



NEWSLETTER

LIFANG & PARTNERS **立方观评**



关注更多精彩内容

No. **381**

2024.5

立方要闻周报

Weekly News By Lifang & Partners

NO.119

立方竞争法周报 Weekly Competition Law News

中国“苹果税”反垄断第一案消费者败诉

First Consumer Antitrust Lawsuit against “Apple Tax” Dismissed in China

市场监管总局发布《市场监管部门优化营商环境重点举措（2024年版）（征求意见稿）》

SAMR Releases Key Initiatives of Market Regulation Departments to Optimise the Business Environment in 2024 (Draft for Comments)

北京市市监局：强化自然垄断环节价格监管

Beijing AMR: Strengthens Price Regulation in Natural Monopoly Segments

贵州省市监局：开展民生领域反垄断反不正当竞争执法

Guizhou AMR: Carries out Antimonopoly and Anti-unfair Competition Law Enforcement in Field of People's Livelihood

欧盟批准KKR以240亿美元收购意大利固定线路网络公司NetCo

EU Approves KKR's USD 24 Billion Acquisition of Italian Fixed-line Network Firm NetCo

汽车电池制造商将对欧盟的卡特尔指控提出抗辩

Car Battery Makers to Fight EU Cartel Charges

印度尼西亚调查Shopee和Lazada的反竞争行为

Indonesia Probes Shopee and Lazada for Anti-competitive Behaviours

美上诉法院确认消费者可以针对苹果提起反垄断集体诉讼

U.S. Court of Appeals Affirms Consumers Can Bring Antitrust Class Action Against Apple



NEWSLETTER

LIFANG & PARTNERS 立方观评



关注更多精彩内容

No.381

2024.5

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

中央网信办等三部门印发《信息化标准建设行动计划（2024—2027年）》

OCCAC and Other Three Departments Issues *Action Plan for the Informatisation Standards Construction (2024-2027)*

网安标委发布《网络安全技术 关键信息基础设施边界确定方法（征求意见稿）》

TC 260 Releases *Network Security Technology: Critical Information Infrastructure Boundary Determination Methods (Draft for Public Comments)*

工信部规划1亿个车联网专用号码

MIIT Plans 100 Million Dedicated Numbers for Internet of Vehicles Business

国家数据局发布20个“数据要素×”案例

NDA Publishes 20 “Data Elements X” Cases

国家知识产权局发布数据知识产权登记十大典型案例

CNIPA Releases Top 10 Typical Cases of Data Intellectual Property Registration

英国正式出台《数字市场、竞争与消费者法案》

UK Formally Introduces *Digital Markets, Competition and Consumers Bill*

美国NIST宣布AI评估项目

NIST Announces AI Assessment Programme

知识产权 Intellectual Property

中国将首次举办世界知识产权大会

China to Host AIPPI for the First Time

最高院案例：高分子化合物领域，因说明书公开不充分被宣告全部无效

Supreme Court Case: In the Field of Polymer Compounds, Declared Entirely Invalid Due to Insufficient Disclosure in the Description

最高院案例：发明具有突出的实质性特点“三步法”原则中“显而易见”标准的判断



No.381

2024.5

Supreme Court Case: Invention with Prominent Substantial Features: Judgment of "Obviousness" Standard in the "Three-Step Method"

深圳法院案例：调换他人商标文字前后顺序构成侵权

Shenzhen Court Case: Rearranging Trademark Text Order Constitutes Infringement

上海法院案例：电商平台未履行平台义务，违背平台中立性应承担连带责任

Shanghai Court Case: E-commerce Platform Fails to Fulfill Duties, Held Liable for Breaching Neutrality

湖北法院案例：严惩假冒东风商标侵权，判处罚金并追缴违法所得

Hubei Court Case: Severe Punishment for Counterfeiting Dongfeng Trademark: Fines Imposed and Illegal Gains Recovered

广州法院案例：进口化妆品是否进行备案登记不影响其装潢权益保护

Guangzhou Court Case: Import Cosmetics' Unregistered Status Does Not Affect Protection of Trade Dress

德法院裁定耐克在与阿迪达斯的条纹纠纷中部分胜诉

Nike Partially Wins Appeal Over Stripes Dispute with Adidas in Germany

美国法院首次裁定外挂软件侵犯游戏公司版权

U.S. Court Rules for First Time: Cheat Software Infringes Game Company's Copyright

印度法院裁定中国深圳摩比天线专利侵权，判罚2600万美元

Indian Court Rules Shenzhen Mobi Antenna from China Guilty of Patent Infringement, Fines \$26 Million

立方竞争法周报 Weekly Competition Law News

中国“苹果税”反垄断第一案消费者败诉

2024年5月29日，据媒体报道，上海知识产权法院就中国首例由消费者针对“苹果税”发起的反垄断诉讼进行一审宣判，驳回原告诉请。上海知识产权法院认定，本案相关市场为中国iOS系统下的智能终端应用程序交易平台市场，苹果具有市场支配地位，但驳回消费者金某关于停止收取30%“苹果税”的不公平高价行为，以及停止“应用内购买”强制使用Apple Pay搭售行为的诉请。对此，原告代理律师表示后续将上诉至最高人民法院。（[查看更多](#)）

First Consumer Antitrust Lawsuit against “Apple Tax” Dismissed in China

On May 29, 2024, according to media reports, the Shanghai Intellectual Property Court handed down a judgment at first instance on China’s first consumer antitrust lawsuit against the “Apple Tax”, rejecting the plaintiff’s claims. The Court found that the relevant market in this case was the market for smart terminal application trading platforms under the iOS system in China and that Apple had a dominant position in the market but rejected consumer Jin’s claims to stop charging the unfairly high price of 30 percent “Apple tax” and to stop mandatory use of Apple Pay in “in-app purchases” for tie-ins. In response, the plaintiff’s attorney indicated that the plaintiff would later file an appeal with the Supreme People’s Court. ([More](#))

市场监管总局发布《市场监管部门优化营商环境重点举措（2024年版）（征求意见稿）》

2024年5月29日，国家市场监督管理总局（“市场监管总局”）发布《市场监管部门优化营商环境重点举措（2024年版）（征求意见稿）》，共10个部分，40条具体措施。在完善公平竞争制度方面，市场监管总局提到推动修订《经营者反垄断合规指南》，研究制定《关于药品领域的反垄断指南》《经营者集中反垄断审查申报技术规范》，制定出台横向经营者集中审查指引。在加强反垄断监管执法方面，市场监管总局提到推进民生领域反垄断执法专项行动，加强经营者集中反垄断监管，持续推进企业境外反垄断应诉指导工作。（[查看更多](#)）

SAMR Releases Key Initiatives of Market Regulation Departments to Optimise the Business Environment in 2024 (Draft for Comments)

On May 29, 2024, the State Administration for Market Regulation (“SAMR”) released *Key Initiatives of Market Regulation Departments to Optimise the Business Environment in 2024 (Draft for Comments)*, which consists of 10 sections and 40 specific measures. In terms of improving the fair competition system, the SAMR mentioned promoting the revision of the *Antimonopoly Compliance Guidelines for Undertakings*, researching on and formulating the *Antimonopoly Guidelines in the Pharmaceutical Area*, the *Technical Specifications of the Declaration for the Antimonopoly Review of the Concentration of Undertakings*, and formulating and issuing the guidelines for the review of horizontal concentrations of undertakings. In terms of strengthening antimonopoly enforcement, the SAMR mentioned promoting special antimonopoly enforcement actions in the field of people’s livelihood, strengthening antitrust

regulation of concentrations of undertakings, and continuously promoting guidance for enterprises to respond to antimonopoly lawsuits in other countries. ([More](#))

北京市市监局：强化自然垄断环节价格监管

近日，北京市市场监督管理局（“北京市市监局”）发布《2024年全面优化营商环境打造“北京服务”工作方案》（“《工作方案》”），共九个方面三十五条工作举措。在构建公平竞争市场环境方面，《工作方案》要求强化自然垄断环节价格监管。落实国家关于健全自然垄断环节监管体制机制有关要求，开展天然气管网、供水等自然垄断环节及延伸竞争性环节价格收费检查，依法查处不执行政府定价、指导价和违规乱收费行为。 ([查看更多](#))

Beijing AMR: Strengthens Price Regulation in Natural Monopoly Segments

Recently, the Beijing Municipal Administration for Market Regulation (“Beijing AMR”) issued the *Work Plan for Comprehensively Optimising the Business Environment and Creating “Beijing Services” in 2024* (“*Work Plan*”), which consists of thirty-five initiatives in nine areas. In terms of building a fair and competitive market environment, the *Work Plan* requires strengthening price regulation in natural monopoly segments, implementing the relevant requirements of the State regarding the improvement of the institutional mechanism for the regulation in natural monopoly segments, carrying out inspections in natural monopoly segments such as natural gas pipeline networks and water supply, and investigating and handling per law the failure to implement government pricing and guidance prices, as well as illegal charges. ([More](#))

贵州省市监局：开展民生领域反垄断反不正当竞争执法

近日，贵州省市场监督管理局（“贵州省市监局”）印发《贵州省市场监管系统营商环境大改善三年行动方案（2024-2026年）》，部署35项重点工作任务。在提升市场监管效能方面，贵州省市监局提出开展民生领域反垄断反不正当竞争执法，开展民生领域“铁拳”行动等措施，打造公平竞争的市场环境。 ([查看更多](#))

Guizhou AMR: Carries out Antimonopoly and Anti-unfair Competition Law Enforcement in Field of People’s Livelihood

Recently, the Guizhou Provincial Administration for Market Regulation (“Guizhou AMR”) issued the *Three-Year Action Programme for Guizhou Provincial Market Regulation System Business Environment Improvement (2024-2026)*, deploying 35 key tasks. In terms of enhancing the effectiveness of market regulation, Guizhou AMR proposes to carry out antimonopoly and anti-unfair competition law enforcement in the field of people’s livelihood, and carry out the “Iron Fist” action and other measures to create a fair and competitive market environment. ([More](#))

欧盟批准KKR以240亿美元收购意大利固定线路网络公司NetCo

2024年5月30日，欧盟委员会无条件批准KKR集团（Kohlberg Kravis Roberts & Co. L.P.）以240亿美元（1738亿人民币）收购NetCo公司。本次收购范围包括意大利电信公司（Telecom Italia

S.p.A.) 的主干固定线路网络 (Backbone/backhaul fixed-line networks) 以及FiberCop (FiberCop S.p.A) 的次级固定线路网络 (Secondary fixed-line networks)。欧盟委员会调查了该交易对意大利批发宽带接入服务市场的影响, 认为该交易不会显著降低竞争水平。 ([查看更多](#))

EU Approves KKR's USD 24 Billion Acquisition of Italian Fixed-line Network Firm NetCo

On May 30, 2024, the European Commission unconditionally approved the acquisition of NetCo by KKR & Co. Inc. (Kohlberg Kravis Roberts & Co. L.P.) for USD 24 billion (CNY 173.8 billion). The acquisition includes Telecom Italia S.p.A.'s backbone/backhaul fixed-line networks and FiberCop S.p.A.'s secondary fixed-line networks. The European Commission investigated the impact of the transaction on the Italian market for wholesale broadband access services in Italy and concluded that the transaction would not significantly reduce the level of competition. ([More](#))

汽车电池制造商将对欧盟的卡特尔指控提出抗辩

2024年5月29日, 据媒体报道, 汽车电池制造商将于下周举行的一次非公开听证会上就欧盟对其卡特尔行为的指控提出抗辩, 涉案制造商包括Banner、Clarios、Exide、Rombat、FIAMM Energy Technology (FET) 及其前身Elettra。除上述制造商外, 行业组织Eurobat及其服务供应商Kellen也面临着欧盟委员会的指控。欧盟委员会于2023年指控七家汽车电池制造商于2004年至2017年间通过制定、发布并同意在与汽车生产商的价格谈判中使用Eurobat Premium System中的新指数, 合谋提高出售给欧洲经济区汽车生产商的汽车起动电池 (starter batteries) 的价格, 违反了欧盟竞争法。 ([查看更多](#))

Car Battery Makers to Fight EU Cartel Charges

On May 29, 2024, according to the media, car battery makers, including Banner, Clarios, Exide, Rombat, FIAMM Energy Technology (FET) and its predecessor Elettra, are set to defend themselves against EU cartel charges at a closed hearing next week. In addition to these manufacturers, industry organisation Eurobat and its service provider Kellen are also facing charges from the European Commission. The European Commission alleged in 2023 that seven automotive battery manufacturers conspired to increase the prices of automotive starter batteries sold to automotive manufacturers in the European Economic Area (EEA) by setting, publishing and agreeing to use new indices from the Eurobat Premium System in price negotiations with automotive manufacturers between 2004 and 2017, which is considered as a breach of EU competition law. ([More](#))

印度尼西亚调查Shopee和Lazada的反竞争行为

2024年5月27日, 据媒体报道, 印度尼西亚商业竞争监督委员会 (Commission for the Supervision of Business Competition, "KPPU") 正在调查电子商务平台Shopee和Lazada可能的反竞争行为。东南亚技术公司冬海集团 (Sea Limited) 旗下的Shopee和中国阿里巴巴集团旗下的Lazada是该地区电子商务领域的主要参与者。KPPU认为Lazada和Shopee可能采取了歧视性的做

法，阻碍竞争并损害了消费者的利益。如果被证实存在反竞争行为，Lazada和Shopee可能会面临的罚款金额最高可达其净利润的50%或总销售额的10%。（[查看更多](#)）

Indonesia Probes Shopee and Lazada for Anti-competitive Behaviours

On May 27, 2024, according to the media, Indonesia's Commission for the Supervision of Business Competition (KPPU) is investigating e-commerce platforms Shopee and Lazada for possible anti-competitive behaviours. Shopee, owned by a technology firm in Southeast Asia, Sea Limited, and Lazada, owned by China's Alibaba Group, are major players in the regional e-commerce sector, and the KPPU believes that Lazada and Shopee may have engaged in discriminatory practices that have hindered competition and harmed consumers. If proven to have engaged in anti-competitive behaviours, Lazada and Shopee could face fines of up to 50 percent of their net profit or 10 percent of their total sales. ([More](#))

美上诉法院确认消费者可以针对苹果提起反垄断集体诉讼

2024年5月24日，美国第九巡回上诉法院（“上诉法院”）驳回了苹果（Apple Inc.）的审前上诉请求。消费者于2011年提起一项集体诉讼，指控苹果公司垄断了iPhone应用市场，并人为地抬高了数千万用户的应用价格，苹果在本次上诉中未能说服上诉法院阻止该集体诉讼。此前，加州北区联邦地区法院于2024年2月作出裁决，确认了自2008年以来在苹果应用或应用内购买服务上花费10美元或以上的消费者可以向苹果提起集体诉讼。（[查看更多](#)）

U.S. Court of Appeals Affirms Consumers Can Bring Antitrust Class Action Against Apple

On May 24, 2024, the US Court of Appeals for the Ninth Circuit (“Court of Appeals”) denied Apple (Apple Inc.)’s request for a pre-appeal brief. Consumers filed a class action lawsuit in 2011 alleging that Apple monopolised the iPhone app market and artificially inflated the price of apps for tens of millions of users, and Apple failed to persuade the Court of Appeal to block the class action in this appeal. Before that, the U.S. District Court for the Northern District of California made a ruling in February 2024, confirming that consumers who have spent USD 10 or more on Apple apps or in-app purchases of services since 2008 can file class action lawsuits against Apple. ([More](#))

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

中央网信办等三部门印发《信息化标准建设行动计划（2024—2027年）》

近日，中央网信办、市场监管总局、工业和信息化部联合印发《信息化标准建设行动计划（2024—2027年）》（“《行动计划》”），要求加强统筹协调和系统推进，健全国家信息化标准体系，提升信息化发展综合能力，有力推动网络强国建设。《行动计划》围绕4个方面部署了主要任务，包括创新信息化标准工作机制，在关键信息技术、数字基础设施、数据资源、产

业数字化、电子政务、信息惠民、数字文化、数字化绿色化协同发展等8个重点领域推进信息化标准研制，推进信息化标准国际化，提升信息化标准基础能力。（[查看更多](#)）

OCCAC and Other Three Departments Issues Action Plan for the Informatisation Standards Construction (2024-2027)

Recently, the Office of the Central Cyberspace Affairs Commission (“OCCAC”), the State Administration for Market Regulation and the Ministry of Industry and Information Technology of the People’s Republic of China jointly issued *the Action Plan for the Construction of Informatisation Standards (2024-2027)* (“**Action Plan**”). The *Action Plan* calls for strengthening overall coordination and systematic promotion, improving the national informatisation standard system, enhancing the comprehensive capacity of informatisation development, and strongly promoting the construction of national strength in cyberspace. The *Action Plan* deploys major tasks surrounding 4 aspects, namely innovating the working mechanism of informatisation standards; promoting the development of informatisation standards in 8 key areas including critical information technology, digital infrastructure, data resources, industrial digitisation, e-government, information benefiting the people, digital culture, and collaborative development in a digitized and eco-friendly manner; advancing the internationalisation of informatisation standards, and upgrading the foundational capacity of informatisation standards. ([More](#))

网安标委发布《网络安全技术 关键信息基础设施边界确定方法（征求意见稿）》

2024年5月30日，全国网络安全标准化技术委员会（“网安标委”）发布国家标准《网络安全技术 关键信息基础设施边界确定方法（征求意见稿）》（“《标准》”）。《标准》从保护视角出发，规定了关键信息基础设施边界确定方法、流程、步骤。为关键信息基础设施运营者提供了基于信息流识别关键信息基础设施常态化和极限情况下的边界的一种方法，通过不可或缺性判定，理清功能、部署信息、业务关系等相关描述信息，对软硬件资产等进行归集，形成关键信息基础设施要素，最终由所有关键信息基础设施要素的集合形成关键信息基础设施边界。（[查看更多](#)）

TC 260 Releases Network Security Technology: Critical Information Infrastructure Boundary Determination Methods (Draft for Public Comments)

On 30 May 2024, the National Technical Committee 260 on Cybersecurity of Standardization Administration of China (“TC 260”) published a national standard *Network Security Technology: Critical Information Infrastructure Boundary Determination Method (Draft for Public Comments)* (“**Standard**”). The *Standard* stipulates the critical information infrastructure boundary determination methods, processes and steps from a protection perspective. It provides critical information infrastructure operators with a method for determining the boundary of critical information infrastructure in both regular and extreme situations based on information flow, and the said operators can, through indispensability determination, clarify relevant descriptive information such as functions, deployment information, and business relationships, and aggregate hardware and software assets to form critical information infrastructure elements. Ultimately, the aggregation of all critical information infrastructure elements will form the critical information infrastructure boundary. ([More](#))

工信部规划1亿个车联网专用号码

近日，工业和信息化部规划1亿个11位公众移动通信网号码专用于车联网业务。与普通手机用户使用手机SIM卡联网类似，智能网联汽车依托配置车联网专用号码的物联网卡连接4G/5G网络，可支持车辆与车企后台进行数据通信、车内人员日常上网娱乐以及紧急情况下车内人员救援、道路救援的语音通信等各种功能，保障用户安全的同时，带来丰富的用车体验。下一步，工业和信息化部将按程序向有关基础电信企业核配车联网专用号码，不断提升码号资源管理水平，适时补充码号资源，支持智能网联汽车和车联网业务高质量发展。（[查看更多](#)）

MIIT Plans 100 Million Dedicated Numbers for Internet of Vehicles Business

Recently, the Ministry of Industry and Information Technology of the People's Republic of China ("MIIT") has planned to dedicate 100 million 11-digit public mobile communication network numbers to the Internet of Vehicles ("IoV") business. Similar to how ordinary mobile phone users connect to the internet using SIM cards, intelligent connected vehicles rely on the Internet of Things cards configured with IoV dedicated numbers to connect to the 4G/5G network, which can support a variety of functions such as data communication between vehicles and the backend of car manufacturers, daily internet entertainment for vehicle occupants and voice communication for emergency rescue of vehicle occupants and roadside assistance, thereby bringing rich car-using experience while safeguarding the safety of the users. In the next step, the MIIT will allocate IoV dedicated numbers to relevant basic telecommunication enterprises in accordance with the procedures, continuously improve the management level of numbering resources, and timely supplement the numbering resources, so as to support the high-quality development of intelligent connected vehicles and IoV business. ([More](#))

国家数据局发布20个“数据要素×”案例

2024年5月24日，据媒体报道，国家数据局会同多个部门发布首批20个“数据要素×”典型案例。案例涵盖了工业制造、现代农业、商贸流通、交通运输、金融服务、科技创新、文化旅游、医疗健康、应急管理、气象服务、城市治理、绿色低碳等12个行业和领域，覆盖了北京、上海、浙江、江苏、四川、安徽、湖南、湖北、广东、福建、山东、新疆等12个省市，以及部分中央企业、地方国有企业和民营企业，有力展示了有关单位促进数据要素开发利用的典型经验做法。（[查看更多](#)）

NDA Publishes 20 "Data Elements X" Cases

On 24 May 2024, according to media reports, the National Data Administration, together with a number of departments, released the first batch of 20 typical cases of "data elements x". The cases covered 12 industries and fields including industrial manufacturing, modern agriculture, commerce and trade circulation, transportation and logistics, financial services, science and technology innovation, culture and tourism, healthcare, emergency management, meteorological services, urban governance, green and low-carbon industry, and covered 12 provinces and cities such as Beijing, Shanghai, Zhejiang, Jiangsu, Sichuan, Anhui, Hunan, Hubei, Guangdong, Fujian, Shandong, Xinjiang, as well as some central and local state-owned enterprises and private enterprises. The cases strongly demonstrated the typical experience and practices of relevant entities in promoting the development and utilisation of data elements. ([More](#))

国家知识产权局发布数据知识产权登记十大典型案例

2024年5月24日，据媒体报道，国家知识产权局战略规划司组织评选出数据知识产权登记十大典型案例。案例的应用场景包括电力看双碳监测数据集、隧洞施工现场氨气分析数据、知识产权大数据分析数据集、microRNA敲除小鼠资源库、企业用水行为分析数据、多模态成年人群脑影像数据、船舶实时报位信息数据、花边设计图及设备实时日产量衍生数据、地质钻孔数据集、医疗大模型预训练数据集，涉及地域包括北京、天津、山东、浙江、江苏、广东、福建7个省市。（[查看更多](#)）

CNIPA Releases Top 10 Typical Cases of Data Intellectual Property Registration

On May 24, 2024, according to media reports, the Strategic Planning Department of the China National Intellectual Property Administration (“CNIPA”) organized the selection of the top 10 typical cases of data intellectual property registration. The application scenarios of these cases include: “Power Watch” monitoring datasets of peak carbon dioxide emissions and carbon neutrality, ammonia analysis data for tunnel construction sites, big data analysis datasets for intellectual property, microRNA resource libraries of knockout mice, enterprise water usage behavior analysis data, multimodal adult brain imaging data, real-time ship location information data, lace design diagrams and real-time daily production derived data, geological drilling datasets, and large model pre-trained medical datasets. These cases involve seven provinces and cities, including Beijing, Tianjin, Shandong, Zhejiang, Jiangsu, Guangdong, and Fujian. ([More](#))

英国正式出台《数字市场、竞争与消费者法案》

2024年5月24日，英国科学、创新和技术部（“DSIT”）宣布，《数字市场、竞争和消费者法案》（“《法案》”）在获得皇室同意后正式成为法律。《法案》适用于具有“战略市场地位”的公司，即在数字活动方面拥有实质性的、牢固的市场力量和具有战略意义的地位的公司。“战略市场地位”意味着企业或企业所在集团在相关期间的全球营业总额超过250亿英镑或其在英国境内营业总额超过10亿英镑。此外，该法案还赋予英国竞争与市场管理局新的权力以监管数字市场的竞争，创设针对违反消费者保护法的商家的新的处罚，针对不公平的商业行为、订阅陷阱、预付储蓄计划（prepayments to savings schemes）等方面引入消费者保护。（来源：DSIT）（[查看更多](#)）

UK Formally Introduces *Digital Markets, Competition and Consumers Bill*

On 24 May 2024, the UK Department for Science, Innovation and Technology (“DSIT”) announced that the *Digital Markets, Competition and Consumers Bill* (“*Bill*”) had officially become law after receiving Royal Assent. The Bill applies to companies with a “strategic market status”, i.e. companies with substantial and established market power in digital activities and a position of strategic significance. “Strategic market status” means that the company or the group of companies has a total value of global turnover of more than GBP 25 billion or a total value of UK turnover of more than GBP 1 billion in the relevant period. The Bill also gives the UK Competition and Markets Authority (“CMA”) new powers to regulate competition in the digital markets, creates new penalties for businesses that breach

consumer protection laws, and introduces consumer protections against unfair business practices, subscription traps, and prepayments to savings schemes. ([More](#))

美国NIST宣布AI评估项目

2024年5月28日，美国国家标准与技术研究院（“NIST”）宣布将启动一项新的测试、评估、认证和验证（“TEVV”）项目，以增进人们对AI能力和影响的了解。TEVV项目名为“评估AI的风险和影响”（“ARIA”），其具体目标是帮助用户确定AI技术在部署后是否有效、安全和可靠。ARIA是对2023年1月发布的现行《人工智能风险管理框架》（“AI RMF”）的扩展，有助于将AI RMF的风险测量功能操作化，该功能建议使用定量和定性技术来分析和监控AI的风险和影响。NIST强调，ARIA项目将有助于评估风险和影响，以帮助确定AI系统如何在社会中发挥作用。（[查看更多](#)）

NIST Announces AI Assessment Program

On 28 May 2024, the United States National Institute of Standards and Technology (“NIST”) announced that it would be launching a new Testing, Evaluation, Verification, and Validation (“TEVV”) program to improve the common understanding of the capabilities and impacts of AI. The TEVV program, named “Assessing the Risks and Impacts of AI” (“ARIA”), is specifically aimed to help users determine whether AI technologies are effective, safe, and reliable after deployment. ARIA extends the current *Artificial Intelligence Risk Management Framework* (“AI RMF”) released in January 2023 and helps operationalise the AI RMF’s risk measurement function, which recommends using both quantitative and qualitative techniques to analyse and monitor the risks and impacts of AI. NIST emphasizes that the ARIA program will aid in assessing the risks and impacts to help determine how AI systems function in society. ([More](#))

知识产权 Intellectual Property

中国将首次举办世界知识产权大会

由中国贸促会和国际保护知识产权协会（AIPPI）主办、杭州市人民政府和AIPPI中国分会承办的2024年AIPPI世界知识产权大会将于10月19日至22日在浙江省杭州市举办。这是AIPPI成立127年来首次在中国举办世界知识产权大会。

据中国贸促会新闻发言人赵萍介绍，本次大会主题为“知识产权的平衡保护与创新”，预计将有来自80多个国家和地区的1500名中外嘉宾参会。“中国首次举办AIPPI世界知识产权大会反映了国际社会对中国高度重视知识产权保护、加强知识产权法治保障、完善知识产权管理体制的充分认可，对于促进中外知识产权界交流与合作，推动我国深入参与知识产权国际规则制定，向世界宣传中国知识产权保护成就意义重大，将成为中国知识产权保护工作历史上一次里程碑事件。”

来源：中国贸促会

China to Host AIPPI for the First Time

China is set to host the AIPPI Congress for the first time, marking a significant milestone in the organization's 127-year history. The 2024 AIPPI Congress, hosted by the China Council for the Promotion of International Trade (CCPIT) and the International Association for the Protection of Intellectual Property (AIPPI), and organized by the People's Government of Hangzhou and the China Branch of AIPPI, will take place in Hangzhou, Zhejiang Province, from October 19th to 22nd.

According to Zhao Ping, a spokesperson for the CCPIT, the theme of the conference is "Balanced Protection and Innovative Development of Intellectual Property Rights." It is expected that 1,500 guests from over 80 countries and regions will attend. "The first-time hosting of the AIPPI Congress in China reflects the international community's full recognition of China's high regard for the protection of intellectual property rights, strengthening the legal protection of intellectual property, and improving the management system of intellectual property rights. It is of great significance for promoting exchanges and cooperation between Chinese and foreign intellectual property circles, deepening China's participation in the formulation of international intellectual property rules, and promoting China's achievements in the protection of intellectual property rights to the world. This will become a milestone event in the history of China's work on the protection of intellectual property rights."

(Source: CCPIT)

最高法院案例：高分子化合物领域，因说明书公开不充分被宣告全部无效

近日，中华人民共和国最高人民法院对圣戈班性能塑料帕姆普斯有限公司提起的发明专利权无效行政纠纷案作出终审裁决，维持了北京知识产权法院的原判，确认该公司的“免维护的滑动轴承”发明专利因说明书公开不充分而被宣告无效。该案凸显了在化学产品专利领域，尤其是高分子化合物，说明书必须详尽描述以确保技术方案的可实施性。圣戈班公司在一审和二审中均未能提供充分证据支持其专利的有效性，最终导致专利权的丧失。此裁决进一步明确了专利说明书的法律要求，对知识产权保护具有重要指导意义。

来源：最高人民法院

Supreme Court Case: In the Field of Polymer Compounds, Declared Entirely Invalid Due to Insufficient Disclosure in the Description

Recently, the Supreme People's Court of the People's Republic of China made a final judgment on the administrative dispute case of the invalidation of the invention patent rights initiated by Saint-Gobain Performance Plastics Pamplona Co., Ltd., upholding the original judgment of the Beijing Intellectual Property Court and confirming that the company's invention patent for "maintenance-free sliding bearings" was declared invalid due to insufficient disclosure in the description. This case highlights the necessity for a detailed description in the patent document to ensure the feasibility of the technical solution, especially in the field of chemical product patents, such as polymer compounds. Saint-Gobain was unable to provide sufficient evidence to support the validity of its patent in both the first and second trials, ultimately leading to the loss of patent rights. This judgment further clarifies the

legal requirements for patent documents and has significant guiding significance for the protection of intellectual property rights.

(Source: Supreme People's Court of the People's Republic of China)

最高法院案例：发明具有突出的实质性特点“三步法”原则中“显而易见”标准的判断

最高人民法院近日在一宗医疗器械发明专利权无效宣告行政纠纷案中，应用“三步法”原则对发明的创造性进行了深入分析。案件中，苏州维尔蒙医疗器械有限公司的“包皮切割缝合器的载钉盘结构”发明专利被常州杰瑞尔医疗器械有限公司和无锡市瑞源普斯医疗器械有限公司提出无效宣告请求。最高人民法院在终审判决中指出，判断发明是否显而易见，需从本领域技术人员角度出发，考虑发明相对于最接近的现有技术是否具有突出的实质性特点。经审理，法院认为该专利满足了创造性的标准，因此撤销了一审法院的判决，驳回了维尔蒙公司的诉讼请求，确认了专利权的有效性。该裁判要点为未来专利创造性的评判提供了明确的法律适用标准，对知识产权保护领域具有重要意义。

来源：最高人民法院

Supreme Court Case: Invention with Prominent Substantial Features: Judgment of "Obviousness" Standard in the "Three-Step Method"

The Supreme People's Court recently conducted an in-depth analysis of the inventive step of a medical device invention patent in an administrative dispute case of invalidation declaration, applying the "three-step method" principle. In the case, Suzhou Weiermon Medical Device Co., Ltd.'s invention patent for "the nail-loading disc structure of a foreskin cutting and suturing device" was subject to an invalidation declaration request by Changzhou Jierui Medical Device Co., Ltd. and Wuxi Ruiyuan Pusi Medical Device Co., Ltd. The Supreme People's Court pointed out in its final judgment that determining whether an invention is obvious requires consideration from the perspective of a person skilled in the art, and whether the invention has prominent substantial features compared to the closest existing technology. After trial, the court believed that the patent met the standard of inventiveness, and therefore, it overturned the judgment of the first instance court, rejected Weiermon Company's litigation request, and confirmed the validity of the patent rights. This ruling provides a clear legal application standard for the future evaluation of patent inventiveness and is of significant importance to the field of intellectual property protection.

(Source: Supreme People's Court of the People's Republic of China)

深圳法院案例：调换他人商标文字前后顺序构成侵权

近日，一家著名椰子鸡火锅连锁企业“某某椰林公司”在龙岗法院提起诉讼，指控“椰林某某公司”未经授权使用其注册商标“某某椰林”，仅对文字顺序进行了调换，涉嫌商标侵权及不正当竞争。原告指出，被告在原告已注册商标并成功运营多家门店后，继续使用相似的名称，误导消费者，侵犯了原告的合法权益。

法院审理后支持了原告的主张，认为被告的行为构成了对注册商标的侵权，并涉及不正当竞争。因此，法院判决被告赔偿原告总计244万余元，其中包括填平性赔偿金和一倍的惩罚性赔偿金。法院特别指出，由于被告的侵权行为持续时间较长，情节严重，故依据相关法律规定，适用了惩罚性赔偿的规定。此案的判决结果体现了对知识产权的严格保护，以及对维护市场公平竞争秩序的坚定决心。

来源：深圳市中级人民法院

Shenzhen Court Case: Rearranging Trademark Text Order Constitutes Infringement

Recently, a renowned coconut chicken hotpot chain enterprise "XiaoXiao Yelin Company" (Plaintiff) filed a lawsuit in Longgang Court, accusing "Yelin XiaoXiao Company" (Defendant) of unauthorized use of its registered trademark "XiaoXiao Yelin", merely rearranging the order of the characters, suspected of trademark infringement and unfair competition. The plaintiff pointed out that the defendant continued to use a similar name after the plaintiff had registered the trademark and successfully operated multiple stores, misleading consumers and infringing on the plaintiff's legal rights and interests.

After hearing the case, the court supported the plaintiff's claim, believing that the defendant's actions constituted an infringement of the registered trademark and involved unfair competition. Therefore, the court ruled that the defendant should compensate the plaintiff a total of more than RMB 2.44 million, including compensatory damages and punitive damages at one times the amount. The court specifically pointed out that due to the long duration and serious nature of the defendant's infringement, punitive damages were applied in accordance with relevant legal provisions. The outcome of this case reflects strict protection of intellectual property rights and a firm determination to maintain a fair market competition order.

(Source: Shenzhen Intermediate People's Court)

上海法院案例：电商平台未履行平台义务，违背平台中立性应承担连带责任

近日，北京倍和阳光科技发展有限公司在商标权侵权纠纷案中取得胜诉。该公司发现被告某某食品店和周某某在某电商平台上未经授权使用其“碧萝芷”注册商标，销售类似商品，构成商标侵权。此外，被告某电商平台未能及时采取必要措施制止侵权行为，被认定违反了《电子商务法》规定的平台义务，应承担相应的连带责任。法院判决被告某某食品店和周某某赔偿原告经济损失及合理费用，某电商平台对部分赔偿金额承担连带责任。该案件凸显了电商平台在知识产权保护方面的责任，同时也展示了法律对注册商标专用权的严格保护。

来源：上海浦东新区人民法院

Shanghai Court Case: E-commerce Platform Fails to Fulfill Duties, Held Liable for Breaching Neutrality

Recently, Beijing Beihe Sunshine Technology Development Co., Ltd. (Plaintiff) won a lawsuit in a trademark infringement dispute. The company discovered that the defendant, a certain food store and

individual Zhou, were using its registered trademark "Biluo Zhi" on an e-commerce platform without authorization to sell similar products, constituting trademark infringement. In addition, the defendant e-commerce platform failed to take timely necessary measures to stop the infringement and was found to have violated the platform obligations stipulated in the E-commerce Law, and should bear the corresponding joint liability. The court ruled that the defendant food store and individual Zhou should compensate the plaintiff for economic losses and reasonable expenses, and the e-commerce platform should bear joint liability for part of the compensation amount. This case highlights the responsibilities of e-commerce platforms in the protection of intellectual property rights and also demonstrates the strict legal protection of the exclusive rights to registered trademarks.

(Source: Shanghai Pudong New Area People's Court)

湖北法院案例：严惩假冒东风商标侵权，判处罚金并追缴违法所得

近日，十堰市张湾区人民法院审结了一起重大商标侵权案件，有力维护了东风汽车集团有限公司的"双飞燕"注册商标权益。案件中，一家电气公司在未经授权的情况下，非法使用"双飞燕"商标长达13年，严重侵犯了东风公司的商标专用权。法院经审理认为，被告单位及相关责任人的行为已构成假冒注册商标罪。法院依法作出判决：对被告单位某电气公司判处罚金50万元；对被告人龙某判处有期徒刑三年，缓刑五年，并处罚金20万元；对被告人唐某判处有期徒刑二年，缓刑四年，并处罚金10万元；追缴违法所得10万元；责令被告单位停止侵权行为，并在指定媒体上公开道歉。该案件的审结，彰显了司法机关对知识产权侵权行为的严厉打击，体现了对知名品牌合法权益的有力维护。十堰市张湾区人民法院将知识产权保护作为服务汽车产业链、优化营商环境的重要举措，为辖区汽车产业的高质量发展提供了坚实的司法保障。

来源：广州互联网法院

Hubei Court Case: Severe Punishment for Counterfeiting Dongfeng Trademark: Fines Imposed and Illegal Gains Recovered

Recently, the People's Court of Zhangwan District in Shiyan City concluded a significant trademark infringement case, effectively safeguarding the "Shuangfei Yan" registered trademark rights of Dongfeng Motor Industry Group Co., Ltd. (Plaintiff) In the case, an electrical company (Defendant) had been illegally using the "Shuangfei Yan" trademark for 13 years without authorization, severely infringing upon Dongfeng Company's exclusive trademark rights. After examination, the court determined that the actions of the defendant company and the responsible individuals constituted the crime of counterfeiting a registered trademark. The court made a judgment: imposing a fine of RMB 500,000 on the defendant company; sentencing the defendant Long to three years in prison, suspended for five years, and a fine of RMB 200,000; sentencing the defendant Tang to two years in prison, suspended for four years, and a fine of RMB 100,000; confiscating illegal gains of RMB 100,000; ordering the defendant company to cease the infringement and to issue a public apology in designated media. The conclusion of this case demonstrates the judicial authorities' strong crackdown on intellectual property rights infringement and reflects the strong protection of the legitimate rights and interests of well-known brands. The People's Court of Zhangwan District in Shiyan City has taken the protection of intellectual property rights as an important measure to serve the automotive industry chain and optimize the business environment, providing a solid judicial guarantee for the high-quality development of the automotive industry in its jurisdiction.

(Source:Guangzhou Internet Court)

广州法院案例：进口化妆品是否进行备案登记不影响其装潢权益保护

广东省高级人民法院对一起进口化妆品包装装潢权益纠纷案作出终审判决。原告因被告汕头市深特宝洁实业有限公司使用相似商品装潢标识提起诉讼，一审法院判决被告赔偿16万元。原告不满赔偿金额上诉请求改判200万元。被告辩称原告产品未进行进口化妆品备案登记，其装潢不应受到法律保护。二审法院审理后认为，化妆品是否进行备案登记属于行政管理范畴，不影响其装潢权益保护，遂驳回上诉，维持原判。该判决明确了即便未进行进口备案登记，产品装潢权益同样受到法律保护，为类似案件提供了重要参考。

来源：广东省高级人民法院

Guangzhou Court Case: Import Cosmetics' Unregistered Status Does Not Affect Protection of Trade Dress

The Guangdong Provincial High Court has made a final judgment on a dispute over the trade dress rights of imported cosmetics. The plaintiff filed a lawsuit against the defendant, Shantou City Shen Te Baojie Industrial Co., Ltd., for using similar product trade dress and identification, and the first-instance court ruled that the defendant should compensate RMB 160,000. Dissatisfied with the compensation amount, the plaintiff appealed for a retrial requesting RMB 2 million. The defendant argued that the plaintiff's product had not undergone the filing and registration for imported cosmetics, and its trade dress should not be legally protected. After reviewing the case, the second-instance court held that whether cosmetics have undergone filing and registration is a matter of administrative management and does not affect the protection of their trade dress rights and interests, thus rejecting the appeal and upholding the original judgment. This judgment clarifies that even if the product has not undergone import filing and registration, the trade dress rights and interests are still legally protected, providing an important reference for similar cases.

(Source:Guangdong Provincial People's Court)

德法院裁定耐克在与阿迪达斯的条纹纠纷中部分胜诉

近日，德国一家法院裁定，耐克可以在部分裤子设计上加入三道条纹，这是耐克与阿迪达斯展开第二次上诉听证会的结果。据悉，在阿迪达斯于2022年提起商标侵权诉讼后，杜塞尔多夫地区法院已禁止耐克在其五款裤子设计中使用两道或三道条纹。法院表示，耐克现在可以在其中四个有争议的款式上使用条纹，而对剩余一个款式的禁令仍然有效，从而部分推翻了之前的判决。三条平行条纹是阿迪达斯的著名商标，其在世界各地的法庭上都在不遗余力地保护这一商标。一年前，阿迪达斯决定撤销对“Black Lives Matter”黄色三条纹标识的法律申请，因为它担心自己的反对可能会被视为对反种族主义组织的批评。耐克声称阿迪达斯的保护范围过于狭窄，条纹装饰并不一定与所属品牌有关。

来源：路透社

Nike Partially Wins Appeal Over Stripes Dispute with Adidas in Germany

Recently, a German court ruled that Nike can include three stripes on some of its pants designs, the result of a second appeal hearing between Nike and Adidas. It is reported that after Adidas filed a trademark infringement lawsuit in 2022, the Düsseldorf Regional Court had banned Nike from using two or three stripes in its five pants designs. The court stated that Nike can now use stripes on four of the disputed models, while the ban on the remaining one model is still in effect, thereby partially overturning the previous judgment. The three parallel stripes are a well-known trademark of Adidas, which is tirelessly protecting this trademark in courts around the world. A year ago, Adidas decided to withdraw its legal application against the "Black Lives Matter" yellow three-stripe logo because it was concerned that its opposition might be seen as a criticism of the anti-racism organization. Nike claims that Adidas's protection scope is too narrow, and the use of stripes does not necessarily relate to the brand itself.

(Source:Reuters)

美国法院首次裁定外挂软件侵犯游戏公司版权

近日，华盛顿联邦法院陪审团裁定，由Phoenix Digital运营的外挂网站AimJunkies制作和销售《命运2》（Destiny 2）外挂软件的行为，侵犯了该游戏开发商Bungie的版权，需支付63,210美元赔偿金。陪审团认为，四被告（David Schaefer、Jeffrey Conway、Jordan Green、James May）涉嫌制作、销售外挂软件并从中获利，这些外挂软件能够让fps玩家透视墙壁后的敌人，或以自瞄形式秒杀敌人，从而获得竞争优势。“被告的行为损害了Bungie的《命运 2》玩家群体。” Bungie的律师在审前陈述中表示，“Bungie受理了超过6,000起关于玩家使用作弊软件的投诉，并花费数百万美元打击作弊者和作弊开发者（如本案被告），以保护玩家群体。” 根据被告提供的记录，Aimjunkies在2019年底至2021年初期间，卖出逾1400份《命运 2》外挂软件，并获得约65,000美元的收入。这是一场具有里程碑意义的判决，在美国，目前尚无专门针对视频游戏中“开挂”行为的法律条文，这项有利于Bungie的裁决意味着行业首例“支持游戏公司声称此类作弊行为侵犯版权”的裁决出现，这可能为未来类似案件提供法律依据和参考。

来源：The Verge

U.S. Court Rules for First Time: Cheat Software Infringes Game Company's Copyright

Recently, a jury in the Federal Court of Washington ruled that the AimJunkies cheat site, operated by Phoenix Digital, violated the copyright of Destiny 2 developer Bungie by creating and selling cheat software for the game, and was ordered to pay \$63,210 in damages. The jury found that the four defendants (David Schaefer, Jeffrey Conway, Jordan Green, James May) were suspected of creating and selling cheat software that allowed FPS players to see enemies behind walls or instantly kill enemies with auto-aim, thereby gaining a competitive advantage. "The defendants' actions have harmed the Destiny 2 player community of Bungie," said Bungie's lawyers. Bungie's lawyers stated in their pre-trial remarks, "Bungie has processed over 6,000 complaints regarding players using cheat software and has spent millions of dollars combating cheaters and cheat developers (such as the defendants in this

case) to protect the player community." According to records provided by the defendants, Aimjunkies sold more than 1,400 copies of Destiny 2 cheat software between the end of 2019 and the beginning of 2021, earning approximately \$65,000 in revenue. This is a landmark decision, as there are currently no specific legal provisions in the United States targeting the "cheating" behavior in video games. This ruling in favor of Bungie signifies the industry's first decision "supporting the game company's claim that such cheating behavior infringes on copyright," which may provide legal grounds and reference for future similar cases.

(Source: [The Verge](#))

印度法院裁定中国深圳摩比天线专利侵权，判罚2600万美元

印度德里高等法院在一宗具有里程碑意义的专利侵权案中裁定，中国深圳摩比天线技术公司侵犯了通信元件天线公司（Communication Component Antenna Inc，简称“CCAI”）的专利权，并需赔偿21.7亿卢比（约2604万美元）。该案件涉及一项关于非对称光束频谱效率的PCT国际专利，原由加拿大TenXc Wireless公司持有，后转让给CCAI。摩比天线的三种产品型号被认定侵犯了该专利。法官乔蒂·辛格在判决中采用了利润损失原则来确定赔偿金额，并颁布了禁止侵权产品进口至印度的禁令。这起案件被认为是印度有史以来第一次在如此大赔偿额的专利侵权诉讼中根据利润损失原则给予损害赔偿的判决，法官援引了“原告的损失不一定是被告的收益”这一经典原则。此案标志着印度在专利侵权赔偿计算方面采用了新的法律标准，可能会对后续专利案件产生重要影响。

来源： [Live Law](#)

Indian Court Rules Shenzhen Mobi Antenna from China Guilty of Patent Infringement, Fines \$26 Million

The High Court of Delhi has ruled in a landmark patent infringement case that Shenzhen Mobi Antenna Technology Co., Ltd. from China has infringed upon the patent rights of Communication Component Antenna Inc. (CCAI) and must compensate 2.17 billion rupees (approximately \$26.04 million). The case involves a PCT international patent concerning asymmetric beam spectrum efficiency, originally held by Canada's TenXc Wireless and later transferred to CCAI. Three product models of Mobi Antenna were determined to have infringed upon this patent. Judge Jyoti Singh applied the principle of lost profits to determine the amount of compensation and issued an injunction prohibiting the importation of the infringing products into India. This case is considered the first in India's history where such a large amount of compensation has been awarded in a patent infringement lawsuit based on the principle of lost profits, with the judge citing the classic principle that "the plaintiff's loss is not necessarily the defendant's gain." This case marks the adoption of a new legal standard in India for calculating compensation in patent infringement cases, which may have a significant impact on subsequent patent cases.

(Source: [Live Law](#))

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。

This Newsletter has been prepared for clients and professional associates of Lifang & Partners. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.





Subscribe to our WeChat community


扫码关注公众号“立方律师事务所”和“竞争法视界”

北京 | 上海 | 武汉 | 广州 | 深圳 | 海口 | 首尔

Beijing | Shanghai | Wuhan | Guangzhou | Shenzhen | Haikou | Seoul

 www.lifanglaw.com

 Email: info@lifanglaw.com

 Tel: +8610 64096099

 Fax: +8610 64096260/64096261