



No.382

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### Weekly News By Lifang & Partners

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阿拉斯加航空在与维珍航空 1.6 亿美元的英国商标纠纷中败诉

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USPTO和UKIPO就标准必要专利政策进行合作

USPTO and UKIPO collaborate on policies related to standard essential patents

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

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### 国务院公布《公平竞争审查条例》

2024年6月13日，李强总理签署第783号国务院令，公布《公平竞争审查条例》（“《条例》”），《条例》将于2024年8月1日起施行。《条例》共五章二十七条，明确公平竞争审查的范围，规定开展审查工作相关机关的职责，明确公平竞争审查标准，明确公平竞争审查机制，强化监督保障。《条例》规定政策措施不得具有或者可能具有排除、限制竞争效果，但在维护国家安全、实现公共利益等情形下存在例外。（[查看更多](#)）

### State Council Promulgates *Fair Competition Review Regulation*

On June 13, 2024, Premier Li Qiang signed the No. 783 Decree of the State Council and promulgated the *Fair Competition Review Regulation* (“*Regulation*”). With five chapters and 27 articles, the *Regulation* specifies the scope of fair competition review, stipulates the duties of the relevant authorities in carrying out the review, specifies the standards for fair competition review, specifies the mechanism for fair competition review, and reinforces regulation safeguards. The *Regulation* stipulates that policies and measures shall not have or may have the effect of excluding or restricting competition, but there are exceptions where it is for safeguarding national security and realizing the public interests. ([More](#))

### 停钟332天，市场监管总局附条件批准JX金属收购拓自达

2024年6月11日，国家市场监督管理总局（“市场监管总局”）附条件批准JX金属株式会社（“JX金属”）收购拓自达电线株式会社（“拓自达”）股权。经审查，本案相关市场为全球黑化压延铜箔、电磁屏蔽膜、各向同性导电胶膜市场以及中国境内柔性电路板不锈钢补强板市场。市场监管总局认为，由于JX金属和拓自达的市场份额高且产品之间存在相邻关系，集中后实体在中国境内的相关市场具有排除、限制竞争的能力和动机，可能产生排除、限制竞争的效果。因此，市场监管总局要求集中双方和集中后实体（1）不得进行搭售或者施加其他不合理的交易条件，不得阻碍或限制客户单独购买或使用JX金属产品和拓自达产品，不得在商业条款方面歧视单独购买产品的客户，不得阻碍或限制合作伙伴选择第三方的产品；（2）以公平、合理、无歧视原则向中国客户供应产品；（3）除为满足客户要求外，不得降低其产品与第三方产品之间的现有兼容性水平。（[查看更多](#)）

### Stopping-the-clock for 332 Days, SAMR Approved JX Metals' Acquisition of Tatsuta

On June 11, 2024, the State Administration for Market Regulation (“SAMR”) conditionally approved the acquisition of shares of Tatsuta Electric Wire & Cable Co., Ltd. (“Tatsuta”) by JX Advanced Metals Corporation (“JX Metals”). Upon review, the relevant market of this case was the global market for blackened annealed copper foil, electromagnetic shielding film, isotropic conductive adhesive film, and the Chinese market for stainless steel reinforcement plate of flexible circuit board. SAMR held that due to the high market share of JX Metals and Tatsuta as well as the adjacent relationship between their products, the entity after the concentration would have the ability and motivation to exclude and restrict

competition in the relevant market within Chinese territory, which might produce the effect of excluding and restricting competition. Therefore, SAMR required both parties of the concentration and the entity after the concentration (1) not to engage in tying or to impose other unreasonable trading conditions, not to hinder or restrict customers from purchasing or using JX Metals' products and Tatsuta products separately, not to discriminate in commercial terms against customers purchasing products separately, not to hinder or restrict business partners from choosing products supplied by third-party businesses; (2) to supply products to Chinese customers on fair, reasonable, and non-discriminatory terms; (3) not to reduce the current compatibility level between their products and third-party products except to meet customers' requirements. ([More](#))

### 三部门：做好行业协会反垄断指南宣贯实施 提升反垄断合规管理水平

2024年6月11日，市场监管总局、中央社会工作部、民政部联合印发《关于做好行业协会反垄断指南宣贯实施 提升反垄断合规管理水平的通知》（“《通知》”）。通知明确了四项主要任务，即加强《指南》宣传解读，引导行业协会认真学习理解和掌握《关于行业协会的反垄断指南》，增强宣贯工作实效；指导加强反垄断合规建设，多措并举提升本行业经营者反垄断合规意识和能力；查处行业协会典型垄断案件；推动各地市场监管、社会工作、民政等部门以及行业协会协同开展监管工作。（[查看更多](#)）

### Three Departments: Implements Anti-Monopoly Guidelines for Industry Associations and Improves Level of Management Level for Anti-Monopoly Compliance

On June 11, 2024, the State Administration for Market Regulation, the Social Work Department for Central Committee of the Communist Party of China, and the Ministry of Civil Affairs jointly issued the *Notice on Implementing the Anti-Monopoly Guidelines for Industry Associations and Enhancing the Level of Anti-Monopoly Compliance Management* (“Notice”). The *Notice* clarifies four major tasks, namely: (1) to guide industry associations to earnestly study, understand, and command the *Anti-Monopoly Guidelines for Industry Associations*; (2) to take multiple measures to enhance the anti-monopoly compliance awareness and capabilities of business operators in the industry; (3) to investigate and deal with typical monopoly cases of industry associations; (4) to promote the collaborative regulatory work of market regulation, social work, civil affairs and other departments as well as trade associations in various places. ([More](#))

### 中国与巴基斯坦签署反垄断合作谅解备忘录

2024年6月7日，国家市场监督管理总局局长罗文与巴基斯坦驻华大使卡里尔·哈希米签署了两国反垄断合作谅解备忘录。根据该备忘录，中巴将在竞争法律、政策和执法领域建立双边沟通合作机制，开展信息共享、技术合作及能力建设。（[查看更多](#)）

### China and Pakistan Signs Memorandum of Understanding on Anti-Monopoly Cooperation

On June 7, 2024, Director of the State Administration for Market Regulation Luo Wen, and Ambassador of Pakistan to China Khalil Hashmi signed the Memorandum of Understanding on Anti-Monopoly

Cooperation (“Memorandum”) between the two countries. According to the Memorandum, China and Pakistan will establish a bilateral communication and cooperation mechanism in the field of competition law, policy, and enforcement, and conduct information sharing, technological cooperation and capacity building. ([More](#))

## 欧盟委员会就印度药企价格卡特尔行为发表异议声明

2024年6月13日，欧盟委员会发布异议声明（Statement of Objections），指控印度药企艾肯国际（Alchem International）参与价格卡特尔行为。欧盟委员会指控艾肯国际与其他制药商共谋操纵N-丁基溴化莨菪碱/东莨菪碱（SNBB）市场，限定SNBB的最低销售价格并分配限额，并疑似通过交换商业敏感信息的方式维持其卡特尔安排的有效性。SNBB是用于生产腹部抗痉挛药物珀适灵（Buscopan）及其仿制药的关键成分。 ([查看更多](#))

## European Commission Issues Statement of Objections Against Indian Pharmaceutical Company for Price Cartel Behaviour

On June 13, 2024, the European Commission issued a Statement of Objections to Indian pharmaceutical company Alchem International (“Alchem”), charging against the company for its participation in a price-fixing cartel. European Commission alleged that Alchem colluded with other drugmakers to manipulate the market for N-Butylbromide Scopolamine/Hyoscine (SNBB), setting minimum sales prices for SNBB and allocating quotas, and suspected them of maintaining the effectiveness of the cartel by exchanging commercially sensitive information. SNBB is essential in the production of the abdominal antispasmodic drug Buscopan and its generic versions. ([More](#))

## 日本参议院通过《促进特定智能手机软件竞争法案》

2024年6月12日，《促进特定智能手机软件竞争法案》（“《法案》”）在日本参议院获得通过。《法案》主要内容包括三个方面：（1）指定《法案》监管的供应商（“指定供应商”），根据特定智能手机软件的不同类型，明确了对应的软件供应商不同的业务规模标准。（2）明确针对指定供应商的禁止行为和合规机制，禁止行为包括不得阻止第三方供应商提供自己的应用程序商店；不得阻止其他应用程序开发商使用第三方计费系统；不得将获取的竞争应用数据用于自己的应用等。（3）对指定供应商的违法行为进行执法，指定供应商有义务提交合规报告，日本公平贸易委员会有权进行调查、发布禁止令和加处罚款支付令（相关营业额的20%）等。 ([查看更多](#))

## House of Councilors of Japan Passes Act on Promotion of Competition for Specified Smartphone Software

On June 12, 2024, the Act on Promotion of Competition for Specified Smartphone Software (“the Act”) was passed in the House of Councilors of Japan. The Act includes three main aspects: (1) the Act designates the Specified Software Providers regulated by the Act (“Designated Providers”) and clarifies the different business scale standards for corresponding software suppliers based on the types of specific smartphone software; (2) the Act clarifies the prohibited conducts and compliance mechanisms

for specified software suppliers and the prohibited conducts include that Designated Providers shall not prevent third party providers from offering their own application stores, that they shall not prevent other application developers from using third party billing systems and that they shall not use acquired data about competing applications for their own applications, etc. (3) the *Act* includes enforcement against violations of Designated Providers, obliging designated operators to submit compliance reports, granting the Japan Fair Trade Commission to investigate, issuing cease-and-desist orders and surcharge payment orders (20% of relevant turnover), etc. ([More](#))

## 消费者指控美国主要轮胎制造商非法操纵价格

2024年6月7日，据媒体报道，消费者对几大轮胎制造商提起集体诉讼，指控其共谋操纵在美国销售的替换轮胎的价格。涉案轮胎制造商包括固特异（Goodyear）、大陆（Continental）、米其林（Michelin）、诺记（Nokian）、倍耐力（Pirelli & C.）和普利司通（Bridgestone）。原告声称，在过去四年中，被告共发布了至少65次提价公告，且存在固特异宣布提价后其他公司迅速跟进提价的情形；固特异公开承认其提价的幅度超过了增加的成本；轮胎市场的集中性较高且存在较高的进入壁垒。（[查看更多](#)）

## Consumers Accuses Major US Tire Manufacturers of Illegal Price-Fixing Scheme

On June 7, 2024, according to media reports, consumers filed a class action lawsuit against several major tire manufacturers, alleging they engaged in a conspiracy to fix prices for new replacement tires sold in the United States. The tire manufacturers involved in the case include Goodyear, Continental, Michelin, Nokian, Pirelli & C. and Bridgestone. The plaintiffs claimed that over the past four years, the defendants issued at least 65 price increase announcements; and there were situations where other companies followed suit with their own price hikes shortly after Goodyear announced a price increase; Goodyear admitted publicly that the price increased more than offset the increased costs; the tire market had a high concentration level and significant barriers to entry for new competitors. ([More](#))

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

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### 九部门联合发文：允许符合条件的跨境电商、跨境支付等应用场景数据有序自由流动

据商务部2024年6月11日消息，商务部等9部门联合发布《关于拓展跨境电商出口推进海外仓建设的意见》（以下简称为“《意见》”）。《意见》要求提升跨境数据管理和服务水平。在符合法律法规要求、确保安全的前提下，促进和规范数据跨境流动，允许跨境电商、跨境支付等应用场景数据有序自由流动。鼓励跨境电商、海外仓企业依法依规利用数据赋能产业链上下游，增强生产企业柔性化供应能力。（[查看更多](#)）

## **Nine Departments Jointly Issue an Opinion on Allowing the Orderly Free Transfer of Data for Qualified Cross-border E-commerce, Cross-border Payment and Other Scenarios**

According to the Ministry of Commerce (“MOFCOM”) on 11 June 2024, nine departments, including MOFCOM, jointly issued the *Opinions on Expanding Cross-border E-commerce Exports and Promoting the Construction of Overseas Warehouses* (the “Opinions”). The *Opinions* requires the enhancement of cross-border data management and service levels. On the premise of complying with the requirements of laws and regulations and ensuring security, it promotes and regulates cross-border flow of data, and allows orderly and free transfer of data in cross-border e-commerce, cross-border payment and other application scenarios. Encourage cross-border e-commerce and overseas warehouse enterprises to use data to empower the upstream and downstream of the industrial chain in accordance with laws and regulations, and enhance the flexible supply capacity of production enterprises. ([More](#))

### **全国网安标委就《网络安全标准实践指南—敏感个人信息识别指南（征求意见稿）》公开征求意见**

2024年6月11日，全国网络安全标准化技术委员会秘书处（以下简称“全国网安标委”）发布《网络安全标准实践指南 敏感个人信息识别指南（征求意见稿）》（以下简称《征求意见稿》），意见征求截止于2024年6月24日。《征求意见稿》提出了敏感个人信息识别方法，给出了常见敏感个人信息的类别和示例。可用于指导各组织识别敏感个人信息范围，也可为敏感个人信息处理、出境和保护工作提供参考。（[查看更多](#)）

### **TC260 Seeks Public Comments on Cyber Security Standard Practice Guidelines - Guidelines for Identification of Sensitive Personal Information (Draft for Public Comments)**

On 11 June 2024, the National Technical Committee 260 on Cybersecurity of Standardization Administration of China (the “TC260”) released the *Cyber Security Standard Practice Guidelines - Guidelines for Identification of Sensitive Personal Information (Draft for Public Comments)* (the “Draft”), which is open for public comments until 24 June 2024. The *Draft* proposes methods for identifying sensitive personal information, and gives categories and examples of common sensitive personal information. It can be used to guide organisations in identifying the scope of sensitive personal information, and can also provide reference for the handling, cross-border transfer and protection of sensitive personal information. ([More](#))

### **北京发布《关于加强本市数据资产管理的通知》**

2024年6月11日，北京市财政局转发《财政部关于印发〈关于加强数据资产管理的指导意见〉的通知》《财政部关于加强行政事业单位数据资产管理的通知》，并补充通知要求各相关单位，加强数据资产管理；确保数据资产管理全过程的安全合规，实施数据资产分类分级管理，建立数据资产安全管理制度和监测预警、应急处置机制，明确数据资产全生命周期各环节防护要求；积极探索数据资产化管理的有效路径；稳步推动数据资产的开发利用等。（[查看更多](#)）

## Beijing Issues Notice on Strengthening Data Asset Management in the Beijing

On 11 June 2024, the Beijing Municipal Finance Bureau forwarded the *Notice of the Ministry of Finance on Issuing the Guiding Opinions on Strengthening the Management of Data Assets*, the *Notice of the Ministry of Finance on Issuing the Strengthening of the Management of Data Assets of Administrative Institutions*. Meanwhile, it also released supplementary notice requesting all relevant units to strengthen the management of data assets; ensure the safety and compliance of the whole process of the management of data assets; implement the classification and grading of the management of data assets; establish a data assets security management system and mechanism of monitoring, early warning and emergency disposal, and clarify the protection requirements for each link in the whole life cycle of data assets; actively explore the effective path of data asset-based management; and steadily promote the development and utilisation of data assets, etc. ([More](#))

## 深圳市财政局关于加强企业数据资源相关会计处理的通知

2024年6月12日，深圳市政府网消息，为响应国家构建数据基础制度的号召，深圳市财政局发布《关于加强企业数据资源相关会计处理的通知》（以下简称“《通知》”）。《通知》要求企业严格遵循会计准则，强化会计信息披露，并提升数据资产的管理能力。同时，为支持企业更好地进行数据资源管理，市财政局将组建“云咨询”团队，为企业提供专业咨询服务。这一举措旨在进一步规范企业数据处理行为，促进数据资源的有效利用，推动深圳数字经济持续健康发展。（[查看更多](#)）

## Notice of Shenzhen Municipal Finance Bureau on Strengthening Accounting Treatment Related to Enterprise Data Resources

On 12 June 2024, the Shenzhen Municipal Government website announced that in response to the national call to build a data base system, the Shenzhen Municipal Finance Bureau issued the *Notice on Strengthening the Accounting Treatment Related to Enterprise Data Resources* (the “*Notice*”). The *Notice* requires that enterprises shall strictly follow accounting standards, strengthen accounting disclosure and enhance the management of data assets. Meanwhile, in order to support enterprises to better manage data resources, the Municipal Finance Bureau will set up a “cloud consulting” team to provide professional consulting services to enterprises. This initiative aims to further regulate the data processing behaviour of enterprises, promote the effective use of data resources, and promote the sustainable and healthy development of Shenzhen's digital economy. ([More](#))

## 香港隐私专员公署发布《人工智能(AI): 个人资料保障模范框架》

2024年6月11日，香港个人资料隐私专员公署于发布《人工智能 (AI): 个人资料保障模范框架》（以下简称为《框架》）。该框架旨在协助机构在采购、实施及使用AI时，确保遵守《个人资料（私隐）条例》的规定，并保护个人数据隐私。《框架》涵盖四大方面，包括制定AI策略及管治架构、进行风险评估及人为监督、定制AI模型与实施管理，以及促进与持份者的沟通。（[查看更多](#)）

## Office of the Privacy Commissioner for Personal Data of Hong Kong Releases *Artificial Intelligence (AI): A Model Framework for Personal Data Protection*

On 11 June 2024, the Office of the Privacy Commissioner for Personal Data of Hong Kong released the *Artificial Intelligence (AI): A Model Framework for Personal Data Protection* (the “*Framework*”). The Framework aims to assist organisations to ensure compliance with the requirements of the *Personal Data (Privacy) Ordinance* and to protect personal data privacy when procuring, implementing and using AI. The *Framework* covers four main areas, including the development of AI strategy and governance structure, conducting risk assessment and human oversight, customising AI models and implementation management, and facilitating communication with stakeholders. ([More](#))

## 青海公安对某网站未履行联网备案等网络安全义务作出处罚

据公安部网安局2024年6月11日消息，青海西宁公安局城东分局网安部门在日常工作中发现，辖区一家公司自开办网站以来，该网站联网使用后，未在规定时间内到属地公安机关和全国互联网安全管理服务平台进行联网备案，未落实网络安全保护义务，未采取防范计算机病毒和网络侵入等技术措施，网站未对其发布的信息进行有效审核及管理，导致违法信息在网络上发布，造成不良影响。针对上述违法违规行为，网安大队民警及时传唤该公司法人及网站负责人，普及网站日常管理和维护知识。同时，警方依据相关法律规定，对该公司给予行政处罚，并责令该公司及网站负责人限期内作出整改进行网站备案登记，严格落实主体责任，合法合规开办网站。 ([查看更多](#))

## The Qinghai Public Security Bureau Punishes a Website for Failing to Comply with Internet Registration and Other Cybersecurity Obligations

According to a news release from the Ministry of Public Security's Cybersecurity Bureau on 11 June 2024, the Cybersecurity Department of the Chengdong Branch of the Xining Public Security Bureau in Qinghai discovered during routine operations that a local company had failed to put its website on records in the local public security authority and the National Internet Security Management Service Platform within the stipulated time after the website went online. The company also failed to fulfill its cybersecurity protection obligations, such as implementing technical measures to prevent computer viruses and network intrusions. Additionally, the website did not effectively review and manage the information it published, leading to the dissemination of illegal content and causing negative impacts.

In response to these violations, the cybersecurity team promptly summoned the company's legal representative and the website administrator to educate them on daily website management and maintenance practices. The police, in accordance with relevant legal provisions, imposed administrative penalties on the company. Furthermore, the company and its website administrator were ordered to rectify the situation within a specified period, complete the website record process, strictly fulfill their primary responsibilities, and operate the website legally and compliantly. ([More](#))

## 英国与加拿大联合调查23andMe数据泄露

2024年6月10日，英国信息专员办公室（ICO）与加拿大隐私专员办公室（OPC）共同宣布，将对全球基因测试公司23andMe在2023年10月发生的数据泄露事件展开联合调查。23andMe处理高

度敏感的个人信息，包括遗传信息，如信息泄露则可能影响个人及其家庭的隐私和安全。ICO专员John Edwards和OPC专员Philippe Dufresne将共同领导调查，评估信息泄露范围、公司保护措施及通知程序的合规性。此次合作体现了双方对保护个人隐私的坚定承诺。（[查看更多](#)）

## **The UK and Canada Jointly Investigate 23andMe Data Breach**

On 10 June 2024, the UK's Information Commissioner's Office (the "ICO") and Canada's Office of the Privacy Commissioner (the "OPC") announced a joint investigation into the data breach incident that occurred at the global genetic testing company 23andMe in October 2023. 23andMe handles highly sensitive personal information, including genetic data, and a breach of such information could impact the privacy and security of individuals and their families. ICO Commissioner John Edwards and OPC Commissioner Philippe Dufresne will jointly lead the investigation, assessing the extent of the data breach, the company's protective measures, and the compliance of its notification procedures. This collaboration demonstrates the strong commitment of both offices to protecting personal privacy. ([More](#))

## **知识产权 Intellectual Property**

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### **上海高院发布知识产权专业化审判三十年100件经典案例**

上海高院近日发布知识产权专业化审判三十年100件经典案例，这些案例覆盖了著作权、商标权、专利权以及商业秘密等多个知识产权领域，充分展现了上海法院在知识产权司法保护方面取得的显著成就。自1993年以来，上海法院在知识产权审判领域积累了丰富的经验，处理了大量具有重大社会影响和指导意义的案件。这些案例不仅体现了法院严格公正司法的立场，也激励了创新创造，维护了公平竞争，促进了文化繁荣。通过发布这些经典案例，上海法院不仅向社会各界传达了加强知识产权保护的坚定决心，也为法律从业者和公众提供了宝贵的参考和启示。

来源：[上海市高级人民法院](#)

### **The Shanghai High People's Court releases 100 classic cases of intellectual property specialized trials over the past thirty years**

The Shanghai High People's Court recently published 100 classic cases of intellectual property specialized trials over the past thirty years. These cases cover various fields of intellectual property rights, including copyright, trademark rights, patent rights, and trade secrets, fully demonstrating the significant achievements made by Shanghai courts in the judicial protection of intellectual property. Since 1993, Shanghai courts have accumulated rich experience in the field of intellectual property trials, handling a large number of cases with significant social impact and guiding significance. These cases not only reflect the courts' stance on strict and fair justice but also inspire innovation and creation, maintain fair competition, and promote cultural prosperity. By releasing these classic cases, the Shanghai courts have conveyed to all sectors of society their firm determination to strengthen the pro-

tection of intellectual property rights, and also provided valuable references and insights for legal practitioners and the public.

Source: Shanghai High People's Court

## 最高法院案例：中国新能源汽车技术秘密侵权案判赔额创新高，权利人获赔6.4亿元

中国最高人民法院近日对一起备受瞩目的新能源汽车技术秘密侵权案作出终审判决。案件起因于两家知名车企之间的技术人才流动，原告方索赔金额高达21亿元。最终，最高人民法院判决侵权方赔偿经济损失及维权合理开支合计约6.4亿余元，刷新了中国知识产权侵权诉讼判赔数额的记录。

吉某集团、浙江吉某汽车研究院有限公司（以下统称“吉某方”）指控威某汽车科技集团有限公司及其他关联公司（以下统称“威某方”）非法获取并使用其新能源汽车底盘技术秘密。吉某集团称，威某方利用其技术秘密申请了12项实用新型专利，并短期内推出了涉嫌侵权的电动汽车产品。最高人民法院在审理中指出，本案证据能够证明威某方非法获取吉某方涉案技术秘密并进行了披露、使用，威某方的行为构成了有组织、有计划地大规模挖取技术人才及技术资源，侵害了吉某方的技术秘密。故法院判决威某方立即停止使用涉案技术秘密，并细化了停止侵害的具体措施，包括但不限于停止披露、使用技术秘密，销毁或移交所有载有技术秘密的资料，发布公告通知相关人员，并签署保守商业秘密及不侵权承诺书等。在损害赔偿数额的确定上，法院考虑到吉某方未能提供实际损失的直接证据，最终决定以威某方公布的销售数量和平均销售价格为基础，参考同期新能源汽车代表性企业的利润来计算威某方的侵权获利经计算，威某方应赔偿吉某方经济损失及维权合理开支约6.4亿元。

来源： 最高人民法院

## Supreme Court Case: The compensation awarded in a Chinese new energy vehicle technology trade secret infringement case has reached a new peak, with the rights holder receiving a compensation of RMB 640 million

The Supreme People's Court of China recently made a final judgment on a highly watched case of trade secret infringement involving new energy vehicle technology. The case stemmed from the movement of technical personnel between two well-known car companies, with the plaintiff demanding a compensation amount of RMB 2.1 billion. Ultimately, the Supreme People's Court ruled that the infringing party should compensate for economic losses and reasonable expenses for rights protection, totaling approximately 640 million yuan, setting a new record for the amount of compensation in intellectual property infringement litigation in China.

Ji Group and Zhejiang Ji Automobile Research Institute Co., Ltd. (collectively referred to as "Ji Party", Plaintiffs) accused Wei Automobile Technology Group Co., Ltd. and other related companies (collectively referred to as "Wei Party", Defendants) of illegally obtaining and using their new energy

vehicle chassis technology secrets. Plaintiffs claimed that Defendants used their technology secrets to apply for 12 utility model patents and quickly launched new energy electric vehicle products suspected of infringement. The Supreme People's Court pointed out in the trial that the evidence in this case could prove that Defendants illegally obtained and disclosed, and used the Plaintiffs' involved technology secrets. Defendants' actions constituted an organized and planned large-scale poaching of technical personnel and technical resources, infringing on the Plaintiffs' technology secrets. Therefore, the court ruled that Defendants must immediately stop using the involved technology secrets and detailed specific measures to stop the infringement, including but not limited to stopping the disclosure and use of technology secrets, destroying or transferring all materials containing technology secrets, issuing public announcements to notify relevant personnel, and signing a commitment to keep trade secrets and not infringe, etc. In determining the amount of compensation for damages, the court considered that Plaintiffs failed to provide direct evidence of actual losses, and finally decided to calculate the profits obtained by Defendants from the infringement based on the sales volume and average selling price published by Defendants, and refer to the profits of representative enterprises in the new energy vehicle industry during the same period. After calculation, Defendants should compensate Plaintiffs for economic losses and reasonable expenses for rights protection of about RMB 640 million.

Source: The Supreme People's Court

### 广州法院案例：“金沙古酱”侵害“金沙”商标权，被判赔300万

近日，广东省高级人民法院对贵州金沙窖酒酒业有限公司（以下简称“金沙窖酒公司”）与贵州金沙安底斗酒酒业有限公司等多家企业（以下统称“被告企业”）侵害商标权纠纷案作出终审判决。法院驳回上诉，维持一审判决，要求侵权企业立即停止侵权行为，并赔偿金沙窖酒公司经济损失及合理维权开支合计300万元。

金沙窖酒公司指控被告企业使用“金沙古酱”等商标，侵犯了其“金沙”商标权。被告企业辩称其使用被诉侵权标识系正当使用，法院认为，金沙窖酒公司的三项注册商标均含有“金沙”字样，“金沙”作为贵州省毕节市下辖金沙县的行政区划名称，本身不具有固有显著性。但是，涉案注册商标经过金沙窖酒公司长期持续性地使用，不仅提升了一定的知名度和影响力，而且还使其中的显著识别部分“金沙”产生了行政区划名称以外的第二含义，即用于指代金沙窖酒公司生产销售的白酒产品。被告企业作为与金沙窖酒公司同处金沙白酒产区的同业竞争者，在知悉涉案商标知名度和市场影响力的情况下，仍然在其商品、包装及其附随物的显著位置突出使用了与涉案注册商标近似的被诉侵权标识目的是借助“金沙”与金沙窖酒公司之间形成的稳定联系，攀附涉案注册商标的知名度及凝结的商誉。同时，该使用行为客观上起到了指示商品来源的作用，超出了正当使用的合理范围，属于商标性使用，故被告企业的正当使用抗辩不能成立。

此案的判决结果对维护商标权利人的合法权益具有重要意义，同时也为其他企业提供了商标使用和保护的指导。

来源：广东省高级人民法院

## **Guangzhou Court Case: "Jinsha Ancient Sauce" infringed on the trademark rights of "Jinsha" and was ordered to pay 3 million yuan in compensation**

Recently, the Guangdong High People's Court made a final judgment on the trademark right infringement dispute between the Plaintiff, Guizhou Jinsha Cellar Wine Co., Ltd., and the Defendant, Guizhou Jinsha Andi Dou Wine Co., Ltd., among other companies. The court dismissed the appeal, upheld the original first-instance judgment, and ordered the infringing companies to immediately halt the infringement and compensate the Plaintiff for economic losses and reasonable costs for rights protection, totaling RMB 3 million.

The Plaintiff alleged that the Defendant's use of trademarks such as "Jinsha Ancient Sauce" infringed upon its "Jinsha" trademark rights. The Defendant claimed that their use of the accused infringing mark was in good faith. The court found that although "Jinsha", part of the Plaintiff's registered trademarks, is also the name of an administrative region in Bijie City, Guizhou Province, it lacks inherent distinctiveness. However, through the Plaintiff's extensive and continuous use, "Jinsha" has gained a secondary meaning that identifies the white liquor products produced and sold by the Plaintiff, beyond its role as a place name.

As competitors within the same industry and production area, the Defendant, aware of the Plaintiff's trademark recognition and market influence, still prominently used marks similar to the Plaintiff's registered trademarks on their products, packaging, and accompanying materials. The court determined that this was an attempt to capitalize on the established association between "Jinsha" and the Plaintiff, thereby leveraging the Plaintiff's brand reputation and goodwill. Moreover, the Defendant's use of the mark served to indicate the source of the goods, which exceeded the bounds of fair use and constituted trademark use. Therefore, the Defendant's claim of fair use was not accepted.

The outcome of this case is significant for safeguarding the legitimate rights and interests of the Plaintiff and offers legal guidance to other enterprises on trademark utilization and protection.

[Source: Guangdong High People's Court](#)

## **云南法院案例：商品包装装潢“知名度”要件认定**

近日，云南省高级人民法院对一起涉及不正当竞争商品包装、装潢案件作出二审判决。东莞市家家宜洗涤用品有限公司（以下简称“家家宜公司”）认为云南金板桥洗涤用品有限公司（以下简称“金板桥公司”）、安宁威力洗涤用品有限公司、澜沧升亿百货店的“家家清洁净熏香洗衣粉”与其“家家宜洁净熏洗衣粉”产品包装近似，构成商标侵权与不正当竞争，向法院提起诉讼。一审法院认为金板桥公司并未侵犯家家宜公司的商标权，且家家宜公司的包装装潢不具有独特性，不能区别商品来源，不构成知名商品特有的包装装潢，驳回了家家宜公司的诉讼请求。云南高院经审理后认为，尽管侵权产品与家家宜公司产品在包装装潢的颜色上有一定差异，但整体视觉效果近似，易使公众误认为其商品来源于家家宜公司或与家家宜公司有关联，构成误导，因此改判“家家清洁净熏香洗衣粉”包装装潢构成不正当竞争。判决金板桥公司等停止销售该商品，共同赔偿家家宜公司经济损失及维权合理费用共计人民币150000元。此案的改判体现了司法机关对知名商品包装装潢“知名度”要件的重视，强调了在不正当竞争案件

中，权利人主张的商品包装装潢应具有显著性和一定的影响力，以保护消费者权益和维护市场秩序。

来源：云南省高级人民法院

## Yunnan Court Case: Determination of the "Well-known" Requirement for Product Packaging and Decoration

Recently, the Yunnan High People's Court made a second-instance judgment on a case involving unfair competition over product packaging and decoration. Dongguan Jia Jia Yi Cleaning Products Co., Ltd. (Plaintiff), believed that Yunnan Jin Ban Qiao Cleaning Products Co., Ltd., along with Anning Wei Li Cleaning Products Co., Ltd., and Lancang Sheng Yi Department Store (Defendants), had packaging for their "Jia Jia Clean Fragranced Laundry Powder" that was similar to the Plaintiff's "Jia Jia Yi Clean Fragranced Laundry Powder", constituting trademark infringement and unfair competition, and thus filed a lawsuit in court. The first-instance court ruled that the Defendants did not infringe upon the Plaintiff's trademark rights, and that the Plaintiff's packaging and decoration lacked distinctiveness, could not identify the source of the goods, and did not constitute the unique packaging and decoration of a well-known product, hence rejecting the Plaintiff's lawsuit.

After deliberation, the Yunnan High Court found that although there were some differences in color between the infringing product and the Plaintiff's product, the overall visual effect was similar, which could easily mislead the public into believing that the product originated from or was associated with the Plaintiff, thus constituting deception. Therefore, the court overturned the judgment that the packaging and decoration of "Jia Jia Clean Fragranced Laundry Powder" constituted unfair competition. The court ordered the Defendant and others to cease selling the product and to jointly compensate the Plaintiff for economic losses and reasonable costs for rights protection, totaling RMB 150,000.

The reversal of this case reflects the judicial authorities' emphasis on the "well-known" requirement for the packaging and decoration of well-known products, highlighting that in unfair competition cases, the packaging and decoration claimed by the rights holder should have distinctiveness and a certain degree of influence to protect consumer rights and maintain market order.

Source: Yunnan High People's Court

## 北京法院案例：合作协议解除后，继续使用他人商标及包含该商标的企业名称，构成商标侵权和不正当竞争

近日，北京知识产权法院对天畅自然投资管理（北京）有限公司（以下简称“天畅公司”）与《罗博报告》杂志社有限公司（以下简称“罗博杂志社”）之间的侵害商标权及不正当竞争纠纷案作出二审判决。二审法院认为，在双方合作协议解除后，罗博杂志社继续使用“罗博报告”“罗博”字样的行为构成商标侵权，且罗博杂志社还将涉案商标作为企业名称中的字号使用，易引起公众误认，构成不正当竞争。遂二审法院改判罗博杂志社立即停止使用涉案商标，停止使用含有“罗博报告”字号的企业名称，并赔偿天畅公司经济损失500,000元及合理开支50,000元。罗博杂志社还需在微信账号连续七日发布声明，以消除影响。此判决凸显了合作协议解除

后，原合作方继续使用商标及企业名称可能面临的法律风险，体现了司法对商标权及不正当竞争行为的严格规制。

来源：北京知识产权法院

### **Beijing Court Case: After the termination of a cooperation agreement, the continued use of another's trademark and the business name containing that trademark constitutes trademark infringement and unfair competition**

Recently, the Beijing Intellectual Property Court made a second-instance judgment on the trademark right infringement and unfair competition dispute case between Tian Chang Natural Investment Management (Beijing) Co., Ltd. (Plaintiff) and Robb Report Magazine Co., Ltd. (Defendant). The second-instance court held that after the termination of the cooperation agreement between the two parties, The Defendant's continued use of the words "Robb Report" and "Robb" constituted trademark infringement. Furthermore, the Defendant's use of the disputed trademark as part of its business name could easily mislead the public, constituting unfair competition. Therefore, the second-instance court overturned the judgment, ordering Defendant to immediately cease using the disputed trademark, to stop using the business name containing the term "Robb Report", and to compensate the Plaintiff for economic losses of RMB 500,000 and reasonable expenses of RMB 50,000. The Defendant is also required to publish a statement on its WeChat account for seven consecutive days to mitigate the impact. This judgment highlights the legal risks that may be faced by the original partners after the termination of a cooperation agreement when they continue to use trademarks and business names, reflecting the judiciary's strict regulation of trademark rights and unfair competition practices.

Source: Beijing Intellectual Property Court

### **欧洲专利局发布统一专利制度最新进展**

2024年6月1日，欧洲专利局（EPO）发布统一专利（Unitary Patent）制度实施一周年后的相关进展。自该制度启动以来，EPO已处理了超过28000项统一专利申请，其中27500项已正式注册，占有授权欧洲专利的近25%。欧洲对新制度的接受程度尤为高，特别是在EPO的39个成员国内，有64.2%的专利权利人选择采用统一专利。此外，小型企业和初创公司对这一新制度表现出极大的兴趣，仅在2023年就占欧洲所有单一专利的35.5%。目前，统一专利制度已在17个欧盟国家生效，新成立的统一专利法院（UPC）迄今已受理了数百起案件。

来源：欧洲专利局

### **The European Patent Office releases the latest progress on the Unitary Patent system**

On June 1, 2024, the European Patent Office (EPO) released the progress report on the implementation of the Unitary Patent system one year after its launch. Since the start of the system, the EPO has processed over 28,000 applications for Unitary Patents, with 27,500 officially registered, accounting for nearly 25% of all granted European patents. The acceptance of the new system in Europe is particularly high, especially among the 39 member states of the EPO, where 64.2% of patent proprietors have chosen to adopt the Unitary Patent. In addition, small and medium-sized enterprises and startups have

shown great interest in this new system, accounting for 35.5% of all Unitary Patents in Europe in 2023 alone. Currently, the Unitary Patent system is in effect in 17 EU countries, and the newly established Unified Patent Court (UPC) has already accepted hundreds of cases to date.

Source: European Patent Office

## 阿拉斯加航空在与维珍航空 1.6 亿美元的英国商标纠纷中败诉

近日，伦敦上诉法院驳回了阿拉斯加航空公司试图推翻去年裁决的上诉，维持了原判，即阿拉斯加航空需在2039年之前每年支付约800万美元的特许权使用费，总额约1.6亿美元。这场纠纷始于伦敦一家法院去年的裁决，裁决认定即便阿拉斯加航空不再使用维珍品牌，维珍仍有权收取特许权使用费。维珍航空有限公司和维珍企业有限公司在法庭上成功主张，根据2014年签订的商标许可协议，阿拉斯加航空应每年支付约800万美元的最低特许权使用费，直至2039年。而伦敦高等法院去年的裁决明确指出，最低使用费是作为获取维珍品牌使用权的固定费用，无论该品牌是否实际使用。阿拉斯加航空曾试图以商业上的不合理性为由推翻这一裁决，但未能成功。

来源: Reuters

## Alaska Airlines loses appeal in \$160 mln UK trademark dispute with Virgin Aviation

Recently, the Court of Appeal in London rejected Alaska Airlines' appeal to overturn last year's ruling, upholding the original judgment that Alaska Airlines must pay an annual franchise fee of about 8 million US dollars, totaling approximately 160 million US dollars, before 2039. This dispute began with a ruling by a London court last year, which determined that even if Alaska Airlines no longer uses the Virgin brand, Virgin still has the right to collect franchise fees. Virgin units Virgin Aviation TM Ltd and Virgin Enterprises Ltd successfully argued in court that, according to the trademark license agreement signed in 2014, Alaska Airlines should pay an annual minimum franchise fee of about 8 million US dollars until 2039. The High Court of London's ruling last year clearly stated that the minimum fee is a fixed cost for obtaining the right to use the Virgin brand, regardless of whether the brand is actually used. Alaska Airlines tried to overturn this ruling on the grounds of commercial unreasonableness, but was unsuccessful.

Source: Reuters

## USPTO和UKIPO就标准必要专利政策进行合作

2024年6月3日，美国专利商标局（USPTO）与英国知识产权局（UKIPO）签署了一项新的谅解备忘录，为两个主管局在标准必要专利（SEP）相关政策方面的合作提供了一个框架。根据该协议条款，USPTO和UKIPO计划采取以下行动：

1. 联合开展活动，加强在SEPs政策议题上的合作与信息共享，确保技术标准的平衡发展；

2. 探索对寻求在公平、合理且非歧视性（FRAND）条件下实施或促进技术互操作性标准制定的中小企业的教育方式；
3. 审查提高公平、合理、非歧视性（FRAND）许可在技术互操作性标准中的透明度的方法；
4. 主动接触各方利益相关者，提升他们对SEPs相关议题的认识和理解；
5. 探讨将更多司法管辖区纳入两局关于SEPs的活动中，以扩大合作范围。

来源：美国专利商标局

### **USPTO and UKIPO collaborate on policies related to standard essential patents**

On June 3, 2024, the United States Patent and Trademark Office (USPTO) and the United Kingdom Intellectual Property Office (UKIPO) signed a new Memorandum of Understanding (MOU), providing a framework for cooperation between the two offices on policies related to standard essential patents (SEPs). According to the terms of the agreement, the USPTO and the UKIPO plan to take the following actions:

Jointly conduct activities to strengthen collaboration and information sharing on policy matters concerning SEPs, ensuring the balanced development of technical standards; Explore educational methods for small and medium-sized enterprises seeking to implement or contribute to the development of technical interoperability standards on fair, reasonable, and non-discriminatory (FRAND) terms; Review methods to improve transparency in the licensing of technical interoperability standards on fair, reasonable, and non-discriminatory (FRAND) terms; Proactively engage with stakeholders to enhance their awareness and understanding of issues related to SEPs; Discuss incorporating additional jurisdictions into the activities of the USPTO and the UKIPO concerning SEPs to expand the scope of cooperation.

Source: United States Patent and Trademark Office

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