



# NEWSLETTER

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Shenzhen court case: The first instance judgment on the trade secret infringement case exceeded RMB 14.18 million

ITC 337终裁：科沃斯旗下添可品牌两款真空吸尘器将被禁止进口到美国

ITC 337 Final ruling: Two vacuum cleaners under Cobos' Teco brand will be prohibited from being imported into the United States

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The highest photographic infringement statutory damages judgment in the United States: 42 photos of infringement, awards RMB 45 million

## 立方竞争法周报 Weekly Competition Law News

### 丝路沿线西北省区经营者集中审查协作签约仪式在西安举行

2023年12月21日，陕西牵头会商甘肃、青海、宁夏、新疆等西北省区五地市场监管部门在西安举行《丝路沿线西北省区经营者集中审查协作框架协议》（“《协议》”）签约仪式。《协议》确定了五个方面的协作内容，包括加强五省区市场监管部门反垄断工作沟通和交流；联合组织对区域内重点企业、律所和反垄断职能部门经营者集中业务培训；共享达到申报标准的规模以上企业信息；加强经营者集中审查相关法规的宣传，引导区域内企业开展合规工作；加强对所在地区经营者集中申报和履行审查决定的指导，建立健全对违法实施经营者集中行为的处置联动机制。（[查看更多](#)）

### Signing Ceremony for Collaboration on Review of Concentration of Undertakings in Northwest Provinces and Regions along Silk Road Held in Xi'an

On December 21, 2023, a signing ceremony of the Framework Agreement on Collaboration on Review of Concentration of Undertakings in Northwest Provinces and Regions along the Silk Road (the “Agreement”) is held in Xi'an by the market regulatory authorities of the five northwest provinces and regions, including Gansu, Qinghai, Ningxia and Xinjiang, led by Shaanxi. The Agreement identifies five aspects of collaboration, including strengthening communication and exchanges on anti-monopoly work between the market supervision departments of the five provinces and regions; jointly organizing centralized business training for undertakings of key enterprises, law firms and anti-monopoly departments in the region; sharing information on enterprises above the designated size that declares the standard; strengthening the publicity of relevant laws and regulations on the concentration of undertakings, and guiding enterprises in the region to carry out compliance work; strengthening guidance on the declaration and implementation of review decisions on the concentration of undertakings in the region, establishing and improving the supervision of illegal concentration of undertakings behavioural processing linkage mechanism. ([More](#))

### 最高法发布指导性案例221号垄断纠纷案

2023年12月20日，最高人民法院（“最高法”）发布指导性案例221号张某勋诉宜宾恒某投资集团有限公司、四川省宜宾市吴某建材工业有限责任公司等垄断纠纷案。张某勋名下的砖厂为宜宾市某行业协会的成员，该行业协会组织具有竞争关系的会员单位达成《暂行管理办法》，约定部分企业停产，控制宜宾砖瓦市场砖的生产数量，控制停产会员单位直接退出宜宾市砖瓦市场的竞争。2013年3月6日，四川省工商行政管理局在《行政处罚决定书》中认定该行业协会进行了限制商品生产数量的垄断协议行为。后张某勋起诉行业协会及相关成员至四川省成都市中级人民法院，该行业协会及相关成员不服一审判决上诉至最高法。最高法认为，张某勋作为涉案横向垄断协议的实施者，无权因自身的违法行为获得利益，对其关于赔偿损失的诉讼请求不予支持。（[查看更多](#)）

## **Supreme Court Issues Guiding Case No. 221 on Monopoly Disputes**

On December 20, 2023, the Supreme People's Court ("SPC") issues Guiding Case No. 221, Zhang v. a Yibin investment group limited company and a Sichuan Yibin building material industry corporation. The brick factory under Zhang's name was a member of a trade association in Yibin, which organised member units with competitive relationships to reach a Temporary Management Measure, agreeing that some enterprises would stop production, control the number of bricks produced in the Yibin brick market, and control the stoppage of production of member units to directly withdraw from the competition in the brick market in Yibin. On March 6, 2013, the Sichuan Industry and Commerce Bureau determined in the Decision of Administrative Sanctions that the industry association had engaged in the act of monopoly agreement limiting the quantity of goods produced. Zhang later sued the trade association and related members to the Chengdu Intermediate People's Court in Sichuan Province, and the trade association and related members appealed the first instance judgment to the Supreme Court. The Supreme Court holds that Zhang as the perpetrator of the horizontal monopoly agreement in question, is not entitled to benefit from his own unlawful behaviour and does not support his claim for compensation for damages. ([More](#))

## **市场监管总局公布一起滥用行政权力排除、限制竞争行为**

2023年12月20日，国家市场监督管理总局（“市场监管总局”）公布一起由云南省市场监督管理局（“云南省市监局”）处理的滥用行政权力排除、限制竞争行为案件。2023年7月24日，云南省市监局依法对昆明市五华区人民政府办公室（“当事人”）立案调查。经查，当事人制定印发文件，要求城市更新改造项目合作企业（伙伴）中标人须在五华辖区范围内注册成立全资子公司或控股的合资项目公司，违背了市场公平竞争原则，构成滥用行政权力排除、限制竞争行为。调查期间，当事人积极整改，主动纠正违法行为，发文废止了上述文件，并在政府信息公开上公示，消除了不良社会影响，恢复了市场公平竞争。（[查看更多](#)）

## **SAMR Announces Penalty of Abuse of Administrative Power to Exclude or Restrict Competition**

On December 20, 2023, the State Administration for Market Regulation ("SAMR") announces a case of abuse of administrative power to exclude and restrict competition handled by the Yunnan Provincial Administration for Market Regulation ("Yunnan AMR"). On July 24, 2023, the Yunnan AMR initiated an investigation against the Office of the People's Government of Wuhua District, Kunming (the "Party") in accordance with the law. After investigation, the Party formulated and issued documents requiring the successful bidder of the cooperative enterprise (partner) of the urban renewal and reconstruction project to register and set up a wholly-owned subsidiary or a controlling joint venture project company within the jurisdiction of Wuhua, which violated the principle of fair competition in the market, and constituted an abuse of administrative power to exclude and restrict competition. During the investigation, the party concerned actively rectified the situation, took the initiative to correct the illegal behaviour, issued a document repealing the said document, and made it public on the public disclosure of government information, eliminating the adverse social impact and restoring fair competition in the market. ([More](#))

## **中俄签署反垄断领域合作谅解备忘录**

2023年12月19日，在国务院总理李强和俄罗斯总理米舒斯京见证下，市场监管总局局长罗文与



俄罗斯联邦反垄断局局长沙斯科斯基在北京共同签署了《中华人民共和国国家市场监督管理总局和俄罗斯联邦反垄断局谅解备忘录（2024—2025）》。根据该谅解备忘录，中俄双方将开展反垄断、反不正当竞争和广告领域的交流合作。（[查看更多](#)）

## China and Russia Sign Memorandum of Understanding on Cooperation in Field of Antimonopoly

On December 19, 2023, the Memorandum of Understanding (2024-2025) between the State Administration of Market Regulation of the People's Republic of China (SAMR) and the Russian Federal Antimonopoly Service (FAS Russia) is signed in Beijing by Director General of the SAMR, Luo Wen and Director General of the FAS Russia, Shaskosky, witnessed by Premier Li Qiang and Russian Prime Minister Mishusztin. Under the Memorandum of Understanding, China and Russia will carry out exchanges and cooperation in the areas of antimonopoly, anti-unfair competition and advertising. ([More](#))

## 日本公平贸易委员会发布反垄断合规指南

2023年12月21日，日本公平贸易委员会（JFTC）发布了《设计和实施有效反垄断合规计划指南：重点应对卡特尔和操纵投标行为》（“《指南》”）。JFTC从支持企业遵守反垄断法的角度出发，通过问卷调查和访谈等形式了解企业遵守反垄断法的情况，明确当前存在的问题和课题，提出进一步改进的各项措施。此外，其他司法管辖区的竞争监管机构、国际组织和国际网络也发布了公司设计和实施竞争法合规计划的指南。在这些工作的基础上，JFTC制定并发布了《指南》，简要概述了帮助各个公司设计和实施有效的反垄断合规计划的最佳实践，主要涉及卡特尔和操纵投标行为。《指南》全面、系统地梳理了有效反垄断合规计划的构成要素、意义、精要和注意事项，并引入了积极参与反垄断合规的公司等的真实意见，如JFTC过去的实况调查中进行的问卷和访谈，作为良好实践的范例。（[查看更多](#)）

## JFTC Issues Antitrust Compliance Guide

On December 21, 2023, the JFTC publishes the *Guide for the Design and Implementation of an Effective Antimonopoly Act (the AMA) Compliance Program: Focusing on Responses to Cartels and Bid-rigging* (the *Guide*). JFTC has made and published reports to understand and analyse the status of companies' efforts to comply with the AMA through questionnaires and interviews, to clarify current problems and issues, and to propose various measures for further improvement. In addition, competition authorities in other jurisdictions, international organizations and an international network have published guides for companies to design and implement compliance programs regarding competition law. Based on these efforts, the JFTC has made and published the *Guide* that outlines best practices to help individual companies design and implement effective AMA compliance programs mainly related to cartels and bid-rigging. The *Guide* has the characteristic in that it comprehensively and systematically organizes the components of an effective AMA compliance program, its significance, its essence, and its points of attention. Another characteristic of the *Guide* is that it introduces the real opinions of companies, etc. which are actively engaged in the AMA compliance, as seen in the questionnaires and interviews conducted in the JFTC's past fact-finding surveys, as examples of good practices. ([More](#))

## 德国联邦卡特尔局公布2023年执法行动总结

2023年12月21日，德国联邦卡特尔局（FCO）公布了2023年执法行动总结。在卡特尔诉讼方面，FCO对工业建筑行业的8家公司和5名自然人处以约280万欧元（约2219.28万人民币）的罚款，并从此前结束的诉讼中收取了约7740万欧元（约6.13亿人民币）的罚款（包括利息）。在数字经济方面，FCO指控PayPal涉嫌排除竞争对手并限制价格竞争；完成了对“非搜索在线广告”（non-search online advertising）领域及“即时通讯和视频服务”（messenger and video services）领域的行业调查；2019年FCO诉Facebook一案也由欧盟法院（CJEU）作出裁决。在合并控制方面，2023年，FCO审查了大约800项合并行为，有7项合并进入了进一步调查阶段。在竞争法修订方面，2023年11月7日德国竞争法（GWB）第11修正案正式生效。作为修正案的一个关键内容，FCO的权限得到扩大，其能够在部门调查后采取相应的救济措施，还可以审查涉嫌违反欧盟《数字市场法》的行为。（[查看更多](#)）

## German FCO Publishes Its Review of 2023

On December 21, 2023, the German Federal Cartel Office (FCO) publishes its Review of 2023. In the area of cartel prosecution, the FCO imposes fines of approximately EUR 2.8 million (CNY 221,928,000) on a total of 8 companies and 5 individuals in the industrial construction sector. Around EUR 77.4 million (CNY 613 million) in fines, including accrued interest, were collected from previously concluded proceedings. In relation to the digital economy, the FCO initiated a proceeding under the rules of traditional abuse control against PayPal on account of practices possibly hindering competitors; the FCO also concluded a sector inquiry into non-search online advertising and a sector inquiry under consumer protection law into messenger and video services; in 2023 the Court of Justice of the European Union (CJEU) handed down a landmark decision in connection with the FCO's 2019 Facebook case. In the area of merger control, the FCO In 2023 the FCO examined around 800 merger projects. Seven of these mergers were closely examined in the second phase proceedings. In terms of competition law amendments, on November 7 2023, the 11<sup>th</sup> Amendment to the German Competition Act (GWB) entered into force. As a key element of the amendment, the FCO's competencies have been extended and it is able to enable the authority to impose remedies following a sector inquiry, as well as to examine possible violations of the EU's Digital Markets Act. ([More](#))

## 法国竞争管理总局因纵向限制竞争行为对劳力士处以9160万欧元罚款

2023年12月19日，法国竞争管理总局决定对劳力士法国（包括Rolex Holding SA, the Hans Wilsdorf Foundation and Rolex SA）十余年来禁止其零售商通过线上渠道销售劳力士手表的行为处以9160万欧元（约7.25亿人民币）的连带罚款。法国竞争管理总局认为法国劳力士与其零售商之间的选择性分销协议条款构成限制竞争的纵向协议。尽管劳力士法国辩称禁止网上销售的理由是需要打击假冒和平行贸易，但由于劳力士法国的主要竞争对手在面临同样风险的情况下仍在一定条件下允许其产品在网上销售，因此法国竞争管理总局认为可以通过限制竞争较少的方式实现上述目标。劳力士法国的行为严重限制了市场竞争，相当于关闭了营销渠道，损害了消费者和经销商的利益。除了罚款外，劳力士法国还被勒令将这一决定通知其经销商，并在未来两个月内连续七天在其网站以及指定报刊上发布该决定的摘要内容。（[查看更多](#)）

## **The Autorité de la concurrence Fines Rolex EUR 91.6 Million for Prohibiting Its Authorised Retailers from Selling Its Watches Online**

On December 19, 2023, according to media reports, the Autorité de la concurrence (“Autorité”) has fined Rolex France (jointly and severally with Rolex Holding SA, the Hans Wilsdorf Foundation and Rolex SA) for prohibiting its retailers from selling Rolex watches online for more than ten years. The Autorité considers that the terms of the selective distribution agreement between Rolex France and its retailers constitute a vertical agreement that restricts competition. The Autorité rejected Rolex France’s argument that the ban on online selling was justified by the need to combat counterfeiting and parallel trade. Finding in this respect that Rolex’s main competitors, who face the same risks, authorise the online selling of their products under certain conditions, it considered that these objectives can be achieved by means that are less restrictive of competition. Rolex France’s actions severely restricted competition in the market and amounted to the closure of marketing channels to the detriment of consumers and dealers. In addition to the fine, Rolex France was ordered to notify its dealers of the decision and to publish a summary of the decision on its website, as well as in selected newspapers, for seven consecutive days over the next two months. ([More](#))

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

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### **《网络安全标准实践指南——大型互联网平台网络安全评估指南》公开征求意见**

2013年12月23日，全国信息安全标准化技术委员会秘书处发布关于对《网络安全标准实践指南——大型互联网平台网络安全评估指南（征求意见稿）》（以下称《实践指南》）公开征求意见的通知，《实践指南》面向社会公开征求意见，意见征求日期截止到2024年1月5日。《实践指南》从影响或者可能影响社会稳定和公共利益的角度，给出了开展大型互联网平台网络安全评估的评估内容和评估方法。评估内容包括关键业务弹性、容灾备份能力、关键软硬件产品供应链安全性、对外提供数据的可控性、数据泄露事件发生后应急处置、平台控制权及用户权益保护，为大型互联网平台开展网络安全评估提供参考。（[查看更多](#)）

### ***The Guidance for Cybersecurity Standards Practice-Network Security Assessment Guideline for Large Internet Platforms Is Open for Comment***

On 23 December 2013, the Secretariat of the NISSTC issued a notice on soliciting comments on the "The Guidance for Cybersecurity Standards Practice-Network Security Assessment Guideline for Large Internet Platforms (Draft for Comment)" (hereinafter referred to as the "*Practice Guidance*"), and the *Practice Guidance* is open to the public for comments until January 5, 2024. From the perspective of affecting or possibly affecting social stability and public interests, the *Practice Guidance* provides the contents and evaluation methods for conducting network security assessment of large Internet platforms. The assessment includes key business resiliency, disaster recovery and backup capability, supply chain security of key hardware and software products, controllability of providing data externally, emergency response after data breach, platform control rights and user rights protection, providing reference for large Internet platforms to carry out network security assessment. ([More](#))



## **“粤港澳大湾区数据保护和数据跨境服务”平台正式上线并签约首批合作单位**

2023年12月19日，“粤港澳大湾区数据保护和数据跨境服务平台上线启动仪式暨首批合作单位签约仪式”在第二届粤港澳数据合作会议上成功举行。粤港澳大湾区数据保护和数据跨境服务平台集技术服务、专业咨询、资讯分享为一体，将致力于为南沙（粤港澳）数据服务试验区乃至大湾区企业数据流通的安全性、合规性提供保障。据了解，平台提供“数据跨境合规”、“APP合规”、“数据交易流通”、“企业数据合规治理”以及“合规能力提升”五大核心解决方案，并提供关于粤港澳大湾区数据跨境流动便利化政策的专项服务等。（[查看更多](#)）

## **The "Guangdong-Hong Kong-Macao Greater Bay Area Data Protection and Cross-Border Data Services" Platform Officially Launched and Signs with the First Batch of PARTNERS**

On 19 December 2023, the Launch Ceremony of the Guangdong-Hong Kong-Macao Greater Bay Area Data Protection and Cross-border Data Service Platform and the Signing Ceremony of the First Batch of Partners were successfully held at the second Guangdong-Hong Kong-Macao Data Cooperation Conference. The platform integrates technical services, professional consultation and information sharing, and will be committed to safeguarding the security and compliance of the data flow of enterprises in Nansha (Guangdong, Hong Kong and Macao) Data service Pilot Zone and even the Greater Bay Area. It is understood that the platform provides five core solutions of "data cross-border compliance", "APP compliance", "data transaction circulation", "corporate data compliance governance" and "compliance capability enhancement", and provides special services on the Guangdong-Hong Kong-Macao Greater Bay Area data cross-border flow facilitation policies. ([More](#))

## **上海高院发布10个服务保障数字经济发展典型案例**

2013年12月18日，上海市高级人民法院发布10个服务保障数字经济发展典型案例。典型案例按照“涉个人信息处理或利用网络侵害其他人格权案件”“涉数据形态财产权益及市场竞争秩序保护案件”“涉平台经营者/数据算法运用者法定义务及相关主体权益保护案件”“涉侵害数据形态权益、利用数据技术实施网络犯罪及黑灰产业防治案件”四大分类研究体系梳理而成，涉及刑事、民事、商事、金融、知产等各个审判领域，其中不乏涉及数据流通、算法应用等前沿问题的案件，如员工个人信息合理使用问题等。（[查看更多](#)）

## **Shanghai High People's Court Releases 10 Typical Cases of Serving and Safeguarding Digital Economy Development**

On 18 December 2013, the Shanghai High People's Court issued 10 typical cases of serving and safeguarding digital economy development. Typical cases are studied according to the four categories, that is, "cases involving personal information processing or network infringement of other personality rights", "cases involving data form property rights and market competition order protection", "cases involving platform operators/data algorithm users' legal obligations and related subjects' rights protection", "cases involving infringement of data form rights and interests, the use of data technology to implement cyber-crimes and prevention and control of black and gray industry" The research system has been sorted out, involving criminal, civil, commercial, financial, intellectual property and other trial

fields, including many cases involving data circulation, algorithm application and other cutting-edge issues, such as the rational use of employee personal information. ([More](#))

## 全国首例法院认定数据交易买受人商业秘密侵权案公布

2023年12月19日，据重庆两江新区（自贸区）法院发布信息，法院对重庆光某摩托车制造有限公司与广州三某摩托车有限公司侵犯商业秘密纠纷案作出判决。基本案情为：光某公司与三某公司同为摩托车生产、出口企业。2019年4月17日，三某公司与第三方数据公司订立合同，约定购买摩托车出口量前十位的企业数据。第三方数据公司向其提供了含光某公司在内多家摩托车企业每次出口报关详情信息，包括出口目的地、规格型号、排量、美元单价、美元总价、申报数量等21项具体项目。被告三某公司接收上述信息后，认可第三方数据公司的交付行为，同时向第三方披露、使用了光某公司的上述信息。光某公司向法院起诉，主张三某公司非法获取并使用其商业秘密，请求判令三某公司立即停止侵权，并赔偿光某公司经济损失300万元。

法院审理认为，原被告为同业竞争主体，具有类似的外贸经营模式，三某公司在发现数据涉及竞争企业每次出口的具体品牌、型号、数量、单价等特殊组合信息时，必然知道数据信息涉及他人的商业秘密。数据交易买受人明知数据涉及他人的商业秘密仍予接收并使用的，应当与数据提供者承担共同侵权责任。遂判决三某公司停止侵犯商业秘密的行为，赔偿光某公司经济损失及合理维权费用合计5万元。（[查看更多](#)）

## First Case in China: Court Rules the Buyer of a Data Transaction Constitutes Trade Secret Infringement

On 19 December 2023, according to the information released by the court of Chongqing Liangjiang New Area (Free Trade Zone), the court made a judgment on the case of a Chongqing company suing a Guangzhou company for infringement of trade secrets.

The plaintiff and the defendant are both motorcycle production and export enterprises. On 17 April 2019, the defendant entered a contract with a third-party data company to purchase the data of the top ten enterprises for motorcycle exports. The third-party data company provided the details of each export declaration of a number of motorcycle enterprises, including 21 specific items such as export destination, specifications and models, displacement, dollar unit price, dollar total price, and declared quantity. The plaintiff's information was also involved. After receiving the above information, the defendant disclosed and used the above information of the plaintiff to other parties. The plaintiff filed the case with court, claiming that the defendant illegally obtained and used its trade secrets, and requested that the defendant immediately stop the infringement and compensate the plaintiff for economic losses of RMB 3 million.

The court held that the plaintiff and defendant are competing with each other in the industry and has a similar foreign trade business model, and the defendant must know that the data involves the trade secrets of others when he finds that the data involves the specific brand, model, quantity, unit price and other special combination information of each export of the competitive enterprise. Where a data transaction buyer accepts and uses the data when knowing that it involves the trade secrets of others, it shall bear joint tort liability with the data provider. Therefore, the defendant was sentenced to stop the viola-

tion of trade secrets and compensate the plaintiff for economic losses and reasonable rights protection costs of RMB 50,000.([More](#))

### 四川多家单位因网络安全管理不到位被处罚

2023年12月17日，网信四川发布两则网络安全管理案例，分别为：1. 某医院未制定内部安全管理制度和操作流程，未确定网络安全负责人，未采取防范计算机病毒和网络攻击、网络侵入等危害网络安全行为的技术措施，导致被黑客攻击造成系统瘫痪。公安机关对该院处以责令改正并警告的行政处罚。2. 某单位信息系统未按规定设立防火墙，未安装网络流量监测软件，未记录网站访问日志，未采取防范计算机病毒和网络攻击、网络入侵等危害网络安全行为的技术措施，网站建设完成至今，未更新安全策略、未落实等级测评等安全防护措施。公安机关根据对该单位罚款1万元，对直接责任人罚款5千元；对托管单位某公司罚款1万元、对直接责任人罚款5千元。（[查看更多](#)）

### Multiple Units in Sichuan Have Been Punished for Inadequate Network Security Management

On 17 December 2023, “Wangxin Sichuan” released two network security management cases, respectively:

1. A hospital did not formulate an internal security management system and operation process, did not appoint the person in charge of network security, did not take technical measures to prevent computer viruses and network attacks, network intrusion and other harmful network security behaviors, resulting in system paralysis caused by hacker attacks. The public security organ imposed an administrative penalty of ordering the hospital to correct and warning.

2. The information system of a company did not set up a firewall according to regulations, did not install network traffic monitoring software, did not record website access logs, did not take technical measures to prevent computer viruses and network attacks, network intrusion and other harmful network security behaviors, and did not updated security policies and implemented security protection measures such as grade evaluation since the completion of website construction. The public security organ imposed a fine of RMB 10,000 on the company and a fine of RMB 5,000 on the person directly responsible; A fine of RMB 10,000 for the custodial company and RMB 5,000 for the person directly responsible.([More](#))

### 上海“兴业太古汇”因扫码付停车费诱导用户关注商场公众号问题被严肃约谈

2023年12月19日，据上海网信办发布信息，上海“兴业太古汇”商场在消费者停车缴费服务中存在违法收集个人信息的情况。经核实，该商场停车场未提供“纯净版”停车码等便捷缴费方式，同时存在缴费入口设置隐蔽、诱导用户关注商场公众号，以及隐私政策中需要消费者提供“身份证号码”等个人信息授权同意（但技术检测并没有实际收集）等问题。2023年12月18日，上海市网信办会同静安区网信办依法约谈“兴业太古汇”运营企业，要求企业立即整改，切实维护消费者的合法权益。（[查看更多](#)）

## Shanghai "HKRI Taikoo Hui" Is Seriously Interviewed for Inducing Users Follow the Shopping Mall's Official Account When Pay for Parking Fees by Scanning Codes

On 19 December 2023, according to the information released by the Shanghai Cyberspace Administration Office, Shanghai "HKRI Taikoo Hui" shopping mall illegally collected personal information in the parking payment service of consumers. After verification, the shopping mall parking lot does not provide a "pure version" parking code and other convenient payment methods, and there are problems such as hidden payment entrance settings, inducing users to follow the official account of the shopping mall, and the privacy policy requires consumers to provide "ID number" and other personal information which has not been actually collected by the technical detection. On December 18, 2023, the Shanghai Internet Information Office and the Jing'an District Internet Information Office interviewed the operating enterprise of "HKRI Taikoo Hui" in accordance with the law, requiring the enterprise to immediately rectify and effectively safeguard the legitimate rights and interests of consumers. ([More](#))

## 欧洲数据保护委员会对欧盟委员会提出的Cookie承诺自愿倡议采取回应

2023年12月19日，欧洲数据保护委员会（EDPB）通过了一封回应欧盟委员会cookie承诺自愿倡议的信函。EDPB对该倡议表示欢迎，指出该倡议应旨在帮助保护用户的基本权利和自由，增强用户做出有效选择的能力，并为利益相关者提供一个交流意见的平台。不过，EDPB强调，各组织遵守cookie承诺原则并不等同于遵守《通用数据保护条例》（GDPR）或《隐私和电子通信条例》（ePrivacy条例），并确认数据保护当局在必要时仍有权行使其权力。此外，欧洲数据保护委员会提出了一些建议，主要集中在有效同意的要求、信息要求以及普通法和特别法关系方面。（[查看更多](#)）

## EU: EDPB Adopts Response to Commission's Cookie Pledge Voluntary Initiative

The European Data Protection Board (EDPB) adopted on December 19, 2023, a letter in response to the European Commission's cookie pledge voluntary initiative. The EDPB welcomed the initiative, noting that the initiative should aim to help protect the

fundamental rights and freedoms of users, empower them to make effective choices and provide a platform for stakeholders to exchange views. Nevertheless, the EDPB highlighted that adherence to the cookie pledge principles by organizations does not equal compliance with the General Data Protection Regulation (GDPR) or Directive on Privacy and Electronic Communications (the ePrivacy Directive), confirming that data protection authorities remain competent to exercise their powers when necessary. Furthermore, the EDPB provided recommendations focused on, among other things, requirements for valid consent, informational requirements, and the lex generalis and the lex specialis relationship between the GDPR and Article 5(3) of the ePrivacy Directive. ([More](#))

## 意大利数据保护机构对不当使用和收集员工个人数据的市政府处以20,000欧元的罚款

2023年12月15日，意大利数据保护机构（Garante）公布了其于2023年11月16日发布的第577号决定，在该决定中，该机构在接到投诉后对Castel Goffredo市政府处以2万欧元的罚款，理由是



其违反了《通用数据保护条例》（GDPR）和《个人数据保护法》（下称“《保护法》”）。在调查之后，Garante得出结论认为，Castel Goffredo市政府收集录音和录像中申诉人的个人数据不符合《通用数据保护条例》的合法性、正当性和透明性原则。此外，Garante还认定Castel Goffredo市政府在没有法律依据的情况下收集了申诉人的个人数据。基于上述情况，Garante确认，Castel Goffredo市政府违反了GDPR第5(1)(a)条和第5(1)(b)条以及第6条，并违反了投诉时已生效的《保护法》第2条之第三款。根据调查结果，Garante对Castel Goffredo市政府处以20,000欧元的罚款。（[查看更多](#)）

## Italy: Garante Fines Municipality €20,000 for Improper Use and Collection of Employee Personal Data

On 15 December 2023, the Italian data protection authority (Garante) announced in its newsletter, decision No. 577 issued on November 16, 2023, in which it imposed a fine of € 20,000 on the Municipality of Castel Goffredo for violations of the General Data Protection Regulation (GDPR) and the Personal Data Protection Code (the Code), following a complaint. Following its investigation, the Garante concluded that the Municipality of Castel Goffredo's collection of the complainant's personal data contained in the audio and video recordings did not comply with the GDPR principles of lawfulness, correctness, and transparency. In addition, the Garante determined that the Municipality of Castel Goffredo collected the complainant's personal data in the absence of a legal basis.

Based on the above, the Garante confirmed that the Municipality of Castel Goffredo had violated Articles 5(1)(a) and 5(1)(b) as well as Article 6 of GDPR and Article 2-ter of the Code which was in force at the time of the complaint. In light of its findings, the Garante imposed a € 20,000 fine on the Municipality of Castel Goffredo. ([More](#))

## 知识产权 Intellectual Property

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### 国知局发布《关于施行修改后的专利法及其实施细则相关审查业务处理过渡办法的公告》

2023年12月21日，国家知识产权局发布关于施行修改后的专利法及其实施细则相关审查业务处理过渡办法的公告（第559号）。《过渡办法》共十七条，除第一条适用原则和第十七条施行日期外，第二条至第六条主要涉及申请人权利义务，第七条至第十六条涉及国务院专利行政部门审查职责。《过渡办法》明确专利法及其实施细则生效前后相关审查业务处理的原则性规定，即原则上不溯及既往。并明确强制代理例外相关情形、优先权恢复、增加或者改正相关内容、保密审查期限、局部外观设计专利申请、新颖性宽限期相关情形、外观设计本国优先权等的适用规则。

来源：国家知识产权局

## CNIPA issues the Interim Measures on the Implementation of the Revised Patent Law and Its Implementing Rules Related to the Review of Business Handling

On 21 December 2023, the CNIPA issued a Notice on the Interim Measures for the implementation of the revised Patent Law and its Implementing Rules related to the examination of business processing (No. 559). In addition to the applicable principles of Article 1 and the implementation date of Article 17, Articles 2 to 6 mainly involve the rights and obligations of the applicant, and Articles 7 to 16 involve the examination duties of the patent administration department under The State Council. The "Transitional Measures" clarify the principle provisions of the relevant examination business treatment before and after the patent Law and its implementing rules come into force, that is, in principle, it is not retroactive. And clarify the applicable rules of compulsory agency exceptions, priority restoration, addition or correction of relevant content, confidentiality review period, partial design patent application, novelty grace period, national priority of design, etc.

Source: CNIPA

## 国家知识产权局发布专利审查指南（2023）

2023年12月21日，国知局发布《专利审查指南（2023）》，审查指南分为六个部分，38个章节，内容涵盖初步审查、实质审查、进入国家阶段的国际申请的审查、复审与无效请求的审查、专利申请及事务处理、外观设计国际申请等方面内容，审查指南将自2024年1月20日起施行。2010年1月21日公布的《专利审查指南》及其后公布的相关局令、公告同时废止。

来源：国家知识产权局

## CNIPA issues Patent Examination Guidelines (2023)

On 21 December 2023, CNIPA issued the "Patent Examination Guide (2023)", which is divided into six parts and 38 chapters, covering preliminary examination, substantive examination, examination of international applications entering the national stage, examination of review and invalid requests, patent application and affairs processing, international design applications, etc. The review guidelines will take effect on January 20, 2024. The Patent Examination Guidelines promulgated on January 21, 2010 and the relevant bureau orders and announcements promulgated later shall be repealed simultaneously.

Source: CNIPA

## 北京知识产权法院发布六件计算机软件著作权民事案件典型案例

12月21日，北京知识产权法院召开新闻发布会，通报计算机软件著作权司法保护工作情况并发布六件典型案例，案例涉及软件行业纠纷中的典型问题、热点问题，包括：权利软件版本与被诉侵权软件版本的举证责任分配，当事人是否可以自行委托鉴定机构进行一致性比对及其流程规范，网页模板代码是否可以作为计算机软件予以保护，通过信息网络传播软件的行为能否适用合法来源抗辩，向公众开放下载的App安装包或驱动程序能否被随意复制、修改、发行许可，抄袭剽窃类软件侵权遵循的判定方法等。

来源：北京知识产权法院

## Beijing IP Court issues six typical cases of computer software copyright civil cases

On December 21, the Beijing Intellectual Property Court held a press conference to inform the judicial protection of computer software copyright and released six typical cases involving typical and hot issues in software industry disputes, including: The distribution of the burden of proof between the version of the right software and the version of the accused infringing software, whether the parties can entrust the identification agency to conduct the consistency comparison and the process specification, whether the web template code can be protected as computer software, and whether the legal source defense can be applied to the behavior of spreading software through the information network. Whether the App installation package or driver downloaded to the public can be copied, modified, and distributed license, and the determination method followed by plagiarism and plagiarism software infringement.

Source: Beijing IP Court

## 北京知识产权法院发布《涉外案件主体资格证明文件办理参考》

12月19日，北京知识产权法院召开新闻发布会，通报2023年立案工作情况并发布《涉外案件主体资格证明文件办理参考》。《办理参考》涉及美国、法国、德国、比利时、日本、韩国6个国家，在总结以往审查涉外案件公证认证文件经验的基础上，分别介绍了证明文件名称、样式、办理步骤等内容，并设置有“文件示例”，直观展示司法实践中不同国家主体提交的真实样本，供办理者参考借鉴。

来源：北京知识产权法院

## Beijing IP Court issues Guidelines for Handling Supporting Documents Certifying the Subject Qualification in Foreign-related Cases

On December 19, the Beijing Intellectual Property Court held a press conference to inform the case filing work in 2023 and issued the "Reference for Handling Qualification Documents of Foreign-related Cases". The "Handling Reference" involves 6 countries including the United States, France, Germany, Belgium, Japan and South Korea. On the basis of summarizing the previous experience in reviewing notarial certification documents in foreign-related cases, it introduces the name, style and handling steps of the certification documents respectively, and sets up "document examples" to visually show the real samples submitted by different national subjects in judicial practice. For the management of reference.

Source: Beijing IP Court

## 最高法院案例：药品专利链接诉讼参照适用“先行裁驳、另行起诉”

近日，最高法院就住友制药株式会社与浙江某海药业股份有限公司确认是否落入专利权保护范围纠纷一案二审裁定驳回上诉。此前北京知识产权法院一审裁定驳回原告大日本住友制药株式会社的起诉。

最高法院认为，涉案无效宣告请求审查决定已发生法律效力，涉案专利权应当自始无效，故住友制药株式会社起诉的条件不再具备。鉴于一审法院裁定驳回起诉，未对案件进行实体审理，故原审裁定的结论应予维持。关于案件是否应当实体审理的争议焦点，法院认为：人民法院在审理权利人或利害关系人提起的确认是否落入专利权保护范围纠纷之诉时，可以参照适用侵犯专利权纠纷解释（二）第二条关于“先行裁驳、另行起诉”的规定，先行裁定驳回起诉符合专利法设立药品专利纠纷早期解决机制的制度定位，先行裁定驳回起诉并不会导致双方当事人利益失衡。原审法院在涉案专利权被国家知识产权局宣告无效、宣告专利权无效的审查决定尚未确定发生法律效力、的情况下，参照适用上述规定，先行裁定驳回住友制药株式会社的起诉，亦无不当。

来源：最高人民法院

### **Supreme Court Case: Drug patent link litigation refer to the application of "first cut refute, Sue separately"**

Recently, the Supreme Court rejected the appeal of the second instance of the dispute between Sumitomo Pharmaceutical Co., Ltd. and Zhejiang Haihai Pharmaceutical Co., LTD., which confirmed whether it fell into the scope of patent protection. Earlier, the Beijing Intellectual Property Court ruled in the first instance to reject the plaintiff Sumitomo Pharmaceutical Co., LTD.

The Supreme Court held that the review decision on the request for invalidation had taken legal effect, and the patent rights involved should be invalid from the beginning, so the conditions for Sumitomo Pharmaceutical Co., Ltd. to Sue were no longer available. Since the court of first instance ruled to dismiss the lawsuit and did not conduct a substantive trial of the case, the conclusion of the original ruling should be upheld. On the issue of whether the case should be tried in substance, the Court held that: When the people's court hears a lawsuit filed by a right holder or an interested party to confirm whether the dispute falls within the scope of patent right protection, it may refer to the provisions of Article 2 of the Interpretation of patent right infringement Disputes on the provision of "first arbitration and refute, and then bring a separate lawsuit", and the first ruling to reject the lawsuit conforms to the institutional positioning of the Patent Law to establish an early settlement mechanism for drug patent disputes. An early ruling to dismiss an action will not result in an imbalance of interests between the parties. In the case that the patent right in question has been declared invalid by the State Intellectual Property Office, and the examination decision declaring the patent right invalid has not yet been determined to have legal effect, it is also improper for the court of first instance to rule to reject the lawsuit of Sumitomo Pharmaceutical Co., Ltd. with reference to the above provisions.

Source: Supreme Court

### **最高法院案例：不得使用无效宣告请求人未主张的证据结合方式判定专利创造性**

近日，最高法院就石家庄金垦科技有限公司、国家知识产权局与沈阳隆基电磁科技股份有限公司等实用新型专利权无效行政纠纷案判决撤销一审判决、国知局针对案涉无效宣告请求重新作出审查决定。此前北京知识产权法院一审判决驳回原告石家庄金垦科技有限公司的诉讼请求。



最高法院认为，本案中，国知局不但难以证明其审查范围在当事人提出的无效宣告请求的范围之内，且其只是从无效宣告请求人罗列的证据中自行选取证据结合方式进行审查，其作出被诉决定的理由超出了无效宣告请求的证据组合范围。同时，在案亦无证据能够证明专利权人在被诉决定作出之前对采用该种证据组合方式评价创造性具有陈述意见的机会，故国家知识产权局作出被诉决定亦不符合听证原则。由于国家知识产权局作出被诉决定的程序违法，故法院不能基于缺乏正当程序基础的证据组合对本专利创造性进行审查。但是需要指出的是，国家知识产权局在重新作出审查决定或基于其他证据组合对本专利的创造性进行评价时，应当重点考虑区别特征是否整体发挥作用取得技术效果、本专利是否属于两项以上现有技术的简单叠加等因素，依法作出判断。

来源：最高人民法院

### **Supreme Court Case: The combination of evidence not claimed by the applicant for invalidation shall not be used to determine patent creativity**

Recently, the Supreme People's Court revoked the first instance judgment on the administrative disputes over utility model patent invalidation of Shijiazhuang Jinken Technology Co., LTD., the State Intellectual Property Office and Shenyang Longji Electromagnetic Technology Co., LTD., and the State Knowledge Bureau made a reconsideration decision on the request for invalidation of the case. Earlier, the Beijing Intellectual Property Court rejected the plaintiff's claim of Shijiazhuang Jinken Technology Co., LTD.

The Supreme Court held that in this case, it was not only difficult for the State Knowledge Bureau to prove that its scope of examination was within the scope of the request for invalidation put forward by the parties, but also that it only selected the evidence combination method from the evidence listed by the claimant for invalidation for examination, and the reasons for making the decision against the prosecution exceeded the scope of the evidence combination of the request for invalidation. At the same time, there is no evidence to prove that the patentee has the opportunity to state his opinion on the evaluation of creativity by this combination of evidence before the decision is made, so the decision of the State Intellectual Property Office to make the decision is not in line with the hearing principle. Since the procedure by which the SIPO made the decision to Sue is illegal, the court cannot review the creativity of this patent on the basis of the combination of evidence that lacks the basis of due process. However, it should be pointed out that when the State Intellectual Property Office makes a re-examination decision or evaluates the creativity of the patent based on other combinations of evidence, it should focus on whether the distinguishing features play a role in achieving technical effects as a whole, whether the patent is a simple superposition of more than two prior art and other factors to make a judgment in accordance with the law.

Source: Supreme Court

### **浙江法院案例：充分利用“有一定影响的商品名称”与商标权的有效衔接**

近日，浙江省瑞安市人民法院就香蕉工作室(STUDIOBANANASL.)诉瑞安市君瑞工艺品厂案侵害商标权及不正当竞争纠纷一案作出一审判决，判决被告停止商标侵权行为，并赔偿原告经济损失30万元。

法院认为，原告是“OSTRICHPILOW”标识的商标权人，在“OSTRICHPILOW”商标注册前，通过原告自己和他人的使用、宣传，使“OSTRICHPILOW”达到识别商品来源的商业标识作用，属于有一定影响的商品名称，被告使用该标识构成不正当竞争，在商标注册之后被告使用行为构成商标侵权。被告在其生产、销售的枕头商品名称及商品详情页面中使用“鸵鸟枕”“鸵鸟头枕”“鸵鸟午睡枕”标识的行为亦构成不正当竞争，基于商标法及反不正当竞争法之间关系，法院对香蕉工作室主张的个别被诉侵权行为同时构成商标侵权及不正当竞争的诉请依法不予支持。

来源：浙江省瑞安市人民法院

### **Zhejiang Court case: Make full use of the effective connection between "influential trade name" and trademark right**

Recently, the People's Court of Ruian City, Zhejiang Province, on the STUDIOBANANASL.v. Ruian Junrui Arts and crafts factory case of trademark infringement and unfair competition dispute made a judgment of the first instance, the defendant to stop trademark infringement, and compensate the plaintiff for economic losses of 300,000 yuan.

The court held that the plaintiff is the trademark owner of the "OSTRICHPILOW" logo. Before the registration of the "OSTRICHPILOW" trademark, through the use and publicity of the plaintiff and others, "OSTRICHPILOW" can achieve the role of commercial identification of commodity sources, and it belongs to the commodity name with certain influence. The defendant's use of the mark constitutes unfair competition, and the defendant's use of the mark after the registration of the trademark constitutes trademark infringement. The defendant's use of the logos "Ostrich pillow", "Ostrich head pillow" and "Ostrich nap pillow" in the product name and product details page of the pillows it produced and sold also constituted unfair competition. Based on the relationship between trademark law and anti-unfair competition law, the court did not support the claims of STUDIOBANANASL.that the individual alleged infringements constituted trademark infringement and unfair competition at the same time.

Source: Ruian People's Court of Zhejiang Province

### **深圳法院案例：就商业秘密侵权案件一审判赔超1418万**

12月18日，深圳市江波龙电子股份有限公司（以下简称“江波龙电子”）发布诉讼事项进展公告，称深圳中院对江波龙电子与两名自然人及深圳市晶存科技有限公司（以下简称“晶存科技”）涉案超1.3亿元的商业秘密诉讼案作出一审判决，判令三被告赔偿江波龙电子约1418.34万元。

此前，江波龙电子以卢某、赵某、晶存科技三被告侵害其测试技术商业秘密为由，向深圳中院提起诉讼。2020年6月22日，深圳中院出具《受理案件通知书》受理该案。本次诉讼被告的两名自然人为原告的前员工，为被告企业的现员工。法院经审理认为，被告晶存科技未经许可在LPDDR3芯片测试经营业务中使用了江波龙电子在案件中主张的相关商业秘密密点的技术信

息；江波龙电子涉案的商业秘密由被告卢某、赵某未经许可披露给被告晶存科技，被告卢某、赵某、晶存科技共同侵害了江波龙电子对上述商业秘密所享有的合法权益，应共同承担相应的法律责任。

来源：深圳市中级人民法院

### **Shenzhen court case: The first instance judgment on the trade secret infringement case exceeded RMB 14.18 million**

On December 18, Shenzhen Jiangbolong Electronics Co., LTD. (hereinafter referred to as "Jiangbolong Electronics") issued a notice of litigation progress, saying that the Shenzhen People's Court made a first-instance judgment on a trade secret lawsuit involving more than 130 million yuan between Jiangbolong Electronics and two natural persons and Shenzhen Jingcun Technology Co., LTD. (hereinafter referred to as "Jingcun Technology"). The three defendants were ordered to compensate Jiangbolong Electronics about 14.1834 million yuan.

Previously, Jiangbolong Electronics filed a lawsuit with the Shenzhen Intermediate Court on the grounds that Lu, Zhao and Jingcun Technology three defendants violated their test technology trade secrets. On June 22, 2020, the Shenzhen People's Court issued a Notice of Case Acceptance to accept the case. The two defendants in this lawsuit are former employees of the plaintiff and current employees of the defendant's enterprise. The court held that the defendant Jing Storage Technology used the technical information of the relevant trade secrets claimed by Jiangbolong Electronics in the case without permission in the LPDDR3 chip test and operation business; The trade secrets involved in Jiangbolong Electronics were disclosed to the defendant Jingcun Technology by the defendants Lu Mou and Zhao mou without permission, and the defendants Lu Mou, Zhao Mou and Jingcun Technology jointly infringed the legitimate rights and interests of Jiangbolong Electronics to the above trade secrets, and shall jointly bear the corresponding legal responsibilities.

Source: Shenzhen Intermediate People's Court

### **ITC 337终裁：科沃斯旗下添可品牌两款真空吸尘器将被禁止进口到美国**

2023年12月18日，美国国际贸易委员会（ITC）应美国必胜公司的投诉，对中国家居清洁龙头科沃斯旗下的添可（Tineco）涉及的某些表面干湿清洁设备的337调查发出最终裁决。2022年2月，美国必胜公司向美国国际贸易委员会ITC对添可智能在内的三家关联公司发起了337调查。指控添可智能侵犯其五件美国专利。请求对添可智能等发布普遍排除令，禁止其进口到美国市场，在终裁中，ITC认为添可在美国销售的某些干湿表面清洁设备（真空吸尘器/洗地机）侵犯了美国必胜公司的美国专利US11,076,735的权利要求1、13、15中的一项或多项，或US11,071,428专利的权利要求1。但是ITC调查后认为其它三项专利并未违反第337条有关专利的规定。

因此，ITC在考虑了公共利益后，提出了适当的补救办法：（1）发布有限排除令，禁止添可进口侵犯上述两项专利的产品；（2）针对每个被控产品的停止和中止令，ITC决定，在总统审查的60天期间，为每种涵盖iFloor 3产品设定99.01美元的保证金，为每一种涵盖Floor One S3产品

设定99.01\$的保证金，以及为每种进口的任何其他涵盖产品设定0美元的保证金；（3）ITC认为，公共利益因素并不能排除本补救办法。

来源：ITC

### **ITC 337 Final ruling: Two vacuum cleaners under Cobos' Teco brand will be prohibited from being imported into the United States**

On 18 December 2023, the United States International Trade Commission (ITC) issued a final ruling on the 337 investigation of certain surface wet and dry cleaning equipment involving Tineco, a subsidiary of China's leading home cleaning company Covos, in response to a complaint by the United States company. In February 2022, Biwin launched a 337 investigation to the ITC of the United States International Trade Commission against three affiliated companies, including Teco Intelligence. Accused Taco of infringing five of its US patents. In its final finding, the ITC found that certain dry and wet surface cleaning devices (vacuum cleaners/floor washers) sold by the company in the United States infringed one or more of claims 1, 13, 15 of the United States patent US11,076,735 of the company. Or claim 1 of patent US11,071,428. However, the ITC investigated and found that the other three patents did not violate the provisions of Section 337 concerning patents.

Accordingly, the ITC, having considered the public interest, proposed the appropriate remedy: (1) issue a limited exclusion order prohibiting the importation of products that infringe the two patents; (2) For each alleged cease and stay order, the ITC determines that, during the 60-day period under presidential review, a deposit of \$99.01 will be set for each covered iFloor 3 product and \$99.01 for each covered Floor One S3 product. And set a deposit of \$0 for any other covered product of each import; (3) The ITC considers that public interest factors do not preclude this remedy.

Source: ITC

### **英国最高法院：只有“人”，而非“AI”，才是专利的发明人**

2023年12月20日，英国最高法院在一起有关人工智能的创作能否被授予专利的上诉案件中，再次确认了：只有“人”，而非“人工智能”，才是专利有资格的“发明人”。英国最高法院审理的这起案件为非常著名的DABUS自主引导设备（被认为是AI）发明的多个产品，能否以DABUS为发明人申请专利的案件。英国上诉法院认为，根据英国法律，只有“一个或多个人”才能被列为专利发明人。上诉法院说，1977年的《专利法》简单地规定了一个人可以是一个发明家，因此人工智能机器的创建者无权为计算机产生的发明申请专利。英国最高法院裁决继续维持了原判。

来源：英国最高法院

### **UK Supreme Court: Only "human", not "AI", is the inventor of a patent**

On 20 December 2023, in an appeal case on whether the creation of artificial intelligence can be granted patents, the UK Supreme Court once again confirmed that only "human", not "artificial intelligence", is the qualified "inventor" of a patent. The case before the UK Supreme Court is about whether



DABUS can be the inventor of several products invented by the famous DABUS autonomous guidance device, which is thought to be AI. The Court of Appeal held that under British law, only "one or more persons" could be listed as inventors of a patent. The court of Appeal said the 1977 Patents Act simply states that a person can be an inventor, so the creator of an AI machine is not entitled to patent a computer-generated invention. The British Supreme Court upheld the original ruling.

Source: UK Supreme Court

### **美国最高摄影侵权法定赔偿判决：侵权42张照片，判赔4500万元**

近日，加利福尼亚州的陪审团认定美国最大的退休社区提供商之一的Pacifica Senior Living（以下简称Pacifica公司）未经许可对建筑摄影师Scott Hargis的42张经版权登记的照片进行了商业性使用，判决Pacifica公司赔偿630万美元（约为人民币4495.9万元），成为美国历史上最大的摄影侵权法定赔偿判决。

照片摄影师于2022年9月起诉Pacifica公司，指控该公司在宣传和营销其老年生活设施时使用了其43张照片，侵犯了版权，要求该公司赔偿损失并采取禁令救济措施。Pacifica公司拒绝与摄影师和解，该案件被升级为陪审团审判，陪审团认定每张照片都是故意侵权，并判给Hargis版权法允许的每张图片最高15万美元的损害赔偿金。陪审团认为，摄影师未能证明他拥有其中一张照片的注册版权，因此判决对其中42张照片进行损害赔偿，赔偿总额为630万美元。

来源：PetaPixel

### **The highest photographic infringement statutory damages judgment in the United States: 42 photos of infringement, awarded RMB 45 million**

A jury in California recently found Pacifica Senior Living, one of the largest retirement community providers in the United States, guilty of unlicensed commercial use of 42 copyrighted photographs by architectural photographer Scott Hargis. Pacifica was awarded \$6.3 million (about 44.959 million yuan), making it the largest photographic infringement statutory damages judgment in U.S. history.

The photo photographer sued Pacifica in September 2022, accusing the company of copyright infringement for using 43 of its photos in the promotion and marketing of its senior living facilities, seeking damages and injunctive relief from the company. Pacifica refused to settle with the photographer, and the case was upgraded to a jury trial, which found that each image was willful infringement and awarded Hargis damages of up to \$150,000 per image allowed under copyright law. The jury found that the photographer had failed to prove that he owned the registered copyright to one of the photos, and awarded damages for 42 of them, totaling \$6.3 million.

Source: PetaPixel

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