



中国外商投资企业协会  
优质品牌保护委员会  
QUALITY BRANDS PROTECTION COMMITTEE CHINA  
ASSOCIATION OF ENTERPRISES WITH FOREIGN INVESTMENT

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# 品保委通讯 QBPC NEWSLETTER

2020-2021 年度知识产权保护十佳案例  
2020-2021 ANNUAL TOP TEN CASES IN IP PROTECTION

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QBPC APRIL GM MEETING

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品保委第二届知识产权保护论坛在京开幕  
QBPC SECOND IP FORUM HELD IN BEIJING



中国外商投资企业协会  
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QUALITY BRANDS PROTECTION COMMITTEE OF CHINA  
ASSOCIATION OF ENTERPRISES WITH FOREIGN INVESTMENT

## 品保委通讯

2021 年 第 2 期

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# 卷首语 FOREWORD

我宁愿忘记过去的一年，这是 25 年来我第一次不能与我在中国的朋友和同事们相见。

新冠疫情的乌云仍笼罩着我们。万幸的是，在这不到一年的时间里，世界各地的科学家和生物技术公司经过不懈努力，研发、生产、推出了数以亿计的疫苗，我们正在赢得这场战“疫”。我们应当向他们表达崇高的敬意。虽然在中国和美国，情况已经恢复相对正常，但我们不能有丝毫松懈。尽管面临种种挑战，品保委及其成员的韧性是显而易见的。从本期季刊中，你可以了解到品保委在过去三个月中举办的一系列精彩活动。

在我看来，加入行业小组是品保委可以为你带来的最大益处之一，看到他们在过去几个月如此活跃，以及今年后续的工作计划，我备受鼓舞。如果截至到目前为止你还未参与任何一个行业小组，我在此真诚的建议你积极加入。在过去的一年里，我使用线上交流和视频会议工具的能力得到了很大的提升，我相信我已经具备了与本通讯读者同等的 IT 技能。不过，没有任何 IT 工具可以和面对面的交流所能达到的互动和协作效果相媲美。我很高兴我们的许多日常活动都恢复了。

遗憾的是，国际旅行仍然非常困难，比我在 2020 年之前想象的要困难得多。然而，各国已经开始讨论疫苗接种的跨境承认以及具有接种证明或者抗体检测呈阳性的人员可以缩短隔离期限的可行性，希望在这方面能取得进一步进展。果真如此，我和其他外派同事很快就能回到中国，我非常期待这一天的到来。

The past year is one I would prefer to forget. It is the first time in over twenty-five years that I have not been able to spend time with my friends and colleagues in China.

The dark cloud of Covid-19 still hangs over us. However, thanks to the amazing efforts of scientists and biotech companies around the world to invent, develop and roll out millions of doses of vaccine in less than a year, we are winning the battle. We owe them our thanks. In China and the US, relative normality has already returned, though we must all remain vigilant.

The resilience of QBPC and its members, despite all the challenges we faced, is clear. You can see just how much has been happening from the various articles in this newsletter.

The Industry Working Groups (IWGs) in my view, are one of the most important benefits of QBPC membership, and it has been encouraging to see them so active in the last few months and to see their plans for the remainder of the year. If you are not actively participating in at least one IWG, I sincerely encourage you to do so. My skills in using the many online communication and video conferencing tools available to us have grown immensely over the past year, as I suspect have the IT skills of many of the readers of this newsletter. Despite all the IT tools though, there is nothing that can match the quality of interaction and collaboration that can be achieved from direct face-to-face conversations. I am so pleased that has resumed in many of our day to day activities.

Unfortunately, international travel remains incredibly difficult, much more so than I could ever have imagined prior to 2020. However, discussions have started about cross-border recognition of vaccinations and the possibility of reduced quarantine periods for those with proof of vaccination or who test positive for antibodies. I am hopeful that further progress will be made, and it will not be too long before I, and our other internationally based colleagues, can return to China. I am looking forward to that very much.

John Groves

艾默生知识产权副总裁 / Vice President and Group Leader Intellectual Property, Emerson  
品保委副主席（行业小组） / Vice Chair for IWG Support, QBPC

# 特别报道 SPECIAL REPORTS

## 2020-2021

### 品保委年度知识产权保护十佳案例（刑事案件） QBPC ANNUAL TOP TEN CASES(CRIMINAL CASES)

#### 01

#### 山东齐某特大生产、跨境销售假冒医美产品案

Large Cross-Border Case of Manufacturing and Selling Counterfeit Medical Aesthetic Products in Shandong

推荐机关：山东省公安厅食品药品与环境犯罪侦查总队、山东省济宁市公安局食品药品与环境犯罪侦查支队、山东省邹城市公安局食品药品与环境犯罪侦查大队

Recommended Agencies: Food, Drug and Environment Crimes Corps of Public Security Department of Shandong Province, Food, Drug and Environment Crimes Division of Jining Public Security Bureau, Food, Drug and Environment Crimes Division of Zoucheng Public Security Bureau

提名单位：艾尔建信息咨询（上海）有限公司

Member Company: Allergan Information Consulting (Shanghai) Co., Ltd. (an Abbvie company)

#### 02

#### 河南省周口市鹿邑县兴宇轮毂案

Xingyu Wheel Hub Case in Luyi County, Zhoukou City, Henan Province

推荐机关：河南省周口市鹿邑县公安局、河南省周口市鹿邑县人民检察院、河南省周口市鹿邑县人民法院、河南省周口市公安局、河南省周口市人民检察院及河南省周口市中级人民法院

Recommended Agencies: Henan Luyi Public Security Bureau, Henan Luyi People's Procuratorate, Henan Luyi People's Court, Henan Zhoukou Public Security Bureau, Henan Zhoukou People's Procuratorate, Henan Zhoukou Intermediate People's Court

提名单位：大众汽车（中国）投资有限公司、奥迪公司、本田技研工业（中国）投资有限公司、丰田汽车（中国）投资有限公司、捷豹路虎（中国）投资有限公司

Member Company: Volkswagen (China) Investment Co., Ltd., AUDI AG, Honda Motor (China) Investment Co., Ltd., TOYOTA MOTOR (CHINA) INVESTMENT Co., Ltd., JAGUAR LAND ROVER (CHINA) INVESTMENT Co., Ltd.

#### 03

#### 李某等人侵害乐高集团著作权案

Criminal Conviction against Li and Others for Copyright Infringement on the LEGO Group

推荐机关：上海市公安局经济犯罪侦查总队、上海市高级人民法院、上海市人民检察院

Recommended Agencies: Economic Crime Investigation Department of Shanghai Public Security Bureau, Shanghai Higher People's Court, Shanghai People's Procuratorate

提名单位：乐高玩具（上海）有限公司

Member Company: LEGO Toy (Shanghai) Co., Ltd.

04

## 傅桂秋团伙制售假冒飞利浦照明产品

Fu Guiqiu Criminal Gang Who Produced and Sold Fake PHILIPS Branded Lighting Product

推荐机关：上海市公安局嘉定分局经济犯罪侦查支队、上海市嘉定区人民检察院、上海市普陀区人民法院

Recommended Agencies: Economic Crime Investigation Detachment, Jiading Branch of Shanghai Public Security Bureau, People's Procuratorate of Jiading District in Shanghai, People's Court of Putuo District in Shanghai

提名单位：昕诺飞控股有限公司

Member Company: Signify Holding B.V.

05

## 果珈公司、姚某等人销售假冒苹果公司注册商标的产品案

Criminal Conviction against Shanghai Guojia, Yao and Other Perpetrator for Selling Counterfeit Goods Bearing Apple's Registered Trademarks

推荐机关：上海市公安局经济犯罪侦查总队食品药品环境犯罪侦查支队、上海市人民检察院第三分院、上海市第三中级人民法院

Recommended Agencies: Food and Drug Environmental Crime Investigation Division, Economic Crime Investigation Department, Shanghai Public Security Bureau, Third Branch of the Shanghai Procuratorate, Shanghai Third Intermediate People's Court

提名单位：苹果公司

Member Company: Apple Inc.

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## 张某某、芜湖市迪顿电气贸易有限公司销售假冒注册商标的商品刑事自诉案

Private Criminal Prosecution against ZHANG XX and Wuhu Teaton Electric Trading Co., Ltd. on Selling Goods Bearing Counterfeit Registered Trademarks

推荐机关：安徽省芜湖经济技术开发区人民法院、安徽省芜湖市中级人民法院、芜湖海关

Recommended Agencies: Anhui Wuhu Economic & Technological Development Zone People's Court, Anhui Wuhu Intermediate People's Court, Wuhu Customs

提名单位：ABB 公司

Member Company: ABB

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## “春雷行动”中央 1 号专案——哈尔滨“12.7”特大生产销售假药案

Spring Thunder Operation” Central Project No.1 – Harbin “12.7” Extraordinary Production and Selling of Counterfeit Drugs

推荐机关：黑龙江省药品监督管理局、黑龙江省哈尔滨市公安局经济犯罪侦查支队、黑龙江省哈尔滨市人民检察院第三检察部

Recommended Agencies: Heilongjiang Provincial Drug Administration, Economic Crime Investigation Detachment of Harbin Municipal Public Security Bureau in Heilongjiang Province, the Third Procuratorial Department of Harbin People's Procuratorate in Heilongjiang Province

提名单位：赛诺菲（中国）投资有限公司、北京诺华制药有限公司、拜耳医药保健有限公司、辉瑞普强管理有限公司、阿斯利康投资（中国）有限公司、诺和诺德（中国）制药有限公司

Member Company: Sanofi (China) Investment Co., Ltd., Beijing Novartis Pharmaceutical Co., Ltd, Bayer Healthcare Co., Ltd., Pfizer Upjohn Management Co., Ltd., AstraZeneca Investment (China) Co., Ltd., Novo Nordisk (China) Pharmaceutical Co., Ltd.

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### 南京宝光公司、余某燕、张某平、党某强假冒注册商标犯罪案

Nanjing Baoguang Company, Yu, Zhang, Dang Counterfeiting Registered Trademark Case

推荐机关：安徽省马鞍山市公安局楚江分局、安徽省马鞍山市花山区人民法院、安徽省马鞍山市中级人民法院

Recommended Agencies: Chujiang Branch of Ma Anshan Public Security Bureau, Anhui Province, People's Court of Huashan District, Ma Anshan City, Anhui Province, Intermediate People's Court of Ma Anshan City, Anhui Province

提名单位：伊顿公司、施耐德电气（中国）有限公司  
Member Company: EATON CORPORATION, Schneider Electric (China) Co., Ltd.

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### 中国及阿联酋警方联合破获特大跨国侵犯知识产权犯罪案

Chinese and UAE Police Jointly Crack a Major Transnational Intellectual Property Infringement Case

推荐机关：上海市公安局经济犯罪侦查总队食品药品环境犯罪侦查支队、迪拜警察局反经济犯罪处反商业欺诈组、上海市公安局闵行分局经济犯罪侦查支队

Recommended Agencies: Shanghai Food, Drug, Environment and Criminal Crime Investigation Detachment, Anti-commercial Fraud Unit of Anti-Economic Crime Department of Dubai Police Bureau, Minhang Public Security Bureau Economic Crimes Investigation Detachment in Shanghai

提名单位：路易威登马利蒂（法国）  
Member Company: Louis Vuitton Malletier

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### 广东汕头吴耿标等制售假冒注册商标案

Wu Gengbiao et al. Counterfeiting Registered Trademark in Shantou City, Guangdong Province

推荐机关：重庆市公安局、重庆市巴南区人民检察院、重庆市巴南区人民法院

Recommended Agencies: Chongqing Public Security Bureau, Chongqing Banan District People's Procuratorate, Chongqing Banan District People's Court

提名单位：联合利华（中国）投资有限公司、宝洁（中国）有限公司  
Member Company: Unilever (China) Investment Co., Ltd., P&G (China) Co., Ltd.

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### 郭团结假冒注册商标案

Case of Guo A's Counterfeiting Registered Trademarks

推荐机关：北京市公安局朝阳分局环食药旅大队

Recommended Agencies: Food, Medicine, Environment & Tourism Security Department of Beijing Chaoyang Public Security Bureau

提名单位：富邑葡萄酒集团

Member Company: Treasury Wine Estates (Shanghai) Trading Co., Ltd.

## 2020-2021

### 品保委年度知识产权保护十佳案例（非刑事案件）

QBPC ANNUAL TOP TEN CASES(NON-CRIMINAL CASES)

01

新昌县大明制冷机厂受托生产制冷压缩机产品构成不正当竞争行政处罚案

The Administrative Punishment of Unfair Competition Case of Xinchang Daming Refrigeration Factory Was Commissioned to Produce Refrigeration Compressors

推荐机关：浙江省绍兴市新昌县市场监督管理局、浙江省绍兴市市场监督管理局

Recommended Agencies: Xinchang County Market Supervision Administration in Shaoxin City, Zhejiang Province, Shaoxing City Market Supervision Administration in Zhejiang Province

提名单位：艾默生电气（中国）投资有限公司

Member Company: Emerson Electric (China) Holdings Co., Ltd.

02

NBA 赛事直播版权纠纷案

Copyright Dispute on NBA Live Broadcasting

推荐机关：北京市高级人民法院

Recommended Agencies: Beijing Higher People's Court

提名单位：美商 NBA 产物股份有限公司

Member Company: NBA Properties, Inc.

03

叶某锐等商标和不正当竞争民事侵权判决执行案件

The Enforcement Case of Ye Trademark Infringement and Unfair Competition Civil Judgement

推荐机关：四川省成都市公安局武侯区分局、四川省成都市武侯区人民法院、四川省成都市中级人民法院

Recommended Agencies: Wu Hou District Branch of Chengdu Public Security Bureau, Sichuan Province, People's Court of Wu Hou District, Chengdu City, Sichuan Province, Intermediate People's Court of Chengdu City, Sichuan Province

提名单位：伊顿公司

Member Company: EATON CORPORATION

04

博柏利有限公司诉新昂利商贸（上海）有限公司等侵害商标权及不正当竞争纠纷案

Preliminary Injunction Issued in BURBERRY V. BANE BERRY [Dispute Over Trademark Infringement & Unfair Competition]

推荐机关：江苏省苏州市中级人民法院

Recommended Agencies: Suzhou Intermediate People's Court, Jiangsu Province

提名单位：BURBERRY LIMITED 博柏利有限公司

Member Company: BURBERRY LIMITED



05

贵州君成天下企业管理咨询有限公司恶意注册“维秘”商标  
行政诉讼案

Guizhou Juncheng Tianxia Business Management & Consulting Co.,  
Ltd. Administrative Litigation Case of Registered Trademarks of  
Victoria's Secret

推荐机关: 北京知识产权法院、北京市高级人民法院

Recommended  
Agencies: Beijing Intellectual Property Court, Beijing Higher People's Court

提名单位: L Brands 有限公司

Member  
Company: L Brands Inc.

06

法国轩尼诗公司诉广东卡某某公司等侵害实用艺术品著作权案件  
Copyright Infringement Litigation Case - Hennessy Vs. Guangdong  
KXX Wine Co., Ltd.

推荐机关: 广东省高级人民法院、广州知识产权法院

Recommended  
Agencies: Guangdong High People's Court, Guangzhou Intellectual Property Court

提名单位: 酩悦轩尼诗

Member  
Company: Moët Hennessy

07

新百伦贸易(中国)有限公司诉深圳市新平衡运动体育用品  
有限公司、郑朝忠等侵害商标权及不正当竞争纠纷案

New Balance Trading (China) Company Limited vs. Shenzhen Xin  
Ping Heng Sporting Goods Limited Company, Zheng Chaozhong, etc.  
under Trademark Infringement and Unfair Competition

推荐机关: 江苏省高级人民法院、江苏省苏州市中级人民法院

Recommended  
Agencies: Jiangsu Higher Court, Suzhou Intermediate Court in Jiangsu Province

提名单位: 新百伦贸易(中国)有限公司

Member  
Company: New Balance Trading (China) Company Limited

08

阿迪达斯有限公司与阮国强、阮永义侵害商标权纠纷案

adidas AG v. Ruan Guoqiang and Ruan Yongyi, Trademark  
Infringement Case

推荐机关: 浙江省温州市中级人民法院

Recommended  
Agencies: Wenzhou Intermediate People's Court of Zhejiang Province

提名单位: 阿迪达斯有限公司

Member  
Company: adidas AG

09

## 科迪华植物新品种权民事诉讼案

Corteva's Civil Infringement Case of New Plant Variety Rights

推荐机关：甘肃省兰州市中级人民法院

Recommended Agencies: Intermediate People's Court of Lanzhou City, Gansu Province

提名单位：科迪华（中国）投资有限公司

Member Company: Corteva (China) Investment Co., Ltd.

10

## 阿诺尔德·里希特电影技术两合公司、阿诺莱德贸易（北京）有限公司与广州明影影视设备有限公司不正当竞争纠纷案

ARRI China ( Beijing ) Co.,Ltd. and Arnold &amp; Richter Cine Technik GmbH &amp; Co. Betriebs KG vs. Guangzhou Ming Film &amp; Video Equipment Co.

推荐机关：北京市朝阳区人民法院

Recommended Agencies: Beijing Chaoyang District People's Court

提名单位：阿诺莱德贸易（北京）有限公司

Member Company: ARRI China ( Beijing ) Co., Ltd.

11

## 易富（上海）贸易有限公司诉珠海多力康贸易有限公司等商标侵权案

Yifu (Shanghai) Trading Co., Ltd. Vs. Zhuhai Duolikang Trading Co., Ltd.

推荐机关：广州知识产权法院

Recommended Agencies: Guangzhou Intellectual Property Court

提名单位：富邑葡萄酒集团

Member Company: Treasury Wine Estates (TWE)

## 2020-2021

品保委年度知识产权保护"两法"衔接案件  
QBPC ANNUAL MODEL CASES

01

## 1.25 假冒注册商标案

Counterfeiting Registered Trademark Case on January 25

推荐机关：上海市徐汇区市场监督管理局、上海市公安局徐汇分局

Recommended Agencies: Xuhui District Administration for Market Regulation of Shanghai City, Shanghai Municipal Public Security Bureau Xuhui Branch

提名单位：3M 公司

Member Company: 3M Company

02

## 假冒、翻新“ABB”、“SIEMENS/ 西门子”产品跨区域销售案

Cross-regional Sale of Counterfeiting and Refurbished “ABB” and “SIEMENS” Products

推荐机关：福建省厦门市海沧区市场监督管理局、福建省厦门市公安局海沧分局经济犯罪侦查大队、福建省厦门市思明区人民检察院

Recommended Agencies: Fujian Xiamen Haicang Administration for Market Regulation, Fujian Xiamen Public Security Bureau Haicang Branch Economic Crime Investigation Department, Fujian Xiamen Siming People's Procuratorate

提名单位：ABB 公司、西门子（中国）有限公司

Member Company: ABB, Siemens Ltd., China

03

## 浙江省温州市方某等制售假冒西门子开关插座产品案

Fang et al. Manufacturing and Selling Counterfeit Siemens Switch and Socket Products in Wenzhou City, Zhejiang Province

推荐机关：浙江省温州市龙湾区市场监督管理局、浙江省温州市公安局龙湾区分局

Recommended Agencies: Longwan District Administration for Market Regulation of Wenzhou City, Zhejiang Province, Longwan District Branch of Wenzhou Municipal Public Security Bureau, Zhejiang Province

提名单位：西门子（中国）有限公司

Member Company: Siemens Ltd., China

04

## 苏州百都利商贸有限公司、常熟骆某某等人销售假冒联合利华、宝洁公司旗下注册商标的商品案

Suzhou Baiduli Trade Co., Ltd. and Changshu Ms. Luo etc. Selling Counterfeit Commodities Bearing Registered Trademark under Unilever and P&amp;G Case

推荐机关：江苏省苏州市常熟市市场监督管理局、江苏省苏州市常熟市公安局

Recommended Agencies: Changshu City Administration for Market Regulation, Jiangsu Province, Changshu Public Security Bureau, Jiangsu Province

提名单位：联合利华（中国）投资有限公司、宝洁（中国）有限公司

Member Company: Unilever (China) Investment Co., Ltd., Procter &amp; Gamble (China) Ltd.

# 大事记 QBPC MILESTONES

## 品保委四月会员大会

文 / 杨楠

4月13日，中国外商投资企业协会优质品牌保护委员会（下称品保委）在上海召开四月会员大会，来自全国打击侵权假冒工作领导小组办公室、市场监督管理部门、法院、检察院、公安机关和海关的嘉宾，以及近二百位会员代表出席。

品保委主席丁宇致开幕词时表示，2020年是中国知识产权保护体系发展的重要一

年，一系列立法、修法工作的完成给保护机制带来了结构性变革。2021年，品保委将探究新法新规对于知识产权保护实践的影响；持续加强同中央和地方的执法、司法部门的交流，切实解决会员在日常工作中遇到的难点、痛点；充分发挥行业小组的作用，找到行业共性问题，探索普遍适用的解决方案；促进国际间交流，带回建设性意见，并在世界大舞台上分享中国知识产权保护进展。



丁宇 Michael DING

### 主旨发言

全国打击侵权假冒工作领导小组办公室副主任、国家市场监督管理总局执法稽查局副局长（正司级）路政闽做主旨发言，向大家介绍了中国政府保护知识产权、打击侵权假冒工作的最新进展。

**公平、开放、便利，中国营商环境持续优化，在华外资保持良好发展势头，外资企业与中国共同实现互利共赢。**2020年全球外国直接投资急剧下挫，从2019年1.5万亿美元下降到8590亿美元，同比下降42%。但中

国利用外资逆势增长4%，达1630亿美元，居全球首位。中国统筹疫情防控与经济社会发展政策为外资企业提供了稳定的预期以及开阔的市场。路主任表示，外资是中国经济的重要组成部分，中国政府历来高度重视。习总书记强调，中国将继续完善公开透明的涉外法律体系，强化知识产权保护，维护外资企业合法权益，以优质服务营造更好环境。中国利用外资的政策不会变，对外商投资企业合法权益的保护不会变，为各国企业在华投资兴业提供更好服务的方向不会变。





路政闽 LU Zhengmin

**严保护、大保护、快保护、同保护，中国知识产权体系再上一层楼。**路主任强调，中国政府平等保护包括外商投资企业在内的各类市场主体的知识产权。民法典、刑法修正案十一、专利法、著作权法修正案、企业名称登记管理规定、网络交易监督管理办法等一系列法律法规、司法解释、规范性文件的出台，提高了赔偿数额、优化了举证责任、缩短了维权周期，进一步完善了中国知识产权司法和行政保护体系。各部门联合开展的各类知识产权保护专项行动则在互联网领域、农村和城乡结合部、进出口环节、重点民生领域等查办了一大批侵权造假违法犯罪案件，保护了权利人的合法权益。路主任特别提到，针对外资企业反映较多的名称、字号等被侵权的问题，国务院修订了《企业名称登记管理规定》（国务院令〔2020〕第734号），明确规定“企业认为其他企业名称侵犯本企业名称合法权益的，可以向人民法院起诉或者请求为涉嫌侵权企业办理登记的企业登记机关处理”，解决了困扰多年的企业名称字号被侵权问题。针对权利人反映的网上售假问题，2021年3月市场监管总局出台《网络交易监督管理办法》，为规范网络交易

活动、维护网络交易秩序、保障各方主体合法权益提供了重要依据。

**打击侵权假冒、保护知识产权，要坚持社会共治。**在制定、修订法律法规、司法解释、规范性文件上，包括外商投资企业在内的社会各界都积极提出建设性的意见和建议。在开展专项行动，宣传中国知识产权保护工作，讲好中国知识产权故事上，社会组织也都充分参与，发挥了重要作用。路主任还特别赞扬品保委在推动社会共治方面做出了积极贡献。

**新形势、新业态为下一步工作提出了更高要求。**路主任也谈到当前知识产权保护工作面临的主要挑战，如跨境犯罪日益增多、治理难度不断加大、贸易保护有所抬头、科技交流遭遇阻力等。2021年是十四五规划开局之年，是中国现代化建设进程中具有特殊重要意义的一年。全国打击侵权假冒工作领导小组办公室将继续认真贯彻落实党中央国务院决策部署，根据新形势、新挑战持续强化统筹协调、加大惩治力度、提升监管效能、推进社会共治、深化国际合作。



## 创新工作举措，强化检察履职

上海市人民检察院第四检察部主任、知识产权检察办公室主任胡春健介绍了2020年检察机关办理侵犯知识产权案件基本情况和特点。从上海检察机关办理的案件中，不难看出，侵权犯罪手段在升级，规模在扩大。2020年新案、要案频发。制假者犯罪手段越发专业、智能，仿真程度越来越高。一些制假者还将商品运输到境外以后再贴假冒商标，以躲避侦查。涉及的行业也从奢侈品等渗透到其他利润率高的民生、工业领域。利用互联网侵权犯罪的趋势持续上升，如在线上销售假冒产品、利用云服务侵犯著作权等，已成为常态。在侵犯商业秘密上，尤其值得权利人注意的是，不仅是技术信息，能够帮助在市场竞争中获得优势的经营信息，也成为侵权者觊觎的对象。

**成立知识产权检察办公室是为应对侵权犯罪新趋势、服务保障国家战略、提升打击知识产权犯罪能力的新举措。**2020年11月，最高人民检察院开始整合知识产权刑事、民事、行政检察职能，成立知识产权检察办公室，并决定在北京、上海等8个省市检察机关开展为期一年的知识产权检察职能集中统一行使试点工作。上海市人民检察院也决定

在第三分院和6个基层检察院组建知识产权检察办公室，统一履职。除了继续做优做精刑事检察工作以外，知识产权检察办公室也将探索更多的法律监督途径，确保司法裁判正确适用法律，及时纠正行政机关违法行使职权或者不行使职权的行为，切实保障权利人合法权益。在人员配备上，上海市检知识产权检察办公室力图做到一业一人，在知识产权的每一个领域都有专门人员把研究做精做深。

**一系列新举措出台，助力检察工作。**2014年，上海市检察机关率先启动权利人诉讼权利义务告知制度。2019年，最高检在六省二市开展权利义务试点项目；2021年2月，决定在全国推广。经过多年的实践，上海检察机关的告知方式变得更加灵活、程序更加完善，告知范围也拓展到其他竞合罪名。在告知基础上，上海检察机关积极推动权利人实质性参与诉讼，如审判逮捕阶段的公开听证。特别是在专业性较强的案件中，权利人的提前参与为案件办理提供了更好的基础。在完善合理赔偿制度、加强服务商标保护、推动企业建立合规制度上，上海检察机关也采取了相应举措。



胡春健 HU Chunjian

## 商业秘密进入强保护时代

原江苏省高级人民法院审判委员会委员、知识产权庭庭长、资深法官、全国审判业务专家宋健，结合多年的审判实践和研究经验，与品保委员会分享了自 2019 年反不正当竞争法修订以来，商业秘密司法保护的最新进展。

**反法第 32 条有效地降低了权利人的举证负担。**反法第 3 条规定了商业秘密的构成要件，即不为公众所知悉、具有商业价值、且权利人采取了相应的保密措施。这其中第一个要件关于秘密性的证明，因其为消极事实，尤其让权利人头疼。最高人民法院 2006 年出台的司法解释尽管给出了秘密性的认定标准，但如果继续适用传统民事案件高度盖然性的证明标准，则商业秘密权利人很难应对侵犯商业秘密的行为。反法第 32 条则从法律规定的层面解决了权利人维权难的问题。根据 32 条的规定，权利人仅需要对构成要件和侵权行为提出两方面的初步证据，举证责任即转移至被诉侵权人。“初步证据”的规定应理解为法定的证明标准降低，而在个案中如何具体把握证明责任的转移，则应因“案”制宜，合理确定。

**商业秘密案件的特点对民刑诉讼程序的交叉和关联提出了新要求。**反法虽然降低了权利人的举证难度，但由于刑事案件中适用“排除合理怀疑”的证明标准，鉴于商业秘密案件技术性普遍很强，鉴定起来难度大、

费用高，这些因素都给检察机关带来了挑战；对于先刑后民的案件，在先刑事判决认定构成犯罪的，在后的民事赔偿诉讼中可以直接由被告承担不构成侵权的反证责任，而对于先民后刑的案件，因民事诉讼的证明标准低于刑事案件，如何能将在先民事判决应用到刑事诉讼中，需要进一步探讨。

**新方法推动损害赔偿确定。**商业秘密案件中另一个难点是权利人很难证明损失；无法证明损失，就难以获得赔偿。最高人民法院在最近判决的“卡波”技术秘密惩罚性赔偿案和“香兰素”技术秘密高额判赔案中，权利人通过精细化计算损失的举证，其主张的较高的合理赔偿额获得了法院支持。精细化计算不等于纯数学的精确推导计算，统计学中的估值方法以及经济学分析值得权利人重视。

**商业秘密强保护给社会福利带来正向作用。**有观点认为，专利系以公开换保护，作为正外部性，对社会有积极意义；而商业秘密，因其保密性，对现有技术贡献较少，则不能带来这样的社会福利。但这种观点忽略了商业秘密强保护对于促进企业创新研发投入的积极性。只有当商业秘密获得完善的保护，创新人才才有可能因此获得更自由的社会流动，更加促进市场主体的技术创新和社会整体创新的提升。



宋健 SONG Jian

## 全链条打击侵权假冒犯罪

上海经侦总队第十支队队长喻檬在发言中透露，去年，上海经侦总队侦破相关案件1700余起，抓获犯罪嫌疑人4300人，有力地保护了310多个品牌的合法权益。接着，他深入分析了几起重大案件，分享了上海公安机关在办案过程中总结的经验和心得，并给会员们提供了一些很好的建议。

**智慧赋能检测风险，从源头上打击侵权假冒行为。**利用云盘、网站、直播等互联网技术侵权的行为越来越普遍，侵权犯罪者的反侦查能力也越来越高超。针对这种情况，上海市公安经侦部门汇聚行政监管、电商平台、公安内部数据，通过系统研判分析和数据穿透，精准预警、打击侵权假冒违法犯罪，有效地遏制、阻断了假冒伪劣商品或侵权作品流入市场，保护了权利人的合法权益。

**经过多年的探索与实践，上海市公安经侦部门形成了一套颇具特色的条线打击模式。**犯罪分子往往将假冒伪劣产品的生产、销售

链条分散在各地，以躲避侦查；因此，公安机关需要投入大量的警力和资源开展调查。为节约资源、集中优势力量，对于典型案件，总队直接侦办，联合分局查处；对于线索尚不成熟的复杂案件，总队前期经营，分局后续侦办；其他线索，分局核查，总队派员指导侦办。正是应用了这样一套策略，上海市公安经侦部门高效利用手中资源，侦破了一批样板案件。

**全链条打击侵权假冒犯罪，需要多方携手。**一些信息在权利人眼中不过是常识，但在行业外却不为人所知。掌握这样的信息，往往可以帮助公安机关对接底层数据，更准确地筛查可疑店铺。当执法机关、权利人、平台积累的底层数据碰撞、融合在一起的时候，一些未曾被注意的信息建立起了联系，好的线索就有可能从中产生。而这种碰撞、融合需要建立在常态化的沟通和线索充分分享之上。



喻檬 YU Meng



## 守好国门：知识产权海关保护实践

边境保护向来是品保委员会重点关注的议题，成立 20 年来，品保委已经与全国各地海关举行了 200 余场各式各样的交流、培训活动。这次大会上，上海海关综合业务处副处长沈勇向会员介绍了上海海关在阻断侵权假冒商品上的主要举措和执法行动当中的一些特点。

**利用大数据平台，上海海关在给予守法者最大通关便利的同时，高效维护权利人合法权益。**2020 年克服疫情带来的影响，攻坚克难，上海海关查扣批次数和商品数量均增长 20% 以上，其中，查扣批次数位列全国海关首位。依托上海海关跨境贸易大数据平台，融合物流、报关、税务、金融等数据，对侵权高风险商品，实现精准布控，大幅提升打击侵权的针对性和有效性。

**多维度合作是上海海关的另一有力支撑。**在与兄弟海关加强跨关区合作的基础之上，上海海关与公安机关联合开展了打源头、摧网络、断链条等执法合作，完善双向的情报

互通的合作机制，优化了行刑衔接程序。上海海关还积极融入到地方知识产权保护工作中去，与地方政府签署合作备忘录，与市场监督管理部门、知识产权保护机关定期沟通、分享信息。上海海关还与权利人、行业组织、国际组织等在执法培训、情报共享、便利维权等方面展开了合作。

**集中执法资源，关注重点领域，开展专项行动。**值著作权法颁布 30 周年之际，上海海关自主开展了针对进出口侵犯著作权行为的专项整治工作，取得积极成效。通过行邮渠道售假是长期困扰权利人的问题。为此，海关开展寄递渠道知识产权保护专项行动——“蓝网”，查扣侵权商品逾 1.6 万余批次；深化两法衔接，实现全链条溯源打击，保持高压态势。去年，在海关总署的统筹部署之下，上海海关进一步加大对进出口防疫用品的知识产权保护力度，并通过强化与公安机关的协同执法，拓展打击的深度与广度，提升执法的威慑力。



沈勇 SHEN Yong

## 结语

本次大会就此圆满结束。从各位嘉宾的发言可以看出，我国知识产权保护体系逐渐完善，大保护格局即将到来。上层品牌建设，底层创新支持势必成为各方关注的焦点。品

保委将继续发挥桥梁作用，落实本次大会的交流成果，在执法、司法机关与权利人之间建立常态化信息分享模式，提升打击知识产权违法犯罪的力度和效果。

# QBPC APRIL GM MEETING

Andrei YANG



On April 13, the Quality Brands Protection Committee of the China Association of Enterprises with Foreign Investment (QBPC) held the April general membership meeting in Shanghai. Representatives from the Office of the National Leading Group for the Fight against IPR Infringement and Counterfeiting, market regulation agencies, courts, procuratorates, public security organs and customs, as well as nearly 200 member representatives attended the meeting.

QBPC Chair Michael Ding welcomed the audience. 2020 was an important year for the development of China's IPR protection system, and the completion of a series of

legislative works had brought structural changes to the protection mechanism. In 2021, the QBPC would explore the impact of the new laws and regulations on the practice of intellectual property protection; continue to strengthen exchanges with the central and local law enforcement and judicial departments, and effectively solve difficulties and pains encountered by members in their daily work; fulfill the role of industry working groups—find common problems in the industry, and explore universally applicable solutions; and promote international exchanges, bring back constructive suggestions, and share the progress of IP protection in China on the world stage.

## KEYNOTE SPEECH

Deputy Director-General of the National Leading Group on the Fight against IPR Infringement and Counterfeiting, Deputy Director-General of the Department of Law Enforcement and Inspection of the State Administration for Market Regulation (DG Level) Lu Zhengmin delivered the keynote speech, introducing the latest progress under Chinese government's IP protection and anti-counterfeiting efforts.

**Remaining fair, open and convenient, China's business environment had been continuously optimized; foreign investment in China had maintained a good momentum of development, and foreign enterprises**

**and China mutually benefited each other.** Global foreign direct investment fell sharply in 2020, from \$1.5 trillion in 2019 to \$859 billion, down 42%. However, China's utilization of foreign investment, against the trend, increased by 4% to US \$163 billion, ranking first in the world. China's overall epidemic prevention and control, economic and social development policies had provided a stable expectation and an open market for foreign enterprises. Director-General Lu stated that foreign investment was an important part of China's economy and the Chinese government had always attached great importance to it.



President Xi had emphasized that China would continue to improve the open and transparent foreign-related legal system, strengthen IP protection, safeguard the legitimate rights and interests of foreign-invested enterprises and create a better business environment with quality public services. China's policy on foreign capital utilization would remain unchanged, the protection of the legitimate rights and interests of foreign-invested enterprises would remain unchanged, and the direction of providing better services for foreign enterprises to invest and develop in China would remain unchanged.

**Strict protection, broad protection, timely protection and equal protection were key features of China's IPR protection system, which had reached a higher level.**

Lu stressed that the Chinese government equally protected the intellectual property rights of various market players, including foreign-invested enterprises. The promulgation of a series of laws and regulations, judicial interpretations and rule-setting documents such as the Civil Code, the Amendment XI to the Criminal Law, the Amendment to the Patent Law, the Amendment to the Copyright Law, the provisions on the administration of enterprise name registration, and the measures for the supervision and administration of online transactions had increased the amount of compensation to right holders, alleviate the burden of proof, reduced the duration to defend one's rights in court and before agencies, and further improved China's judicial and administrative protection system for IPRs. Various special IPR protection joint actions by various departments investigated and handled a large number of illegal and criminal cases of infringement and counterfeiting on the Internet, in rural and urban-rural fringe areas, import and export sectors, and key areas relating to people's livelihood, and protected the legitimate interests of right holders. In particular, the Director-General Lu mentioned that the State Council had revised the Administrative Provisions on the Registration of Enterprise Names (Order of the State Council [2020] No.734) to address the problem of infringement of enterprise names and trade names, an issue frequently raised by foreign-invested enterprises. The order clearly stipulated that "where an enterprise considers that another enterprise name has infringed upon the legitimate rights

and interests of its trade name, it may file a lawsuit with the people's court or request the company registration authority that handles the registration of that name to handle the matter", which cured this long-term headache for relevant parties. In response to the online sales of fake products reported by right holders, the State Administration for Market Regulation issued the Measures for the Supervision and Administration of Online Transaction in March 2021, which provided an important basis for regulating online trading activities, maintaining online trading order and protecting the legitimate interests of all parties.

**To crack down on infringements and counterfeiting, and protect IPRs, required contributions from all sectors of the society.**

In the formulation and revision of laws and regulations, judicial interpretations and rule-setting documents, all stakeholders, including foreign-invested enterprises, had actively put forward constructive opinions and suggestions. Social organizations had also played an important role in carrying out the special campaign, publicizing China's IPR protection work and telling China's IPR stories. Director-General Lu also paid special tribute to the positive contribution of QBPC in promoting social co-governance.

**The new situation and new business models put forward higher requirements for the next step of work.**

Director-General Lu pointed out the major challenges facing the protection of IPR, such as the increasing number of cross-border crimes, increasing difficulties in governance, the rise of trade protectionism, and obstacles to scientific and technological exchanges. The year 2021 was the first year of the 14th Five-Year Plan, a year of special significance in the progress of China's modernization. The Office of the National Leading Group for the Fight against IPR Infringement and Counterfeiting would continue to conscientiously implement the decisions and arrangements of the CPC Central Committee and the State Council; and in light of the new situation and new challenges, NLGO would continue to strengthen overall coordination, intensify punitive measures, improve regulatory efficiency, promote social co-governance and deepen international cooperation.

## INNOVATIVE MEASURES TO AID FULFILLING PROSECUTORIAL DUTIES

Hu Chunjian, director of the Fourth Division of Shanghai People's Procuratorate and director of the Intellectual Property Procuratorial Office, introduced the overall statistics and characteristics of the handling of IP infringement cases by procuratorial organs in 2020. From

the cases handled by the Shanghai procuratorial organs, it was not difficult to see that the means of committing IP infringements were upgrading and expanding. New and important cases occurred frequently in 2020.

**Counterfeiters had become more professional, their toolkits more intelligent, and their fakes more real.**

Some counterfeiters also transported goods abroad before labeling of counterfeit trademarks to avoid detections. The impact had shifted from the traditional luxury goods to other high-profit margin, consumer and industrial fields. Online infringement crimes continued to rise, such as selling counterfeit products online, using cloud services to infringe copyright, and had become the norm. In the infringement of trade secrets, the right holder should pay attention to not only the technical information, but also the business operation information that could help gain advantages in the market competition.

**The establishment of IPR procuratorial office was a new measure to cope with the new trend of infringement crimes, serve and safeguard the national strategy, and enhance the ability to combat IPR crimes.**

In November 2020, the Supreme People's Procuratorate (SPP) began to integrate the criminal, civil and administrative procuratorial functions of intellectual property rights, set up an IPR procuratorial office, and decided to carry out the pilot program of centralized and unified exercise of IPR procuratorial functions in eight provinces and municipalities, including Beijing and Shanghai for a period of one year. The Shanghai Municipal People's Procuratorate had also decided to form an intellectual property procuratorial office in the Third Branch and six primary procuratorates to perform their duties in a unified manner. In addition to continuing to do a good job in criminal procuratorial work, the IPR procuratorial office would also explore more legal

supervision channels to ensure the correct application of law in judicial adjudication, timely correct the acts of administrative organs in illegally exercising or failing to exercise their powers, and effectively protect the legitimate interests of right holders. In terms of staffing, the Shanghai IPR Procuratorial Office strived to achieve "one expert for each field", so that there could be dedicated personnel in every field of IPR to do in-depth research.

**A series of new measures had been introduced to help the procuratorial work.**

In 2014 the Shanghai Procuratorate took the lead in launching a program informing IPR holders' rights in proceedings against IP crimes. In 2019, the Supreme People's Procuratorate launched the pilot program in six provinces and two cities; and in February 2021, the Supreme People's Procuratorate decided to promote the pilot program nationwide. After many years of practice, Shanghai procuratorial organs had adopted flexible ways and thoughtful procedure of notifying the right holders, and the scope of the program had also expanded to other concurrent charges. On the basis of the program, the Shanghai procuratorate actively promoted the substantive participation of right holders in litigation, such as holding public hearings at the stage of trial and arrest. Especially in the more technical cases, right holders' early participation provided a better foundation for handling the cases. The Shanghai procuratorial organ had also taken corresponding measures to improve compensations for right holders, strengthen the protection of service trademarks, and promote enterprises to establish compliance systems.

## **STRONG PROTECTION FOR TRADE SECRET IS IN PLACE**

As a former member of judicial committee, Director of IP Division and Senior Judge of Higher People's Court of Jiangsu Province, a national expert in the trial profession, Song Jian shared with members the latest development in trade secret protection since the 2019 revision of the Anti-Unfair Competition Law (AUCL) based on years of experience on adjudication and research.

**Article 32 of AUCL effectively alleviated the burden of proof for the right holder.** Article 3 of AUCL provides the factor test for what constitutes trade secret, that is, it is not known to the public, has commercial value and the right holder has taken appropriate measures to maintain the secrecy. The first of these is the proof of secrecy, which is particularly troubling for the right holder because

it is a negative fact. Although the judicial interpretations issued by the Supreme People's Court in 2006 provide the standards for determining the confidentiality, if the traditional evidentiary standard in civil cases, the clear and convincing evidence standard, continued to be applied, it would still be difficult for trade secret holders to deal with the misappropriations. Article 32 of AUCL solves this problem. According to Article 32, the right holder only needs to provide prima facie evidence in respect of satisfying the factor test and showing the infringing act; thereafter the burden of proof shall be transferred to the alleged infringer. The provision of "prima facie evidence" should be understood as lowering the standard of proof. As to what standard there should be, it shall be decided on a case-by-case basis.

**The characteristics of trade secret cases demand another look at the intersection and connection of civil and criminal proceedings.** Although AUCL reduces the difficulty for the right holder to provide evidence, as a result of the application of the "beyond reasonable doubt" standard of proof in criminal cases, and in view of the fact that trade secret cases are generally highly technical, difficult and expensive to prepare expert testimonies, all these factors have brought significant challenges to the procuratorial organs. For cases in which the criminal judgment has already determined that a crime has been committed, the defendant may directly bear the burden of proof in the subsequent civil proceedings; for a criminal case with a prior civil proceeding, due to different standards of proof, how to apply the civil judgment in the criminal litigation needs further discussion.

**New calculations have aided the determination of damages.** Another difficulty in trade secret cases is that it is difficult for the right holder to prove its loss; if the right holder cannot show its loss, it is difficult to obtain compensation. In the recent judgment of the Supreme

People's Court in the punitive damage case of "Carbomer" technical secret and the judgment of "Vanillin" technical secret case with high damages, the right holders supported their high claims by meticulously calculating the losses, which were eventually supported by the court. This is not to say that right holders need to support their claims with accurate numbers; but the applications of statistics valuation and economic analysis deserve our attention.

**Strong protection of trade secret has positive effect on social welfare.** Some people hold the view that patents exchange publicity for protection, which is a positive externality for the society; while trade secrets, because of their secrecy, do not contribute much to existing technology, and thus cannot bring such social benefits. But this viewpoint ignores what strong protection of trade secrets can do in energizing investments in innovation and R&D. Only when trade secrets are well protected, can talents move freely and promote even more technological innovations for the market players and the society as a whole.

## STOPPING INFRINGEMENTS IN EVERY LINK OF THE CRIMINAL CHAIN

Head of Food, Drug & Environmental Crime Investigation Division of Shanghai Public Security Bureau Yu Meng disclosed in his speech that last year, Shanghai FDECID solved more than 1700 cases, arrested more than 4300 suspects, and protected more than 310 brands' legitimate interests. Captain Yu also analyzed several significant cases, shared on the ground experience and insights, and gave members some thoughtful suggestions.

**Smart technologies could detect risks and crack down on infringements and counterfeiting from the source.** Using cloud storage, website, live-streaming and other Internet technology for infringement had become more and more common; the infringer's counter-surveillance ability had become more subtle. In view of this situation, the economic crime investigation department of the Shanghai Public Security Bureau pooled resources from the administrative regulatory authorities, e-commerce platforms, and internal data of the public security bureaus, and through systematic research, analysis and data penetration, accurately gave early warning and cracked down on infringements and counterfeiting, effectively

curbed and blocked infringing products from entering the market, and protected the legitimate interests of the right holders.

**After years of exploration and practice, the economic investigation department of Shanghai Public Security Bureau had formed a unique way to combat infringements.** Criminals often dispersed their supply and distribution chains across multiple regions to avoid detection. Therefore, the public security organs needed to invest a lot of police force and resources to carry out investigation. In order to save resources and concentrate strength, for model cases, Shanghai PSB would investigate directly with assistance by relevant divisions; for complex cases with immature leads, Shanghai PSB would conduct preliminary investigations to develop the cases further, and divisions would follow up afterwards; for other leads, the divisions would handle the investigation with the support from the headquarter. It was with such a set of strategies that the economic investigation department of Shanghai PSB had made efficient use of its resources to solve a number of model cases.

**To crack down the infringement and counterfeiting crimes completely required joint efforts by all stakeholders.** Some information in the eyes of the right holder was simply common sense, but was not known to people outside the industry. Mastering such information could often help the public security organs to better utilize their data and more accurately investigate suspects. When

the underlying data accumulated by law enforcement agencies, right holders, and platforms collide and merge, some previously unnoticed information would emerge and generate useful leads. But these kinds of collision and fusion could only be built upon regular exchanges and fully sharing of information.

## GUARDING THE BORDER: CUSTOMS PRACTICES IN IPR PROTECTION

Border protection has been a key issue for QBPC members. For twenty years since its founding, QBPC has held more 200 exchanges, trainings, and other activities with customs across the nation. Deputy Director of Department of General Operation of Shanghai Customs Shen Yong introduced measures Shanghai Customs has taken to stop the movement of infringing products and noteworthy characteristics of their operations.

**By taking advantage of the big data platform, the Shanghai Customs should effectively safeguard the legitimate interests of the right holders while facilitating the maximum expediency for law-abiding importers and exporters.** In 2020, despite the impact of the epidemic, Shanghai Customs increased the number of seizures and the actual number of goods seized by more than 20%, ranking first in the country. Relying on Shanghai Customs' big data platform for cross-border trade, and by integrating data from logistics, customs declaration, taxation and finance, Shanghai Customs was able to accurately control goods highly prone to infringement, thus significantly improving the pertinence and effectiveness of the crackdown on infringement.

**Multi-dimensional cooperation is another pillar of strong support.** On the basis of strengthening cross-customs cooperation with other customs offices, the Shanghai Customs and public security organs jointly carried out law enforcement operations in attacking the source, destroying the network and breaking the chain, improved the two-way information exchange and cooperation mechanism, and optimized the procedures

bridging administrative and criminal enforcements. The Shanghai Customs also actively integrated into the local intellectual property protection work through signing memorandum of understandings with the local governments, and regularly sharing information with the market regulation and IP protection authorities. The Shanghai Customs had worked closely with right holders, industry organizations and international organizations in law enforcement training, intelligence sharing, facilitation of rights protection, etc.

**Concentrate law enforcement resources, focus on key areas, and carry out special actions.** On the 30th anniversary of the promulgation of the Copyright Law, the Shanghai Customs independently launched a special campaign against copyright infringement in import and export sectors, and achieved positive results. Selling fake products by mail was a long-term problem that had puzzled right holders. Therefore, the customs carried out the "Blue Net" campaign for the protection of IPR in delivery channels to seize more than 16,000 batches of infringing goods; deepened the connection between administrative and criminal enforcements, achieved the elimination of the infringing network to its very source, and maintained high pressure on infringers. Last year, under the supervision of the General Administration of Customs, the Shanghai Customs further strengthened the protection of IPR of imported and exported epidemic prevention gears, and by working more closely with public security organs, enhanced the scope of the crackdown operations and the deterrence of the law.

## THE END

Thus concluded the April general membership meeting. From the distinguished speakers' remarks, it is obvious that China's IP protection system has gradually matured. A grand and systematic protection scheme emerges. Brand building and innovation will become the focal point for all stakeholders. QBPC will continue to be the

bridge that connects public and private sectors, implement what we have achieved in this conference, establish a regular information sharing scheme between right holders and enforcement and judicial agencies, and enhance the intensity and effect of cracking down on IP infringements.



## 品保委 2020-2021 年度十佳案例评选会在上海举行

文 / 沈时雨

4月14日,中国外商投资企业协会优质品牌保护委员会(下称品保委)在上海成功举办2020-2021年度知识产权保护十佳案例及“两法”衔接典型案例评选会(下称年度案例评选会)。

自2002年设立该活动以来,今年正好是十佳案例评选的第20年,在历届服务团队的不懈努力及会员公司的大力支持下越办越好。年度案例评选会不仅得到会员企业的积极响应,推荐的优秀案件越来越多,竞争越来越激烈,而且也受到国家有关部委的认可和各地执法部门的支持。

业界普遍认为,品保委历年评选出的“知识产权保护十佳案例”具有一定的典型性、代表性和国际影响力。此次参评的案例由会员企业自主提名,共有63件,分为刑事类知识产权保护十佳案例、非刑事类知识产权保护十佳案例及“两法”衔接典型案例三大类。

在评选会现场,参评会员公司代表在五分钟的限时里使出浑身解数,妙语连珠的发言干货满满,引人入胜,令观众受益匪浅,意犹未尽。

## QBPC 2020-2021 ANNUAL TOP TEN CASES REVIEW MEETING HELD IN SHANGHAI

Hailie SHEN

On April 14, the Quality Brands Protection Committee of China Association of Enterprises with Foreign Investment (QBPC) successfully held the 2020-2021 annual review meeting for the Top Ten Cases in IPR Protection and Model Cases Bridging Administrative and Judicial IP Enforcement in Shanghai.

Since its launching in 2002, the QBPC Annual Top Ten Cases Review Meeting has witnessed progress year by year with the unremitting efforts of successive service team members and strong support from member companies. The event has not only received positive responses from member companies, with fierce competition among an increasing number of recommended cases, but also been well recognized and supported by relevant government agencies, and local law enforcement

departments.

It is the common view of IP community that the "Top Ten Cases of IPR Protection" selected by QBPC in previous years are of some typicalness, representativeness and international influence. This year, QBPC members recommended 63 cases, which were divided into three categories, namely criminal cases, noncriminal cases and model cases bridging administrative and judicial IP enforcement.

In their presentations during the review meeting, representatives from relevant QBPC members did their utmost within the five-minute time limit. Their speeches fascinated and benefited the audience a lot.



主持人 陈超

Host: Conan CHEN



主持人 章艳华

Hostess: Nora ZHANG



主持人 张宏恺

Host: Hongkai ZHANG



# 品保委见证侵权假冒伪劣商品集中统一销毁行动

文 / 沈时雨

4月23日，值此世界知识产权日来临之际，由全国打击侵权假冒工作领导小组办公室组织的“2021年侵权假冒伪劣商品集中统一销毁活动”在湖北省咸宁市成功举办。品保委主席丁宇应邀赴咸宁参与活动，并作发言。

全国打击侵权假冒工作领导小组办公室主任、国家市场监督管理总局副局长甘霖赴现场监销并讲话，全国打击侵权假冒工作领导小组相关成员单位，相关驻华使（领）馆、行业协会以及权利人企业代表等现场见证销毁；在北京、河北、山西、内蒙古、吉林、上海、江苏、山东、河南、湖南、广东、重庆、贵州、甘肃等十四省（区、市）设立分会场，云上直播同步销毁。此次销毁行动有效地落实推进《关于加强侵权假冒商品销毁工作的意见》的实施，有力地震慑制假售假违法犯罪行为，有利于优化市场化、法治化、国际化营商环境。

活动由全国打击侵权假冒工作领导小组办公室副主任、国家市场监督管理总局执法稽查局副局长（正司级）路政闽主持。湖北省打击侵权假冒工作领导小组组长、省人民政府副省长张文兵致辞，海关总署综合业务司二级巡视员周亚春、湖北省咸宁市委副书记、市长王远鹤分别发言。

丁宇在发言中表示，很荣幸代表品保委参与和见证此次活动。他谈到，依照中国的

法律法规，相关的行政和司法部门对侵权假冒伪劣产品及时查扣，将其排除在合法商业渠道之外，并最终予以销毁，既保障了消费者的权益，也保护了品牌方的权利，这充分彰显我国知识产权保护的力度和透明度。相信通过该活动，既能够帮助公众继续提高知识产权保护的意识，也让在中国经营的知识产权权利人更有信心。基于多方共治，共同促进中国的经济在技术创新和品牌建立的可持续性发展道路上不断升级，这也与今年4.26世界知识产权日的主题内容中的“把创意推向市场”相切合。因为没有良好的知识产权保护的环境和土壤，即使将创意推向市场，她也会中途夭折，无法最终开花结果。

品保委自2000年成立以来，一直与中央和地方执法与司法部门保持紧密的交流与合作，包括为知识产权相关法律法规、司法解释的修订建言献策，支持与配合相关执法和司法部门打击侵权假冒，以及协助就查扣的商品的进行真伪鉴定和针对侵权假冒伪劣商品的销毁工作，致力于共同推动中国知识产权营商环境的不断优化。4月14日，品保委在上海成功举办2021年度十佳案例评审会，通过会员单位提名的63个案例，使我们再次了解到中国知识产权行政执法，刑事和民事司法的最新进展和成功经验。

最后，丁宇代表品保委向为加强中国知识产权保护默默奉献、不懈努力的相关执法部门和司法单位的同仁们致以衷心的感谢。



丁宇 Michael Ding

## QBPC REPRESENTATIVE WITNESSES THE BULK DISPOSAL OF COUNTERFEITS AND INFERIOR-QUALITY GOODS

Hailie SHEN

On April 23, just before the World IP Day, the Office of the National Leading Group on the Fight against IPR Infringement and Counterfeiting (NLGO) organized the 2021 Bulk Disposal of Counterfeits and Inferior-Quality Goods in the city of Xianning, Hubei Province. At the invitation of NLGO, Quality Brands Protection Committee Chair (QBPC) Michael Ding participated in the meeting and made a speech.

Director General of the Office of the NLGO and Deputy Minister of State Administration for Market Regulation (SAMR) Gan Lin supervised the disposal and made a speech. Representatives of NLGO member agencies, relevant foreign missions, industry associations and right holders witnessed the event on the spot. Meanwhile fourteen branch venues were set up in Beijing, Hebei, Shanxi, Inner Mongolia, Jilin, Shanghai, Jiangsu, Shandong, Henan, Hunan, Guangdong, Chongqing, Guizhou and Gansu. There was a cloud live broadcast of simultaneous disposal activities. The event aimed at pushing forward the implementation of the Opinions on Strengthening the Disposal of Infringing and Counterfeiting Goods, creating deterrence over illegal and criminal activities involving producing and selling counterfeiting commodities. It could help to optimize a business environment of marketization, legalization and internationalization.



The event was hosted by Deputy Director General of NLGO and Deputy Director-General of Law Enforcement and Inspection Department of (SAMR) Lu Zhengmin. Head of Hubei Leading Office and Deputy Governor of Hubei Zhang Wenbing, Deputy Director General of GAC Zhou Yachun and Deputy Party Secretary and Mayor Wang Yuanhe made remarks respectively.

In his speech, Michael Ding said that he was honored to represent QBPC at the event. According to Chinese laws and regulations, relevant administrative authorities and judicial organs should timely seize the infringing and inferior-quality products, exclude them from legal markets and finally conduct disposal. The disposal action could safeguard not only the interests of consumers but also the rights of brand owners while highlighting the strength and transparency of IP protection in China. He believed that the event would further enhance the public awareness of IP protection as well as the confidence of right holders running business in China. It was in line with the theme of World IP Day "Taking Big Ideas to Market" to jointly promote the sustainable growth of the Chinese economy through technological innovation and brand building based on joint governance by multiple parties. Without a good environment and soil of IP protection, big ideas would wither like flowers on their way to the market without any chance to blossom and bear fruits.

Since its foundation in 2000, QBPC had always worked closely and communicated frequently with enforcement authorities and judicial organs at both central and local levels. It had made suggestions on the legislation and amendment of relevant laws, regulations and judicial interpretations, collaborated with authorities on cracking down on infringement and counterfeiting, help identify the confiscated fake products, and supported bulk disposal activities. The aim was to jointly push forward the optimization of China's IP environment for businesses. On April 14, QBPC successfully held 2021 Top Ten

Cases Review, which showcased the latest development and experience in IP administrative, criminal and civil enforcement through 63 cases submitted by QBPC members.

Finally, on behalf of QBPC, Michael Ding expressed his gratitude towards the colleagues from relevant enforcement authorities and judicial organs for their relentless efforts and contribution to IP protection in China.



# 品保委 2020-2021 年度知识产权保护十佳案例发布会在京举行

文 / 姚欣



2021年6月25日下午，中国外商投资企业协会优质品牌保护委员会（以下简称“品保委”）在北京举行2020-2021年度知识产权保护十佳案例发布会。来自全国打击侵权假冒工作领导小组办公室、世界知识产权组织、最高人民检察院、最高人民法院、海关总署、国家市场监

督管理总局、国家知识产权局、国家版权局、中国外商投资企业协会等有关部门领导、知识产权保护十佳案例办案单位代表、驻华使馆、商协会、知识产权科研机构、电商平台、媒体和品保委员会代表等近300人出席了发布活动。



丁宇 Michael DING

品保委主席丁宇首先对与会嘉宾表示热烈欢迎，对各界同仁多年来的支持和帮助表示诚挚的感谢，对获选十佳案例的办案单位和会员公司表示衷心的祝福。接下来，主持人宣布了本年度获选案例共26个，今年的参评案例为

63个，是有史以来参评案例最多的一次。为了感谢办案单位为知识产权保护作出的不懈努力和贡献，品保委向办案单位敬赠感谢牌。随后，品保委向获选的会员公司颁发奖牌，以肯定和鼓励会员公司为这些成功案例所做的工作。



曹宏瑛 CAO Hongying

最后，中国外商投资企业协会常务副会长曹宏瑛作闭幕发言。他强调，党和政府高度重视保护外商投资企业的合法权益，重视知识产权的保护和创造良好的营商环境，近几年来在知识产权立法、执法和司法等方面采取了一系列强有力的措施并取得了显著的成果。品保委在过去一年克服各种困难，为促进中国知识

产权行政执法和司法保护工作的持续进步以及知识产权营商环境的优化做出了不懈的努力，此次十佳案例发布活动就是品保委交出的又一张亮丽的成绩单。希望品保委能够继续发挥桥梁作用，对内介绍国际先进经验，对外讲好知识产权保护的中国故事。他还期待品保委为中国的知识产权保护事业做出更大的贡献。

## 关于十佳案例

自 2002 年首次举办以来，品保委十佳案例评选活动日臻完善，参评案例的数量和质量不断提高，在国内国际知识产权界的知名度和影响力与日俱增，已经成为了国际社会观察和了解中国投资与知识产权环境的重要窗口。十佳案例活动参评的案例分为刑事类知识产权保护十佳案例、非刑事类知识产权保护十佳案例及“两法”衔接典型案例三大类，由会员企业自主提名，有投票权的会员企业投票产生。截止今年，该活动已经举办了二十次，共有品保委 117 家会员推荐的 346 件案例获选，涉及相关办案单位 433 家，罚金总额达 4 亿 6 千 9 百余万元。这些案例均有很强的代表性，能够反映知识产权的热点和难点问题，获得了相关执

法和司法部门的高度认可，为中国知识产权立法和执法的完善提供了生动的参考素材，同时也为广大会员展示了可资借鉴的宝贵经验。

今年获选的 26 个案例分别来自食品、药品、医疗美容、汽配、电器、农业、玩具、奢侈品等多个行业，很多产品直接关系到人民群众的健康和生命安全，例如假冒防疫产品的案件。这些案件主要涉及制售假冒商标的商品、商标恶意抢注、不正当竞争、侵犯著作权等比较突出的侵犯知识产权违法行为，其中不少案件的办理和判决有一定的代表性，在某些方面取得了突破性的进展，相关案件的处理对将来的执法和司法判决具有很强的示范效应。



例如，山东齐某特大生产、跨境销售假冒医疗美容产品案件、跨国特大假冒LV商标案等，是中外执法部门国际合作的典范；果珈案件涉及判决罚金1000万元，是全国知识产权刑事案件中判处罚金刑最高的案件之一；在NBA赛事直播版权纠纷案中，中国的法院首次明确了体育赛事直播节目的版权属性；易富（上海）贸易有限公司诉珠海多利康贸易有限公司等商标侵权案是驰名商标跨类对抗注册商标的典型案；李某等人侵害乐高集团著作权案的判决确认了乐高玩具积木套装属于著作权法定义的“美术作品”，对于整个玩具市场的知识产权保护具有深远的影响，该案例还入

选了国家版权局和扫黄打非办的最佳案例。

从这些获选案例中，我们可以清楚的看到中国在知识产权保护立法、司法和政策方面取得的成果；也可以看到，执法部门投入了更多的资源，运用大数据分析、同电商或社交平台合作、跨区域和跨部门紧密配合以及加强国际执法合作；权利人与中央和地方执法部门开展交流、分享信息，实现社会共治，也是知识产权保护非常重要的一个方面，例如，近几年品保委同山东和黑龙江警方的频繁交流和合作也对几起相关案件的侦破有所帮助。







## QBPC HOLDS 2020-2021 ANNUAL TOP TEN CASES ANNOUNCEMENT

YAO Xin

On the afternoon of June 25, the Quality Brands Protection Committee of China Association of Enterprises with Foreign Investment (QBPC) held the 2020-2021 Annual Top Ten Cases Announcement of Intellectual Property Protection in Beijing. Nearly 300 people attended the event, including leaders from State Administration for Market Regulation (SAMR), WIPO, Supreme People's Procuratorate (SPP), Supreme People's Court (SPC), General Administration of Customs (GACC), China National Intellectual Property Administration (CNIPA), National Copyright Administration, China Association of Enterprises with Foreign Investment (CAEFI), representatives of enforcement agencies, embassies, business associations, IPR research institutions, e-commerce platforms, media and QBPC members.

In his opening remarks, QBPC Chair Michael Ding welcomed and thanked all the stakeholders for their support over the years. He also expressed his sincere wishes to the enforcement agencies and member companies of the selected cases. After that, 26 selected cases were announced. This year, QBPC members nominated 63 cases, which marked a record in history. In the following session, the representatives of relevant enforcement agencies received plaques of appreciation

for their efforts and contributions to IPR protection. QBPC also presented medals to member companies who nominated the selected cases.

As a conclusion, Cao Hongying, Executive Vice Chairman of China Association of Enterprises with Foreign Investment, made a speech. He stressed that the Chinese Party and the government had been attaching importance to protecting the legitimate rights of foreign-invested enterprises, creating a healthy business environment, and protecting intellectual property rights. In recent years, a series of measures had been made on legislation, enforcement and judiciary with outstanding accomplishments. Over the past year, QBPC had overcome all kinds of difficulties and made unremitting efforts to promote the continuous progress of IPR administrative enforcement and judicial protection as well as the optimization of business environment in China. The announcement of annual top ten cases was a highlight of what QBPC had achieved. He hoped that QBPC would continue to play a bridging role in bringing in international experience while telling the Chinese story of IPR protection to the world IP community. He expected to see greater contributions by QBPC to IPR protection in China.

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## About QBPC Top Ten Cases

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Since it was launched in 2002, the QBPC Top Ten Cases selection has been perfected year by year. The number of nominated cases has been increasing while the case quality was constantly elevated. It has become a window through which the international community could better observe and understand the investment and IP environment of China. QBPC Top Ten Cases in IPR protection were divided into three categories, including criminal, noncriminal, and model cases bridging administrative and judicial enforcement. The cases were nominated by member companies and voted by those members with voting rights. Up to this year, the event has been held twenty times, and a total of 346 cases recommended by 117 member companies had been selected, involving 433 enforcement agencies and a total fine of more than 469 million yuan. Reflecting the priority issues of IPR, these typical cases were highly acknowledged by related enforcement and judicial departments. They had not only provided reference for the improvement of China's IPR legislation and law enforcement, but also shared valuable experience with members.

The 26 selected cases came from various industries such as foods, pharmaceuticals, medical beauty, auto parts, electrical appliances, agriculture, toys, luxury goods, etc. Many of the products involved were directly related to people's livelihood, such as the case of counterfeit anti-epidemic products. The violations of IP rights included the manufacture and sale of counterfeit trademark goods, bad faith registration of trademarks, unfair competition, copyright infringement and others. Some breakthroughs have been made in certain aspects, which was typical in terms of enforcement as well as judgement. The cases will set models for future law enforcement and court decision.

For example, Large Cross-Border Case of Manufacturing and Selling Counterfeit Medical Aesthetic Products in Shandong and the Chinese and UAE Police Jointly Crack a Major Transnational Intellectual Property Infringement

Case are models of international cooperation between Chinese and foreign law enforcement agencies; The case Criminal Conviction against Shanghai Guojia, Yao and Other Perpetrator for Selling Counterfeit Goods Bearing Apple's Registered Trademarks involved a fine of 10 million yuan, which was one of the highest fines in criminal intellectual property cases in China. The Copyright Dispute on NBA Live Broadcasting, in which Chinese courts affirmed the copyright nature of live sporting event programs for the first time. The trademark infringement case of Yifu (Shanghai) Trading Co., Ltd. v. Zhuhai Duolikang Trading Co., Ltd. was a typical one of cross-category well-known trademarks against registered trademarks. The court decision of Criminal Conviction against Li and Others for Copyright Infringement on the LEGO Group confirmed that LEGO building block sets belong to "art works" defined by the copyright law. This case was also selected as one of the best cases by National Copyright Administration and the Office of National Working Group for Combating Pornography and Illegal Publication, with profound impact on the protection of intellectual property rights in toy market.

From these selected cases, we could witness the achievements made by China in terms of IPR protection legislation, judiciary, and policies. We also noticed that enforcement authorities had invested more resources, such as applying big data analysis, cooperating with e-commerce or social networking platforms, working closely across regions and departments, and strengthening international enforcement cooperation. Furthermore, facilitating exchanges and sharing information between rights holders and central as well as local law enforcement authorities to achieve social co-governance is also a critical aspect of IPR protection. For example, the frequent exchanges and cooperation between QBPC and Shandong and Heilongjiang public security departments in recent years had also contributed to the detection of related cases.

## 品保委第二届知识产权保护论坛在京开幕

文 / 张明洁

6月25日，中国外商投资企业协会优质品牌保护委员会（下称“品保委”）在北京举行了第二届知识产权保护论坛。本届论坛是品保委年度会议的一部分，主题为促创新、强合作、新发展。品保委主席丁宇主持论坛并致开幕词，全国打击侵权假冒工作领导小组办公室（“双打办”）副主任、国家市场监督管理总局执法稽查局副局长（正司级）路政闽、世界知识产权组织中国办事处高级顾问吴

凯、最高人民检察院知识产权检察办公室副主任宋建立、最高人民法院知识产权法庭第十合议庭审判长，三级高级法官魏磊、美国驻华大使馆知识产权参赞 Duncan Willson、欧盟知识产权局知识产权专员 Benoit Misonne、国际商标协会首席执行官 Etienne Sanz de Acedo 和艾默生公司高级副总裁、公司秘书兼总法律顾问 Sara Yang Bosco 分别作主旨发言。



丁宇 Michael DING

在开幕发言中，丁宇向与会嘉宾简要介绍品保委的愿景、使命以及今年的四个主要工作方向，即跟进最新修订知识产权相关法律法规的实施情况、加强与中央和地方执法与司法部门的沟通合作、推动不同行业知识产权问题的解决以及继续扩展国际交流和合

作。丁宇表示，品保委论坛的特色，是能够理论与实践相结合，聚焦行业的特点和难点问题，并通过针对部分十佳案例的讨论，将成功经验在更大的范围推广，既有全球广度，又有中国深度。随后，他阐述了对论坛的三个主题，即促创新、强合作和新发展的看法。





路政闽 LU Zhengmin

路政闽副主任在发言时表示，党中央、国务院高度重视知识产权保护，习近平总书记多次强调保护所有企业合法知识产权，李克强总理专门对保护知识产权、打击侵权假冒工作作出重要批示。她介绍了2020年以来全国双打工作的主要进展及下一步工作计划，其中：4月23日，全国双打办组织16个省（区、市）开展统一销毁行动；4月26日，发布《中国知识产权保护与营商环境新进展报告（2020）》，介绍了2020年中国政府保护知识产权、打击侵权假冒、优化营商环境的主要措施和工作成效；5月份，印发了年度全国打

击侵权假冒工作要点，将外资企业知识产权保护作为专条列入；召开了全国电视电话会议，部署推进落实打击侵权假冒工作。下一步，全国双打办将围绕五个关切（党中央和国务院关切、民众关切、社会关切、市场主体关切、国际关切），突出四个重点（重点领域、重点商品、重点市场、重点区域），聚焦三大战略（一带一路、区域一体化、自贸区建设），强化统筹协调，推进社会共治，打造形成线上线下一全渠道、城市农村全区域、生产消费全过程、进口出口全环节的执法打假良好格局。



吴凯 WU Kai



世界知识产权组织中国办事处高级顾问吴凯表示,2020年中国通过世界知识产权组织《专利合作条约》(PCT)体系提交的国际专利申请量以68,720件的成绩排名全球第一,同比增长16.1%;国际商标注册申请量达到了7075件,排名全球第三,同比增长16.4%;中国在海牙外观设计国际注册申请量2020年达到了826项,排名全球第九,同比增长22.7%。这些成绩的取得,是世界知识产权组织与中国政

府密切沟通和紧密合作的结果。世界知识产权组织高度赞赏中国政府近年来为建设和完善知识产权制度所作出的努力,非常看好中国创新创造和知识产权事业的发展前景。世界知识产权组织将继续加强与中国各界的合作与协调,抓住中国未来发展的机遇和红利,为中国各方提供更紧密、更及时、更优质的债权服务,从而更加有效的为中国的发展作出更大贡献。



宋建立 SONG Jianli

最高检知识产权检察办公室副主任宋建立介绍了检察机关在知识产权司法保护中创新工作措施,推进体制机制有效衔接,更新司法理念,建设知识产权诚信体系方面所做的工作。最高检于今年初在全国9个省市开展了知识产权、刑事、民事、行政综合履职的试点工作,相关省市均成立了知识产权检察办公室并办理了一批知识产权民事行政刑事案件,取得了

很好的社会效果。今后可以考虑在处理一些案情比较简单,法律关系并不太复杂的商标与著作权刑事案件时,将积极推进刑事附带民事诉讼的适用,在体制机制上合理配置司法资源,切实提高知识产权司法保护的有效性。同时加强各类知识产权司法保护,切实降低维权成本和加大制裁力度。此外,检察机关需积极参与社会综合治理,培育知识产权信用文化意识。



魏磊 WEI Lei

最高人民法院知识产权法庭是经党中央决策部署设立的最高人民法院的常设机构，统一审理全国范围内的包括专利、技术秘密、垄断、植物新品种等技术类知识产权民事和行政上诉案件。魏磊法官就法庭成立情况、职能与定位、人才队伍建设、案件审理机制、司法改革动向等情况与参会嘉宾做了分享。自2019年1月1日挂牌成立以来，至2020年底，知识产权法庭共受理案件5000余件，审结4000余件，案件平均审理周期123天，极大提高了

技术类知识产权二审案件的审判质效。知识产权法庭充分发挥技术类知识产权案件审判职能，进一步统一裁判标准，不断形成案件处理规则，搭建技术类案件裁判规则库，统筹调派全国技术调查资源。司法保护和行政保护是知识产权保护的两架马车，知识产权法庭积极与国家知识产权局、农业农村部种子管理局等多个知识产权行政管理部门开展合作，通过行政部门的配合协调，形成知识产权保护的合力。



Duncan Willison



品保委作为中外知识产权界的桥梁，一直致力于推动中国知识产权营商环境的优化，获得了国际社会的认可和赞誉。美国驻华大使馆知识产权参赞 Duncan Willson 称在过去的 20 多年间，品保委在中国知识产权

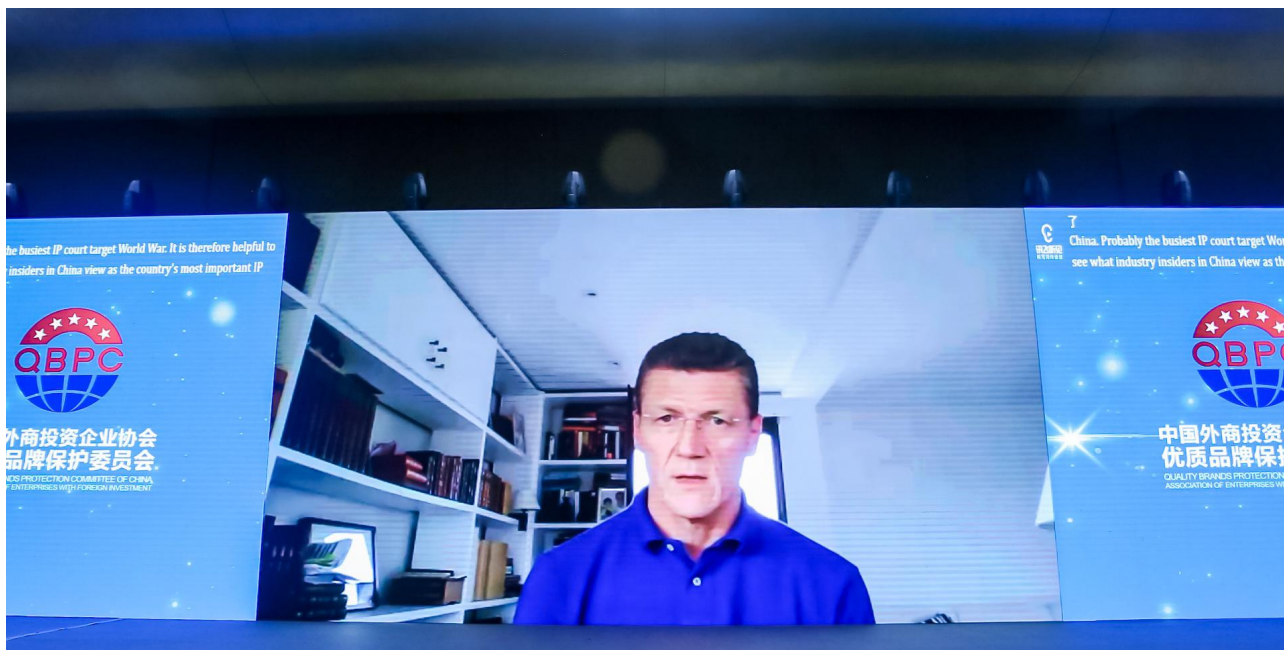
保护和执法体系发展方面发挥了很重要的作用。通过认真的合作，坦诚的沟通，以及对推进中国知识产权体制改革的不懈努力，品保委赢得了多国企业和官员的尊敬和钦佩。



Benoit Misonne

欧盟知识产权局知识产权专员 Benoit Misonne 认为，过去 20 年间，中国和欧盟在知识产权方面的交流从未停歇，双方共同为知识产权法律制度框架的建立与体系的完善而努力。对于著作权的保护，欧盟和中国相关部门一直保持着紧密的合作；在商标

申请方面也已经有了新的进展；在专利申请方面，双方面临着新的情况和挑战，相信通过共同努力，会提出切实可行的解决办法。他强调双方进行公开、坦诚和建设性对话的重要性，以继续应对现有和未来的挑战，为全球的知识产权保驾护航。



Etienne Sanz de Acedo

随后，国际商标协会首席执行官 Etienne Sanz de Acedo 就疫情下知识产权保护的相关问题发表了演讲。新形势下的知识产权保护，要求全球的利益相关人必须携手共同应对，要使法律制度和体系更具全球性和包容性，进一步的推动建立更为牢固和有

效的知识产权保护。要继续支持中小产业和年轻的企业家，他们对推动中国以及全球的经济的发展起到了重要的推动作用，是经济发展的重要引擎。此外，还需加大对知识产权工作的宣传和推广，保护消费者利益。



Sara Yang Bosco

最后一位致辞嘉宾是来自艾默生公司总部的高级副总裁、公司秘书兼总法律顾问 Sara Yang Bosco。她说，艾默生对于中国的法律体系的改革，尤其是知识产权的法庭以及最高人民法院知识产权法庭的建立表示热烈的祝贺。中国的经济发生着变化，法律制度也发生着变化，例如法定赔偿的最高限额已经提高至 500 万人民币，并且对于侵犯他人知识产权的行为实行了惩罚性的赔偿，这些做法都对那些侵权或计划侵权的人产生极大的威慑作用。成功的知识产权案件数量也在增

加，对权利人的补偿金额也在不断提高。艾默生一直饱受商标恶意申请的困扰，公司投入了大量的人力物力、采取了很多措施来应对。相关案件上诉到北京高院后最后胜诉，对于这个结果艾默生感到欢欣鼓舞，并对中国的法律制度以及司法机关信心倍增，相信中国的知识产权保护工作将取得更大的成效。

本次论坛设有三个专题讨论环节，分别聚焦知识产权刑事保护趋势、诉讼以及数字经济下知识产权犯罪的特点等问题。以下是详细报道。

## 讨论知识产权刑事保护的趋势、挑战和探索



计莹 Ji Ying

品保委副主席计莹主持了此次论坛的第一个专题——讨论知识产权刑事保护的趋势、挑战和探索。讨论会以十佳案例获选刑事案例为基础，探讨了在新的形势下，知识产权刑事司法保护的新趋势。上海铁路运输检察院副检察长朱卫东、中国人民公安大学食品药品与环境犯罪研究中心主任李春雷、上海市公安局经济犯罪侦查总队食品药品环境犯罪侦查支队支队长喻檬、上海市人民检察院第三分院第六检察部副主任潘莉、赛诺菲制药有限公司产品安全负责人邵克亮和乐高玩具（上海）有限公司高级法律顾问施晴从不同角度为大家做了精彩分享。



对物流行业的监管一直都是知识产权保护的重点关注领域之一。在“春雷行动”中央一号专案——哈尔滨“12.7”特大生产销售假药案中，不难看出，伪劣药物的贩售渠道有了新的变化，网络邮寄、快递都是主要的方式。假药劣药可能会危及生命，因此该行为不仅严重侵害了人们的生命健康并构成潜在的巨大损害，而且侵犯了相关企业的知识产权，影响企业的声誉。在互联网高速发展的时代，假药劣药利用现代物流向社会流转，从而导致传播更为广泛，对社会公共利益的损害更大。此外，办案机关在侦查的过程中发现，涉案的物流企业工作人员明知为人销售的药品系非法经营，且寄件物品的相关信息都是虚假的，但仍然为其提供收货、发货、打包等服务，为案件的侦办增加了难度。

针对本案遇到的问题，办案机关反应迅速，在启动刑事审查的同时启动了公益诉讼立案调查，在追究相关人员刑事责任的同时，深入调查假药的传播途径。经过办案查明，涉案的物流企业在日常管理中存在漏洞，部分快递员没有对寄件人身份进行核实，没有对相关物品进行验视，从而使得假冒药品得以流向全国各地。在研讨会中，嘉宾认为，解决以上问题需要从刑事司法、公安侦查、邮政快递平台、学术研究以及企业自律几个方面入手，强化协

同推进，以实现不同程序的有效衔接，不同部门互动合作，加大对涉事邮政快递公司的监管和处置力度，企业自身也需要做好一般预防和特殊预防工作。上述公安、检察院、学术界以及权利人的努力，为加强物流行业的监管进行了非常积极的探索，提供了宝贵的经验。

李某等人侵害乐高集团著作权案主要涉及两个法律问题，即境外主体的著作权是否可以在中国依法受法律保护以及拼插积木玩具是否属于著作权中的“美术作品”。法院判决确认了李某等人的行为侵犯了乐高公司的著作权，在玩具行业中产生了重要影响，为其他相似案件的办理提供了参考。庭审过程中，公诉机关针对该案“人数多、书证多、辩解多”的特点，精心准备，通过制作PPT，以“可视化”形式展示证据，有力驳斥无理辩解，充分提高庭审的质效。此外，该案还是落实权利人实质性参与诉讼的一个典型案例。审查逮捕阶段，权利人就已收到知识产权刑事案件的权利义务告知书；权利人及其诉讼代理人及时提供相关权属证明、第三方授权函、公证文书等文件。权利人的诉讼代理人全程参与庭审过程，充分发表意见。权利人充分感受到司法机关依法加强知识产权保护的理念和做法，案件的成功办理进一步坚定了乐高集团在华持续投资的信心和决心！



## 知识产权诉讼的新热点与新特点



刘清 Alan LIU

本次论坛第二个专题讨论环节由品保委海关工作组主席刘清主持。NBA 法务部高级总监刘伟凯、北京市高级人民法院原法官、审判长兼苏志甫、New Balance 知识产权顾问陈永明以及江苏省高级人民法院三级高级法官、审判长刘莉分别发言，从法院、学者、权利人多个维度讨论了知识产权诉讼的新热点与新特点。该专题以两个获选的非刑事案件为基础，探讨了与视听作品及行为保全相关的内容。

在 NBA 赛事直播版权纠纷案中，权利人面临的最大困难是：体育赛事直播是不是作品、构不构成作品、能不能受著作权保护并没有一个明确的规定，这也是本案争议的焦点。反对其作为作品受保护的理理由主要有两个：没有满足独创性和固定性的要求，这个观点给体育产业权利人保护合法权益带来了很大的困难。多年来，未经授权的转播行为给权利人以及合法被许可人造成了巨大的困扰，给数亿美元的投资带来巨大风险。

2021 年 6 月 1 日，新《著作权法》实施，并引入了“视听作品”这一概念。嘉宾认为，独创性作为著作权法的一个基石性的概念，对它的理解应该是清晰的，在判断是不是构成作品的时候，核心要件应该是独创性的有无，而不是高低。本案中所探讨的“体育赛事直播”，不论是拍摄角度、镜头切换、拍摄场景和对象选择、画面选取、音乐、灯光、剪辑、编排及画外解说等方面都体现了摄像、编导等创作者的个性选择和安排，是一种信息和思想独特的表达，具有独创性。对于固定性的要求，《伯尔尼公约》第二条第 2 款规定“本同盟各成员国得通过国内立法规定所有作品或任何特定种类的作品如果未以某种物质形式固定下来便不受保护”。这一概念的设置有时代的局限性，随着技术的蓬勃发展，在今天这样一个流媒体的环境下，不应该再局限于字面的要求，在判断类电作品的时候应该弱化所谓的固定性的要求，应更强调它的表现形式。本案判决为 2022 年冬奥会直播的知识产权保护铺平了道路，是北京打造知识产权保护高地一个有力明证。

侵害 New Balance 商标权及不正当竞争纠纷案涉及禁令以及行为保全的申请问题。在本案中，法院经过审理，认为被告行为存在构成侵害原告知名商品特有装潢权益、注册商标专用权以及虚假宣传的可能性，不立即采取措施将对原告造成不可弥补的损害。在禁令不会损害公共利益，且申请人已经提供相应担保的情况下，裁定被告立即停止生产、销售侵权商品，并删除涉嫌虚假宣传的内容。这是全国首例从禁止生产、销售到禁止虚假宣传全链条覆盖的知识产权禁令，也是江苏省首例涉及知名商品特有装潢权的诉中禁令。

突破性的高额赔偿也是本案的一个亮点，被告侵权规模巨大，涉及商标侵权、擅自使用他人知名商品特有装潢以及虚假宣传等复合式侵权行为，且在本案诉中禁令后仍持续实施被诉侵权行为，系恶意侵权，情节严重。两审法院基于原告的充分举证和详细计算，严格审查了权利人因被侵权所遭受的实际损失、本案侵权人获利情况，并考量被告恶意侵权适用加倍赔偿、本案的合理费用支出等情节，确认了无论是按照被侵权人实际损失还是侵权人获利，计算结果均超过了原告所主张的 1000 万元。此外，被告收到禁令裁定后拒不履行，继续实施侵权行为，结合以上情节，两审法院认定被告侵权情节严重，侵权人主观恶意明显，适用加倍赔偿，全额支持了原告 1000 万余元的赔偿请求。本案的成功办理，产生了广泛而深远的影响，这不仅是某一品牌对山寨品牌取得的阶段性胜利，对于其他在华受到侵权的品牌而言，也具有里程碑式的意义。





## 数字经济与知识产权保护 ——侵权和犯罪的网络技术化、跨境化、有组织化、产业链条化



陶洋 TAO Yang

第三个专题由品保委政府事务和公共政策工作组主席、人工智能与数字行业小组协调员陶洋主持，他与北京师范大学网络法治国际中心执行主任、博导、中国互联网协会研究中心副主任吴沈括、新浪集团法务部诉讼总监张喆和安踏集团有限公司法务中心知识产权部总监崔瑞林等共同探讨了数字经济时代下的一些知识产权保护前沿问题。

数字经济时代下的企业数据所面临的侵权隐患困扰着很多的企业。随着网络信息技术的发展，企业数据对各国经济及互联网企业的发展发挥着越来越举足轻重的作用。然而，目前的法律法规在对企业数据的价值以及法律定位等方面的规定还有待进一步明确，以便企业数据权益被侵犯时，相关司法保护能够及时介入。部分企业选择从自身出发，加强技术手段或者数据管理手段保护自己的数据，这在一定程度上可以提高数据的“三性”，但同时也会增加运营成本和开发成本。推动相关行业健康有序发展，还需综合治理，完善法律法规，针对企业数据制定准确的、统一的、合理的规则，让那些该被共享的数据被秩序性共享，该流通的数据被秩序性流通起来，该保护的数据被秩序性保护起来。

数字化转型是传统企业的一个热点，它也

带动了知识产权保护的内涵和外延不断延伸拓展。这个新形势给传统的知识产权保护手段带来了很多新的挑战。最明显的就是在2020年疫情期间，随着线上经济的爆发，侵权人也迅速的转移到了各种线上平台进行售假，不仅仅在传统平台，而且急速扩张到视频直播平台、各种私域流量渠道上进行售假，甚至有独立开发小程序及APP这种更为隐蔽的售假手段。在这种新型全数字化形态售假趋势下，传统的品牌保护策略和手段也必须进行相应的调整 and 变化，以应对数字化时代侵权行为发现难、取证难、落地难、打击难的挑战。因此，在这种趋势下，就需要将知识产权保护策略转变为以技术为核心，以信息为导向，专注数据调查情报对撞，强化多方协作合力，寻求对线下的运作团伙进行落地打击，结合行政、刑事以及民事诉讼多种手段合围。

随着网络信息技术的发展，新领域，新技术，犯罪手段不断翻新，知识产权犯罪呈现明显的网络技术化、跨境化、有组织化和产业链条化。在此趋势下，电子数据和证据、公私合作、跨境合作就尤为关键。数字化浪潮给

知识产权保护带来的革新机遇更多于挑战，在这个环境下，应该建立并强化对于数字背后的“趋势感知”能力，发现数字化变革中的新优势，提高认知，并运用到知识产权保护实践中去，以推动保护水平的不断提升。



## QBPC SECOND IP FORUM HELD IN BEIJING

ZHANG Mingjie

On June 25, the Quality Brands Protection Committee of China Association of Enterprises with Foreign Investment (QBPC) held its second IP protection forum in Beijing. With a theme of Driving Innovation, Strengthening Cooperation, Furthering Development, the forum is a part of QBPC's annual meeting. QBPC Chair Michael Ding presided over this forum and gave an opening speech. Deputy Director of NLGO and Deputy Director-General of Bureau of Law Enforcement and Inspection of SAMR Lu Zhengmin, Senior Consultant of WIPO Office in China Wu Kai, Deputy Director Song Jianli from IP Procuratorial Office of Supreme People's Procuratorate (SPP), Chief Judge Wei Lei of No.10 Tribunal of IP Court of the Supreme People's Court (SPC), IP Counselor of U.S. Embassy Duncan Willson, EUIPO IP Attaché Benoit Misonne, CEO of INTA Etienne Sanz de Acedo and Emerson Senior Vice President, Secretary and General Counsel Sara Yang Bosco delivered the keynote speeches.

In the opening remarks, Michael briefly introduced the QBPC vision, mission and this year's four main focuses, namely to follow the implementation of the latest revision of laws and regulations related to intellectual property,

strengthen the communication with the central and local law enforcement and the judicial organs, seek the solutions to industry-specific IP issues, and continue to expand international exchanges and cooperation. He said that the QBPC forum was characterized by the combination of theory and practice while focusing on specific hot issues of different industries. Through in-depth discussion, the best practice of top ten cases could be promoted widely in international IP community. He also explained the theme of the forum--- Driving Innovation, Strengthening Cooperation, Furthering Development.

According to Deputy Director Lu Zhengmin, the CPC Central Committee and the State Council attached great importance to the protection of intellectual property rights. President Xi Jinping had emphasized the protection of the legitimate intellectual property rights of all enterprises on many occasions, and Premier Li Keqiang had written important instructions on IPR protection and cracking down on infringement and counterfeiting. She reviewed the major progress made in the nationwide fight against IPR infringement, and the production and sale of fake and shoddy goods since 2020 as well as the next-phase plan.



On April 23, NLGO organized 16 provinces (autonomous regions and municipalities) to carry out a simultaneous disposal operation on counterfeiting and inferior goods; On April 26, the Report on the Latest Development of IPR Protection and Business Environment in China (2020) was released, introducing the main measures taken by the Chinese government in 2020 to protect intellectual property rights, crack down on infringement and counterfeiting, and optimize the business environment; In May, NLGO issued Key Points of the Nationwide Crackdown on Intellectual Property Infringement and the Production and Sale of Counterfeit and Inferior Goods in 2020, listing the protection of intellectual property rights of foreign-owned enterprises as a special article; NLGO also held a national teleconference to promote the implementation of the fight against infringement and counterfeiting. Next, NLGO would focus on five concerns (the concerns of the CPC Central Committee and the State Council, the public, society, market entities and the international community), highlight four key points (key fields, key commodities, key markets, key regions), focus on three strategies (The Belt and Road, Regional Integration, Free Trade Zone Construction), strengthen overall planning and coordination, promote social co-governance, and build a good pattern of law enforcement and anti-counterfeiting covering both online and offline channels, both urban and rural areas, the whole process of production and consumption, and the whole chain of export and import.

Senior Consultant Wu Kai said that in 2020 China ranked first in the world with 68,720 international patent applications through Patent Cooperation Treaty (PCT) system, an increase of 16.1% year on year; the number of international trademark registration applications by China reached 7,075, ranking third in the world, up 16.4 percent; the number of applications for international registration of appearance design reached 826 in 2020, ranking ninth in the world, with a year-on-year growth of 22.7%. These achievements were the results of the close communication and cooperation between WIPO and the Chinese government. WIPO highly appreciated the efforts made by the Chinese government in recent years to build and improve the intellectual property system and was very optimistic about the prospects of innovation, invention and intellectual property cause in China. WIPO would continue to strengthen cooperation and coordination with all sectors in China, seize the opportunities and dividends of China's future development, and provide timely and better debt service to all stakeholders in China, so as to

make greater contributions to China's development in a more effective manner.

Deputy Director Song Jianli introduced the work of the procuratorial organs in creating new measures in the judicial protection of intellectual property, linking different systems and mechanisms, updating judicial mindset, and building the integrity system of intellectual property. At the beginning of 2021, the SPP launched a pilot program to combine intellectual property, criminal, civil and administrative duties in nine provinces and municipalities across the country. Relevant provinces and municipalities had all set up intellectual property procuratorial offices and handled a number of civil, administrative and criminal IP cases, which was well recognized by the public. In the future, when dealing with some relatively simple criminal cases involving trademarks and copyrights, procuratorates could actively promote the application of civil suit collateral to criminal proceedings penal action, rationally allocate judicial resources in terms of system and mechanism, and practically improve the effectiveness of judicial protection of intellectual property rights. At the same time, procuratorial organs would strengthen judicial protection of all kinds of intellectual property rights, effectively reduce the cost of safeguarding rights and increase the intensity of sanctions. In addition, procuratorial organs should actively participate in the comprehensive governance of the society and cultivate the awareness of intellectual property and credit culture.

The Intellectual Property Tribunal of the Supreme People's Court (SPC) is a permanent organ of the SPC established based on the decision and deployment of the CPC Central Committee. It hears all civil and administrative appeals of technology-related intellectual property cases nationwide, including patents, technical secrets, monopolies, plants variety, etc. Chief Judge Wei Lei shared the court's establishment, functions and positioning, human resources strategy, trial mechanism and judicial reform trend with the participants. Since its establishment on January 1, 2019, the IP Tribunal had accepted more than 5,000 cases and concluded more than 4,000 cases by the end of 2020, with an average trial period of 123 days, which had greatly improved the trial quality and efficiency of technology-related IP cases of second instance. The tribunal had fulfilled its role in adjudicating technology-related IP cases, further unified adjudication standards, constantly formed rules for handling cases, built a database of adjudication rules, and coordinated the allocation of technical investigation resources nationwide.

As judicial protection and administrative protection were the two carriages of intellectual property protection, the IP tribunal had actively cooperated with China National Intellectual Property Administration, the Department of Seed Industry of the Ministry of Agriculture and Rural Affairs, and other IP administrative departments, which created a joint force of protection.

As a bridge between Chinese and foreign IP community, QBPC has been promoting the optimization of China's IP business environment and is well recognized by the international community. Duncan Willson, Intellectual Property Counselor of U.S. Embassy in Beijing, said that the QBPC had played an important role in the development of China's intellectual property protection and enforcement system over the past 20 years. QBPC had won the respect and admiration of multinational companies and foreign government officials through serious cooperation, frank communication and unremitting efforts to promote the reform of China's intellectual property system.

EUIPO IP Attaché Benoit Misonne believed that in the past 20 years, the exchanges between China and the EU in the field of intellectual property had never stopped, and the two sides had made joint efforts to establish the legal framework and improve the system of intellectual property. In terms of copyright protection, the EU and the relevant Chinese departments had maintained close cooperation; new progress had also been made in trademark applications; in the field of patent application, both sides were faced with new situations and challenges. Through joint efforts, practical solutions would be put forward. He emphasized the importance of an open, frank and constructive dialogue to continue addressing existing and forthcoming challenges to ensure IP protection globally.

Later, CEO of INTA Etienne Sanz de Acedo gave a

speech on the protection of intellectual property rights in the context of the epidemic. He said the protection of intellectual property in the new situation required all stakeholders around the world to work together, make the legal institution and system more global and inclusive, and further promote the establishment of a more solid and effective protection of intellectual property. Relevant parties should continue to support small and medium-sized industries and young entrepreneurs, who played an important role in driving China's and the world's economic development and were an important engine of economic development. In addition, it was necessary to strengthen the publicity and promotion of intellectual property work to protect the interests of consumers.

The last speaker was Sara Yang Bosco, Senior Vice President, Secretary and General Counsel from Emerson. She said that Emerson warmly congratulated China on the reform of its legal system, especially the establishment of the Intellectual Property Court and IP court of the Supreme People's Court. Changes in China's economy and legal system, such as the increase of the maximum legal compensation limit to 5 million RMB and the imposition of punitive damages for infringement of intellectual property rights, had a significant deterrent effect on those who infringe or plan to infringe. Emerson had been plagued by malicious trademark applications, which the company had invested a lot of manpower and resources, and taken a lot of measures to deal with. The relevant case was appealed to the Beijing High Court and eventually won, which encouraged Emerson and increased its confidence in China's legal system and judicial authorities. She looked forward to greater results in China's IPR protection.

The Forum had three panels, respectively focusing on Criminal IP Protection, IP Litigation, and IP infringement and crimes in the Era of Digital Economy. Below is a detailed coverage of the panels.

## Trends, Challenges and Explorations for Criminal IP Protection

QBPC Vice Chair Ji Ying hosted the first panel—Trends, Challenges and Explorations for Criminal IP Protection. Based on the top ten criminal cases selected by QBPC, the discussion explored the new trend of criminal judicial protection of intellectual property under the new situation. Deputy Procurator-General of Shanghai Railway Transportation Procuratorate Zhu Weidong, Director Li Chunlei of the Food, Drug and Environment

Crime Research Center of People's Public Security University of China, Head of Division, Shanghai Food, Drug and Environment Crime Investigation Brigade Yu Meng, Deputy Director Pan Li from No.6 Division, the Third Branch of Shanghai People's Procuratorate, Head of Product Security from Sanofi Victor Shao and Senior Counsel of LEGO Group Angela Shi shared their insightful views from different angles.

The supervision over logistics industry has always been one of the key concerns of intellectual property protection. In the case of “Spring Thunder Operation” Central Project No.1— Harbin “12.7” Case of Extremely Large-scale Production and Sales of Counterfeit Drugs, we could definitely tell new changes in the distribution of fake and inferior drugs, namely mail and express delivery. Fake and inferior drugs may be threatening to people's lives and health. Meanwhile they also infringe the IP of related enterprises and damage the reputation of enterprises. In an era of rapid development of the Internet, fake and inferior drugs are distributed to the society through modern logistics, which leads to a wider impact and greater damage to the public interest. In addition, it has been found that relevant logistics enterprise staff knowingly provided services such as receiving, delivering and packing, with the knowledge that the drugs sold by the perpetrators were illegal, and the relevant information on the waybill was false.

In response to the problems encountered in the case, the enforcement authorities promptly launched a public interest lawsuit investigation along with the criminal review. While investigating the crime of the relevant personnel, they also conducted in-depth investigations over the distribution channels of fake drugs and identified the loopholes in daily management of the logistics enterprise. Some couriers did not even verify the identity of the consigners and inspect the relevant items, thus allowing the counterfeit drugs to flow around the country. In workshop, the speakers suggested that case-handling authorities should strengthen coordination in terms of criminal justice, public security investigation, postal and express platforms, academic research and self-discipline of enterprises, so as to realize the effective connection of different procedures and cooperation among different departments. The supervision and punishment

on the postal and express companies involved should be intensified, and the enterprises shall also conduct general and special prevention by themselves. The relevant public security authorities, procuratorate, academia and right owners have made a meaningful exploration and provided valuable experience for strengthening the supervision over the logistics industry.

In the case of Criminal Conviction against Li and Others for Copyright Infringement on the LEGO Group, there are two main legal issues, namely whether the copyright of an overseas owner could be protected by law in China and whether the toy of building blocks belongs to the "artistic work" under the copyright. The court's decision confirmed that Li and others had violated the copyright of LEGO, which was meaningful for the toy industry and provided a reference for future similar cases. During the trial, the prosecuting authority made careful preparations focusing on the features of the case, namely "large number of people, documentary evidence and excuses". The evidence was presented in a "visual" form through PPT, which effectively refuted unreasonable justifications and greatly improved the quality and effectiveness of the trial. In addition, it is a showcase for substantive participation of the right holders in litigation. At the stage of arrest examination, the right holder received the notification of the rights and obligations of the intellectual property criminal case; the right holder and its lawyer timely provided relevant ownership certificates, third party authorization letters, notarization documents and other documents. The lawyer participated in the whole trial process and fully expressed opinions. As a result, the right holder witnessed the efforts of the judicial organs in strengthening intellectual property protection in accordance with the law, which further beefed up the confidence and determination of LEGO Group in continuing to invest in China!

## New Hotspots and Characteristics of IP Litigation

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The second panel discussion was moderated by QBPC Customs Committee Chair Alan Liu. The speakers included Senior Director and Senior Counsel of NBA China Victor Liu, former Judge and Chief Judge of Beijing Higher People's Court Su Zhifu, IP Manager of New Balance Chen Yongming and Chief Judge Liu Li from Jiangsu Provincial People's High Court. They made presentations and discussed the new hotspots and features of intellectual property litigation from the perspectives of judges, scholars and right holders. Based on two non-criminal cases, the panel explored the issues of

audiovisual works and behavior preservation.

In the case of Copyright Dispute on NBA Live Broadcasting, the right holder faced a huge challenge since there was no clear regulation on whether a live sports broadcast was a work, whether it constituted a work, and whether it could be protected by the copyright law. It was also the focus of the dispute in this case. The main reason against the live sports broadcast being protected as a piece of work was that it failed to meet the requirements of originality and fixity.



This view made it extremely difficult for right holders in sports industry to protect their legitimate rights and interests. For many years, unauthorized transmission had caused great distress to right holders and legal licensees, and put hundreds of millions of dollars of investment at great risk.

On 1 June 2021, the new Copyright Law came into force and introduced the concept of "audiovisual works". Speakers believed that originality, as a cornerstone concept of copyright law, should be clear. When judging whether a subject constituted a work, the core element should be the originality rather than the degree. The live sports broadcast in this case displayed the individual choice and arrangement of the creators such as the photographers, editors and directors in terms of the shooting angle, shot switch, shooting scene and object selection, picture selection, music, lighting, editing, arrangement and off-screen commentary. As a unique expression of information and thoughts, it had originality. For fixity, Article 2 in paragraph 2 of the Berne Convention states that "It shall, however, be a matter for legislation in the countries of the Union to prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form." The definition of this concept is times-bound. With the rapid development of technology, especially in today's streaming media environment, it should no longer be limited to the literal requirements. When judging cinematographic work, the so-called fixity requirements should be weakened, instead its form of expression should be emphasized more. The judgment was a clear illustration of Beijing's efforts to establish the highest standards of intellectual property protection. It paved the way for the effective protection of intellectual property rights for the upcoming 2022 Winter Olympics.

The dispute case of infringement of New Balance trademark right and unfair competition involves the application of injunction and behavior preservation. During the first instance trial, the court held that the conducts of the defendants were likely to constitute infringements against the distinctive decoration of the plaintiff's well-known commodities and trademark

in addition to possible false advertisement. The court held that irreparable damages might incur to the plaintiff if no interim measures were taken to cease the infringement. Considering that the injunction would not harm public interests and the proper guarantees had been provided by the plaintiff, the Court ordered the defendants to immediately cease manufacturing and selling the accused infringing products, and remove suspected false advertisements. This was the first IP injunction order in China covering the whole infringing supply chain including manufacturing, distribution and false advertisement. Meanwhile it was the first injunction order concerning distinctive decoration of well-known commodities in Jiangsu Province.

The record-high damage was another highlight in this case. The defendants' infringements were huge in scale, involving trademark, unauthorized use of distinctive decoration of well-known commodities and false advertisements. Furthermore the infringement continued even after the injunction order was served. As a result, it was deemed as malicious infringement with serious consequences. Supported by the plaintiff's enormous evidence and detailed calculations, the Courts of two instances carefully examined the actual losses of the right holder caused by the infringement as well as the infringers' gains. After taking into consideration of the defendants' maliciousness and reasonable expenses of the plaintiff in this case, the courts hence affirmed that the amount of damage, either calculated based on the plaintiff's actual losses or the infringers' profits, had far exceeded the RMB 10 million claimed by the plaintiff. In addition, since the defendants refused to comply with the court's effective injunction order, the Courts of two instances affirmed the defendants had obviously carried out infringements maliciously, which had resulted in serious consequence and should be imposed with punitive damages. Finally the courts supported the plaintiff's claim for compensation of more than RMB 10 million. The successful handling of this case had broad and positive social impact. It was not only a landmark victory for a brand against parasite brands, but also a milestone for other foreign brands that have been infringed in China.

## Digital Economy and Intellectual Property Protection

---Trends in intellectual property infringement and crimes: cyber technology, cross-border action, tight organization, specialization

In the era of digital economy, many enterprises are troubled by the potential infringement on enterprise data. With the development of network information technology, enterprise data plays a more and more important role in the development of national economy and Internet enterprises. However, the existing laws and regulations need to be further clarified in respect of the value and legal positioning of corporate data, so that relevant judicial protection can intervene in a timely manner when the rights and interests of data holders are violated. Some enterprises choose to adopt technical means or strengthen data management to protect their data, which can improve the accuracy, timeliness, and integrity of data to some extent, but at the same time, it will also increase the operating cost and development cost. To promote the sound and orderly development of related industries, it is also necessary to promote comprehensive treatment, improve laws and regulations, and formulate accurate, unified and reasonable rules on enterprise data management, so that the data can be shared, circulated and protected with order.

Digital transformation is a hotspot for traditional enterprises, which also drives the connotation and extension of the protection of intellectual property rights. This new situation has brought about many new challenges to the traditional means of intellectual property protection. Most notably since the epidemic outbreak in 2020 led to the booming of online economy, the infringers quickly shifted to various online platforms for sales. To adopt more covert approaches of selling counterfeits, they operated not only in traditional platforms but also rapidly

penetrated into the live video platforms and various private domain flow channels, or even developed independent smart programs and APPs. Due to the new trend of selling counterfeits in full digital form, the traditional brand protection strategies and means must be adjusted and changed accordingly, so as to overcome the difficulties in finding infringement acts, obtaining evidence, landing and cracking down on them in the digital age. Therefore, it is necessary to make the intellectual property protection strategy technology-centered and information-oriented, focusing on data investigation and intelligence collision, strengthening multi-party collaboration, seeking to strike offline operating infringement groups offline, and combining administrative, criminal and civil litigation means to form the siege.

With the development of network information technology, new fields, new technologies and new criminal means constantly emerged, and intellectual property crimes are featured by cyber technology, cross-border action, tight organization, and specialization. Under this circumstance, electronic data and evidence, public-private partnership, and cross-border collaboration are particularly critical. Digital wave creates innovative opportunities more than challenges for the protection of intellectual property rights. Therefore we should establish and strengthen the trend perception ability behind the digital numbers, identify new strength in the digital revolution, and improve awareness, which could be applied to the practice of the protection of intellectual property rights, in order to promote the level of protection.



### 品保委拜访上海市人民检察院

文 / 王月

4月12日上午，品保委主席丁宇，最佳案例/执法工作组主席陈超，政府事务和公共政策工作组主席陶洋，法律工作组主席于帮清，海关工作组副主席施晴，会员服务工作组副主席马萌萌、尤小刚，及部分会员代表拜访了上海市人民检察院知识产权办公室。市检察院第四检察部主任兼知产办主任胡春健，第四检察部检察官、知产办副主任陆川接待了品保委一行。

胡主任首先对品保委一行来访表示欢迎并介绍了现阶段的主要工作。根据最高检已下发的试点方案，决定在北京、上海、重庆、天津、四川、江苏、浙江、福建8个省市检察机关开展为期一年的知识产权检察职能集中统一行使试点工作，同时也鼓励其他非试点地区检察机关因地制宜推进知识产权检察工作。上海市人民检察院在市检察院、三分院、浦东、徐汇、普陀、杨浦、静安、闵行区院进行试点，整合知识产权刑事、民事、行政检察职能，专门从事知识产权检察工作，开展对知识产权全方位综合性的司法保护。

胡主任强调，本年度的工作重点主要有服务商标的专项保护、发布知识产权保护企业指

引和知识产权保护白皮书、知识产权权利人权利义务告知及实质性参与刑事诉讼、探索检察官支持民事诉讼和刑事自诉、推动企业刑事合规等，期待同品保委及会员公司更好地交流与合作。

品保委主席丁宇向胡主任及检察官们对于知识产权保护的大力支持与创新举措表示感谢，并介绍了品保委的重要工作方向：探究法律法规和司法解释对于知识产权保护的实践影响；持续加强同中央和地方的公检法部门的交流；加深会员交流和分享；促进国际交流。胡主任也表示期待品保委可以更好地发挥促进国内外知识产权保护经验交流的平台作用。

会员代表们还提出了跨境知识产权维权、新刑法修正案“违法所得”、著作权侵权、翻新产品等问题，均获得胡主任等检察官的耐心解答。上海市人民检察院知识产权办公室还为权利人设置了专门邮箱，有利于权利人提供刑事案件的诉讼线索等。

参与本次活动的会员公司包括 ABB、亚马逊、联合利华、微软、安踏、思科、杜邦、开云、乐高、MLB、赛诺菲、昕诺飞和美国华尔推剪。





## QBPC VISITS SHANGHAI PEOPLE'S PROCURATORATE

WANG Yue

On the morning of April 12, QBPC Chair Michael Ding, QBPC BPEC Chair Conan Chen, GAPPCC Chair Tao Yang, LC Chair Michael Yu, Customs Vice Chair Angela Shi, MSC Vice Chair Ma Mengmeng and Jayden You, and some member representatives visited the Intellectual Property Office of the Shanghai People's Procuratorate. Hu Chunjian, Director of the Fourth Division of Shanghai People's Procuratorate and the Intellectual Property Office of the Municipal Procuratorate, and Lu Chuan, Prosecutor of the Fourth Procuratorate Department and Deputy Director of the Intellectual Property Office, received the QBPC delegation.

Mr. Hu first welcomed the QBPC team and introduced main work of his office at this stage. According to the pilot program issued by the Supreme People's Procuratorate, it had been decided to carry out a one-year pilot program on the centralized and unified exercise of IPR prosecution functions in eight provincial or municipal procuratorates of Beijing, Shanghai, Chongqing, Tianjin, Sichuan, Jiangsu, Zhejiang and Fujian. Meanwhile other non-pilot areas' procuratorates would also be encouraged to promote IPR prosecution work in accordance with local conditions. The Shanghai People's Procuratorate conducted the pilot in the Municipal Procuratorate, the Third Branch, Pudong, Xuhui, Putuo, Yangpu, Jing'an and Minhang District Procuratorates to integrate the criminal, civil and administrative procuratorial functions of intellectual property, specializing in intellectual property procuratorial work and carrying out comprehensive judicial protection of intellectual property.

Mr. Hu introduced the focuses of his office in 2021, including service marks protection, issuing guidelines for enterprises on IPR protection and the whitepaper of IPR protection, informing IPR right holders of their

rights and obligations to enhance their substantive participation in criminal proceedings, exploring how prosecutors could support civil litigation and criminal private prosecution, and promoting enterprises' criminal compliance. He expected more communication and cooperation with QBPC and its members.

QBPC Chair Michael Ding expressed his gratitude to Mr. Hu and other prosecutors for their great support and innovative initiatives on IP protection. Michael introduced that QBPC would spare no efforts in exploring the impact of laws, regulations and judicial interpretations on IP protection in practice, continuously strengthening exchanges with central and local judicial organs and law enforcement departments, enhancing exchanges and sharing among members, and promoting international exchanges. Mr. Hu also expressed his expectation that QBPC could better serve as a platform to promote the exchange of experience in IPR protection between China and international IP community.

Member company representatives also raised questions about cross-border intellectual property rights, the new criminal law amendment on "illegal income", copyright infringement and refurbished products, which received detailed answers by Director Hu and other prosecutors. The IPR Office of the Shanghai Municipal People's Procuratorate also set up a specific email address for the communication with right holders, which is conducive to providing case leads on litigation of criminal cases and other information.

Member companies participating in the event included ABB, Amazon, Unilever, Microsoft, ANTA, CISCO, DuPont, Kering, LEGO, MLB, Sanofi, Signify and WAHL.

# 品保委拜访上海市公安局经济犯罪侦查总队

文 / 王月

4月12日下午，品保委主席丁宇，最佳案例 / 执法工作组主席陈超、副主席章艳华，海关工作组副主席施晴，会员服务工作组副主席马萌萌与会员代表拜访了上海市公安局经济犯罪侦查总队（经侦总队），受到总队第十支队队长喻檬的欢迎。

丁宇首先介绍了品保委在法律法规、中央与地方执法机关交流、会员内部分享以及国际合作四个重要工作方向，并表示品保委及会员企业将继续配合上海经侦总队十支队加强知识产权刑事保护，形成常态化以及聚焦性的讨论和合作机制。

喻檬说，依据3月1日起施行的新刑法修正案，司法机关将加大知识产权类犯罪的处罚力度，增强对知识产权刑事保护，突显对犯罪行为的震慑作用。同时，他期待品保委及会员

企业将相关品牌信息和案件线索第一时间分享给上海经侦总队十支队，从而通过数据研判，快速助力权利人维护知识产权权益。

目前双方也同其他平台合作，共同启动跨平台知识产权刑事保护与执法机制的建设和探索。此机制将为刑事侦查和起诉提供案件线索，并在不同的电子商务平台之间建立预警系统，有效阻断不法分子。与会的品保委员会员代表还提出软件著作权侵权、高新技术产业的知识产权问题、山寨产品问题、网络主播侵权、商标侵权证据等热点问题，同喻檬支队长和警官们展开了热烈的讨论交流。

参与本次活动的会员公司包括 ABB、亚马逊、艾尔建、安踏、思科、杜邦、霍尼韦尔、乐高、MLB、赛诺菲和美国华尔推剪。



## QBPC VISITS SHANGHAI PUBLIC SECURITY BUREAU ECONOMIC CRIMES INVESTIGATION DEPARTMENT

WANG Yue

On the afternoon of April 12, QBPC Chair Michael Ding, QBPC BPEC Chair Conan Chen, BPEC Vice Chair Nora Zhang, Customs Committee Vice Chair Angela Shi, MSC Vice Chair Ma Mengmeng and member representatives visited the Shanghai Public Security Bureau's Economic Crime Investigation Department (ECID) and were welcomed by Chief of the 10th Detachment of Shanghai ECID Yu Meng.

Michael Ding first introduced the four focuses of QBPC including laws and regulations, exchanges between central and local law enforcement agencies, internal sharing among members and international cooperation. He stressed that QBPC and its member companies would continue to cooperate with the Tenth Detachment of Shanghai ECID to strengthen the criminal protection of intellectual property, forming a regular cooperation mechanism with focused discussion.

Meng mentioned that under the new criminal law amendments that came into effect on March 1, the judiciary would increase the penalties for Intellectual property crimes, enhance the criminal protection of IPR and create the deterrence on criminal acts. At the same time, he expected QBPC and its member companies to

share relevant brand information and case leads with them as early as possible. It would enable them to quickly assist right holders to safeguard their IP rights through data research and judgment.

Both parties are currently working with other platforms to initiate the construction and exploration of a Cross-Marketplace IPR Protection and Enforcement Mechanism. This mechanism will provide case leads for criminal investigations and prosecutions as well as establish an early warning system between different e-commerce platforms to effectively deter wrongdoers. QBPC member representatives also raised hot issues such as software copyright infringement, intellectual property issues in high-tech industries, copycat product issues, online anchor infringement and evidence of trademark infringement to exchange with Meng and other police officers.

The representatives of QBPC member companies including ABB, Amazon, Allergan, ANTA, CISCO, Dupont, Honeywell, LEGO, MLB, Sanofi and WAHL attended the meeting.





# 品保委和小红书成功举办首场合作交流

文 / 杨楠

4月15日，中国外商投资企业协会优质品牌保护委员会（下称品保委）和小红书安全部和法务部在上海举行交流会。在本次交流会上，权利人和平台就在此新业态中如何更好地进行知识产权保护进行了交流和探讨。

此次活动由品保委互联网专责工作小组协调员斜迟迟组织带队。小红书安全部负责人陈冬芳、安全部品牌保护负责人韩洪连和法务部知识产权负责人张杰参加了本次交流活动。

小红书代表首先介绍了小红书的整体运营情况，接下来分享了平台所采取的各种品牌保护措施。

资质审核：从经营者申请入驻商城开始，小红书就会对其实体身份和资质进行审核，之后会对商城的整体线索收集和风险布控进行评估。

内容审核：小红书重视用户发布内容的真实性。对原创内容，给予强保护；对于抄袭、侵权内容、不实信息等第一时间进行核实处理。对于用户发布的海量内容，小红书实行人机双审模式，力图在发布之前就拦截违规内容。依托权利人提供的品牌特征和关键点，小红书也在不断迭代机器拦截模型。如有引流外部售假的账号，

将被永久封号。

保护原创：小红书还开展专项整治活动，对重要影视作品、用户的原创内容提供及时的维权保护，并重点整治违规搬运账号。

合作鉴定：小红书内部调查人员如在日常工作中如发现相应线索，会主动与权利人联系进行合作鉴定。对于侵权行为，小红书持零容忍态度，一旦发现经营者销售假货，立即清退。

专项治理：2021年1月，小红书启动熊猫计划，以保护国宝的精神维护权利人合法权益，严打导流涉假营销号，并定期公布打击数据。

会议的最后，小红书代表还回答了会员就测买流程、机器与人工审核底层机制等提出的问题。小红书代表还与品保委会员分享了近期的一些多方合作打击侵权人的典型案例。

来自阿迪达斯、安踏、艾尔建、博柏利、宝洁、百威、爱马仕、杜邦、戴森、迪士尼、飞利浦、环球影城、杰尼斯、L Brands、联合利华、拉科斯特、陆逊梯卡、苹果、强生、微软、应用材料、庄臣会员公司的代表参加了本次交流会。



## QBPC AND RED HOLD FIRST EXCHANGE

Andrei YANG

On April 15, Quality Brands Protection Committee of China Association of Enterprises with Foreign Investment (QBPC) and the security and legal departments of RED, known as Xiaohongshu in China, held an exchange in Shanghai. The right holders and the platform shared views on how to better protect IPR under new e-commerce business models.

The exchange was organized by QBPC Internet Task Force coordinator Cecilia Dou. Head of Security Department Chen Dongfang, Head of Brand Protection of the Security Department Han Honglian, and Head of IP Protection of the Legal Department Zhang Jie from the RED joined the exchange.

The RED representatives first introduced operations of the company and then shared measures the platform had taken to protect brands.

**Identity Review:** as soon as the operator applies to open a store on the platform, the RED will check its identity and supporting documents; the RED will constantly analyze all stores on its platform to collect leads and manage risks.

**Content Review:** the RED emphasizes the truthfulness of the contents published by its users. The original content will receive strong protection. The pirated, infringing, or false content will be reviewed and deleted at the earliest. In order to handle the gigantic amount of information published by its users, the RED employs a dual review model—by machine and by human, striving to remove the rule-violating contents before their publications. Relying on identifiable characteristics and information provided by the brands, the RED constantly updates its

machine interception model. Accounts involving in selling counterfeits will be banned permanently.

**Protecting Original Content:** the RED has carried out special operations to timely protect movies and original contents created by users, with a special focus on dealing with accounts that copy other's contents.

**Working with Right Holders:** when discovering leads in their daily work, the RED employees will ask right holders for help in identifying counterfeits. The RED takes a zero-tolerance attitude towards infringement. As soon as a seller is found to be selling counterfeits, it will be removed immediately.

**Special Operation:** In January, RED initiated the Panda Plan, which implied protecting right holders' legitimate interests as the national treasure. The plan focuses on removing marketing accounts that lead viewers to counterfeits and publishes results regularly.

In the end, the RED representatives answered members' questions on test buy procedures, underlying principles of machines and human reviews etc. They also shared with QBPC members some of the successful cases, where the RED collaborated with the right holders.

Member representatives from Adidas, Anta, Allergan, Apple, Applied Material, Burberry, Budweiser, Dupont, Disney, Dyson, Genius, Hermes, Johnson&Johnson, Lacoste, Luxottica, L Brands, Microsoft, P&G, Philips, SC Johnson, Universal Studio, and Unilever participated in the exchange.

## 海关总署综合业务司领导来访

文 / 张明洁

6月4日，中国外商企业投资协会优质品牌保护委员会（以下简称“品保委”）主席丁宇、海关工作组主席刘清及部分服务团队成员在品保委办公室接待了来访的海关总署综合业务司黄建华处长一行，这是双方今年第一次线下交流。

品保委代表首先介绍了上半年双方在打击侵权假冒、保护知识产权工作方面的交流合作及相关成效，并对下半年的工作提出了以下几点意见和建议：在数据分享方面，权利人希望能与各地海关建立畅通无阻的沟通机制，将在日常工作中获得的数据提供给海关方面，帮助海关对重点地区特别是进出口东南亚的邮包以及货柜等进行重点查验。同时，品保委计划整合会员公司的相关历史数据，帮助海关更有效地进行风险布控；历次海关培训活动受到广大品保委会员的一致欢迎，特别是每年4.26知识产权周前后，会员培训诉求高涨，名额一度比较紧缺，希望未来的培训可以日常化和机制化，即每个月、每个季度都可以有面对面沟通的机

会，同一地方海关也可以和不同行业的会员进行交流；新的形势下，侵权趋势也发生了变化，走私和假货混杂的案件逐渐增加，希望海关多多关注电商平台，留意侵权人的新手段；对于会员一直关心的海关备案系统的升级以及查扣货物仓储费用结算等问题，品保委代表也进行了反馈。

黄处长回应说，这一次的交流非常及时，海关能够更加了解权利人的关注点，这对于海关部署工作计划非常有帮助，很多权利人关心的问题也是海关的工作重点。对于数据交互和信息共享，海关非常欢迎权利人能够提供线索，共同打击知识产权犯罪行为。会员呼声比较高的海关培训，海关会争取更多的交流机会同时探索新模式，缓解名额紧张的问题。关于备案系统，总署针对权利人反映的问题已经进行了升级与优化，会尽快上线。对于查扣货物仓储费用的结算收取，海关总署会参考做的较好的关区，形成统一模式并争取全国推广。





## GACC VISITS QBPC OFFICE

ZHANG Mingjie

On June 4th, the Quality Brands Protection Committee of China Association of Enterprises with Foreign Investment (QBPC) Chair Michael Ding, Customs Committee Chair Alan Liu and other QBPC service team members hosted Director Huang Jianhua and his colleagues from General Business Department of General Administration of Customs (GACC) at the QBPC office. This was the first face-to-face meeting between GACC and QBPC this year.

At the beginning of the meeting, QBPC representatives briefed on the progress in combating infringement, counterfeiting and protecting IPR as a result of collaboration between the two sides. Meanwhile, they made the following comments and suggestions: in terms of data sharing, a smooth communication mechanism could be established between the right holders and the local customs. The data obtained by right holders could be shared with customs to help them with the inspection, especially with a focus on the parcels and containers imported or exported to Southeast Asia. In addition, QBPC planned to integrate the related historical data of its member companies to help the customs control risks more effectively; customs trainings had been very popular among QBPC members. Especially around 4.26 IPR Week each year, the seats of trainings were quickly booked out. It was suggested that regular trainings could be arranged

more frequently (monthly or quarterly) with local customs, which could enable the same local customs to communicate with representatives of different industries.; under the new situation, the trend of infringement changed, and the cases of mixed smuggling and fake goods were gradually increasing. More attention should be paid to e-commerce platforms and the new means by infringers; QBPC side also gave feedback on the upgrading of the customs filing system and the settlement of seized cargo warehousing charges.

In response, Director Huang said that the meeting was very timely, and the customs could better understand the concerns of the right holders, which was very helpful for the deployment of the customs' work. Many problems were the common concerns of right holders and the customs. For data exchange and information sharing, the customs welcomed the right holders to provide clues to jointly crack down on intellectual property crimes; for customs trainings, the customs would strive for more communication opportunities and explore new models; for the settlement and collection of the storage cost of seized goods, GACC would form a unified model with reference to best practice of local customs, which could be promoted nationwide.

## 最高检知识产权检察办公室领导来访

文 / 王月

6月29日,中国外商投资企业协会优质品牌保护委员会(以下简称“品保委”)主席丁宇接待了来访的最高检知识产权检察办公室主任郑新俭,知识产权检察办公室副主任宋建立,检察官助理刘小艳以及知识产权检察办公室干部万莹一行。

郑厅长首先回顾了品保委与最高检在知识产权保护中的良好交流互动。他表示,最高检组建知识产权检察办公室,整合了刑事、民事、行政检察职能,发挥检察机关知识产权刑事追诉职能,也注重检察职能的全面协调发展,不

断加大知识产权民事、行政诉讼的监督力度。期待品保委积极提供更多更好的意见和建议,以有利于检察机关更有针对性地发挥职能作用,继续优化中国知识产权司法保护的环境。

品保委主席丁宇介绍了品保委员会情况、组织架构以及工作机制,并向最高检一直以来给予品保委的关心和支持表示感谢。丁宇还谈到,感谢最高检在全国范围内推广权利人诉讼权利义务告知制度,期待权利人能够在刑事司法程序中积极参与,共同促进知识产权司法流程的优化。

双方还针对目前知识产权保护中的难点和热点问题,例如刑法修正案十一关于“违法所得”适用的条件和影响,商业秘密刑事司法保护相

关问题,进行了交流。本次交流对于双方日后继续保持紧密交流,加强互动,具有重要意义。



## THE REPRESENTATIVES FROM INTELLECTUAL PROPERTY OFFICE OF THE SUPREME PEOPLE'S PROCURATORATE VISIT QBPC OFFICE

WANG Yue

On June 29, Quality Brands Protection Committee of China Association of Enterprises with Foreign Investment (QBPC) Chair Michael Ding hosted Director of Intellectual Property Procuratorial Office of the Supreme People's Procuratorate (SPP) Zheng Xinjian, Deputy Director Song Jianli, Assistant Prosecutor Liu Xiaoyan, and staff member Wan Ying.

Zheng firstly recalled the good communication between the QBPC and SPP in intellectual property rights protection. The Intellectual Property Procuratorial Office of SPP had been established to integrate the criminal, civil and administrative prosecutorial functions. The Office would focus on the comprehensive and coordinated development of the prosecutorial functions and continuously increase the supervision over civil and administrative litigation for intellectual property rights while exercising the criminal prosecution. He stated that the Office always sought for more enlightening suggestions from QBPC in helping the procuratorial authorities fulfill their functional role in a more targeted

manner and continue to optimize the environment for judicial protection of intellectual property rights in China.

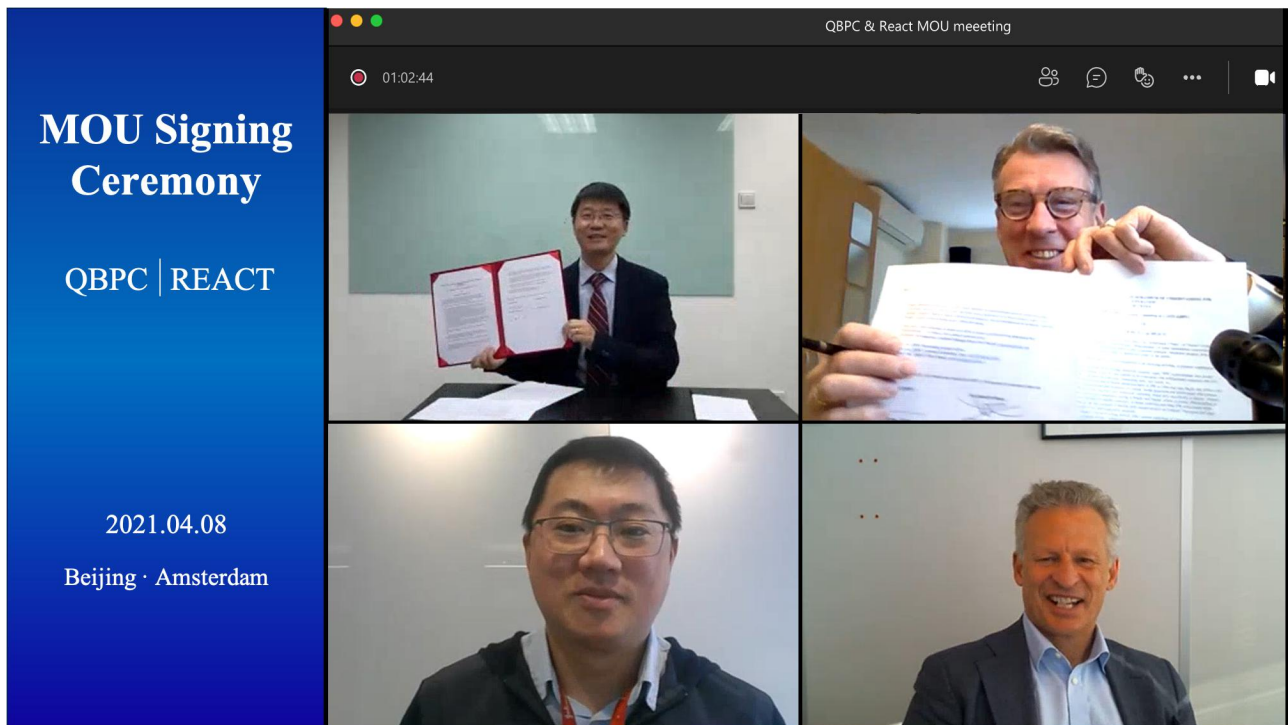
After briefing the guests on QBPC membership, organization and working mechanism, Michael Ding expressed his gratitude for the SPP's continuous support. Michael also thanked SPP for promoting the program of IPR Holders Exercising Rights in the Proceeding against IP Crimes nationwide and looked forward to active participation of right holders in the criminal judicial process, which would promote the improvement of the judicial process of intellectual property rights.

The two sides also exchanged views on the current difficult and hot IPR issues, such as, the application conditions and impact of "illegal income" in Amendment XI to the Criminal Law, the judicial protection of trade secrets and other related issues. The meeting has great significance on future communication and interaction between the two sides.

# 国际合作 INTERNATIONAL COLLABORATION

## 品保委携手 REACT 签署合作备忘录

文 / 张明洁



北京，中国；阿姆斯特丹，荷兰 - 4月8日，中国外商投资企业协会优质品牌保护委员会（下称品保委）与 REACT 签署合作备忘录，以推动两家机构之间的深度合作。

REACT 有三十多年的历史，是一家致力于推动会员企业知识产权保护尤其是海关边境保护的营利性商业协会，总部位于荷兰阿姆斯特丹，现有会员三百余家。而品保委则是中国最具影响力的由权利人组成，由会员驱动，致力于推动完善中国知识产权保护法律体系的不以营利为目的的机构。通过签署合作备忘录，两家机构可以更好地关注知识产权和海关边境保护、协同进行更有效的海关培训、共享相关数据，连接跨境调查以及共同与中国和其它各国的海关进行更加深入的交流。双方还会就共同关注的问题，设定项目及详细的行动计划。

双方举行了简短的线上签署仪式，品保委海关工作组主席刘清和 REACT 董事总经理

Ronald 分别做了开场白。Ronald 认为，相比市场执法和线上执法，海关执法是更直接、更有效的方式，不仅可以提前阻止对权利人的伤害，还可以直接没收侵权商品。他介绍说，React 跟 107 个国家的海关部门建立了沟通联系，帮助它们提升能力、简化流程，大大提升了侵犯知识产权货物的查抄率。刘清表示，品保委和 React 在与各国海关部门建立沟通、加强海关保护、阻止非法货物跨境流动方面拥有相同的目标，双方可以共享资源形成合力。

REACT 主席 Jan de Visser 高度评价了品保委，他称赞品保委已经从二十年前拥有二十多家会员的小型协会成长为一个有责任、有担当并汇聚了众多顶尖品牌的大规模的专业组织。REACT 的很多会员同时也是品保委的会员，他们对双方的合作也乐见其成。这一次的合作将惠及双方所有的会员，为他们提供更多国际化的服务，同时也有利于与中国海关和亚太地区其它国家的海关建立更好的合作。



最后，品保委主席丁宇做了总结发言。他表示，对双方签署合作备忘录感到高兴。加强与全球杰出知识产权组织的合作是品保委的工作方向和重点之一，通过这些合作，品保委不仅可以将中国的最佳实践分享给会员公司总部和各国权利人，同时也可以将国际上一些建设性的意见带回给中国相关执法机关供它们参考。REACT 成立三十余年，在海关保护和电商平台

保护方面具有丰富的经验和专业能力，在全球范围建立了良好的合作关系。通过签署合作备忘录，希望双方无论是在品牌保护实践共享方面，还是数据交换方面能够有更多的互动合作，以便造福于会员。更重要的是在法律法规的制定和实施方面，我们可以支持中国 and 世界各国海关加以改善，从而帮助我们的会员更好的保护知识产权。

## QBPC AND REACT SIGN MOU FOR FUTURE COOPERATION

ZHANG Mingjie

Beijing, China and Amsterdam, Netherlands – On April 8, the Quality Brands Protection Committee (hereinafter referred to as QBPC) and REACT signed a Memorandum of Understanding (MOU) to facilitate cooperation between the two prestigious organizations.

With a history of more than 30 years, REACT is a non-profit business association based in Amsterdam that promotes intellectual property protection, especially border protection for its 300 plus members. QBPC is the most influential member-driven organization of brand owners operating in China and focusing on facilitating improvement of IPR legal framework and enforcement in China. By signing MOU, the two organizations could make joint efforts in protecting intellectual property, conducting more effective customs trainings, sharing relevant data of border protection, connecting cross-border investigations and conducting more in-depth exchanges with customs authorities in China and all over the world. The two sides will also create programs and detailed action plans on issues of common concern.

During the brief online signing ceremony, Alan Liu, QBPC Customs Committee Chair and Ronald, Managing Director of REACT respectively made opening remarks. Ronald believed that compared with market enforcement and online enforcement, customs enforcement was a more direct and effective way of IPR protection, which could not only prevent the damage to the right holders in advance, but also directly confiscate the infringing goods. According to him, REACT had built relationship with 107 customs authorities to help them improve capacity and streamline procedures, resulting in a significant increase in seizures of goods of intellectual property infringements.

Alan expressed that QBPC and REACT shared the same goals of establishing communication with customs authorities in various countries, strengthening customs protection, preventing the flow of illegal goods across borders, and the two sides could share resources to form a synergy.

Jan de Visser, Chairman of REACT, commented that QBPC had grown from a small association with more than 20 members 20 years ago into a large professional organization with responsibility, prestige and a membership of numerous top brands. Since many REACT members were also members of QBPC, they were happy with the cooperation. This collaboration would benefit all members of both organizations by providing them with more international service. It would also provide a good position to reach out to China Customs and other customs authorities in the region.

In the end, QBPC Chair Michael Ding made concluding remarks. He said he was delighted that the two sides signed the MOU. It was one of the focuses of QBPC to strengthen the cooperation with the outstanding intellectual property organizations all over the world. Through these collaborations, QBPC could not only share the best practices in China with the headquarters of its member companies and rights holders in various countries, but also bring back some constructive comments from the international IP community to different Chinese law enforcement agencies for their reference. Established for more than 30 years, REACT had rich experience and expertise in customs protection and e-commerce platform protection. It had established good worldwide network.

By signing MOU, he hoped that there would be more interaction and cooperation between the two organizations in terms of brand protection practices sharing and data exchange to benefit members. More importantly, the two

parties could help members better protect IPR through supporting customs authorities in China and around the world to improve relevant laws/regulations and their enforcement.

## 品保委与 INTA 签署合作备忘录

文 / 刘思洋

上海, 中国; 纽约, 美国 - 北京时间4月13日, 中国外商投资企业协会优质品牌保护委员会(下称品保委)与INTA(国际商标协会)第四次签署合作备忘录, 以继续深化双方自2014年以来开展的战略合作。

根据合作备忘录, 双方将在共同感兴趣的领域进行以下合作: 在商标、争端解决、商标权执法以及其它知识产权相关领域开展大型或者专题合作项目; 就共同关心的问题交流研究成果和信息; 交流经验和教育资料; 在官方网站和新闻通讯上帮助对方宣传(活动、新闻和文章); 定期分享活动并为参与活动的对方会员提供参会费折扣。

此次签署仪式通过线上举行, 品保委副主席满卫理(William Mansfield)和国际商标协会首席执行官Etienne Sanz de Acedo分别做了开场致辞。Etienne表示, 双方自2014年以来, 在中国和国际上打击侵权假冒工作方面已建立了良好且坚固的战略合作关系, 很高兴能够与品保委再次续签合作备忘录。满卫理(William Mansfield)则分别就合作的广度及深度分析了此次续签的意义, 他认为国际商标协会拥有来自世界各地的会员, 具有广泛的覆盖范围, 堪称全球有关商标问题的最大的知识和实践资料库之一; 而品保委处于全球最大的经济体之一(也是大多数供应链的中心), 对品牌保护有着深入的了解和经验。这两个在知识产权保护方面具有广度及深度的组织携手合作, 将在打击侵权假冒工作方面形成1+1大于2的效果。

签字仪式后, 品保委副主席 John Groves 和

国际商标协会主席 Tiki Dare 分别做了发言。John Groves 表示, 他的公司是国际商标协会的老会员, 成为品保委的会员也已有16年了, 很高兴看到两个组织签署合作备忘录。他谈到, 国际商标协会的许多同事发现中国知识产权问题纷繁复杂、令人沮丧, 尤其是近年来花费了大量的时间和金钱来遏制恶意商标抢注的泛滥与提起诉讼。在过去的20年中, 品保委通过与中国刑事、行政和司法执法部门的合作致力于促进中国知识产权行政执法和司法保护, 为中国知识产权保护环境的改善发挥了重要作用, 收获了广泛的认可。此外, 品保委领导层在中国拥有多年且实用的知识产权保护经验, 而国际商标协会则带来了国际化视野和关于商标的专业知识。尽管已经取得了很大进展, 但仍任重道远, 双方联手合作可以使相关工作更加快速且有效。随后, Tiki 介绍了国际商标协会的情况, 并提到了关于打击侵权假冒的三个热点问题, 即海关和边境执法、刑事执法和线上假冒问题。此外, 他还回顾了双方在过去几年的合作中共同取得的成就。

最后, 品保委主席丁宇做总结发言。他表示, 今天是双方合作的又一里程碑, 加强与全球杰出知识产权组织的合作更是品保委的工作方向和重点之一, 通过这些合作, 品保委不仅可以将中国的最佳实践经验分享给会员公司总部和各国权利人, 同时也可以将国际上一些建设性的意见带回给中国相关执法机关作为参考。展望2021, 期待与国际商标协会继续携手并肩, 互惠互利, 分享经验, 共同助力知识产权保护的加强和营商环境的优化, 从而为会员公司的知识产权保护工作赋能。



## QBPC AND INTA SIGN MOU FOR FUTURE COOPERATION

Lilian LIU

Shanghai, China and New York, USA – On April 13 (Beijing Time), the Quality Brands Protection Committee (QBPC) and the International Trademark Association (INTA) signed the fourth Memorandum of Understanding (MOU) to deepen the strategic cooperation between the two parties since 2014.

According to the MOU, both parties may engage in the following activities in areas of mutual interest: development of programs and specific collaborative projects related to trademarks, dispute settlement, trademark rights enforcement, and in other IP related areas; exchange of research and information on issues of mutual interest; exchange of experiences and educational material; promote each other (events, news and articles) on the official websites and newsletters; share events regularly and give discounts to the members of each other for the events participation.

During the online signing ceremony, QBPC Vice Chair William Mansfield and INTA CEO Etienne Sanz de Acedo made opening remarks respectively. Etienne stated that INTA had very good and strong partnership with QBPC over the years from 2014 in brand protection and fighting counterfeiting both in China & outside China. And it was pleased to renew the MOU with QBPC. William pointed out the significance of the cooperation in terms of breadth and depth. INTA had a wide coverage with members from around the world and it represented one of the largest global repositories of knowledge and practice about trademarks on earth. QBPC had a deep depth of knowledge and experience about brand protection centered on one of the largest economies (and

the heart of most supply chains) on earth. The cooperation took a formal step to link these two intellectual property powerhouses as each brought with it absolutely essential tools in the struggle against modern counterfeiting. QBPC fully expected this collaboration that joined breadth and depth for the good of all would result in more than the sum of its parts.

After the signing ceremony, QBPC Vice Chair John Groves and INTA President Tiki Dare made endorsement remarks respectively. John said that his company had been a member of QBPC for sixteen years, and been a member of INTA for even longer, and he really valued the membership of both organizations. He mentioned that many of colleagues in INTA found dealing with China IP issues somewhat complicated and frustrating, notably in recent years the amount of time and money spent opposing and then litigating against a proliferation of bad faith trademark applications. For the last 20 years QBPC had been facilitating and promoting the continuous improvements of administrative and judicial protection for intellectual property in China through cooperative engagement with Chinese criminal, administrative and judicial enforcement authorities, and played an important part in achieving the improved IP environment in China today. In the process, QBPC had gained a lot of respect. Moreover, the leadership of QBPC had many years of experience of practical IP protection in China, while INTA brought global perspective and trademark expertise. Although a lot of progress had been made, there still remained much to do. Together the two organizations could do it faster and more effectively.



Tiki made a comprehensive introduction about INTA and talked about three priority issues on counterfeiting, namely customs and border measures, criminal enforcement and online counterfeiting. Besides, he reviewed the joint achievements made by the two parties in the past years.

In the end, QBPC Chair Michael Ding made closing remarks. He said it was another milestone for both parties to renew the MOU, which matched one of the focuses of QBPC to strengthen the cooperation with the outstanding

intellectual property associations all over the world. Through this kind of win-win collaboration, QBPC could not only share the best practices and insights in China with the headquarters of its members and right holders in various countries, but also bring back some constructive comments from the international IP community to relevant Chinese government authorities for their reference. QBPC looked forward to continuing cooperation with INTA for mutual benefit and best practice sharing to empower members through improving IP protection and business environment.

## 美国国土安全部移民海关执法局代表来访

文 / 王月

5月20日，中国外商投资企业协会优质品牌保护委员会（以下简称“品保委”）主席丁宇在品保委办公室会见了美国国土安全部移民

海关执法局区域参赞莫昊霆、区域副参赞施琳、助理参赞劉繼欣以及两位本地调查员程诚和韩焱。



丁宇首先介绍了品保委背景、组织架构、工作方向和合作伙伴，以及2021年下半年计划组织的会议或活动。莫昊霆参赞介绍了其关注的知识产权保护问题，包括中小型企业知识产权保护。双方还就服务商标保护、知识产权刑事保护以及商业秘密等话题交换了意见。莫参赞表示，期待未来同品保委及会员分享相关实践经验并加强合作。

## THE DHS – ICE/HSI REPRESENTATIVES VISIT QBPC OFFICE

WANG Yue

On May 20, Quality Brands Protection Committee of China Association of Enterprises with Foreign Investment (QBPC) Chair Michael Ding hosted Regional Attaché Mr. Austin L. Moore from U.S. Department of Homeland Security - Immigration and Customs Enforcement / Homeland Security Investigation. The US delegation also included Deputy Regional Attaché Linda J. Slattery, Assistant Attaché June Liu, Foreign Service National Investigators Cheng Cheng and Han Yan.

Michael introduced QBPC background, structure, priorities and partners. He also briefed the guests on forthcoming QBPC events in the plan of second half year. Austin illustrated the intellectual property issues of concern including IPR protection of small and medium-sized enterprises. In addition, the two sides exchanged views on service trademarks protection, criminal protection of intellectual property rights and trade secrets. Austin looked forward to sharing best practices and strengthening cooperation with QBPC and QBPC members in the future.

# 品保委与 PSI 签署合作备忘录

文 / 刘思洋

北京, 中国; 弗吉尼亚州维也纳 (镇), 美国 - 北京时间 6 月 8 日, 中国外商投资企业协会优质品牌保护委员会 (品保委) 与美国 PSI 协会签署合作备忘录, 以推动两家机构之间的深度合作。

PSI 成立于 2002 年, 是一家致力于保护公众健康, 共享假冒药品信息, 通过有关部门启动执法行动的非营利性会员组织, 其总部位于美国弗吉尼亚州维也纳 (镇), 现有 39 家来自各国的制药商。品保委成立于 2000 年, 是中国最具影响力的由权利人组成, 会员驱动, 致力于完善中国知识产权保护法律体系的不以营利为目的机构, 现由来自全球 200 余家会员公司组成。

在线上签约仪式上, 品保委副主席计莹表示, 这些年来, 品保委一直与执法机关、权利人、网络市场、社交媒体和国际机构密切合作, 致力于维护中国良好的知识产权保护环境。她还介绍说, 品保委拥有 17 个行业小组, 其中制药及医疗器材行业小组由超过 20 家业内知名企业组成, 她作为小组协调员一直与公安、检察和海关部门紧密合作。同时, 该小组还针对制药及医疗器材行业的具体问题开展系列活动, 例如: 就共同关注话题定期开展讨论; 访问线上

市场和社交媒体平台, 收集并讨论与行业相关的热点话题; 与执法部门进行培训和趋势分享等。这一系列举措, 旨在打击假冒和非法交易, 保护患者, 并确保患者获得所需的正确药物。

此外, 计莹还提到, 品保委制药及医疗器材行业小组与 PSI 并不陌生。几年前, 双方曾开展过一些联合项目。品保委期待与具有强大医药背景的 PSI 更加紧密地合作, 加强彼此交流和信息共享, 扩大能力建设培训的覆盖面, 讨论共同关注的问题。通过此次签署合作备忘录, 双方可以加强合作, 进一步塑造保护患者和权利人的健康环境, 实现双赢。

随后, 品保委主席丁宇从四个维度向大家介绍了品保委的工作方向。他表示, 对双方签署合作备忘录感到高兴, 因为加强与全球杰出组织的合作是品保委工作的重点之一。通过合作, 品保委品保委希望与成员公司总部和国际知识产权界分享中国的最佳实践, 同时将建设性的意见带回中国以进一步改进。通过此次签署合作备忘录, 期待与 PSI 开展更多实质性的合作, 共同建设更好的知识产权保护商业和法律环境, 尤其是在制药行业领域, 从而造福会员。

签约仪式的最后, PSI 首席执行官 Todd Ratcliffe 先生和亚太地区区域总监 Ramesh Raj Kishore 表示对此次签约合作感到欢欣鼓舞, 并期待双方未来的合作。随着双方代表举起签字的备忘录, 此次签约仪式圆满结束。



## QBPC AND PSI SIGN MOU FOR FUTURE COOPERATION

Lilian LIU

Beijing, China and Vienna VA, USA – On June 8 (Beijing Time), the Quality Brands Protection Committee of CAEFI (QBPC) and the Pharmaceutical Security Institute (PSI) signed a Memorandum of Understanding (MOU) to facilitate cooperation between the two prestigious organizations.

PSI, established in 2002, is a not-for-profit, membership organization dedicated to protecting the public health, sharing information on the counterfeiting of pharmaceuticals and initiating enforcement actions through the appropriate authorities. Its membership includes thirty-nine pharmaceutical manufacturers from many nations. Founded in 2000, QBPC is the most influential member-driven organization of right holders operating in China, focusing on improving IP legal framework and enforcement in China. Currently it is comprised of 200+ member companies worldwide.

During the virtual signing ceremony, QBPC Vice Chair Ji Ying made opening remarks that QBPC had been working closely with the enforcement authorities, right holders, online marketplaces/social media, and international industry bodies with an aim to safeguard the IPR protection environment in China. Moreover, QBPC had 17 Industry Working Groups (IWGs) including the Pharmaceutical & Medical Devices IWG, which was composed of more than 20 famous and influential companies in the industry. As the coordinator of this IWG, she had been working closely with the police, procurators, and Customs. At the same time, the IWG carried out a series of activities focusing on specific issues, such as conducting regular discussions on common topics; organizing group visits to online marketplaces and social media to collect and discuss hot issues; carrying out capacity training and tendency sharing with key enforcement authorities, etc. These initiatives were aimed at combating counterfeits and illicit trading, protecting the

patients, and ensuring that patients had access to the right medicine they needed.

In addition, Ji Ying mentioned that QBPC Pharmaceutical and Medical Devices IWG and PSI were not strangers and had launched some joint projects a few years ago. QBPC looked forward to this partnership with PSI, which had a strong pharmaceutical background. The collaboration between both organizations would enhance communication and sharing of information between each other, expand the coverage of capacity building training, discuss issues of common concern, and further shape the healthy environment to protect both patients and right holders through close cooperation in order to achieve a win-win situation.

Subsequently, QBPC Chair Michael Ding shared priorities of QBPC from four dimensions. He was excited to sign the MOU with PSI as such global collaboration was the said QBPC focus. Through such collaboration, QBPC expected to share the best practices in China with member company headquarters and international IP community, meanwhile, bring constructive comments back to China for further improvement. By signing the MOU, he was looking forward to more substantive cooperation with PSI to jointly promote a better IP protection business and legal environment, especially in the pharmaceutical industry, so as to benefit the members.

At the closure of the event, both CEO of PSI Mr. Todd Ratcliffe and Asia Pacific Regional Director Ramesh Raj Kishore respectively expressed their approval of the ongoing relationship and excitedly looked forward to increased cooperation between the two parties. As the representatives of both parties displayed the signed MOU documents, the signing ceremony was successfully concluded.



## 商业秘密案件判赔思考

文 / 杨楠

当前，创新经济成为发展主旋律，技术竞争日趋白热化。如何合理、高效地保护商业秘密；被侵害后，如何妥善维权，是相关权利人普遍关注的焦点问题。2月26日，最高人民法院对嘉兴中华化工公司等与王龙集团公司等侵害香兰素制备生产技术秘密纠纷上诉案进行宣判，判决被诉侵权人赔偿技术秘密权利人1.59亿元，成为人民法院史上判决赔偿额最高的侵害商业秘密案件该判决，立刻引发了广泛关注。基于此，4月13日，中国外商投资企业协会优质品牌保护委员会（下称品保委）专利及创新工作组邀请“香兰素”一案主办律师、北京允天律师事务所合伙人张秋林参加工作组例行午餐会，与会员分享处理该案的经验和思考。本次午餐会由专利及创新工作组副主席夏心骏主持，工作组主席邓军，副主席刘永刚、王大治，以及60余位会员代表出席了会议。

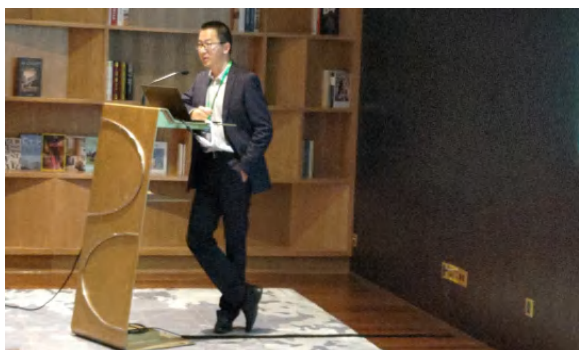
张律师详细讲述了“香兰素”案的案情，介绍了权利人收集和组织证据以及庭审的经过，并剖析了本案的亮点。反不正当竞争法修正以后，有效降低了权利人举证难度，这在本案中得到充分体现。反法第32条规定，权利人只需提供商业秘密构成要件和侵权行为认定的初步证据，举证责任即转移至侵权人。

本案中，依据侵权人的设备买卖合同和环境影响评价报告所列出的设备名称，权利人推定

侵权人使用了9张非法获得设备主图；而侵权人拒不提供任何自主研发证据，也没有解释设备图中细微不同之处的来由，没有完成举证责任。因此，二审中，法院直接认可了权利人的推定。

经济学分析报告证明价格侵蚀，助力权利人在本案中获得高额判赔。价格侵蚀是指因侵权者在市场中与权利人低价竞争，不仅蚕食权利人市场份额，还让权利人被迫降低价格迎战的现象。本案中，通过剥离与侵权无关的价格因素，并选取契合度最高的回归模型，经济学分析报告最终显示，仅价格侵蚀就导致权利人损失7.9亿元。在权利人补充了销售细账、转账发票等客观证据以证实报告基础数据真实性之后，二审法院在计算判赔和诉讼费分担时，参考了报告的结论，选取了营业利润和价格侵蚀之间的销售利润作为计算方法。

本案另一特点是明确了以侵权为业公司的法定代表人的连带责任。被告公司法定代表人直接参与了侵权行为，利诱权利人公司员工，亲自转移涉案技术秘密。通过论证被告公司成立之后的活动，如生产线的建设、产品的投放时间等，法院认定被告公司是专门为实施涉案技术秘密，生产香兰素而成立的公司，是其法定代表人实施侵权的工具。被诉侵权行为既体现了侵权公司的意志，也体现了法定代表人的个人意志，构成共同侵权。



夏心骏



张秋林

交流的最后，张秋林律师回答了会员代表的问题。对于权利人而言，商业秘密案件的关键在于如何提供证明力足够的证据以满足反法 32 条对于初步证据的要求。特别是在涉及前员工，且该员工尚未使用所窃取的秘密

的案件中，如何证明侵权行为和给权利人造成的损失依然是难点。此外，大家还就证据的收集方法及合法性、举证责任转移、民刑程序衔接、惩罚性赔偿等问题展开了热烈讨论。

## DAMAGES IN TRADE SECRET MISAPPROPRIATION CASE

Andrei YANG

Innovation economy has become the locomotive for economic growth, which intensifies the competition for technological advantages. Right holders are facing hot issues of how to protect trade secrets in a reasonable and efficient manner, and how to recover after one's secret information has been misappropriated. On February 26, the Supreme People's Court ruled on the appeal of the dispute regarding the technological secret of producing vanillin between Jiaxing Zhonghua Chemical etc. and Wanglong Corporation etc. The Court awarded the plaintiff, owner of the secret, 159 million CNY, which is the highest amount of damage ever awarded in a trade secret misappropriation case in China. The case drew wide attention, and on April 13 the Patent and Innovation Committee (PIC) of QBPC invited Fairsky Law Office partner Zhang Qiulin, who represented the right holder on the case, to share with members his thoughts and insights at a PIC luncheon. Committee Vice Chair Simon Xia moderated the luncheon, Chair Alvin Deng, Vice Chairs Frank Liu and Wang Dazhi, and more than 60 member representatives participated.

Qiulin explained the facts of the vanillin case in details, and introduced how the right holder collected and organized the evidence, the proceeding of the trial, and the highlights of the case. The revision of the Anti-Unfair Competition Law significantly eases the right holder's burden of proof, which is showcased in this case.

Article 32 of the law stipulates that the burden of proof shifts to the infringer after the right holder produces prima facie evidence to show that the information is trade secret and that it has been misappropriated. In this case, based on the equipment names listed on the defendants' purchase agreements and environmental impact report, the right holder inferred that the defendant used 9 equipment drawings that were illegally acquired. The defendant, on the other hand, provided no evidence to support the claim that they came up with these drawings on their own. They offered no evidence to explain the minor alterations in the drawings either. The defendant thus did not satisfy its burden of proof and during the appeal, the court accepted the plaintiff's inference.



Using economic analysis report to show price erosion helped the right holder receive its high award. Price erosion is the phenomenon where the infringer competes with the right holder, not only taking away the market share but also forcing the right holder to lower its price to stay competitive. In this case, by separating factors that are unrelated to the infringement and choosing the most fit regression model, the economic analysis report showed that price erosion alone cost the right holder 790 million CNY. After the right holder supplemented sales accounts, receipts, and other objective evidence, the court chose gross profit as the method to calculate damages. In this way of calculation, the damage was higher than the operating profit but lower than the damages caused by price erosion.

The case also establishes the principle that the principal agent is jointly liable if his company has been formed to infringe upon other's rights. The principal agent of the defendant directly got involved in the infringement operation, bribing the plaintiff's employees and transferring the secret information himself. After

analyzing the defendant's activities after formation, such as production line construction and product delivery, the court determined that the defendant was formed specifically for the purpose of using the technology secret stolen from the plaintiff to produce vanillin. The company was merely a tool for its principal agent to carry out the infringement. The infringing activity at the core of this case represented both the will of the company and the will of its agent. They must share the liabilities.

At the end of the meeting, Zhang Qiulin answered members' questions. For right holders, the key issue in trade secret litigations was to collect and present the prima facie evidence required by Article 32. Especially in cases involving an former employee that had not actually used the stolen secret yet, it remained difficult to show misappropriation and damages. Meanwhile the participants also discussed issues including evidence collection methods and their legitimacy, shift of burden of proof, connecting the civil and criminal proceedings, and punitive damages.

## 跨国企业汽车行业创新研讨交流会

文 / 王月



丁宇 Michael Ding



林钰桓 Carol Lin

4月15日，品保委人工智能与数字行业小组和汽车行业小组在上海微软人工智能与物联网实验室联合举办跨国企业汽车行业创新研讨交流会。会议聚焦“人工智能、数字转型、网络犯罪”主题，来自人工智能与数字行业小组、汽车行业小组以及部分其他行业小组的近70位会员代表通过线上或线下的方式参会。

本次会议内容主要包括两个环节。首先，线下参会人员参观人工智能和物联网实验室，了解并且体验人工智能在汽车行业的广泛应用。接下来，受邀行业专家、大学教授同参会者共同就人工智能前沿技术与汽车行业数字转型的技术与商业思考、汽车行业创新与数字犯罪的法律思考及应对展开了深入的交流和探讨。

会员服务工作组副主席林钰桓主持会议。品保委人工智能与数字行业小组协调员陶洋在会议开始时介绍到，本次会议将从技术、商业和法律多维度同参会会员分享人工智能与数字相关信息。品保委主席丁宇作主旨发言，感谢两个行业小组组织本次会议，为大家提供了难得的前沿技术与应用学习机会，助力参会会员探索如何在业务运营和日常工作中利用人工智能技术。



## &gt;&gt; 人工智能前沿技术与汽车行业数字转型的技术与商业思考

关于人工智能前沿技术与汽车行业数字转型技术，微软（亚洲）互联网工程院、首席研发总监 Michelle Lei 首先为大家介绍汽车行业 AI 应用及方案。Michelle 指出随着数据规模和算力的持续发展，人工智能模型规模近几年呈现了爆发性增长的趋势。同时分享了微软在 AI 领域的基础研究，产品开发和行业方案的突破性创新，与汽车和制造行业合作打造数据+AI 核心能力平台和方案，如何帮助企业深度挖掘数据价值，提升客户体验，优化产品研发和风险控制效率。微软产品与市场总监 Jordan Dong 则以“微软如何保护您的数据安全”为题，介绍微软对于数

据和信息的保护策略，同时讲述了 Microsoft 365 如何为法律专业人士提供合规性解决方案和技术支持，帮助大家加强信息保护并治理与降低内部数据泄露和损失的风险；接下来，微软中国汽车行业方案总监 Peng Zhang 分享其对于汽车行业的实践和展望。技术驱动下行业数字化转型，包含现代化工作模式、集成的商业应用、应用和基础架构、数据及人工智能，打通了数字化转型中的数据和智能。他还介绍了汽车行业数字化转型的业务驱动力、关注领域和业务价值以及汽车行业关键场景与方案的应用。



Michelle LEI



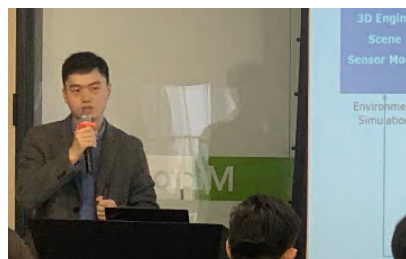
Jordan DONG



Peng ZHANG



熊小帅 XIONG Xiaoshuai



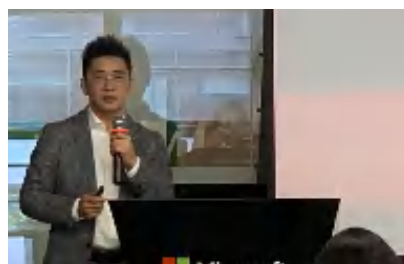
肖云伟 XIAO Yunwei



郝峻晟 HAO Junsheng

就人工智能同汽车行业结合的商业性问题，Com&Lan 昆仑联通科技发展股份有限公司安全咨询事业部总经理熊小帅分析了汽车行业数字化转型中的安全合规挑战与应对实践；Capgemini 凯捷微软高级架构师肖云伟详细介绍了自动驾驶与微软 IOT；Yungoal 云角总经

理郝峻晟阐述了汽车行业的大数据分析；上海联蔚信息科技有限公司公有云安全业务总监 Marshal Jiang 以“国际汽车巨头的数字化转型历程及安全挑战”为主题同参会会员分享了他的看法。



Marshal JIANG



周杜骏 Eric ZHOU



杨宁 YANG Ning

## >> 汽车行业创新与数字犯罪的法律思考及应对

北京大学法律人工智能实验室 / 研究中心副主任、北京大学刑事法治研究中心副主任江溯教授在线上为大家分析并解读了关于自动驾驶的法律问题。当前汽车行业的三大趋势在于电动化、共享化、智能化。无人驾驶作为人工智能的最大应用场景之一，相比传统驾驶来说具有安全、高效、经济等优势。但无人驾驶的发展需要多个条件，包括技术创新、基础设施、法律政策环境、资本投入、消费者接受程度等。江教授重点介绍了我国关于无人驾驶的最新政策和法律指引。此外还分析了无人驾驶可能面临的法律挑战，主要有道路交通安全、民事责任、隐私与数据保护和网络安全等。

接下来，北京师范大学网络法治国际中心执行主任、中国互联网协会研究中心副主任吴

沈括就汽车行业中的数据合规风控建设同大家分享他的思考。吴教授主要讲解了汽车行业与数据治理态势、中国有关数据安全与数据隐私的政策战略要求和法律法规体系等方面的内容。最后，吴教授就企业内部个人信息保护体系的建设提了四点建议：保护思维的转变、风控策略的设定、核心权益的维护和关键风险的管控。

微软数字安全资深分析师周杜骏的演讲主题为汽车行业创新的网络安全应对 - 物联网 (IoT) 网络攻击的防范。随着物联网在各行各业的广泛渗透，物联网时代的安全和隐私问题也越来越引人关注。针对物联网设备的潜在安全挑战，以微软 Azure IoT 安全功能为例，端到端的物联网安全需要专业的技术能力时刻保驾护航。



陶洋 TAO Yang

会议尾声，微软中国政府事务华东总监杨宁向所有发言人及参会会员表示感谢。陶洋代表品保委人工智能与数字行业小组和汽车行业小组作总结发言，并期待将来能与更多来自不同行业的品保委员会继续交流探讨人工智能应用与创新。

## AUTOMOTIVE INNOVATION FOR MULTINATIONALS SEMINAR

WANG Yue

On April 15, the Artificial Intelligence & Digital IWG and the Automotive IWG jointly organized a seminar on innovation in the automotive industry for multinational companies at the Microsoft AI and IoT Lab in Shanghai. The seminar focused on the theme of "**Artificial Intelligence, Digital Transformation and Cybercrime**". Nearly 70 members from the AI & Digital IWG, Automotive IWG and some members of other IWGs participated in the meeting online or offline.

The seminar consisted of two sessions. Firstly, offline attendees visited the AI and IoT labs to understand and experience the wide range of applications of AI in the automotive industry. Next, the invited industry experts, university professors and attendees had an in-depth exchange on the technical and commercial thoughts on

cutting-edge AI technologies and digital transformation in the automotive industry, as well as legal thoughts and responses on innovation and digital crime in the automotive industry.

QBPC Membership Services Committee Vice Chair Carol Lin hosted the meeting. AI & Digital IWG coordinator Tao Yang opened the seminar by introduction that the seminar would focus on AI and digital from technical, business and legal perspectives. QBPC Chair Michael Ding gave a keynote speech to thank the two IWGs for organizing this meeting, which provided a unique opportunity to learn about cutting-edge technologies and applications, and helped members explore how to use AI technology in their business operations and daily work.





### Cutting-edge Technology of AI, Technology of Automotive Industry Transformation, and Relevant Business Thinking

Michelle Lei, Business AI Engineering Director of Microsoft Software Technology Center (Asia), introduced the AI applications and solutions for the automotive industry. Michelle pointed out that the scale of AI models had shown an explosive growth with the continuous development of data scale and computing power in recent years. Michelle also shared Microsoft's groundbreaking innovations in AI research, product development and industry solutions. And she introduced how to work with the automotive and manufacturing industries to build data+AI core capabilities platforms and solutions which would help companies to deeply explore the value of data, improve customer experience and optimize the efficiency of product development and risk control. Jordan Dong, Director of Product and Marketing at Microsoft, spoke about Microsoft's data and information protection strategy and how Microsoft 365 provided compliance solutions and technical support for legal professionals to strengthen information security. Next, Peng Zhang, Director of Automotive Industry Solutions at Microsoft China, shared his practice and outlook for the automotive industry. The technology-driven digital transformation of the industry encompassed modern working models,

business applications, applications and infrastructure, and data and artificial intelligence. The transformation bridged the gap between data and intelligence in the process. He also talked about the business drivers, areas of focus and business value of digital transformation in the automotive industry as well as the application of key scenarios and solutions in the automotive industry.

On the commercial aspect of combining artificial intelligence with the automotive industry, Xiong Xiaoshuai, General Manager of the Security Consulting Division of Com&Lan Kunlun Technology Development Company Limited, analyzed the security compliance challenges and practices in the digital transformation of the automotive industry. Xiao Yunwei, Capgemini Senior Cloud Solution Architect, MCT, gave a detailed introduction on autonomous driving and Microsoft IoT. Yungoal General Manager Hao Junsheng elaborated on big data analytics in the automotive industry; Marshal Jiang, Director of Public Cloud Security Business at Shanghai Lianwei PanCloud Technology Group shared his views on the topic of "*Digital Transformation & Security Challenges of an International Auto Company*".





Professor Jiang Su, the Deputy Director of the Legal Artificial Intelligence Laboratory/Research Center and the Criminal Rule of Law Research Center of Peking University, analyzed and explained the legal issues regarding autonomous driving. The three major trends in the current automotive industry are electrification, sharing and intelligence. As one of the biggest application scenarios of artificial intelligence, self-driving has advantages such as safety, efficiency and economy compared to traditional driving. However, the development of self-driving vehicles required several conditions, including technological innovation, infrastructure, legal and policy environment, capital investment and consumer acceptance. Professor Jiang highlighted the latest policies and legal guidelines on self-driving in China. He also analyzed the legal challenges which were road traffic safety, civil liability, privacy and data protection, and cyber security.

Next, Wu Shenkuo, Executive Director of the International Centre for Network Rule of Law at Beijing Normal University and Deputy Director of the Research Centre of the Internet Society of China, shared his thoughts on data compliance and risk control construction in the automotive industry. Professor Wu mainly explained the automotive industry and the data governance situation,

China's policy and strategic requirements on data security and data privacy, and the legal and regulatory system. Finally, Professor Wu provided four suggestions on the construction of an internal personal information protection system, including the change of protection mindset, the setting of risk control strategies, the maintenance of core rights and interests, and the control of key risks.

Microsoft Digital Security Senior Analyst Eric Zhou's presentation was about cyber security response to innovation in the automotive industry - preventing cyberattacks in IoT. With the widespread penetration of IoT in various industries, security and privacy issues were drawing increasing concerns. To address the potential security challenges of IoT devices, end-to-end IoT security required professional technical capabilities for full protection, as exemplified by Microsoft Azure IoT security features.

At the end of the session, Director of Microsoft Government Affairs East China Yang Ning thanked all the speakers and attendees. In his concluding remarks on behalf of the QBPC AI & Digital IWG and the Automotive IWG, Yang Tao looked forward to continuing exchanges and discussion with more QBPC members from different IWGs on AI applications and innovations in the future.



## 品保委代表在浦江知识产权国际论坛上发言

文 / 杨楠



4月16日、17日，以“知识产权助推数字经济高质量发展”为主题的“2021上海浦江知识产权国际论坛暨长三角珠三角知识产权合作联动大会”在上海张江科学城成功举办。来自世界各国的专家学者、知识产权专业人士、律师、企业代表，以及20万线上观众参与了论坛。国际保护知识产权协会中国分会会长、中国国家知识产权局原局长田力普等在开幕式上致辞。中国外商投资企业协会优质品牌保护委员会（下称品保委）政府事务和公共政策工作组主席陶洋应邀出席论坛并发言，就数字转型给执法工作带来的挑战和应对策略作了分享。

数字化从本质上改变了信息传播的方式，掀起新一轮技术革新，但也给了犯罪分子可乘之机。有史以来，人类筑墙保护自己。但在数字世界，边境的概念被淡化，无法充分保护我们的隐私和财产安全。以数字技术为武器，全球化、有组织的犯罪冲击实体世界。透过暗网，犯罪分子还将犯罪技术手段贩卖给他人，进一步扩大影响。以Citadel恶意软件为例，它在不到18个月的时间里，从全球个人和企业攫取了超过5亿美元的资金，使90余个国家的500多万人受到侵害。

应对这样严峻的挑战，需要三个方面的努力。首先，政府与企业间的合作至关重要。打击网络犯罪需要协同合作，需要利用公共及私营部门的人才和能力。我们需要与执法部门、非营利组织、安全供应商、学术界和业界合作，扩大打击规模，增强打击效果。第二，是跨境执法合作。网络犯罪没有国际边界，政府打击网络犯罪时，单打独斗可能面临管辖权的难题。我们需要不断寻找新的方法，加强全球打击行动的协作性，建设更加牢固的战略关系，在可

能的情况下，我们通过保护客户的努力，为政府打击犯罪提供有益补充。而加深跨境合作，就需要我们在线索共享、证据互通、文书便利等方面下更大功夫，这也是品保委积极推动的方向。第三，拥抱数字技术，应对其带来的挑战是我们共同的责任。数字技术应用不局限在互联网行业，传统行业一样会受新技术支撑下的侵权犯罪影响。加深行业间的协作，分享治理最佳实践，尤为必要。也正是基于这样的考量，品保委人工智能和数字化行业小组今年已经举行两场交流会，和来自医药、汽车行业的会员，探讨数字转型的意义和安全保护的策略。

数字技术以惊人的速度改善着人们的生活，也就更需要法律法规、制度建设给予有力支持。品保委作为连接各方的平台，在推动国际间合作、优化数字经济结构、利用数字技术推动保护制度上，大有可为。全国人大已将数个数字经济相关规制列入立法项目之中，品保委也将持续关注立法动态，发挥桥梁作用，对相关的条款提出建设性意见。

# QBPC REPRESENTATIVE SPEAKS ON SHANGHAI PUJIANG INTELLECTUAL PROPERTY INTERNATIONAL CLOUD FORUM

Andrei YANG

On April 16 and 17, Shanghai Pujiang Intellectual Property International Cloud Forum and Yangtze River Delta and Pearl River Delta Intellectual Property Cooperation Conference were successfully held in Zhangjiang Hi-Tech Park. The theme of the event was IP as an Impetus to High-quality Development of Digital Economy. Academics, IP experts, attorneys, corporate representatives, and more than 200,000 online participants joined the conference. International Association for the Protection of Intellectual Property China Division President, former director-general of China National Intellectual Property Administration Tian Lipu delivered the welcome remarks. Quality Brands Protection Committee of China Association of Enterprises with Foreign Investment (QBPC) Government Affairs and Public Policy Committee Chair Tao Yang was invited to speak at the conference, sharing with the audience the challenges brought by digital transformation and the responding strategies.

Digitalization has completely changed how information spreads, bringing about another round of technology revolution as well as loopholes for criminals. Since the dawn of history, people have built walls to protect themselves. In a digital world, no border could stop criminals from infringing our privacy and taking our property. Using digital tech as a weapon, globalized and organized criminal networks are invading the real world with fierce intensity. Through dark net, criminals are also selling their tool kits to less sophisticated, making the situation even worse. For example, Citadel, a malicious software, stole more than 500 million USD from some 5 million people in 90 countries, all in less than 18 months.

To face such severe challenges, we have to make efforts in the following three areas. First, collaboration between the public and private sectors is critical. Fighting cybercrimes requires us to tap into the resources and talents from both the governments and private companies.

We must work with enforcement agencies, non-profit organizations, security services providers, academics, and corporations, so that we can fight cybercrimes more efficiently and more broadly. Second, we need cross-jurisdiction collaboration. Cybercrimes have no border. If a government is fighting alone, it will face jurisdictional problems. We must keep finding new ways to better coordinate global actions against cybercrimes and build strategic partnership. When possible, through protecting our clients, we may also supplement governments' anti-crime actions. To deepen cross-border collaborations requires us to work on information sharing, evidence and documents certification etc.

This is exactly the direction QBPC is taking. Third, it is our shared responsibility to embrace digital technology and face the challenges it has brought. Application of digital technology is no longer limited to internet industry; traditional industries face infringements powered by new technologies just as well. Deepening collaboration among industries and sharing best practices have become very necessary. It is based on such consideration that QBPC AI&Digital IWG has organized two exchanges this year, discussing the significance of digital transformation and security strategies, with members from pharmaceutical and auto industries.

Digital technology is improving people's lives at an astonishing speed, which requires efficient support from laws and regulations in a systematic way. QBPC, as a platform that connects all stakeholders, has much to achieve in promoting international collaboration, optimizing digital economy and leveraging digital technology to improve the protection system. The National People's Congress has already listed several digital economy-related items in its legislative agenda. QBPC will pay close attention to these upcoming changes, play the role of bridge and submit constructive suggestions to relevant legislations.



## 品保委与大连等四地海关联合举办知识产权执法技能线上培训交流会

文 / 张明洁

4月20日，在世界知识产权日即将来临之际，中国外商投资协会优质品牌保护委员会（下称“品保委”）与大连、沈阳、长春和哈尔滨海关联合举办了线上培训交流会。大连海关综合业务处处长王伟致开幕词，他表示本次线上培训是加强际交流合作的重要形式，也是促进关企交流的重要方式。保护知识产权就是保护创新的理念，深入开展海关知识产权保护工作，持续加大打击进出口侵权行为的力度，支持企业创新发展，认真落实习近平总书记发表的关于保护知识产权重要讲话。

亚马逊（中国）投资有限公司、美国高通公司、高露洁-棕榄公司、棒球主盟资产公司、安踏体育用品集团有限公司、LVMH Asia Pacific Ltd.、让·卡斯兰简单股份有限公司、苹果公司、爱普生（中国）有限公司、思科公司、3M（中国）有限公司和美的集团的代表参加了此次知识产权海关保护培训。上述会员公司代表就查扣假

货技巧与品牌产品涉及类别等内容分别进行了10分钟的展示。

品保委海关工作组副主席杨璐做总结发言，他表示此次交流非常及时和必要，通过培训拉近了海关与企业的距离，知识产权的保护离不开多方的共同努力，并对参与培训的海关官员和品保委员会公司代表表示感谢。

来自大连、沈阳、长春、哈尔滨海关的知识产权保护相关岗位关员和品保委员会代表700多人实时在线参与了培训。此次活动既是2021年品保委与海关举办的首场线上培训，也是东北三省四关首次联合举办知识产权海关保护培训，取得了良好的效果。品保委将在新形势下继续与各地海关积极开展形式多样、内容丰富的交流活动，共同推动知识产权海关保护工作迈上新台阶。



王伟 WANG Wei

# QBPC HOLDS THE INTELLECTUAL PROPERTY ENFORCEMENT SKILLS ONLINE TRAINING AND EXCHANGE MEETING WITH DALIAN AND THREE OTHER CUSTOMS AUTHORITIES

ZHANG Mingjie

On April 20, on the eve of the World Intellectual Property Day, Quality Brands Protection Committee of China Association of Enterprises with Foreign Investment (QBPC) co-hosted an online IP enforcement skills training and exchange meeting with Dalian, Shenyang, Changchun and Harbin Customs. Deputy Director Wang Wei of Department of General Operation of Dalian Customs gave an opening speech. He said that the online training was not only an important form of strengthening the exchanges and cooperation between local customs, but also an important way to promote exchanges between customs and enterprises. Protecting intellectual property rights meant protecting innovation. The relevant customs would deepen the border protection of intellectual property rights, continue to step up efforts to crack down on infringements in import and export, support the innovation of enterprises and conscientiously implement the important instructions on intellectual property rights protection delivered by President Xi Jinping.

Representatives of Amazon, Qualcomm, 3M, Anta, Apple, Cisco Systems, Colgate-Palmolive Company, Epson, Longchamp, LVMH Asia Pacific Ltd., Major League Baseball and Midea Group each made a 10-minute

presentation about techniques of seizing counterfeits and categories of brand products.

Customs Committee Vice Chair Jerry Yang summarized this online meeting. He said the exchange was timely and necessary. The training had shortened the distance between customs and enterprises, and the protection of intellectual property rights was impossible without the joint efforts of relevant parties. He also expressed thanks to the customs officials and representatives of QBPC member companies.

More than 700 QBPC member representatives and Customs officials in IP protection-related posts of Dalian, Shenyang, Changchun and Harbin Customs participated in real-time online training. This event was not only the first online training held by QBPC and the customs in 2021, but also the first training jointly held by four customs in the northeast China on IPR protection which achieved good results. Under the new situation, QBPC will continue to actively carry out various forms of exchange activities with local customs and work with them to promote the customs protection of IP to a new level.

## 品保委与南昌等六地海关联合举办知识产权海关保护线上培训交流会

文 / 张明洁

4月21日,中国外商投资企业协会优质品牌保护委员会(下称“品保委”)与南昌、海口、济南、合肥、深圳、西安海关联合举办了线上培训交流会。开云投资管理集团有限公司、拉科斯特公司、富邑葡萄酒集团、美国国家橄榄球联盟、杰尼亚(中国)商业有限公司、SALVATORE FERRAGAMO、庄臣公司、美国康普国际控股有限公司、L Brands、联合利华(中国)有限公司、施耐德电气以及丰田汽车公司的代表参加了此次知识产权海关保护培训,并

就重点产品真假识别、假冒侵权趋势等内容分别进行了10分钟的展示。

此培训是2020年品保委与南昌海关、海口海关联合举行线上培训后再度合作,并将规模扩大至六个关区。海关关员在培训中认真聆听权利人讲解知识要点,在线观看超800人次,以期进一步提高自身知识产权执法技能和支持企业创新发展。

品保委海关工作组副主席杨璐参加培训并做总结发言。他对参会的海关关员以及权利人表达了感谢，表示线上联合培训将促进和深化关

企交流，加强协同共治，并期待未来能与各海关有更多交流合作。



## QBPC HOLDS THE INTELLECTUAL PROPERTY ENFORCEMENT SKILLS ONLINE TRAINING AND EXCHANGE MEETING WITH NANCHANG AND FIVE OTHER CUSTOMS AUTHORITIES

ZHANG Mingjie

On April 21, the Quality Brands Protection Committee of China Association of Enterprises with Foreign Investment (QBPC) co-hosted an online enforcement skills training and exchange meeting with Nanchang, Haikou, Jinan, Hefei, Shenzhen and Xi'an Customs. Representatives of L Brands, Schneider Electric, Unilever, CommScope, Kering, Lacoste, National Football League, SALVATORE FERRAGAMO, S.C.Johnson & Son, Toyota, Treasury Wine Estates, and Zegna, attended this event. Speakers from above companies each made a 10-minute presentation about how to identify fake products and the features of counterfeiting activities.

Following the first training in 2020, QBPC worked again with Nanchang and Haikou Customs, joined by other

four local customs this time. During the training, customs officials listened carefully to the presentations by the right holders to further improve their enforcement skills and support the innovation of enterprises. There were over 800 views in total.

QBPC Customs Committee Vice Chair Jerry Yang attended the training and made a concluding speech. He expressed his gratitude to the customs officials and right holders attending the meeting, saying that the online joint training would promote the exchanges between customs and enterprises, and strengthen the coordination and co-governance. QBPC looked forward to more exchanges and cooperation with customs in the future.



# 品保委与兰州等三地海关联合举办知识产权执法技能线下培训交流会

文 / 张明洁

4月21日，在世界知识产权日即将来临之际，中国外商投资企业协会优质品牌保护委员会（下称“品保委”）与兰州、银川和西宁海关联合举办了线下培训交流会。30多位来自三地海关一线业务骨干和6家品保委员会公司的代表参与了本次会议。

企业代表来自强生、耐克、宝洁、彪马、3M以及拉科斯特，涉及个人护理品、制药及医疗器械、运动、时尚与生活、化工、高档品牌等7个行业小组。培训会上，会员公司权利人分别从公司产品、假冒侵权特点、真假鉴别技巧、典型案例、实物展示等多维度介绍各自

在边境知识产权保护中的经验。海关关员在培训中积极与权利人进行互动，现场气氛十分热烈。此外，培训会还专门设置了实物真假辨别环节，帮助海关关员更好的检验学习成果。

品保委海关工作组主席刘清参与了本次会议，他首先对三地海关能够配合支持此次线下培训表达了感谢，同时就双方在知识产权保护工作方面的合作与海关达成了一致。他表示品保委海关工作组将继续努力创新，为会员提供高质、高效的与海关交流的平台与机会，期待会员朋友们的积极参与和支持！



## QBPC HOLDS THE INTELLECTUAL PROPERTY ENFORCEMENT SKILLS OFFLINE TRAINING AND EXCHANGE MEETING WITH LANZHOU AND TWO OTHER CUSTOMS AUTHORITIES

ZHANG Mingjie

On April 21, on the eve of the World Intellectual Property Day, Quality Brands Protection Committee of China Association of Enterprises with Foreign Investment (QBPC) co-hosted an offline IP enforcement skills

training and exchange meeting with Lanzhou, Yinchuan, and Xining Customs. More than 30 frontline officials from three customs and representatives from 6 QBPC member companies attended the meeting.

Representatives came from Johnson & Johnson, Nike, Procter & Gamble, Puma, 3M and Lacoste, which were members of Personal Care, Pharmaceutical & Medical Device, Sports, Fashion & Lifestyle, Chemical, and Luxury Goods IWGs. At the training, right holders of member companies introduced their experience in intellectual property border protection from multiple aspects, such as company products, the features of counterfeit infringement, identification skills, typical cases and physical exhibits. The customs officials actively interacted with the right holders during the training. In addition, the Real or Fake Products Display Booth was

set up, to help customs officials better check the learning results.

QBPC Customs Committee Chair Alan Liu expressed his gratitude to the three customs for their cooperation and support of this training and reached an agreement with the customs on the cooperation of intellectual property protection. He said that the Customs Committee would continue to strive for innovation, to provide members with high quality, efficient communication platform and opportunities with customs. He looked forward to the active participation and support of members!



## 青岛海关举办知识产权执法技能线下培训交流会

文 / 周艳



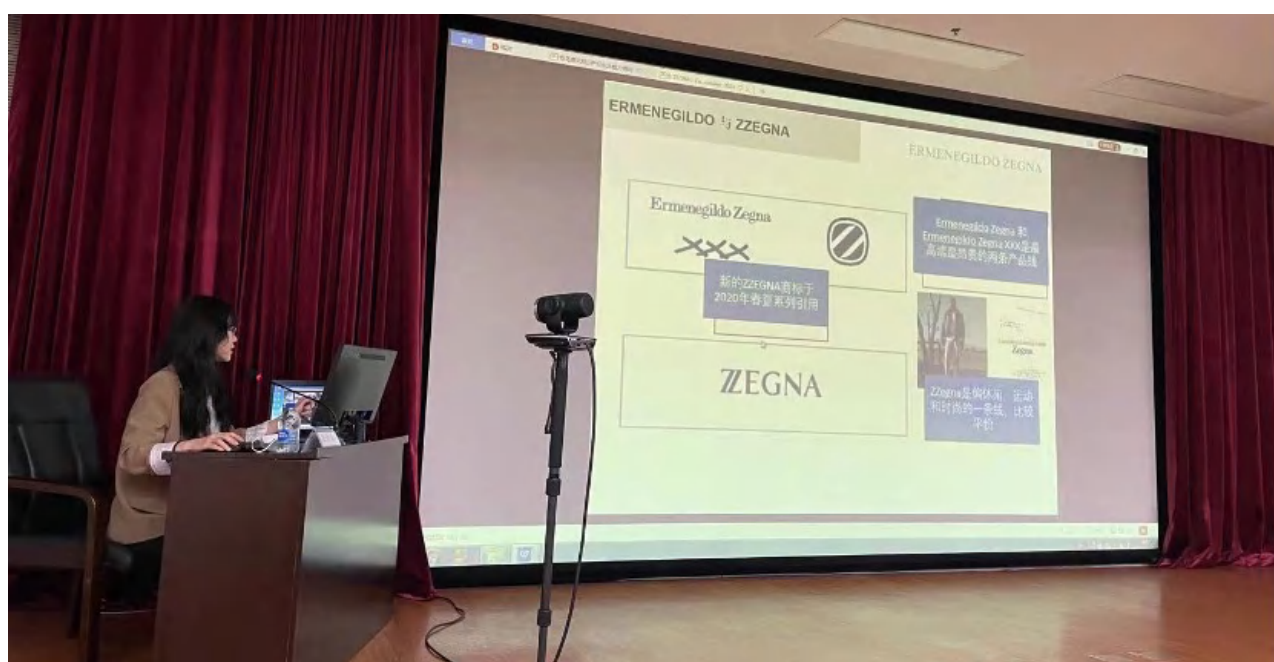
4月20日到22日，青岛海关分别在其隶属黄岛海关、烟台海关、威海海关举行了线下知识产权海关保护培训，参加培训的主要包括相关海关知识产权办案、查验及风险布控相关岗位关员。三场培训线下参与的海关关员多达一百余人，另外有西安海关五十余名关员通过腾讯会议，线上参与了黄岛海关的培训。品保委员会艾尔建、戴森、卡尔文克莱恩、乐高、酷悦轩尼诗、棒球主盟资产公司、美国安全检测实验室、杰尼亚等参与此次培训，为各海关关员介绍了品牌真假货鉴别要点，相关案例等，与各海关关员就品牌的知识产权保护进行了沟通。

# QINGDAO CUSTOMS HOLD THREE INTELLECTUAL PROPERTY ENFORCEMENT SKILLS OFFLINE TRAININGS

Lily ZHOU

From April 20 to 22 Qingdao Customs held three offline enforcement skills trainings in its subordinate Huangdao Customs, Yantai Customs and Weihai Customs respectively. The trainees mainly included customs officials in IP protection-related enforcement, inspection and risk control posts. More than 100 customs officials participated in the three offline trainings. In addition,

more than 50 customs officials from Xi 'an Customs joined the Huangdao Customs' training through Tencent online meeting. QBPC member companies Allergan, Calvin Klein, Dyson, LEGO, Moët Hennessey, MLB, UL and Zegna participated in the training. They talked about how to identify products, relevant cases, etc.





## 品保委与昆明等六地海关联合举办知识产权海关保护线上培训交流会

文 / 张明洁

4月23日，中国外商投资协会优质品牌保护委员会（下称“品保委”）与昆明、成都、重庆、南宁、长沙、武汉海关联合举办了线上培训交流会。品保委海关工作组副主席林洁雯参与了本次培训并致开幕词。她表示，多年来品保委积极与全国各地海关开展知识产权保护领域的合作，与各地海关共同举办各种形式的执法培训和交流活动并取得积极的成效，而海关在知识产权保护领域取得的成就也得到会员的普遍赞誉。她特别提到了即使是受到疫情影响，海关知识产权保护的查扣案件量和上一年相比仍然上升了20%~30%，这说明海关从未懈怠知识产权的保护，企业权利人将继续积极配合海关，为中国知识产权的保护助力！

来自亚马逊信息服务（北京）有限公司、L Brands、宝洁（中国）有限公司、高通无线通信技术（中国）有限公司、施耐德电气、艾尔

建信息咨询（上海）有限公司、佳能（中国）有限公司、戴森贸易（上海）有限公司、爱普生（中国）有限公司、孩之宝公司、开云集团、拉科斯特公司、珑骧、酩悦轩尼诗公司、尼康映像仪器销售（中国）有限公司、美国安全检测实验室公司、美国高尔夫反假冒联盟、法雷奥企业管理（上海）有限公司、武迪（上海）实业有限公司、美国华尔推剪公司和杰尼亚（中国）商业有限公司的21位代表参加了此次知识产权海关保护培训，并就重点产品真假识别、假冒侵权趋势等内容分别进行了展示。

此次培训是2020年品保委与昆明、成都、重庆、南宁、长沙海关联合举行线上培训后再度合作，并将规模扩大至六个关区。海关关员在培训中认真聆听权利人讲解知识要点，在线观看人数近1000人，以期进一步提高自身知识产权执法技能和支持企业创新发展。



# QBPC HOLDS THE INTELLECTUAL PROPERTY ENFORCEMENT SKILLS ONLINE TRAINING AND EXCHANGE MEETING WITH KUNMING AND FIVE OTHER CUSTOMS AUTHORITIES

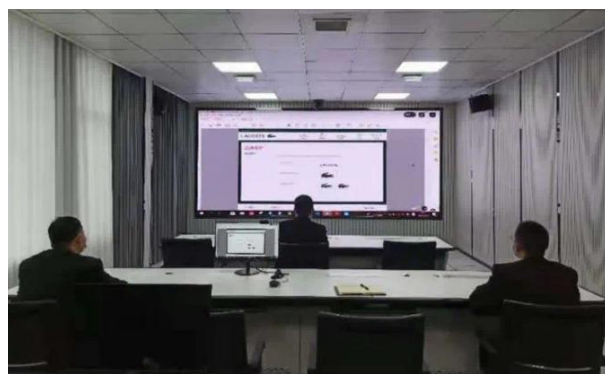
ZHANG Mingjie

On April 23, the Quality Brands Protection Committee of China Association of Enterprises with Foreign Investment (QBPC) co-hosted an online enforcement skills training and exchange meeting with Kunming, Chengdu, Chongqing, Nanning, Changsha and Wuhan Customs. QBPC Customs Committee Vice Chair Wendy Lin attended this meeting and made an opening speech. She said that over the years, QBPC had actively carried out cooperation with all levels of customs in the field of intellectual property protection, jointly organized various forms of law enforcement trainings and communication activities which yielded positive results. The achievements made by the customs had been well recognized by the members. In particular, she mentioned that the number of customs seizures increased by 20% to 30% compared with the previous year, indicating that the customs had never slackened its IPR protection and that the right holders of enterprises would continue to

cooperate with the customs to help protect IPR in China.

Representatives of Amazon, L Brands, Procter & Gamble, Qualcomm, Schneider Electric, Allergan, Canon, Dyson, Epson, Hasbro, Inc., Kering, Lacoste, Longchamp, Moët Hennessy, Nikon Imaging, Underwriters Laboratories, Valeo, Wahl Clipper, WD-40, Zegna and US Golf attended this event. Speakers from above companies each made a 5-minute presentation about how to identify fake products and the features of counterfeiting activities.

Following the first training in 2020, QBPC worked again with Kunming, Chengdu, Chongqing, Nanning and Changsha Customs, joined by Wuhan customs this time. During the training, customs officials listened carefully to the presentations by the right holders to further improve their enforcement skills and support the innovation of enterprises. There were nearly 1,000 viewers in total.



## 品保委代表参加上海浦东法院涉外知识产权司法服务保障营商环境建设新闻发布会以及座谈会

文 / 于帮清

4月25日，品保委副主席曲晓阳、品保委法律工作组主席于帮清以及其他品保委员会企业代表受邀参加上海市浦东新区人民法院（以下简称浦东法院）有关涉外知识产权司法服务保障营商环境建设的新闻发布会以及座谈会。参加此次上述系列活动的还包括上海市人大代表、政协委员、浦东新区政府、自贸区和新片区管委会代表等。

此次发布会，发布了《涉外知识产权司法服务保障营商环境建设白皮书》，浦东法院党组成员、二级高级法官金民珍介绍了浦东法院

全面加强知识产权保护工作，依法公正高效审理涉外案件，平等保护中外当事人合法权益，服务保障营商环境的司法经验，并向企业代表发放了白皮书。浦东法院贯彻严格保护政策，具体表现在：在上海首次适用惩罚性赔偿，多起案件在法定赔偿额内顶格判赔，单起案件判赔金额最高达1000万元，2020年刑事案件被告人实刑率高达75%以上，等。浦东法院知识产权庭庭长徐俊介绍了10件涉外知识产权司法保护典型案例，其中，多起品保委员会企业案件入选其中。



曲晓阳



于帮清

随后，浦东法院举行座谈会，听取上述参会代表的意见建议。浦东法院党组书记、院长吴金水主持会议。吴金水院长首先向与会代表介绍了浦东法院涉外知识产权司法服务保障营商环境的基本情况。针对浦东法院涉外知识产权司法保护工作的情况和特点，代表们进行了发言。曲晓阳表达了期待双方进一步合作，共同营造更优质的营商环境。同时，提出了当前品保委企业重点关注的两个问题：其一、在疫情之下，域外证据的取得和公证认证耗时较长，期待能有替代解决方案；其二、希望进一步加

强商业秘密保护。于帮清对浦东法院当选2020年品保委知识产权保护最佳实践单位之一再次表示祝贺，并提出两点建议：一方面，希望浦东法院继续支持品保委员会企业的知识产权保护工作，为外资企业在华开展知识产权司法保护提供指引，另一方面，也期待浦东法院将涉外知识产权保护成果分享给更多品保委员会企业，以便会员企业向总部和国际社会进行宣传。其他会员企业代表建议浦东法院不断加大运用“三合一”打击假冒侵权力度以及提高知识产权损害赔偿等。



# QBPC MEMBERS PARTICIPATE IN PUDONG COURT PRESS CONFERENCE AND SYMPOSIUM ON IPR JUDICIAL SERVICES FOR FOREIGN RIGHT HOLDERS

Michael YU

On April 25, QBPC Vice Chair Qu Xiaoyang, Legal Committee Chair Michael Yu, and other QBPC member representatives were invited to attend the press conference and symposium, held by the Shanghai Pudong New Area People's Court, on how IP judicial services for foreign parties may contribute to improving the business environment. Representatives from Shanghai Municipal People's Congress, People's Political Consultative Conference, Pudong New Area Government, free trade zone, and New Area Management Committee were also among the participants.

At the press conference, the White Paper on IP Judicial Services for Foreign Parties to Safeguard the Business Environment was released. Senior Judge Jin Minzhen, introduced the Pudong Court's comprehensive efforts in strengthening IP protection, adjudicating cases involving foreign parties in a fair and efficient manner, protecting the legitimate interests of Chinese and foreign parties equally, and serving and safeguarding the business environment. The white paper was distributed among the participants. The strict protection was manifested in the following aspects: first to apply punitive damages in Shanghai; applied the maximum statutory damages in several cases; awarded the right holder up to 10 million CNY in a single case; in 2020, 75% of defendants in criminal trials were sentenced to prison terms with no probation etc. Presiding Judge Xu Jun of the IP tribunal introduced the ten model IP cases that involved foreign parties. Several QBPC members' winning cases had made to the list.

Afterwards, the Pudong Court held a symposium to hear the views of the participants. Wu Jinshui, president of the Pudong Court, chaired the meeting. Wu Jinshui first briefed the participants on the basics of the Pudong Court's efforts to contribute to improving the business environment through IPR judicial services for foreign parties. And the participants made comments in response. Qu Xiaoyang hoped that the two sides could collaborate further to jointly create a better business environment. Meanwhile, he mentioned two issues of great concern to QBPC members: first, due to the pandemic, to acquire and legalize evidence and documents abroad were fairly time consuming, and an alternative was needed; second, QBPC members looked forward to further strengthening the protection of trade secrets. Michael Yu once again congratulated the Pudong Court on its nomination as one of the QBPC IPR protection best practice institutions in 2020, and put forward two suggestions: on one hand, Pudong Court could continue to support QBPC members' the IPR protection work and provide guidance for foreign enterprises to seek judicial IP protection in China; on the other hand, Pudong Court could share the achievements of protecting foreign parties' IPR with more QBPC members so that the members could publicize them to the headquarters and the international community. Representatives of other member companies suggested that the Pudong Court continue to increase the use of "three-in-one" adjudication model to increase anti-counterfeiting efforts and damages in IP litigations.



## 海关总署召开《知识产权海关保护条例》修订研讨会

文 / 张明洁

### 《知识产权海关保护条例》修订研讨会



江苏 无锡  
2021年4月30日

为贯彻落实习近平总书记关于加强知识产权保护系列讲话的重要精神，研究完善知识产权海关保护相关法律制度，进一步提高知识产权海关保护工作水平，做好《知识产权海关保护条例》（以下简称《条例》）修订准备工作，海关总署综合业务司于4月30日在无锡海关举办了《条例》修订研讨会，20位来自海关总署、南京海关、广东分署、北京海关、天津海关、大连海关、上海海关等一线业务骨干和20家品保委员会公司的代表参与了本次研讨会。

海关总署综合业务司黄建华处长首先向参会人员介绍了《条例》修订的背景和意义。他说，国内外知识产权保护的趋势正在发生天翻地覆的变化，特别是近两年来，国家司法机关针对知识产权保护问题相继出台了新的规划、法律法规、司法解释等，此次修订对于切实推进知识产权的保护有着重要的意义。接着，他表示，多年来，品保委作为具有专业性的国内知识产权组织，对于各项与知识产权保护相关的政策以及法律法规密切关注，提出了很多非常有建设性的意见和建议，为中国知识产权的保护留下了浓墨重彩的一笔，此次邀请品保委员会参加本次研讨会，将有助于提升《条例》的全面性以及可行性。

本次《条例》修订课题组成员，上海市锦天城律师事务所高级合伙人贾小宁律师就修订的必要性、修订原则以及主要问题向大家详细阐述了《条例》修订需要高度关注的几个方面。贾律师提到，对《条例》进行研究、修订完善，将更有利于开展知识产权海关保护，满足各类企业对边境保护的需求。修订要与强、大、快的海关知产执法方向相一致，本着协同原则展开，同时要总结执法经验，提升执法措施的法律依据等级。谈到修订面临的问题，贾律师特别提到了担保、仓储和保管费的支付、没收货物的处置方式、30个工作日的调查期间、专利权的保护、信息披露、行政处罚、行邮渠道等品保委员会重点关心的问题。

接下来，围绕《条例》的修订，会议进入了自由讨论环节。来自爱宝、亚马逊、艾默生、强生、彪马、乐高等公司的品保委员会代表结合自身处理案件时遇到的情况，从实体到程序、从理论到实践提出了很多具有研究价值的问题，涵盖了著作权、外观设计专利权的保护，备案系统的使用与升级，查验程序的优化，重点航线的追踪与查扣，风险布控与协查等。各地海关关员耐心解答了权利人的问题。同时，在讨论的过程中，有些会员对于一些问题提出了切实可行的解决办法，得到了海关方面的赞同。

品保委海关工作组主席刘清和副主席施晴参与了本次研讨会。在与海关交流时他们表示，《条例》的修改是为了更好地践行海关知识产权保护，希望品保委企业和各地海关能够更加深入的合作，从海关一线查验知识培训到加强针对特定行业的风险布控交流，再到跨境侵权

调查的合作，期待以此次研讨为契机搭建权利人和海关之间合作交流的平台，更好发挥《条例》为海关知识产权实践保驾护航的作用，为推动中国知识产权的海关保护和边境执法不断向前发展添砖加瓦。



## GACC HOLDS SEMINAR ON CUSTOMS PROTECTION OF INTELLECTUAL PROPERTY RIGHTS REGULATIONS REVISION

ZHANG Mingjie

In order to implement the instructions of President Xi Jinping in his speeches on strengthening intellectual property rights (IPR) protection, study and improve the relevant legal system, further improve the IPR customs protection, and prepare for the revision of the Customs Protection of Intellectual Property Rights Regulations (the Regulations), the Department of General Operation, General Administration of Customs of P.R.C (GACC) held a seminar on April 30 at Wuxi Customs. More than 20 frontline officials from GACC, Nanjing Customs, Guangdong Branch, Beijing Customs, Tianjin Customs, Dalian Customs, Shanghai Customs, and representatives from 20 QBPC member companies attended the meeting.

Mr. Huang Jianhua, Director of the General Business

Department explained the Regulations' background and significance to the participants. The IPR protection was undergoing profound changes both in China and abroad. Especially in the past two years, the judicial organs of China had issued new plans, laws, regulations, and judicial interpretations on IPR protection. The revision of the Regulations was of great significance to the protection of IPR. He also expressed appreciation to QBPC for its great contribution to IPR protection in China. As a professional domestic IPR organization, QBPC had paid close attention to the policies, laws and regulations related to IPR protection, and put forward a lot of constructive opinions and suggestions. The participation of QBPC members would help ensure the comprehensiveness and feasibility of the revision.



The research team member, AllBright Law Offices Senior Partner Sean Jia elaborated on the necessity of revision, principles and main issues. He mentioned that the study, revision and improvement of the Regulations would be in line with the needs of various enterprises for border protection. The revision should be consistent with the strong, broad and efficient customs IPR enforcement, and be carried out in accordance with the principle of coordination. Meanwhile, the enforcement experience should be reviewed to improve the level of legal basis of law enforcement measures. Talking about the problems to be fixed by the revision, Jia specifically mentioned the guarantee, the payment of storage fees, the disposal of confiscated goods, the investigation period of 30 working days, the protection of patent rights, information disclosure, administrative penalties, the channel of luggage and mail, and other key issues of concern to the QBPC members.

There followed a free discussion, in which representatives of ABRO, Amazon, Emerson, Johnson & Johnson, PUMA, LEGO and other member companies raised a lot

of questions with value from the entity to the procedure, and from the theory to the practice. The questions covered the protection of copyright and design patent rights, the use and upgrade of the filing system, the optimization of inspection procedures, the tracking and seizure on key air routes, risk control and cooperation. The customs officials patiently answered the members' questions. Meanwhile some members put forward practical solutions to some problems, which received positive feedback from the customs.

QBPC Customs Committee Chair Alan Liu and Vice Chair Angela Shi made comments that the revision of the Regulations aimed at better practicing the customs' IPR protection. They expected closer cooperation between QBPC enterprises and local customs, e.g. the customs trainings, the exchanges on the risk control in a specific industry, and cross-border infringement investigation cooperation. The seminar could help build a platform of cooperation and exchange between right holders and customs. The revision could help promote China's customs IPR protection and push forward border enforcement.



## 品保委举行惩罚性赔偿和反法适用研讨会

文 / 杨楠

5月14日，中国外商投资企业协会优质品牌保护委员会（以下简称“品保委”）就知识产权诉讼中的惩罚性赔偿制度和实战技巧，以及反不正当竞争法的适用等问题召开研讨会。北京已任律师事务所合伙人赵克峰、韩进文，

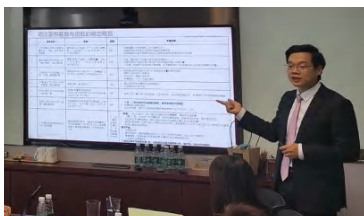
资深律师吕沛受邀与会员分享了实务经验和典型案例。本次研讨会由品保委法律工作组副主席董翠萍主持，已任合伙人夏锋律师作了开场发言。



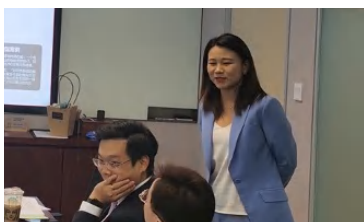
董翠萍 Amanda DONG



夏锋 Jerry XIA



赵克峰 Steven ZHAO



吕沛 Lyu PEI



韩进文 Kevin HAN

研讨会首先分析了惩罚性赔偿制度在知识产权保护领域的发展历程、要点和难点、典型案例以及诉讼技巧。早在 2013 年，商标法就确立了对侵权行为的惩罚性赔偿制度。但在很长一段时间，由于“故意”和“恶意”两个概念难以区分、“情节严重”难以认定以及赔偿的基数和倍数难以确定等原因，迟迟没有出现适用惩罚性赔偿的案例。今年 3 月 3 日，最高人民法院发布《最高人民法院关于审理侵害知识产权民事案件适用惩罚性赔偿的解释》，正式统一恶意和故意两个概念，并对认定情节严重的情形和赔偿基数与倍数的确定作出了规制。而从实务角度来看，惩罚性赔偿需要突破的是取证上的困境。在上述有关惩罚性赔偿的司法解释出台后，权利人可通过举证责任转移和举证妨碍等制度协助取证，充分运用经济学分析报告等方法确定赔偿基数，最后通过证明主观过错和情节严重来主张更高的倍数。与会者还就解释规制之外其他可能属于“故意”和“情节严重”的情形展开了讨论。

研讨会同时关注了反不正当竞争法在知识产权保护中的适用。在竞争中遵守诚实信用原则，保护企业名称、字号、商品包装、装潢等是会员关注的重点议题。在“西四包子铺”企业字号案中，北京知识产权法院终审认定，尽管多年没有使用，“西四包子铺”作为老字号，其历史商誉、知名度以及潜在的商业价值依然存在。被上诉人未经授权在西四地区重启“西四包子铺”，有明显的不正当意图，构成了反不正当竞争法第六条第（二）项规定的仿冒企业名称的行为，损害了权利人的合法权益，破坏了市场秩序。与会者还讨论了反法在互联网领域，特别是在打击网络黑灰产业上能发挥的作用。

近 80 位会员代表通过线下或者线上的方式参加了本次研讨会。该研讨会是品保委热点问题探究系列活动的一部分。

## QBPC HOLDS PUNITIVE DAMAGES AND APPLICATION OF ANTI-UNFAIR COMPETITION LAW WORKSHOP

Andrei YANG

On May 14, the Quality Brands Protection Committee of the China Association of Enterprises with Foreign Investment (QBPC) held a workshop on punitive damages and practical skills in IP litigations, as well as the applications of the Anti-Unfair Competition Law. Partners Steve Zhao and Kevin Han, and senior lawyer

Lyu Pei, from Beijing GEN Law Firm, were invited to share model cases and their observations with members. The seminar was chaired by Amanda Dong, Vice Chair of the QBPC Legal Committee, and Jerry Xia, GEN partner, made an opening speech.

The seminar began with an analysis of the development, key and difficult points, model cases, and practical issues of punitive damages in the field of IP protection. As early as 2013, the trademark law established punitive damages for infringements. But for a long time, there had been no case of actually applying punitive damages due to the difficulties to distinguish "intentional" and "malicious", determine "serious circumstances", and determine the base and multiplier of damages. On March 3, the Supreme People's Court issued the Explanations on the Application of Punitive Damages in the Trial of Civil Cases Involving IP Infringement, which formally unified the two concepts of "malicious" and "intentional", defined serious circumstance and set up the rule on multiplier of damages. In practice, right holders need to overcome the obstacles in obtaining evidence the most to obtain punitive damages. After the promulgation of the above-mentioned judicial interpretation, the right holder could do so by relying on rules dealing with transferring the burden of proof and obstructing the production of evidence, etc., making full use of economic analysis reports and other methods to determine the base of damages, and finally assert a higher multiplier by proving the defendant's subjective fault and the seriousness of the circumstances. Participants also discussed other circumstances that might be considered as "intentional"

and "serious circumstances" other than those prescribed in the interpretation.

The seminar also covered the application of Anti-Unfair Competition Law in protecting IPR. Issues such as observing the principle of good faith and protecting the company's name, trade name, package, trade dress and so on, are on top of members' minds. In the "Xisi Baozi Diner" case, the Beijing Intellectual Property Court finally determined that, although not used for years, "Xisi Baozi Diner" as a time-honored trade name, its historical goodwill, popularity and potential commercial value still existed. The defendant reopened "Xisi Baozi Diner" in the Xisi area with obvious improper intention, which constituted the counterfeiting of another company's name as stipulated in Article 6 (2) of the Anti-Unfair Competition Law, impairing the right holder's legal rights and interests and disrupting the market order. Participants also discussed the role that Anti-Unfair Competition Law could play in the cyberspace, especially in combating the online criminal and grey industries.

Nearly 80 members participated in the workshop on site or online. The workshop was part of a series of model cases sharing and key legal issues discussions.

## 品保委与南京等四地海关联合举办知识产权执法技能线上培训交流会

文 / 张明洁

5月25日,中国外商投资企业协会优质品牌保护委员会(下称品保委)与南京、太原、郑州和乌鲁木齐海关成功举办了知识产权执法技能线上培训交流会。南京海关综合处处领导在致开幕词时特别提到了李克强总理对保护知识产权、打击侵权假冒工作作出的重要指示。他说,无论是从理论还是实践层面,保护知识产权和打击侵权假冒的工作离不开政府与企业的相互协同,此次举办知识产权线上培训促进了海关与企业之间的沟通,并希望今后能与企业在数据分享、风险布控以及对侵权假冒货物查扣量方面获得更大的突破。

来自强生、宝洁、联合利华、艾尔建、亚萨合莱、拜尔斯道夫、碧然德、佳能、思科、康普、戴森、乐高、飞利浦、罗格朗、丰田、易富和美国安全检测实验室的会员代表参加了此次知识产权海关保护培训。上述会员公司代表就查扣假货技巧与品牌产品涉及类别等内容分别进行了8分钟的展示。

最后,品保委海关工作组副主席林洁雯对参会的海关关员以及权利人表达了感谢,并表示此次培训交流是十分及时且必要的,中国的知识产权保护工作离不开多方的共同努力,希望今后能与海关开展更多形式的交流合作。



来自南京、太原、郑州、乌鲁木齐海关的知识产权保护相关岗位关员和品保委员会代表共计 600 多人实时在线参与了培训。此培训是 2020 年品保委与南京海关联合举行线上培训后

再度合作，并将规模扩大至四个关区。品保委将在新形势下继续与各地海关积极开展形式多样、内容丰富的交流活动，共同推动知识产权海关保护工作迈上新台阶。

## QBPC HOLDS THE INTELLECTUAL PROPERTY ENFORCEMENT SKILLS ONLINE TRAINING AND EXCHANGE MEETING WITH NANJING AND THREE OTHER CUSTOMS AUTHORITIES

ZHANG Mingjie

On May 25, the Quality Brands Protection Committee of China Association of Enterprises with Foreign Investment (QBPC) co-hosted an online enforcement skills training and exchange meeting with Nanjing, Taiyuan, Zhengzhou and Urumqi Customs. In his opening speech, the director of Department of General Operation of Nanjing Customs particularly mentioned Premier Li Keqiang's important instructions on protecting intellectual property rights and cracking down on infringement and counterfeiting. He said that both in theory and in practice, the work of protecting IPR and cracking down on IPR infringement and counterfeiting was not possible without the cooperation between the government and enterprises. The online training on intellectual property promoted the communication between the customs and enterprises. He hoped that the customs and enterprises could achieve greater breakthroughs in data sharing, risk control and seizure of infringing and counterfeit goods.

Representatives of Johnson&Johnson, P&G, Unilever, Allergan, ASSA ABLOY, Beiersdorf AG, BRITA, Canon, Cisco, CommScope, Dyson, LEGO, Philips, Legrand, Toyota, TWE and UL attended this event. Speakers from

above companies each made an 8-minute presentation on how to identify fake products and the features of counterfeiting activities.

As a conclusion, Customs Committee Vice Chair Wendy Lin expressed thanks to the customs officials and representatives of QBPC member companies. She said the exchange was timely and necessary. The protection of intellectual property rights was impossible without the joint efforts of relevant parties, and QBPC looked forward to more exchanges and cooperation with customs in the future.

More than 600 QBPC member representatives and Customs officials in IP protection-related posts of Nanjing, Taiyuan, Zhengzhou and Urumqi Customs participated in real-time online training. Following the first training in 2020, QBPC worked again with Nanjing Customs, joined by other three local customs this time. Under the new situation, QBPC will continue to actively carry out various forms of exchange activities with local customs and work with them to promote the customs protection of IP to a new level.

## 律师视角下的惩罚性赔偿司法实践

文 / 张明洁

2020 年 11 月 30 日，习近平总书记在中央政治局第二十五次集体学习时强调“抓紧落实知识产权惩罚性赔偿制度”。我国在商标、专利权、著作权等主要知识产权类型中，已

经全面建立了知识产权惩罚性赔偿制度，在法律层面统一了“故意侵权”和“情节严重”这两个适用条件，以及“一倍以上五倍以下”的赔偿倍数，该项制度引起了社会的广泛关注。

基于此，6月24日，中国外商投资企业协会优质品牌保护委员会（下称品保委）专利及创新工作组邀请 MOTR 商标 / 专利侵权系列案件主办律师、大成律师事务所合伙人胡洪参加工作组午餐会，与会员分享处理该案的经验和思考。本次午餐会由专利及创新工作组副主席鲁鹏主持，品保委主席丁宇，工作组主席邓军，副主席刘永刚、王大治，以及 40 余位会员代表出席了会议。

在发言的第一部分，胡律师详细讲述了“MOTR”案的案情，介绍了权利人收集和组织证据以及庭审的经过，并剖析了本案的亮点，即惩罚性赔偿适用。根据《商标法》第63条规定，适用惩罚性赔偿需要满足以下两个条件：被告故意实施侵权行为；被告侵权行为达到情节严重标准。在本案中，法院支持原告关于适用惩罚性赔偿的诉讼请求的理由主要有以下几个：1. 被告使用的侵权标识与原告完全相同，包括位置、颜色等要素，这种全面摹仿的行为足以证明其侵权主观意图；2. 重复侵权，被告早年就曾因侵权收到原告发函警告，时隔几年后又被再次发现生产销售侵犯原告注册商标专用权的产品，是对诚实信用原则的违背，侵权恶意极其严重；3. 生产经营规模较大、产品销售渠道多、涉及地域范围广，侵权行为影响较大；4. 侵权

产品质量不佳，给原告通过长久努力积累起来的商业信誉带来负面影响。

接着，胡律师对近期典型惩罚性赔偿案例进行了梳理。通过分析，在这些案件中，对于主观故意的推定、情节严重的认定以及对惩罚性赔偿倍数确定是核心要素，也是案件能否适用惩罚性赔偿的重要参考标准。

交流的最后，会员代表就证据的收集方法及合法性、举证责任转移、民刑程序衔接等提出了自己的看法和思考，胡洪律师一一做了回应。本次午餐会圆满结束。



胡洪 HU Hong

## JUDICIAL PRACTICE OF PUNITIVE DAMAGES FROM THE PERSPECTIVE OF LAWYERS

ZHANG Mingjie

On Nov.30, 2020, President Xi pushed for implementing the punitive compensation system while presiding over 25th group study session of the Political Bureau of the CPC Central Committee. In the fields of trademark, patent, copyright and other major types of intellectual property rights, China has established a comprehensive system of punitive damages of intellectual property rights. The two applicable conditions of "intentional infringement" and "serious circumstances" have been adopted by relevant laws, and the compensation multiple

of "more than one times and less than five times" have been clarified. This system drew wide attention. On June 24th, the Patent and Innovation Committee (PIC) of QBPC invited Dentons Law Office partner Hu Hong, who represented the right holder on the MOTR case, to share with members his thoughts and insights at a PIC luncheon. QBPC Chair Michael Ding, Committee Chair Alvin Deng, Vice Chairs Frank Liu and Wang Dazhi, and more than 40 member representatives participated. The event was moderated by PIC Vice Chair Paul Lu.

In the first part of his presentation, Mr. Hu explained the facts of the MOTR case in details, and introduced how the right holder had collected and organized the evidence, the proceeding of the trial, and the punitive compensation which was the highlight of the case. According to Article 63 of the Trademark Law, the following two conditions shall be met for the application of punitive damages: when the defendant intentionally commits the tort, and his or her tort meets the standard of serious circumstances. In this case, the court supported the plaintiff's claim for punitive damages for the following reasons: the mark used by the defendant was exactly the same as that used by the plaintiff in terms of location, color and other elements, which was sufficient to prove its subjective intention of infringement; although the defendant once received a warning from the plaintiff for infringement several years before, he was found again to be producing and selling products that violated the exclusive right to use of the plaintiff's registered trademark. This was a violation of the principle of honesty and credit, and the malicious intent of infringement was extremely

serious; the defendant had a large scale of production and operation, multiple product sales channels and a wide geographical range, so the infringement had a great impact; the infringing products were of poor quality and had a negative impact on the business reputation accumulated by the plaintiff through long-term efforts.

Then, Hu combed the recent typical cases of punitive damages. According to his analysis over the cases, the presumption of subjective intent, the confirmation of serious circumstances and the determination of the multiple of punitive damages were the core elements. They were also the important references for the application of punitive damages.

At the end of the meeting, QBPC members raised issues including evidence collection methods and their legitimacy, shift of burden of proof, connecting the civil and criminal proceedings, and punitive damages. Hu responded to these questions. The luncheon came to a successful conclusion.

## 法律工作组举行法律实务研讨会

文 / 杨楠



董翠萍 Amanda DONG

6月23日，中国外商投资企业协会优质品牌保护委员会（以下简称“品保委”）就企业名称侵权，商标、专利授权确权行政诉讼和商业秘密保护等实用热点问题在北京举行了研讨会，并邀请了中伦律师事务所权益合伙人颜娟律师及其团队知识产权专家张天浩，和中伦律师事务所上海分所顾问蒋强与会员们探讨前沿问题，分享最新案例。品保委法律工作组副主席董翠萍主持本次研讨会，中伦律师事务所高级合伙人黄静文致辞。共计八十多位会员代表参加了本次会议。

研讨会第一个话题是针对企业名称侵权的救济措施。《企业名称登记管理规定》已经于2021年3月1日起施行，其中第二十一条明确规定了，企业可以请求为涉嫌侵权企业办理登记的企业登记机关处理。登记机关可以进行调解；调解不成的，则应在3个月内作出行政裁决。侵权企业必须在收到处理决定之日起30日内办理企业名称变更登记，否则将被列入经营异常名录。





颜娟 YAN Juan



张天浩 ZHANG Tianhao



蒋强 JIANG Qiang

研讨会第二个环节探讨了商标、专利授权确权行政案件中的一些注意事项。2014 年，最高人民法院在关于北、上、广三地知识产权法院案件管辖的规定中说明，不服国务院行政部门裁定或者决定而提起的第一审知识产权授权确权行政案件，由北京知识产权法院管辖。2020 年，北京知识产权法院受理的案件中，约 80% 为商标、专利授权确权行政纠纷。此类纠纷最大特点是起诉时限短。专利授权确权行政诉讼起诉时限为 3 个月，而商标类纠纷仅为 30 日。同时由于此类纠纷大多涉及涉外当事人，根据规定，其主体身份证明文件及委托手续等材料还需经过其所在国的公证机关公证以及领事认证，对时限提出了更高要求。对此，权利人应严格遵循北京知识产权法院的预登记流程，在法定期限内提出预登记申请，审核通过后即享有三个月时间办理相关公证认证手续。

研讨会的最后一个环节关注企业管理中商业秘密保护措施。商业秘密关乎企业存亡，而商业秘密纠纷一旦败诉，会给企业带来极大的负面影响。在实践中，企业往往因为保密措施不严，执行力度不到位而导致无法举证，或不能满足商业秘密的构成要件。这其中有两点尤其值得权利人注意。一是合同中随附的保密义务或单纯的商业秘密保护规章制度并不能构成商业秘密司法解释中所述的“相应保密措施”，保密措施必须是积极的行为，能够体现权利人保护秘密的主观愿望。在一起企业与员工的纠纷中，因无法证明员工看到或收到过相关的保密制度，企业的全部诉讼请求被驳回。权利人需要注意的另一要点则是保密措施要与秘密相适应，措施应当明确保密范围和要求。一些案件中，因对保密范围的约定过于笼统，法院无法判定所采取的保密措施是否合理，从而不能支持原告的诉讼请求。



## LEGAL COMMITTEE HOLDS WORKSHOP ON PRACTICAL LEGAL ISSUES

Andrei YANG

On June 23, 2021, QBPC held a workshop in Beijing on practical issues that have garnered wide attentions, including enterprise name infringement, administrative litigation involving trademark and patent licensing, and trade secret protection. The Workshop invited Yan Juan, partner of Zhong Lun Law Firm, her team member IP expert Zhang Tianhao, and Jiang Qiang, consultant of Zhong Lun Law Firm Shanghai Branch to discuss cutting-edge issues and share latest cases with members. Amanda Dong, Vice Chair of QBPC Legal Committee, presided over the Workshop and Jimmy Huang, senior partner of Zhong Lun Law Firm, delivered the opening remarks. More than 80 members attended the meeting.

The first topic of the Workshop was remedies against enterprise name infringement. Article 21 of the Administrative Provisions on the Registration of Enterprise Names, which came into effect on March 1, 2021, specifies that an enterprise may request the enterprise registration authority that handles the registration of the enterprise suspected of infringement to adjudicate the dispute. The registration authority may mediate between the parties; if the mediation fails, the registration authority shall make an administrative ruling within three months. The infringing enterprise must register with the authority for name alteration within 30 days from the date of the notice, otherwise it will be listed in the abnormal operation list.

The second session discussed several pointers in administrative litigations involving trademark and patent licensing. In 2014, the Supreme People's Court released a judicial interpretation on the jurisdiction of intellectual property courts in Beijing, Shanghai and Guangzhou. According to the interpretation, the first-instance administrative cases regarding IP rights licensing and confirmation filed due to dissatisfaction with rulings or decisions of administrative departments under the State Council shall fall under the jurisdiction of Beijing Intellectual Property Court. In 2020, about 80% of the cases accepted by Beijing Intellectual Property Court were such administrative disputes. One distinct feature

of such disputes is the very short time limit for filing a suit. The time limit for filing an administrative lawsuit over patent right licensing and confirmation is three months, while that for trademark disputes is only thirty days. Meanwhile, as such disputes mostly involve foreign parties, documents such as identification and power of attorney must be notarized by local agencies and then certified by the consular office, which further strains the time limit. In this regard, right holders should strictly follow the pre-registration process of Beijing Intellectual Property Court, and apply for pre-registration within the statutory time limit; if the application is approved, then the right holders will have three additional months to complete the relevant notarization and certification formalities.

The last session of the seminar focused on trade secret protection in terms of a company's internal control. Trade secret concerns the survival of a company, and once the dispute over trade secret is lost, it will have a huge negative impact on the enterprises. In practice, enterprises often fail to produce evidence or even satisfy the statutory elements of what constitutes trade secret due to lax confidentiality measures or inadequate enforcement. Two points are particularly noteworthy for right holders. First, confidentiality obligations attached to the contract or simple rules and regulations on trade secret protection do not constitute "appropriate measures to maintain the secrecy" as mentioned in the judicial interpretation of trade secrets. Such measures must be proactive acts and reflect the subjective desire of right holders to protect trade secrets. In a dispute between an enterprise and its employee, all claims were dismissed because the enterprise failed to prove that the employee had read or received the internal confidentiality rules. Meanwhile the confidentiality measures shall be consistent with the value of the secrets, and the scope and requirements of maintaining confidentiality shall be clearly defined. In some cases, due to the vague scope of confidentiality, the courts were unable to determine whether the confidentiality measures were reasonable. As a result, the relevant claims were not supported.

## 信息汇 IP NEWS

### 昆仑 2021 | 公安部部署全国公安机关 开展“昆仑 2021”专项行动

公安部 4 月 20 日召开全国公安机关视频会议，部署开展“昆仑 2021”专项行动。公安部负责人出席会议并强调，要针对影响安全稳定和人民群众反映强烈的突出问

题，坚持以打开路、打早打小，快侦快破一批案件，最大限度消除食药环和知识产权领域可能影响社会安全稳定的风险隐患。

### THE MPS LAUNCHES “KUNLUN 2021”

On April 20, the Ministry of Public Security (MPS) held a nationwide video conference to deploy the "Kunlun 2021" special campaign. A high-ranking official from MPS attended the meeting and stressed on solving outstanding problems that affect social security and stability, and that

people complained most. The campaign should crack down on criminal acts in their early stage and solve the cases in a timely manner, in order, to eliminate the potential risks that may affect social security and stability in the field of food, drug, and intellectual property.

### 2020 年中国知识产权保护状况白皮书发布

4 月 25 日，中国国家知识产权局发布了《二〇二〇年中国知识产权保护状况》白皮书，总结了 2020 年中国知识产权保护实践做法和进展情况，介绍了一年来知识产权保护工作成效，全文约 2 万字。我国于 1994 年发布第一份知识

产权保护状况白皮书，自 1998 年起，按年度编制发布，至今已 20 余年。白皮书客观反映当年知识产权保护工作进展和突出成效，已成为国内外各界了解中国知识产权保护状况、传递中国政府强化知识产权保护坚定立场的权威文件。

### CHINA RELEASES A WHITE PAPER ON IP PROTECTION IN 2020

On April 25, 2021, China National Intellectual Property Administration (CNIPA) issued a white paper on IP protection in 2020. The paper summarized the practice and progress of IP protection in China in 2020 and introduced the achievements of IP protection in the past year. The full text is about 20,000 words. China issued its first white paper on the protection of intellectual property

rights in 1994 and had released the annual white papers since 1998. The White Paper objectively reflects the progress and outstanding results of IPR protection work every year and has become an authoritative document for all sectors at home and abroad to understand the status of IPR protection in China. It indicates the determination of Chinese government on IPR protection.



# 最高检发布 2020 年度检察机关保护知识产权典型案例

2020 年，全国检察机关共批捕知识产权犯罪 3918 件 7155 人，同比分别下降 9.8% 和 3.7%，起诉 5847 件 12163 人，同比分别上升 7.6% 和 10.4%。其中，侵犯商标权、著作权和商业秘密的案件分别占总数的 94.2%、

5.3% 和 0.5%。现发布一批法律效果好、社会影响大的案件，为进一步探索完善知识产权综合保护机制，切实提高中国的知识产权司法保护水平贡献更多检察力量。

## SPP RELEASES THE 2020 TYPICAL CASES OF IPR PROTECTION

In 2020, the Procuratorates across China approved the arrest of 7,155 persons in 3,918 cases of IPR crimes, down by 9.8 percent and 3.7 percent respectively, and prosecuted 12,163 persons in 5,847 cases, up 7.6 percent and 10.4 percent respectively. Among them, cases of infringement of trademark rights, Copyrights and trade secrets accounted for 94.2 percent, 5.3 percent and 0.5

percent respectively. Several cases with good legal effect and social impact have been issued, which could help further explore and improve the comprehensive protection mechanism of intellectual property rights and effectively promote the level of judicial protection of intellectual property rights in China.

## 李克强对保护知识产权、打击侵权假冒工作作出重要批示

中共中央政治局常委、国务院总理李克强日前对保护知识产权、打击侵权假冒工作作出重要批示，要求进一步加强统筹谋划，完善法律法规，层层压实责任，持续开展重点领域重点环节侵权假冒专项整治。强化行政执法和司法衔接，完善“双随机、一公开”监管、信用监管、跨部门协同监管等有效做法，深化国际交流合作，加强知识产权全链条保

护，着力打造市场化、法治化、国际化营商环境，维护公平竞争的市场秩序，更大激发市场主体活力和社会创造力，为促进创业创新、推动高质量发展、保障和改善民生作出新贡献。

2021 年全国打击侵权假冒工作电视电话会议 5 月 21 日在京召开，国务委员、全国打击侵权假冒工作领导小组组长王勇出席会议并讲话。

## LI KEQIANG GIVES IMPORTANT INSTRUCTIONS ON PROTECTING IPR AND CRACKING DOWN ON INFRINGEMENT AND COUNTERFEITING

Premier Li Keqiang made the remarks in an instruction on IPR infringement and counterfeits, requiring further strengthening of overall planning, improving laws and regulations, strengthening responsibilities, and continuing to carry out special campaigns against infringement and counterfeiting in key areas and links. The relevant agencies were required to strengthen administrative law enforcement and judicial coordination, optimize an oversight model of random inspection and public release across the board, deepen international exchanges and cooperation, strengthen IPR protection across the

whole chain, improve the business environment, maintain a market order featuring fair competition, unleash the vitality of market entities and social creativity, and make new contributions to promoting entrepreneurship and innovation, promoting high-quality development, and ensuring and improving people's lives.

On May 21, a national teleconference on IPR infringement and counterfeits was held in Beijing, State Councilor Wang Yong, also head of a leading group attended this meeting and gave a speech.

## 多部知识产权法律法规自 6 月 1 日起施行

2020 年 10 月 17 日，十三届全国人大常委会第二十二次会议通过了关于修改专利法的决定，修改后的专利法自 2021 年 6 月 1 日起施行。因专利法实施细则尚在修改过程中，为保障修改后专利法的施行，2021 年 5 月 24 日，国家知识产权局发布了《关于施行修改后专利法的相关审查业务处理暂行办法》，就专利申请形式、特殊情况下专利申请流程、外观设计专利申请书面声明、保护期限、新药

的专利权期限补偿请求、费用缴纳、审查时限以及审查程序等问题作出了规定。5 月 28 日，国知局发布了《重大专利侵权纠纷行政裁决办法》，自 2021 年 6 月 1 日起施行，规定了自立案之日起 3 个月内完成裁定的期限。

2020 年 11 月 11 日，十三届全国人大常委会第二十三次会议表决通过了关于修改著作权法的决定，自 2021 年 6 月 1 日起施行。

## SOME INTELLECTUAL PROPERTY LAWS AND REGULATIONS COME INTO FORCE ON JUNE 1

On October 17, 2020, the Standing Committee of the 13th National People's Congress (NPC) adopted the revised Patent Law, which came into force on June 1, 2021. In order to ensure the implementation of revised patent law while the detailed rules of implementation are still under drafting, CNIPA issued the Interim Measures for the Processing of Related Examination Regarding the Implementation of the Revised Patent Law on May 24. The Interim Measures cover design patent term, partial

design examination, patent term adjustment, patent term extension, and other areas. On May 28, CNIPA issued the Administrative Adjudication Measures for Major Patent Infringement Disputes, which stipulated a deadline of three months from the date of filing to that of the ruling.

On November 11, 2020, the Standing Committee of the 13th NPC adopted the decision on amending the Copyright Law, which came into force on June 1, 2021.

## 如何通过品保委这一平台提升公司和个人价值

文 / 赵烨轩

4月12日下午，中国外商投资企业协会优质品牌保护委员会（下称品保委）会员服务之旅第一站——“如何通过品保委这一平台提升公司和个人价值分享会”在上海成功举行。活动在线上和线下同步进行，共有五十余位会员公司代表参加。

会员服务工作组主席孙斯文主持本次会议，她对会员们及受邀发言人满卫理（William Mansfield）、曲晓阳、夏锋和尤小刚的到来表示欢迎和感谢。

来自美国爱宝工业有限公司总部的品保委副主席满卫理（William Mansfield），围绕“如何与海外总部交流中国知识产权保护的成就”谈了他的三点体会。首先，很多公司海外总部仍然对中国知识产权保护现状持负面印象，并不相信中国在这方面能够有所成就。所以，让海外公司总部消除偏见尤为重要；其次，相关员工向总部汇报工作时，要突出中国知识产权保护相关部门和系统做出的贡献。知识产权保护的成功，不仅依靠员工的智慧，更是凭借中国已有的知识产权保护相关部门和系统的支持；最后，将中国的成功与其他地区的利益相关联

可以更好地突出知识产权保护工作成果。因此，相关员工务必定期向总部汇报此方面信息。

接下来，品保委副主席曲晓阳带来了主题为“如何在公司内部提升知识产权部门的地位”的演讲。他首先提出三个大家需要思考的问题：一、知识产权部门与业务部门如何联系起来，并帮助业务部门获得收益？二、对未来技术和市场的布局，知识产权部门可以做什么？三、面对竞争对手，知识产权部门的策略是什么？对此，曲晓阳给出了两点建议。首先，知识产权部门要积极主动地研究公司商业战略，探索部门工作重点与公司战略的相关性。同时，增强知识产权保护部门与业务部门主管的沟通也十分重要。

曲晓阳还对“如何做好知识产权保护”作了简要概括：1. 了解外部大环境、了解行业趋势、了解竞争对手和发展方向。2. 外守法，内合规，并提供解决方案。3. 建立广泛的人际网络，善于沟通赢得支持，“不以得到支持为目的的沟通都是聊天”。他说道，“不同是世界的常态，要开放地看待不同意见”。



满卫理 William Mansfield



曲晓阳 QU Xiaoyang



接下来，霍尼韦尔公司授权代表夏锋，作为2004年加入品保委的“老会员”，为大家带来分享——“同品保委共同成长”。他回忆起在过去的十七年间，一直以不同会员公司代表的身份活跃于品保委的各项活动中。刚加入时，品保委专注于打假活动。如今，他见证了品保委对商业秘密、专利创新等知识产权保护多方面的重视，以及中国司法体系的成长。会员公司在品保委平台互相帮助，互相学习，互相成就。

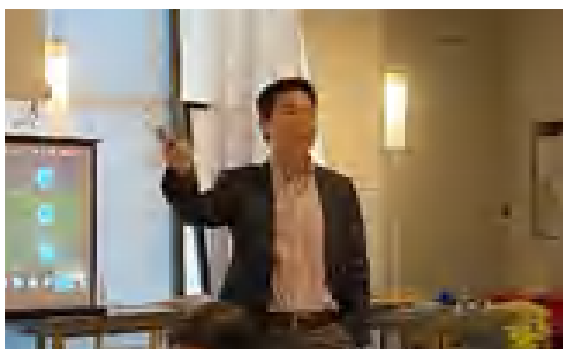
品保委员会工作组副主席尤小刚作为最后一位发言人，结合自身体会分享了“如何通过品保委丰富自己的自身知识产权专业知识”。站在行业新人的角度，他说：“品保委是一个十分包容的平台，不仅有外资企业作为普通会员，也有内资企业作为观察员。加入品保委这个平台就像站在巨人的肩膀上，让自己站的更高，看的更远，进步的更快。”每年的知识产权典型案例评选汇聚了业内优秀案例；各类主题研讨会能够聚焦行业热点。俗话说“众人拾柴火焰高”，在品保委这个平台，诸多行业同仁，群策群力，燃知产之火焰；聚力攻坚，解行业之难题；多方合作，拓维权之道路。

此外，知识产权保护包括刑事、行政、民

事多个维度，加强政府部门与企业间的协作尤为重要。品保委极大的发挥了政企之间的纽带作用，搭建沟通桥梁，促进相互了解；畅通交流渠道，共寻解决方案；增进政企互信，建立长效机制。

在最后的问答环节，来自环球影城投资有限公司、爱宝工业有限公司、泰国天丝医药保健有限公司、拜耳（中国）有限公司等会员公司代表就对假冒零容忍，十佳案例评选以及与海关沟通等热点问题与发言人进行了深入交流与互动，现场气氛活跃。本次分享会内容详实全面，极大地帮助了与会者更好的理解品保委平台可以为个人以及公司带来的价值。

参加本次活动的会员公司包括：爱宝、强生、美敦力、耐克、彪马、维多利亚的秘密、雅培、阿贝克隆比·费奇、动视暴雪、艾尔建、苹果、应用材料、拜耳、巴斯夫、拜尔斯道夫、佳岁、CAPRI HOLDINGS、佳能、达能、丹佛斯、伊顿、捷豹路虎、开云、花王、利惠商业、露露乐檬、上海味好美、诺维信、新平衡体育运动、西门子医疗、庄臣、丰田汽车、泰国天丝医药保健、环球影城、美国安全检测实验室和华为。



夏锋 Jerry XIA



尤小刚 Jayden YOU

## HOW TO ADVANCE COMPANY AND INDIVIDUAL VALUE VIA THE PLATFORM OF QBPC

Elena ZHAO

On the afternoon of April 12, the first stop of Quality Brands Protection Committee of China Association of Enterprises with Foreign Investment (QBPC) Membership Service Journey- How to Advance Company

and Individual Value via the Platform of QBPC workshop was successfully held in Shanghai. More than 50 member company representatives attended the meeting offline and online.

In her opening remarks, Membership Service Committee Chair Penny Sun welcomed and thanked members and four speakers William Mansfield, Xiaoyang Qu, Jerry Xia and Jayden You for their participation.

QBPC Vice Chair William Mansfield, from the headquarter of ABRO INDUSTRIES INC., made three recommendations on how to communicate with overseas headquarters about China's achievements in IPR protection. First of all, many overseas headquarters still had a negative impression of China's IPR protection and did not believe that China could make achievements in this field. So that it was critical to eliminate the bias of the headquarters. Secondly, when reporting to headquarters, relevant employees should highlight the contributions by relevant government agencies, judicial organs and the IPR protection system of China. The success of IPR protection relied not only on the wisdom of employees, but also on the support of the above-mentioned agencies and system. Finally, correlating China's success with the interests of other regions could highlight the results of IPR protection in China. Therefore, it is important for relevant employees to report relevant information to their headquarters regularly.

Next, QBPC Vice Chair Qu Xiaoyang talked about how to improve the position of the IP department within a company. He first raised three questions: 1. How to connect IP department and the business departments, and help the business department get benefits from IP protection? 2. What could IP department do regarding the future technology and market strategy? 3. What plan could IP department propose in the face of competitors? Xiaoyang gave two suggestions. The IP department should actively study the company's business strategy and ensure the relevance of the department priorities. Meanwhile it is very important to strengthen the communication between the IP department and the heads of the business departments.

Xiaoyang also gave a summary on how to achieve intellectual property protection: 1. Understand the external environment, industry trends, competitors, and development directions. 2. Abide by the laws, comply with internal regulations, and provide solutions. 3. Establish a wide-ranging interpersonal network and win support through good communication. "If not for getting support, communication is just a chat." He said, "The world is different. So you need to keep an open mind to different opinions."

Jerry Xia, the representative of Honeywell and a member with QBPC since 2004, shared his experience about Growing together with QBPC. He recalled that in the past

17 years, he had been active in various activities of QBPC as a representative of different member companies. QBPC only focused on anti-counterfeiting activities when he joined. Nowadays, he had witnessed QBPC's emphasis on trade secrets and patent innovation as well as the growth of China's judicial system. Member companies learned from each other and helped each other on the platform of QBPC.

As the last speaker, Membership Service Committee Vice Chair Jayden You shared his experience on how to enrich one's own intellectual property expertise through QBPC. From the perspective of a newcomer in the industry, he said, "QBPC is a very inclusive platform. There are foreign investment enterprises as general members and domestic companies as observers. Joining the QBPC is like standing on the shoulders of giants, to stand higher, see further, and make progress faster." The annual top 10 cases review gathered outstanding cases in the industry, and various seminars focused on industry hotspots. As the saying goes, "The more the merrier." On the platform of QBPC, the members put good ideas of IP protection together, handled tough issues together, cooperated with multiple parties to broaden the road to IP protection.

In addition, IPR protection covered criminal, administrative, and civil aspects, which made the collaboration between government agencies and businesses critical. QBPC had played an important role of strengthening collaboration. It built communication bridges, promoted mutual understanding, dredged communication channels, found solutions together while enhancing mutual trust between government and businesses, and establishing a long-term mechanism.

In the Q&A session, the representatives from Universal City Studios, ABRO, T.C. Pharmaceutical and Bayer exchanged their views with the speakers on hot issues such as zero tolerance for counterfeiting, top 10 cases selection and customs communication. The workshop was detail-oriented with comprehensive content, which greatly helped the participants better understand the values that the QBPC could bring to individuals and their companies.

The member companies participating in this event were ABRO, Johnson & Johnson, Medtronic, Nike, PUMA SE, VICTORIA'S SECRET, Abbott, Abercrombie & Fitch, Activision Blizzard, Allergan, Apple, Applied Material, Bayer, BASF, Beiersdorf, Blackmores, CAPRI HOLDINGS, Canon, Danone, Danfoss, Eaton, Jaguar Land Rover, Kering, Kao Corporation, Levi Strauss&Co., LULULEMON ATHLETICA, McCormick, Novozymes, New Balance, Siemens Healthineers, S.C. Johnson & Son, Toyota, T.C. Pharmaceutical, Universal City Studios, Underwriters Laboratories and Huawei.

## 康普案例分享会

文 / 赵烨轩

4月23日上午，中国外商投资企业协会优质品牌保护委员会（下称品保委）会员服务之旅案例分享系列活动第一期——康普公司提名的王某团伙特大制售假冒“康普”注册商标网线案线上分享会顺利开展，近四十位会员公司代表参加。

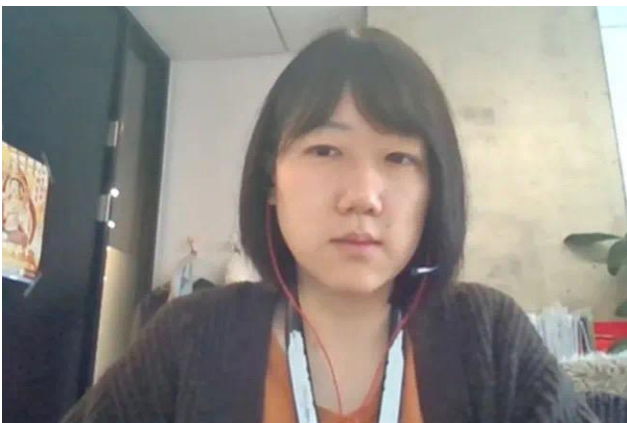
“在刚刚过去的十佳案例评审会中，众多优秀的提名案例由于讲解时间有限，会员们对案例的成功只是惊鸿一瞥。为了给会员们提供更多了解案件亮点与难点的机会，会员服务工作组将开展会员服务之旅案例分享系列活动，计划每一至两周召开一次案例分享会议，预计涵盖大部分参与提名的案件。”会员服务工作组副主席林钰恒介绍说，“本次分享会是案例分享系列活动的第一期，我们邀请到美国康普公司代表杨炜以及授权代表卫晨佳，感谢两位以及所有线上会员的到来。”

杨炜首先介绍了公司概况，美国康普公司在全球先进的通信网络中扮演着关键角色。通过坚持不懈的技术演进，提供的基础设施实现人与技术的互联，其设计及生产的综合布线产品处于世界领先地位，并广泛应用于金融、医疗、教育、交通、体育、娱乐、电信、公共事业等重点行业，帮助客户创造、革新、设计并建立

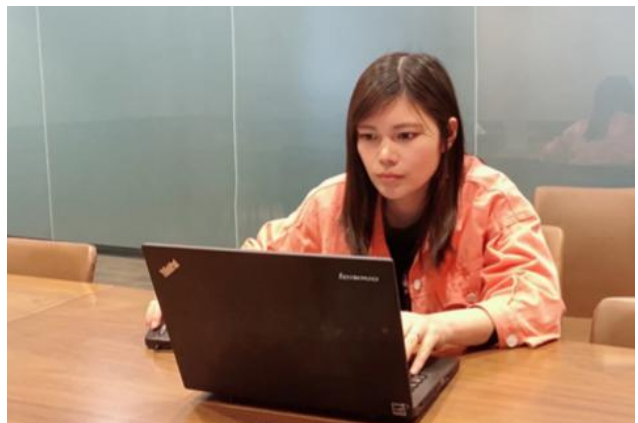
更快更好的有线和无线网络。

然而，正由于康普良好的品牌形象，优异的产品质量和广泛的客户群体，某些不法厂商为牟取暴利，置法律于不顾，大量生产销售假冒康普品牌的综合布线产品。美国康普公司为了保护其客户利益，维护康普品牌形象，针对市场上猖獗的售假制假行为，在2005年就成立了专门反假冒部门并投入大量的人力物力与假冒行为作斗争。康普团队在国际上重点关注亚太和中东市场上的假冒产品，在国内则是重点打击长三角和珠三角地区的假冒活动。

康普公司授权代表卫晨佳作为王某团伙特大制售假冒“康普”注册商标网线案的代理人，从最初发现网络上的假冒产品开始，详细的梳理了案件一步步的进展。卫晨佳谈到，“此次王氏家族案件的发现源自线上的监控。一家名为‘安普综合布线商城’的淘宝店销售金额较高，售卖单价略高于康普的价格红线，并且由于安普是康普旗下品牌，会引起消费者误解。”通过几次测买发现，造假分子回收正品网线的外包装，并二次利用包装上的防伪标签于假冒网线产品。该产品已被用于到湖北省洪湖市一所学校的项目。此后，康普团队开展了一系列的调查。



林钰恒 Carol LIN



卫晨佳 Waye WEI



经过严密的调查取证，并在阿里巴巴大数据和企查查的支持下，找到了王氏家族八家淘宝店，多家位于广州和武汉的仓库以及一个大型供货工厂。在打击行动中查扣了约 74 万件假冒产品，涉案金额高达 2000 万人民币。

在最后的问答环节，来自西门子公司、赛默飞世尔和美国安全检测实验室的代表就如何在网络上筛选可疑目标，案件初期与公安和阿里大数据的合作，公安的督办以及真假混卖的问题与卫晨佳进行了深入交流。卫晨佳表示，康普公司提供的价格红线与长期网上平台的监测数据为筛选可疑目标提供了很大参考作用；案件初期，公安的介入解决管辖权问题，再与阿里公司合作进行更准确的分析；此次公安督办主要原因是涉案金额较大，并且假冒网线已流入到湖北省洪湖市一所学校的项目中，存在信息安全隐患，因此得到了省厅的大力支持；真假混卖一定会对案件产生不良影响。在无现货的情况下，销售记录难以追溯。如果已销售产品的价格明显低于被侵权产品的市场中间价格，且现场缴获了相

同或类似的侵权产品，则可以认定第三方平台的销售记录为侵权产品的销售金额。如分享的康普案件，侵权者无法提供售卖正品的证据，又有大量的假货予以查扣，且其供货工厂非官方授权，所以最终的销售金额都予以认定。

本次分享会让大家对线上侵权案例从发现、追踪到最终打击行动的展开有了更详实的体会，学习了与执法机关、网络平台合作的经验，同时，对康普公司也有了更深入的了解。目前，品保委微信订阅号品保传真（ID: qbpc2020）正在进行提名案例系列分享，会员们可以关注订阅号了解更多案例的详细信息。

参加本次活动的会员公司包括爱宝、强生、耐克、高通、完美、艾尔建、应用材料、博柏利、康普、CAPRI HOLDINGS、丹佛斯、杜邦、伊顿、杰尼斯、捷豹路虎、利惠商业、LVMH Asia Pacific Ltd.、MGA 娱乐、新平衡体育运动、飞利浦、赛诺菲、西门子、庄臣、赛默飞世尔、汤美费格、丰田、美国安全检测实验室、华为和 REACT。

## COMMScope CASE SHARING

Elena ZHAO

On the morning of April 23, the first stop of Quality Brands Protection Committee of China Association of Enterprises with Foreign Investment (QBPC) Membership Service Journey Case Sharing Series- Group Wang Manufactures and Sells Counterfeit "CommScope" Registered Trademark Cabling Products was successfully held online. Nearly 40 member company representatives attended the meeting.

"In recent top ten cases review, the participants could only get a glimpse of the successful cases due to the time limit on each presentation. In order to provide members with more opportunities to learn about the highlights and difficulties of the cases, membership service committee will carry out a series of case sharing activities as part of the membership service journey. We plan to hold a case sharing meeting every one to two

weeks, which is expected to cover most of the nominated cases." Membership Service Committee Vice Chair Carol Lin said. She welcomed and thanked members and two speakers Wei Yang and Wayne Wei for their participation.

Wei Yang first introduced the company. CommScope played a key role in the world's advanced communications network. Through unremitting technological evolution, there were infrastructures provided to realize the interconnection of people and technology, and integrated wiring products designed and produced by CommScope were in world leading position. They were widely used in finance, medical care, education, transportation, sports, entertainment, telecommunications, public utilities and other key industries to help customers create, innovate, design and build faster and better wired and wireless networks.

However, in order to take advantage of CommScope's good image, excellent product quality and wide customer base, some illegal manufacturers produce and sell fake integrated wiring products for profiteering. In order to protect the interests of its customers and maintain the brand image, CommScope established an anti-counterfeiting department in 2005 and invested a lot of labor and resources to combat counterfeiting in response to rampant counterfeiting in the market. The CommScope team focused on counterfeit products in the Asia-Pacific and Middle East markets worldwide as well as the Yangtze River Delta and the Pearl River Delta.

CommScope authorized representative Wayne Wei started from the initial discovery of counterfeit products on the internet and sorted out the progress of the case. Wayne said, "The discovery came from online monitoring. A Taobao store called 'AMP Integrated Cable Store' had a high sales revenue with a unit price slightly higher than CommScope's red line. Besides, AMP was also CommScope's brand, which might cause misunderstandings among consumers." After several test purchases, they discovered that counterfeiters reclaimed the outer packaging of genuine network cables and used the anti-counterfeit labels for counterfeit network cables. The counterfeit products had been used in a school project in Honghu City, Hubei Province. Since then, the CommScope team started a series of investigations.

After rigorous investigation and evidence collection, eight Taobao stores of the Group Wang, several warehouses in Guangzhou and Wuhan, and a large supply factory were found with the support by Alibaba's big data and Qichacha (a verification service). Approximately 740,000 counterfeit products were seized in the crackdown, and the amount involved was as high as 20 million yuan.

In the Q&A session, representatives from Siemens, Thermo Fisher and Underwriters Laboratories discussed with Wayne on how to screen suspicious targets on the internet, cooperation with public security and Alibaba big data at the early stage, supervision by public security, and mixed sale of genuine and fake. Wayne indicated that the

CommScope price red line and long-term online platform monitoring data provided a great reference for screening suspicious targets; the early intervention by the public security authority resolved the jurisdiction issue, and then the cooperation with Alibaba led to more accurate analysis; the main reason for the supervision of the public security authority was that the amount involved was large, and the counterfeit network cables had flowed into the project of a school in Honghu City, Hubei Province, causing high risks to information security; mixed sale of genuine and fake would definitely have negative effect on the case. In the absence of stock, sales records could hardly be traced. If the price of the sold product had been significantly lower than the market median price while the same or similar infringing products had been seized on the spot, the sales recorded by the third-party platform could be recognized as the infringing products' sales. In the CommScope case just shared, the infringer was unable to provide evidence of the sale of genuine goods, many fake goods were seized, and the supplier's factory was not officially authorized. As a result, all sold products were recognized by the court as infringing products.

The meeting enabled participants to gain an in-depth understanding about online infringement cases in terms of discovery, tracking and the final crackdown. Members also learnt from the experience of cooperating with law enforcement agencies and online platforms. At the same time, members got more knowledge about CommScope. At present, QBPC's official WeChat account (ID: qbpc2020) is sharing a series of nominated cases. Please subscribe to learn more about the case details.

The member companies participating in this event were ABRO, Johnson & Johnson, Nike, Qualcomm, Perfect, Allergan, Applied Material, Burberry, CommScope, CAPRI HOLDINGS, Danfoss, Dupont, Eaton, Genius GmbH, Jaguar Land Rover, Levi Strauss & Co., LVMH Asia Pacific Ltd., MGA Entertainment, New Balance, Philips, SANOFI, Siemens, S. C. Johnson & Son, Thermo Fisher Scientific, Tommy Hilfiger, Toyota, Underwriters Laboratories, Huawei and REACT.

## 案例分享

### - 知识产权民事诉讼中的损害赔偿问题

文 / 张艺琳

5月21日，中国外商投资企业协会优质品牌保护委员会（下称品保委）会员服务之旅 - 聚焦“知识产权民事诉讼中损害赔偿问题”的案例分享会在上海举行。七十多位会员公司代表通过线上或线下的方式参加了本次分享会。会员服务工作组副主席马萌萌为会议开场，向受邀主讲人姚红军、点评人于帮清，以及参会的各位会员表达了欢迎和感谢。

主讲人姚红军律师拥有二十多年的知识产权法律从业经验，在品保委代表美国高尔夫生产商反假冒联盟，曾历任品保委法律工作组主席和品保委副主席。姚律师跟大家分享了如何在知识产权侵权民事诉讼中获取高额赔偿及惩罚性赔偿的经验。他首先介绍了知识产权侵权诉讼的最新趋势和知识产权侵权赔偿责任的法律性质和规则原则，并从实务角度分享了如何通过不同渠道获取侵权人侵权规模、侵权获利和侵权恶意方面的证据，以及计算侵权获利的几种方法。在利用惩罚性赔偿制度方面，姚律师通过几个最新案例说明惩罚性赔偿的适用条件和注意事项，尤其是在确定侵权人故意和情节严重的考量因素以及如何确定惩罚性赔偿基数和倍数等方面进行了解读和分析。最后，

他还对刑案后续民事诉讼的几个要点进行了介绍。

品保委法律工作组主席于帮清进行了简要总结和点评。他表示本次分享的内容，如举证问题、相关司法解释和刑案后续民事诉讼等都很贴合实际，听完受益颇多。现场参加与线上参会的会员代表们，也都积极提问和参与了讨论，会场气氛十分热烈。

参加本次活动的会员公司有爱宝工业、艾默生、强生、宝洁、高通、施耐德、联合利华、阿贝克隆比·费奇、雅培、动视暴雪、爱齐科技、艾尔建、苹果、应用材料、佳岁、博世、英国石油、碧然德、博柏利、佳能、卡特彼勒、香奈儿、思科、达能、杜邦、欧时公司、葛兰素史克、本田、霍尼韦尔、捷豹路虎、拉科斯特、乐高、利惠公司、LVMH Asia Pacific Ltd.、MGA 娱乐、美国国家橄榄球联盟、酷悦轩尼诗、新平衡体育运动、诺维信、奥林巴斯、奥的斯、飞利浦、历峰、赛诺菲、西门子、汤美费格、易富、法雷奥、维谛技术、华尔推剪、之宝、华为和美国高尔夫生产商反假冒联盟。



马萌萌 MA Mengmeng



姚红军 Jason YAO



于帮清 Michael YU



## CASE SHARING – DAMAGES IN IP INFRINGEMENT CIVIL LITIGATIONS

Elaine ZHANG

On May 21, Quality Brands Protection Committee of China Association of Enterprises with Foreign Investment (QBPC) landed at another stop of its Membership Service Journey - a workshop focusing on Damages in IP Infringement Civil Litigations was successfully held in Shanghai. More than 70 representatives of QBPC members attended the meeting offline and online.

In her opening remarks, Membership Service Committee Vice Chair Ma Mengmeng welcomed and thanked members and two speakers for their participation.

Jason Yao, the keynote speaker, has more than 20 years of experience practicing IP law. He used to work as Legal Committee Chair and Vice Chair of QBPC. On behalf of the US Golf Manufacturers Anti-Counterfeiting Group this time, Jason talked about how to obtain high damages and punitive damages in IP infringement lawsuits. He first introduced the latest trends in this area and the legal nature and principles of civil IP infringement liabilities. He then explained how to obtain evidence on the scale, profit and malicious deeds of IP infringement via different channels, and methods of calculating infringement profits. In utilizing punitive damages system, Jason illustrated the conditions and precautions of applying punitive damages, with several latest cases as examples, focusing especially on the key factors in determining infringer's intention

and the seriousness of the infringement. He also answered the question on how to determine the base and multiplier of punitive damages. Finally, he gave some advice on handling a civil case with a prior criminal judgement.

QBPC Legal Committee Chair Michael Yu commented on Jason's speech. He said that Jason's sharing on evidence collecting, relevant judicial interpretation, and handling civil cases with a prior criminal proceeding, would be very practical. Representatives, both online and offline, participated actively in the discussion, and the workshop came to a successful conclusion.

Member companies participating in this event were ABRO, Emerson, Johnson & Johnson, P&G, Qualcomm, Schneider Electric, Unilever, Abercrombie & Fitch, Abbott, Activision Blizzard, Align Technology, Allergan, Apple, Applied Materials, Blackmores, Bosch, BP, BRITA, Burberry, Canon, Caterpillar, CHANEL, Cisco Systems, Danone, DuPont, Eurotime, GlaxoSmithKline, Honda Motor, Honeywell, Jaguar Land Rover, Lacoste, LEGO, Levi Strauss & Co., LVMH Asia Pacific Ltd, MGA Entertainment, NFL, Moët Hennessy, New Balance, Novozymes, OLYMPUS, Otis, Philips, Richemont, SANOFI, Siemens, Tommy Hilfiger, TWE, Valeo, Vertiv Tech, WAHL, Zippo, Huawei and US Golf Manufacturers Anti-Counterfeiting Group.



# 宝洁公司打假民事诉讼实务分享

文 / 张艺琳

5月28日，中国外商投资企业协会优质品牌保护委员会（下称品保委）举办了宝洁公司（P&G）打假民事诉讼线上分享会。会员服务工作组副主席尤小刚担任会议主持，宝洁公司大中华区总法律顾问、品牌保护副总裁陈兵和法律部高级法律顾问周游作为主讲嘉宾介绍了宝洁公司近年来在涉假类民事诉讼领域进行的尝试、取得的成果和积累的经验。60多位会员公司代表参加了这次分享会。

宝洁公司的打假民事诉讼，并非刑事和解或是刑事附带民事，而是在刑事审判之后针对刑事判决中的被告进行的独立民事程序，其目的是让制假售假分子既受到刑事处罚，又负担民事赔偿，为侵权行为付出沉重代价，从而更为全面的保护企业财产和消费者权益。

周游在会上就打假民事诉讼的起诉条件、工作机制、实务要点等问题进行了详细阐述，梳理了由诉前准备到立案、查档阅卷、开庭诉中、判决/和解，直至强制执行的诉讼过程，并通过对真实案例的分析和办案亮点、难点、疑惑点的总结，将前述理论与实际操作相结合。

陈兵和周游在发言中提到了知识产权司法保护力度的整体加强、征信制度的实施及对失信被执行人的限制给打假民事诉讼带来的积极影响，同时他们也呼吁更多的友商加入到打假民事诉讼的行动中来，切身体会国家加强知识

产权司法保护对企业带来的裨益，形成聚力促进整个营商环境的提升和优化。陈兵还提及宝洁未来将开展针对更为复杂的网络线上侵权售假行为的打假诉讼思路。

陈兵最后表示，2019年底项目启动以来，宝洁公司已经办理了超过100件的打假民事诉讼案件并完成了从“0-1.0”的工作机制和系统的搭建和运作。宝洁公司会继续通过实践，力求实现打假民事诉讼业务系统迈向工业2.0的进化和完善。得益于品保委的优质平台和精心安排，实践得以分享，知识得以共创，行业聚力，未来可期！

整场分享内容详实，讲解生动。在问答环节，与会代表提出了多个相关热点问题，并逐一得到解答，现场形成了良好的互动氛围。

参加本次案例分享的会员公司有：爱宝工业、微软、耐克、宝洁、彪马、高通、联合利华、3M、阿贝克隆比·费奇、雅培、艾尔建、安踏、应用材料、博世、英国石油、碧然德、博柏利、佳能、卡特彼勒、香奈儿、高露洁、大陆集团、丹佛斯、帝斯曼、杜邦、戴森、葛兰素史克、本田、开云、Longchamp、美泰、MGA娱乐、酷悦轩尼诗、奥林巴斯、奥的斯、飞利浦、赛诺菲、西门子、西门子医疗、汤美费格、美国安全检测实验室、法雷奥、华尔推剪和华为。

## PROCTER & GAMBLE CIVIL LITIGATION SHARING

Elaine ZHANG

On May 28, the Quality Brands Protection Committee of China Association of Enterprises with Foreign Investment (QBPC) held an online sharing meeting on Procter & Gamble's civil litigation practices. Jayden You, Membership Service Committee Vice Chair, hosted the meeting. Benny Chen, General Counsel and Vice President of Brand Protection and William Zhou, Senior Counsel of P&G Greater China Legal Department, shared their experience and achievements over P&G's civil litigation against counterfeiting. More than 60 representatives of QBPC members attended the meeting.

P&G's civil litigation against counterfeiting is neither criminal reconciliation nor supplementary civil action in criminal proceeding. It is handled as an independent civil procedure against the defendants in P&G's concluded criminal cases, in order to make sure that besides receiving the criminal punishment, the counterfeiters also pay a high price with civil compensation to the right holder. As a result, the intellectual property of businesses and consumer rights and interests could be better safeguarded.

In his presentation, William Zhou elaborated on the prosecution conditions, working mechanism, practical key points and other issues of anti-counterfeiting civil litigation, analyzed the litigation process from pre-litigation preparation to the filing of the case, review of the criminal files, in-court performance, receiving judgement or accepting settlement, and finally the enforcement. Then, through case studies, he summarized the highlights, difficulties, and problems in handling these cases.

According to Benny Chen and William Zhou, the overall strengthening of the judicial protection of intellectual property rights, the implementation of the credit reference system and the restrictions on dishonest debtor had brought about positive impact on the civil action against

counterfeiting. In the meantime, they called on more enterprises to join in the civil action against counterfeiting and benefit from the strengthening of IP protection, form a cohesive force to promote the improvement and optimization of the whole business environment. Benny Chen also mentioned that P&G would carry out anti-counterfeiting litigation against more complicated online infringement and online sale of counterfeit goods in the near future.

In the end, Benny Chen said that since the start of the project in late 2019, P&G had handled more than 100 anti-counterfeiting civil cases and had built the working mechanism and operation system from zero to version 1.0. P&G would continuously strive to realize the evolution and improvement of anti-counterfeiting civil litigation system towards industry 2.0 through practice. Thanks to QBPC's high-quality platform and thoughtful arrangements, this group could share best practice, brainstorm new ideas, form a cohesive force and expect a better future!

The sharing was detail-oriented, and the issues were lively explained. During the Q&A session, a number of questions regarding practical hot issues were raised and answered in an interactive atmosphere.

Member companies participating in this event were ABRO, Microsoft, Nike, P&G, Puma, Qualcomm, Unilever, 3M, Abercrombie & Fitch, Abbott, Allergan, Anta, Applied Materials, Bosch, BP, BRITA, Burberry, Canon, Caterpillar, CHANEL, Colgate-Palmolive Company, Continental Automotive, Danfoss, DSM, DuPont, Dyson, GlaxoSmithKline, Honda Motor, Kering, Longchamp, Mattel, MGA Entertainment, Moët Hennessy, OLYMPUS, Otis, Philips, SANOFI, Siemens, Siemens Healthineers, Tommy Hilfiger, Underwriters Laboratories, Valeo, WAHL and Huawei.



## 案例分享 - NBA 篮球赛事视频盗播案

文 / 张艺琳

6月11日，中国外商投资企业协会优质品牌保护委员会（下称品保委）会员服务之旅 - NBA 篮球赛事视频盗播案的案例分享活动在北京举行。来自三十多家会员公司的五十多位代表通过线上或线下的方式参加了本次分享会。

会员服务工作组主席孙斯文主持会议，向参会代表介绍了会议的三位主讲嘉宾。来自 NBA 中国的刘伟凯律师，现任 NBA 中国高级

法律总监，负责 NBA 在华版权维权及篮球合作、运营、赛事和大型活动相关的法务支持工作。赵克峰律师是本案的经办律师，也是已任律师事务所北京办公室的合伙人，拥有 16 年执业经验，是国内资深的知识产权诉讼律师。特邀嘉宾苏志甫先生原为北京市高级人民法院法官、审判长，也是本案的二审法官之一，专注知识产权审判十五年，多个经办案件入选中国法院年度十大知识产权案例。



左起：苏志甫、赵克峰、刘伟凯

Left to right: SU Zhifu, Steve ZHAO and Victor LIU

刘伟凯律师介绍了案件的相关背景，从权利人角度讲述了为在中国保护体育赛事节目的版权，NBA 在 2008 年至 2020 年的十数年间经历的坎坷和所做出的努力。在审判过程中，NBA 以视频的形式向法院展示摄像师、导播、慢动作导演、字幕导演等创作人员在赛事转播过程中进行的自主化选择，采用了与电影相同或近似的镜头表达方式，并且利用镜头的剪切使人物关系和人物特征表现出故事情节性，证

明了 NBA 赛事节目达到了相当的独创性高度，最终在二审中获得了体育赛事节目属于类电作品的判决。

随后，赵克峰律师分享了本案的两个办案要点，一是从法律分析角度向法院说明 NBA 赛事节目具有独创性，二是证明 NBA 赛事节目符合“固定”要件的要求，应属于“类电作品”或至少构成“其他作品”。

赵律师还对本案件的办案亮点进行了总结。他表示北京高院的法官们对体育赛事直播节目构成类电作品的认定具有前瞻性，与修改后的《著作权法》相契合，能够尊重事实和法律而非盲目跟随权威，彰显了保护创新、保护国内外知识产权权利人的坚定决心。

在对体育赛事节目典型案例进行分析与思考的基础上，苏志甫先生探讨了新著作权法对视听作品的保护，从而拓展了话题的广度和深度。他将新旧著作权法的相关条款进行了对比，阐释了旧法下“类电作品”保护存在的争议和问题，通过对典型案例的回顾与总结，分享了法院对于独创性和“摄制在一定介质上”这一要求的理解。苏志甫先生还对新法下视听作品

的保护进行了展望。本次分享会内容详实，对于案件不同视角的展示增加了分享的层次，取得了极佳的效果。现场与线上参会的会员代表们积极提问、认真讨论，会议在热烈的气氛中圆满结束。

参加本次活动的会员公司有爱宝工业、强生、微软、耐克、宝洁、高通、施耐德、阿贝克隆比·费奇、阿迪达斯、爱齐科技、艾尔建、安踏、英国石油、佳能、卡特彼勒、科思创聚合物、丹佛斯、杜邦、戴森、杰尼斯、本田、开云、乐高、棒球主盟、MGA 娱乐、酷悦轩尼诗、美国篮球协会资产有限公司、新平衡体育运动、诺维信、飞利浦、庄臣、赛诺菲、施维雅、西门子、西门子医疗、环球影城和法雷奥。

## CASE SHARING -COPYRIGHT DISPUTE ON NBA LIVE BROADCASTING

Elaine ZHANG

On June 11, the Quality Brands Protection Committee of China Association of Enterprises with Foreign Investment (QBPC) held another Membership Service Journey activity - Copyright Dispute on NBA Live Broadcasting case sharing in Beijing. More than 50 representatives from QBPC member companies attended the meeting online or offline.

Penny Sun, Chair of Membership Service Committee presided over the meeting and introduced the keynote speakers to the attendees. The first keynote speaker Victor Liu is the Senior Legal Counsel of NBA China, in charge of NBA copyright protection and provides legal support to NBA basketball cooperation, operation, and major events held in China. Steve Zhao is the handling lawyer of this case, a partner from Gen Law Beijing Office, an experienced intellectual property litigation lawyer with 16 years of practicing experience. The Guest Speaker Mr. Su Zhifu used to be a judge in Beijing Higher Court and was one of the judges assigned to this case in the appeal court. He was engaged in the intellectual property trials for 15 years, and many of the cases he handled were elected into the Top Ten Cases of the Chinese Courts.

Victor Liu introduced the relevant background of the case. From the perspective of the right owner, he described the ups and downs in NBA's path to protect the copyright of sporting event programs in China from 2008 to 2020.

During the trial, NBA provided a video, which showed the photographers, director, director of slow motion, subtitles director and other creative staff making individualized choices during the broadcast. NBA game programs used a similar expression as the cinematographic works and utilized camera clips to tell stories about people's relationship and personalities. All of these proved that NBA game programs reached the "originality" standard, and finally received the court decision that sporting event programs should be assumed as "cinematographic work" in the appeal.

Steve Zhao shared two key points of the case. The first was to explain the originality of the NBA game programs to the court from legal analysis perspective. The second point was to prove the NBA game programs met the requirements of "fixation" elements and should be treated as "cinematographic work" or at least "other works". Steve Zhao also talked about the highlights of this case. He said that it was forward-looking for the judges in the Beijing Higher Court to identify live sport programs to be "cinematographic work", later echoed by the Amended Copyright Law. The judges respected the facts and laws rather than blindly following mainstream views and showed the determination to protect innovation and intellectual property rights of both domestic and foreign owners.

Based on the analysis and thoughts on model cases of sporting event programs, Mr. Su Zhifu talked about the protection of audiovisual works under the Amended Copyright Law, which led to a broader and in-depth discussion. He made a comparison between the original and amended Copyright Law, explained the controversies and problems in the protection of "cinematographic works" under the original law, and shared his understanding of "originality" and "can be reproduced in tangible forms" from a judge's view. Mr. Su Zhifu also talked about the outlook of the protection of audiovisual works under the amended law.

The sharing meeting was informative, elevated the level of sharing by providing different perspectives of the case

and had achieved excellent results. Representatives, both online and offline, participated actively in the discussion, and the meeting came to a successful conclusion.

The member companies participating in this event were ABRO, Johnson & Johnson, Microsoft, Nike, P&G, Qualcomm, Schneider Electric, Abercrombie & Fitch, adidas, Align Technology, Allergan, Anta, BP, Canon, Caterpillar, Covestro, Danfoss, DuPont, Dyson, Genius GmbH, Honda Motor, Kering, LEGO, Major League Baseball, MGA Entertainment, Moët Hennessy, NBA, New Balance, Novozymes, Philips, S. C. Johnson & Son, SANOFI, Servier, Siemens, Siemens Healthineers, Universal City Studios and Valeo.

## 酷悦轩尼诗案例分享 - 工业设计的知识产权保护

文 / 张艺琳

6月23日，中国外商投资企业协会优质品牌保护委员会（下称品保委）会员服务之旅 - 酷悦轩尼诗工业设计知识产权保护案例分享活动以线上方式举行，来自四十多家会员公司的七十多位代表参加了本次分享会。会员服务工作组副主席林钰恒主持会议。

来自酷悦轩尼诗公司品牌保护团队的北亚区品牌保护负责人姚伟介绍了公司情况及知识产权保护策略。她说，酒瓶是轩尼诗商业价值的载体之一，具有识别商品来源的重要作用，轩尼诗一直非常重视对酒瓶的知识产权保护。针对市场上出现的大量山寨瓶型产品，轩尼诗曾以发送律师函和行政投诉的方式进行维权，但保护力度相对有限。在轩尼诗百乐廷酒瓶著作权侵权纠纷诉讼案中，轩尼诗通过主张实用艺术品著作权获得司法层面的认定和保护，取得了较好效果。轩尼诗和代理律师在案件处理过程中紧密协作，一起在作品的性质、著作权权属证据的收集以及侵权证据的固定等多个方面做了大量工作。

张旭律师在此案基础上，对工业设计的知识

产权保护进行了更为全面的解读，详细分析了工业设计保护的不同途径及各自特点。在外观设计保护上，他介绍了专利法的重大修改和外观专利失效后的版权保护，对立体商标的说明则着重于立体商标的注册现状和对商品包装类立体商标的显著性审查。在实用艺术品著作权保护方面，张旭律师介绍了实用艺术品的概念、起源、相关规定及经典案例，并对轩尼诗百乐廷酒瓶著作权侵权纠纷案的要点进行了梳理。最后，张旭律师援引“第一性原理”，对本次分享作了提升和总结。他认为在工业设计知识产权保护方案的选择上，要从案件最本源需求出发，认清权利人通过这一案件所要达到的目标，不应盲目跟随行业内他人的做法或照搬他人经验。

本次分享会吸引了来自不同行业的会员公司代表参加，体现了会员们对这一话题的关注度。在问答环节，多个与会代表提出了各自在工业设计知识产权保护工作中遇到的难点问题，张旭律师逐一给出了意见。本次分享会取得了圆满成功。



参加本次活动的会员公司有爱宝工业、美敦力、微软、耐克、完美、高通、施耐德、阿贝克隆比·费奇、阿迪达斯、艾尔建、爱茉莉、应用材料公司、安踏、苹果、亚萨合莱、拜尔斯道夫、博世、英国石油公司、碧然德、博柏利、Capri Holdings、卡特彼勒、科思创聚合物、杜

邦、伊顿、乐高、陆逊梯卡、美泰、酷悦轩尼诗、美国篮球协会资产有限公司、新平衡体育运动、诺维信、松下、飞利浦、西门子、西门子医疗、斯托克、先正达、蒂芙尼、丰田、汤美费格、美国安全检测实验室、华尔和美国高尔夫生产商反假冒联盟。

## CASE SHARING - IPR PROTECTION FOR INDUSTRIAL DESIGN

Elaine ZHANG

On June 23, the Quality Brands Protection Committee of China Association of Enterprises with Foreign Investment (QBPC) held an online meeting on Moët Hennessy case sharing - IPR Protection for Industrial Design. Carol Lin, Membership Services Committee Vice Chair, delivered opening remarks. More than 70 representatives of QBPC members attended the meeting.

Vivian Yao, Head of Moët Hennessy North Asia Brand Protection Team, gave a brief introduction of the Hennessy Group and its intellectual property protection strategy. She said that wine bottle as one of the carriers of Hennessy's commercial value, played an important role in identifying the source of goods. Therefore Hennessy always attached great importance to the intellectual property protection of its wine bottles. In view of the large number of counterfeit bottle products on the market, Hennessy used to defend its rights by sending legal letters and file administrative complaints, but the effect was limited. In the case of Hennessy Paradis Bottle copyright infringement dispute, Hennessy obtained good results through judicial recognition and protection by advocating the copyright of "work of applied art". Hennessy and its lawyers worked closely in handling the case and put a lot of efforts in defining the nature of the work, the collection of copyright ownership evidence and the fixation of infringement evidence.

Lawyer Zhang Xu made a more comprehensive interpretation of the intellectual property protection of industrial design and analyzed in detail the different ways and characteristics of industrial design protection. In the aspect of appearance design protection, he introduced the

major amendments of the patent law and the copyright protection after the invalidation of the appearance patent. In terms of three-dimensional trademark, he focused on the registration status and the examination of distinctiveness. On the copyright protection of work of applied art, Zhang Xu explained the concept, origin, relevant regulations and classic cases of this protection method, and sorted out the highlights of Hennessy Paradis Bottle copyright infringement dispute case. Finally, Zhang Xu cited "First Principle Thinking" to end this sharing. He suggested that in the selection of intellectual property protection plan for industrial design, people should recognize the ultimate goal that the right owner wanted to achieve through the case, instead of blindly following the usual practice or copy the experience of others.

The sharing meeting attracted representatives of member companies from different industries, reflecting members' attention to this topic. During the Q&A session, several representatives shared the difficulties they met in IPR protection of industrial design, and Zhang Xu offered his opinions. The meeting came to a successful conclusion.

The member companies participating in this event were ABRO, Medtronic, Microsoft, Nike, Perfect, Qualcomm, Schneider Electric, Abercrombie & Fitch, adidas, Allergan, Amore Pacific, Applied Materials, Anta, Apple, ASSA ABLOY, Beiersdorf, Bosch, BP, Brita, Burberry, Capri Holdings, Caterpillar, Covestro, DuPont, Eaton, Lego, Luxottica, Mattel, Moët Hennessy, NBA, New Balance, Novozymes, Panasonic, Philips, Siemens, Siemens Healthineers, Stokke, Syngenta, Tiffany, Toyota, Tommy Hilfiger, Underwriters Laboratories, WAHL and U.S. Golf.

# 行业小组风采 IWG ACTIVITIES

## 品保委行业小组六月工作会议

文 / 王月

6月8日，品保委副主席 John Groves 主持行业小组六月工作会议。各行业小组协调人依次进行发言，聚焦行业小组在过去几个月中工作计划落实情况、项目进展以及会员企业所关注的行业性知识产权保护问题。参与本次会议的行业小组协调员有：农业小组协调员范涛，自动化及电气行业小组协调员杨士维，人工智能与数字行业小组协调员陶洋，汽车行业小组

协调员 Alex Theil，食品饮料 & 酒业行业小组协调员徐璐佳，照明行业小组协调员张保华，个人护理品行业小组协调员刘启，运动、时尚与生活行业小组协调员俞卓韵，玩具及授权产品行业小组协调员董晶和无线与集成电路行业小组协调员刘涛。品保委主席丁宇也参加会议并提出相关建议。

## IWG COORDINATOR JUNE MEETING

WANG Yue

On June 8, QBPC Vice Chair John Groves hosted June IWG Coordinator Meeting. Each IWG coordinator spoke in turn, focusing on industry group work plan implementation, project progress, and industry-specific IP protection concerns of member companies over the past few months. Agricultural IWG Coordinator Sam Fan, Automation & Electric IWG Coordinator David Yang, Artificial Intelligence and Digital IWG Coordinator Yang Tao, Automotive IWG Coordinator Alex Theil,

Food Beverage & Alcohol IWG Coordinator Louisa Xu, Lighting IWG Coordinator Bob Zhang, Personal Care IWG Coordinator LIU Qi, Sports, Fashion & Life Style IWG Coordinator Julie Yu, Toys & Licensed Goods IWG Coordinator Emo Dong and Wireless & Integrated Circuit IWG Coordinator Kelvin Liu attended the meeting. QBPC Chair Michael Ding also attended the meeting and provided suggestions.



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