序　言

2021年，是我国知识产权事业发展史上具有里程碑意义的一年。党中央、国务院相继印发知识产权强国建设纲要和“十四五”规划，党的十九届六中全会将“强化知识产权创造、保护、运用”写入党的重大历史决议，体现了党中央对知识产权工作的高度重视。这一年，《江苏省“十四五”知识产权发展规划》印发实施，《江苏省知识产权强省建设纲要（2021—2035年）》编制完成，全国首部知识产权促进和保护省级地方性法规《江苏省知识产权促进和保护条例》通过初审，江苏在中央知识产权保护工作检查考核中再获优秀等次，知识产权综合发展指数位居全国第二位，实现了“十四五”良好开局。

2021年，在省委省政府的领导下，省知识产权和商标战略实施工作领导小组以及各成员单位各司其职，持续加大行政执法和司法保护力度，协力构建江苏知识产权“大保护”格局，对侵犯知识产权行为形成有力震慑。在行政执法方面，全省处理专利侵权纠纷案件4564件；专利商标行政处罚案件3908件，罚没金额8762.6万元；查处侵权盗版案件641起，涉案金额1.6亿余元；查处种子案件66件，罚没金额229万元；南京海关扣留侵权货物3882批次，涉案货物数量61.78万件，涉案货物价值415.50万元。在司法保护方面，全省法院系统新收各类知识产权案件31137件，其中适用惩罚性赔偿判决案件80件；检察机关办理各类知识产权案件1193件；公安机关立案侦办各类侵权假冒犯罪案件2609起，

破案 1637 起，抓获犯罪嫌疑人 5488 人，涉案金额 20 亿余元。

在第 22 个世界知识产权日来临之际，我们从省法院、检察院、版权、公安、市场监管、知识产权和南京海关等部门处理的诸多案件中遴选汇编了 2021 年江苏省知识产权十大典型案件，旨在以案说法、促进守法，以点带面、指导工作。本次入选的十大典型案件涉及著作权、专利、商标、商业秘密等领域，民事、刑事、行政案件兼备，部分案件是新环境新业态下出现的新型侵权案件，案情复杂，事实认定困难，社会影响较大，处理过程复杂，充分彰显了我省知识产权“严保护、大保护、快保护、同保护”的氛围和成效。为便于公众了解案情，理解这些典型案件的特点，选编时，对案情作了详细的介绍，提供了案件处理结果，并邀请省内知识产权领域专家对案件进行了分析点评。

希望我省司法机关和行政部门在知识产权保护方面的积极努力和工作成果，能够进一步提振企业和社会公众对知识产权保护的信心，引导全省上下协力推进知识产权创造、保护、运用，为谱写“强富美高”新江苏现代化建设新篇章贡献知识产权力量。

江苏省知识产权和商标战略实施工作领导小组办公室

2022 年 4 月

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案件一：

环球影画公司与千尺雪公司等“小黄人”著作权侵权纠纷案

案情介绍：

“小黄人”系列电影由全球知名的环球影业公司出品，自 2010 年公开上映以来成为电影史上票房最高的动画电影之一。卡通形象“小黄人”在全球具有较高知名度和影响力，环球影画公司经授权使用“小黄人”卡通形象，并针对侵权行为维权。2017 年 4 月 16 日，环球影画公司授权案外人使用“小黄人”卡通形象。

沧州千尺雪食品有限公司（以下简称千尺雪公司）是生产、销售规模较大的食品有限公司，销售范围涉及全国 22 个省的 153 个市县，该公司法定代表人及股东景某江于 2018 年 4 月 19 日将与“小黄人”卡通形象近似的“益小瓶卡通形象”登记为个人美术作品，并在其生产、销售的“旺仔钙铁锌益小瓶”等五款乳制品上使用该卡通形象。同时，千尺雪公司在上述产品中使用“旺仔”商标，该“商标”系旺仔饮料（广州）集团有限公司（以下简称旺仔公司）许可广东泰牛维他命饮料有限公司（以下简称泰牛公司），再由泰牛公司许可千尺雪公司使用，同时产品上标注旺仔公司为商标授权商。千尺雪公司多次通过全国性食品展销会及线上食品招商网站宣传等方式推广、销售侵权产品，在推广、销售中使用了景某江提供的版权登记证书及旺仔公司、泰牛公司提供的《商标使用许可授权书》。

2018 年 5 月 17 日，微信公众号“食品招商网”转发该网站发布文章《引爆市场动销，热销商超、母婴、特通渠道，这款儿童饮品经销商千万不能错过》，文中记载：“产品上市以来，迅速走俏市场，创造了 3 个月地区销售 1500 万，单品破 25 万件的销售奇迹”，并附有千尺雪公司股东景某松的银行账户收取货款记录及招商咨询电话，千尺雪公司董事及股东景某祥在微信朋友圈中多次转发该文章。无锡味能食品有限公司（以下简称味能公司）销售了侵权产品。

2019 年 4 月 25 日，环球影画公司向苏州中院提起诉讼，要求千尺雪公司、景某江、景某松、旺仔公司、泰牛公司、味能公司等六被告立刻停止侵权行为；前五被告千尺雪公司、景某江、景某松、旺仔公司、泰牛公司共同赔偿其经济损失及合理费用等共计 500 万元，并承担消除影响等民事责任；第六被告味能公司赔偿其经济损失及合理费用等共计 10 万元。同时，环球影画公司在立案时申请了行为保全。

处理结果：

2019 年 6 月 28 日，苏州中院作出民事裁定，责令六被告千尺雪公司、景某江、景某松、旺仔公司、泰牛公司、味能公司立即停止生产或销售侵犯“小黄人”卡通形象著作权的侵权乳制品，千尺雪公司立即停止使用“小黄人”卡通形象进行宣传和推广的行为，直至本案终审法律文书发生法律效力时为止。该行为保全禁令裁定于 2019 年 7 月 5 日送达各被告。但时至 2020 年 6 月 3 日开庭，阿里巴巴 1688 网站仍有“旺仔钙铁锌益小瓶”产品销售。

2020 年 7 月 1 日，苏州中院作出一审判决，支持环球影画公司的诉讼请求，判决前五被告千尺雪公司、景某江、景某松、旺仔公司、泰牛公司共同赔偿原告人民币 500 万元，第六被告味能公司赔偿原告人民币 10 万元。千尺雪公司、景某江、景某松、旺仔公司、泰牛公司等五被告提出上诉，认为一审判

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决数额过高。

2021 年 8 月 10 日，江苏省高级人民法院作出驳回上诉、维持原判的二审判决。

（本案由江苏省高级人民法院提供）

分析点评：

本案被侵犯著作权的对象系高票房动画电影衍生的卡通形象作品，具有较高的市场价值。法院经原告申请针对被告侵权行为作出的行为保全禁令及时制止了被告的侵权行为，避免了侵权产品大量流向市场、权利人损失进一步扩大，做到了及时、有效地打击侵权盗版行为。

法院以侵权人自行宣传的销售数额作为基数，结合价格表反映的产品利润率计算其违法所得，核算出被告违法所得为1600万元。同时，考虑到涉案“小黄人”卡通形象具有较高的知名度和影响力，使用该作品应支付合理使用费，以及被告恶意明显、侵权情节严重、拒不履行保全禁令、原告为制止侵权支出了较多合理费用等因素，法院最终判决全额支持环球影画公司 510 万元赔偿的诉讼请求，得到社会各界的广泛关注和高度评价，得到知产力等多家专业媒体报道。

本案原告为美国公司，被告为中国公司和公民，审判机关依法作出支持外国公司诉讼请求的判决，彰显了我国知识产权同保护的法治理念，展示了我国良好的法治环境和营商环境。本案对抑制电影衍生产品市场的盗版行为、保护正版衍生产品的销售具有积极作用，对我国电影行业衍生产品市场的健康发展也将起到一定的引导作用。

案件二：

设易公司与望拓公司演绎作品著作权侵权纠纷案

案情介绍：

南京设易网络科技有限公司（以下简称设易公司）系“建E室内设计网”（网址为 www.justeasy.cn）的经营者，网站拥有超过100万名注册会员，行业覆盖率超40%，涵盖原创模型、贴图、施工图、VR全景合成、云渲染等业务，是室内设计素材与门户网站。设易公司经营模式主要有以下两种，一是普通用户，其下载1个3D模型文件需支付30至40个金点不等，1元可购买10个金点；另一种是注册会员制，年会员可享受九折优惠。

上海望拓网络科技有限公司（以下简称望拓公司）经营模式与设易公司相似，该公司法定代表人陆某远曾系设易公司创始人之一。公司网站中涉案4幅3D模型文件与设易公司主张的4幅作品完全相同，且上传时间晚于设易公司的上传时间。设易公司认可用于3D建模的涉案4幅平面图片均来源于网络下载，亦认可未获得相应权利人的许可，但认为其主张的4件3D模型文件均经过设易公司工作人员二次创作，属于演绎作品，应当受到法律保护。

设易公司诉称望拓公司未经许可将其创作的3D模型文件上传至该公司创办的知末网（网址为 www.znzmo.co）的行为侵害了设易公司享有的相关作品著作权，上传行为构成对设易公司的不正当竞争，请求法院判决支持其诉讼请求。

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案件二审过程中，设易公司获得 1 幅作品原著作权人的授权。

处理结果：

一审法院认为设易公司未经原平面设计图片著作权人的许可、擅自使用他人平面设计图片进行转换复制的行为，属侵害他人著作权的行为；设易公司主张涉案 4 件 3D 模型文件属于演绎作品没有法律依据，一审法院驳回设易公司的全部诉讼请求。设易公司不服一审判决，向江苏省高级人民法院提起上诉。

江苏省高级人民法院二审认为设易公司主张权利的涉案 3D 模型文件属于演绎作品，且设易公司对其享有著作权，虽然设易公司未经许可的改编行为构成对原著作权人的侵权，但这并不妨碍其禁止其他主体未经许可复制、发行其改编后的作品。二审法院改判望拓公司赔偿设易公司经济损失及合理开支共计人民币 6 万元。

（本案由江苏省高级人民法院、省版权局提供）

分析点评：

本案是厘清 3D 模型文件智力成果的认定及权利边界、3D 作品与 2D 在先作品之间的权利保护关系等问题的新型案例。

判决认为，判断该技术创作智力成果是否属于新作品、演绎作品，应当结合 2D 原作品，综合考虑创作过程、创意思路、创作手法、技术应用、表达方式、表现内容、演绎效果等要素，对该智力成果是否具备著作权法意义上的作品属性、是否属于演绎作品作出判断。

本案的另一个亮点，是合理界定未经授权 3D 模型文件演绎作品的性质、权利边界和保护范围。演绎作品系原作品经再度创作形成，凝结了原作品权利人和演绎作品权利人的双重贡献，在判断给予未经授权的演绎作品何种性质的

保护、何等程度的保护时，应当兼顾两度创作环节中不同创作主体的法律权益以及作品传播所衍生的公共利益。

本案一方面指出，未经权利人许可而对在先原作品进行演绎改编的行为，侵犯了原作品权利人的著作权；另外一方面明确，基于未经授权演绎作品改编者所付出的创造性劳动，可依法给予其相应的著作权保护，演绎作品的创作人仍享有演绎作品著作权，有权禁止他人未经授权使用演绎作品，同时也有权就他人侵权行为提出停止侵权和赔偿请求。在确定具体的赔偿数额时，应区分原作者与演绎作者各自的独创性贡献，并根据演绎作品的独创性贡献程度，单独确定演绎作品作者所能获得的赔偿数额。

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案件三：

大自然公司与福建大自然公司、周某良等侵害商标权及不正当竞争纠纷案

案情介绍：

原告大自然家居（中国）有限公司（以下简称大自然公司）经大自然投资控股有限公司（以下简称大自然控股公司）授权许可，对“大自然”“Nature”“ ”“ ”商标依法享有使用权，且有权针对上述商标的侵权事宜展开维权行为。经过多年的使用与宣传，大自然公司的“大自然”品牌在地板行业有极高的知名度与影响力，被国家工商总局认定为驰名商标。

2017 年以来，被告福建因尔心安木业有限公司（以下简称因尔心安公司，原企业名称为福建大自然美学家家居有限公司，以下简称福建大自然公司）不仅在企业名称中使用了“大自然”的文字，而且将公司网站域名注册为“naturemxj.com”，并在其地板产品和宣传品中使用“ ”“ ”等标识。被告还通过中华地板网等平台进行招商加盟，并授权多家地板厂以 OEM 的方式加工地板之后分销各经销商，47 家经销商分布全国。

2018 年，福建大自然公司法定代表人周某良名下的“大自然美学家”商标被北京知识产权法院（2017）京 73 行初 2521 号判决宣告无效后，同一天内又在 37 个商品类别上抢注了“大自然美学家”商标。截至本案诉讼时，福建大自然公司、周某良已申请注册了“大自然 XX 家”系列商标 50 余件，其中与地板有关的 12 件。大自然公司遂诉至法院，请求判令福建大自然公司等停止商标侵

权及不正当竞争行为，并赔偿经济损失 1500 万元。

处理结果：

法院经审理认为，福建大自然公司生产、销售的“大自然美学家”地板与大自然公司涉案商标核定使用的商品类别相同，其在地板包装、对外宣传上使用的“大自然美学家”“大自然美学家地板 Nature Mxj”等标识与大自然公司的“大自然”“大自然美学家”等商标构成近似，易使公众对商品来源产生误认，构成商标侵权。福建大自然公司将“naturemxj.com”注册为域名并用于宣传被诉侵权产品，将“大自然”商标登记为企业字号的行为构成不正当竞争。同时，福建大自然公司在近似商标被认定无效后，继续恶意囤积大量其他近似商标，通过特许经营方式扩大侵权规模，属于情节严重的恶意侵权行为，符合惩罚性赔偿的适用条件。综上，法院判令被告停止商标侵权及不正当竞争行为，并全额支持原告人民币 1500 万元的赔偿请求。

（本案由江苏省高级人民法院、省市场监督管理局提供）

分析点评：

本案系一起典型的通过司法裁判全面规制商标侵权和恶意抢注、囤积商标的案例。法院确定了特许经营方式下侵权人因侵权所获得的利益，并将恶意注册、囤积商标行为作为适用惩罚性赔偿的考量因素，依法支持了大自然公司的赔偿请求，系国内地板行业知识产权领域最高判赔额的案例，为破解知识产权侵权赔偿“计算难”“赔偿低”等难题进行了有益探索，对类案审理具有一定参考意义。

审理法院还向国家知识产权局商标局以及中华地板网、中华建材网等地板行业互联网平台发送司法建议，商标局对福建大自然公司违法注册和囤积商标行为进行了处理，为推动建立全流程打击恶意商标注册联合工作机制和形成打

击恶意注册社会共治局面注入了强劲动力，有利于在全社会进一步营造尊重知识产权的良好氛围和公平有序的法治化营商环境，引导市场主体和消费者强化知识产权保护意识，推动市场主体运用商标品牌战略实现创新发展。

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案 件 四 ：

三吉利公司与泓源公司、张某龙、冯某生、杨某胜、曹某球、潘某祥侵害技术秘密纠纷案

案情介绍：

江苏三吉利化工股份有限公司（以下简称三吉利公司）拥有“苯酚羟基化生产邻苯二酚联产对苯二酚”生产工艺，并作为技术秘密加以保护。杨某胜、曹某球、潘某祥原系三吉利公司的员工，离职后至江苏泓源化工有限公司（以下简称泓源公司）工作。冯某生曾作为天津大学的代表与三吉利公司长期研发“苯二酚”产品分离技术，其与泓源公司实际控制人张某龙签订《备忘录》，将其掌握的苯二酚分离技术提供给张某龙。

三吉利公司认为杨某胜等人违反保密协议，将其掌握的商业秘密披露给泓源公司，而泓源公司使用其商业秘密将生产“苯二酚”产品的设备安装到位，构成侵权，故诉至法院，请求判令泓源公司和杨某胜等人停止使用涉案技术秘密并拆除已经安装的侵害三吉利公司技术秘密的机器设备，并赔偿相应经济损失和合理开支。

处理结果：

法院经审理认为，三吉利公司主张的“苯二酚”生产工艺中的部分技术信息构成技术秘密，泓源公司及张某龙等人实施的涉案行为侵犯了三吉利公司的技术秘密，并判令泓源公司、张某龙等人立即停止侵权，泓源公司立即拆除已经安装的侵犯三吉利公司技术秘密的机器设备，赔偿三吉利公司经济损失及合理开支共计人民币 120 万元。

（本案由江苏省高级人民法院提供）

分析点评：

本案系一起涉及大型化工产品生产工艺的技术秘密纠纷案，涉及复杂的技术事实与法律问题，其标的金额大，被控侵权人众多，侵权行为多样化，既有因员工跳槽引发的侵权行为，亦有因合作研发的技术代表违反保密要求的侵权行为，还存在侵权单位实际控制人对整个侵权实施组织与策划的行为。该案在权利人三吉利公司提起民事诉讼前，经历过刑事程序，因被控侵权装置安装好后尚未投入使用即案发，侵权人的非法获利难以认定，故检察机关决定对侵权人不起诉。作为侵权行为发生时国内唯一使用涉案技术秘密生产“邻苯二酚”的企业，三吉利公司以其研发成本损失 1000 多万元，主张侵权人承担相应的侵权责任。法院针对当事人诸多争议焦点，根据查明的事实，最终判定被控侵权人构成侵权，同时认定侵权单位的实际控制人与其他侵权人构成共同侵权。

虽然技术秘密没有因侵权行为导致公开，而未支持权利人以研发成本主张的赔偿额,但也没有因为刑事案件不起诉的决定,即认为权利人未造成重大损失。考虑到刑事诉讼中对违法所得认定的证据规则、证明标准与民事诉讼中侵权赔偿额确定的相关规则及标准存在差异，本案未以刑事案件中的认定标准作为民事侵权案件中确定损害赔偿额的依据，最终根据侵权行为发生时适用的反不正

当竞争法及相关司法解释的规定，以法定赔偿的最高额确定本案赔偿额，充分保护了权利人的合法权益，彰显了严厉打击恶意侵权行为的司法态度。

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案 件 五：

欣盛公司、宏瑞公司等侵犯著作权罪案

案情介绍：

2017 年 4 月至 2019 年 2 月，被告人王某在经营被告单位北京欣盛建达图书有限公司 (以下简称欣盛公司)、北京宏瑞建兴文化传播有限公司（以下简称宏瑞公司）期间，以营利为目的，未经著作权人许可，私自委托被告人李某雄印刷侵权盗版图书 59 种共计 929314 册并对外销售。被告人漆某娟作为两公司财务、人事、客服负责人，被告人王某星、王某福作为两公司在淮安仓库的负责人之一，被告人樊某新作为两公司图书采购人员，明知公司从事侵权盗版图书销售活动，积极参与上述行为。被告人张某梅作为廊坊市海涛印刷有限公司（以下简称海涛公司）拼版负责人、被告人蔡某凯作为海涛公司生产负责人，被告人刘某影作为廊坊市罗德星空彩印有限公司（以下简称罗德公司）实际经营人，被告人杨某宽作为罗德公司审查、拼版负责人，明知被告人李某雄安排印刷的图书无版权许可等委托印刷手续，帮助其拼版、提供图书样稿、样书，安排员工印刷生产侵权盗版图书。被告人吴某青未经授权，根据被告人李某雄提供的防伪标样本，帮助其制作假冒皮皮鲁系列图书防伪标（皮皮鲁总动员注册商标）100 万枚。

被告单位欣盛公司与宏瑞公司不仅有合法的图书销售资质，而且在业内还有一定的知名度，两公司相关人员在负责人王某的策划下，与其他人员相互配合，购买盗制书籍文稿印刷，通过电商平台销售，再从仓库通过物流发货，形

成制版、印刷、储存、运输、销售、制作防伪标识等“一条龙”产业链，共印刷包括童话作家郑渊洁的《皮皮鲁总动员》系列图书在内的侵权盗版图书59种、929314册。

处理结果：

“童话大王”郑渊洁实名举报后，中宣部版权管理局、全国“扫黄打非”办公室、公安部治安管理局、最高人民检察院第四检察厅联合挂牌督办本案，法院的判决结果是：

被告单位欣盛公司、宏瑞公司犯侵犯著作权罪，各判处罚金人民币50万元；被告人王某、李某雄、漆某娟、王某星、樊某新、王某福、蔡某凯、张某梅、刘某影、杨某宽等10人犯侵犯著作权罪，分别判处最高有期徒刑四年，最低有期徒刑一年六个月、缓刑二年，并处罚金最高人民币300万元，最低人民币4万元；被告人吴某青犯非法制造、销售非法制造的注册商标标识罪，判处有期徒刑三年、缓刑四年，并处罚金人民币6万元；查扣的侵犯著作权图书依法予以没收。

（本案由江苏省人民检察院、省高级人民法院、省版权局提供）

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分析点评：

与以往侵权盗版案件不同，本案是一起“新型犯罪”，采用正版与盗版混搭方式销售。本案对两名主犯王某、李某雄判处实刑，对被告单位及被告人共判处罚金700余万元，严厉打击了分工合作、链条式、专业化、产业化制售盗版图书的特大盗版团伙，有力震慑了侵权盗版行为，取得良好的法律效果和社会效果。

本案判决贯彻最严格知识产权司法保护理念，为打击新型侵犯著作权罪的犯罪案件提供了样本，有利于促进社会公众形成知识产权尤其是著作权的

保护意识，同时也有利于在全社会形成尊重智力成果、尊重劳动、尊重知识、尊重创新的社会氛围。

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案件六：

吴某虎、郭某强等侵犯著作权罪案

案情介绍：

2019年12月，徐州公安机关发现网上有一款名为“魔域”的游戏涉及完整的私服产业链，包括私服游戏运营商、私服游戏发布商等。2020年1月，经公安机关立案侦查，抓获嫌疑人25名。经查，“魔域众神之巅”（以下简称魔域）是福建网龙计算机网络信息技术有限公司运营的网络游戏，该公司享有该游戏作品的著作权。自2018年下半年，被告人吴某虎、郭某强为谋取非法利益，商议合伙出资开设魔域私服游戏发布站，为魔域私服游戏推广宣传，获得魔域私服游戏运营商的付费。

2018年10月，被告人吴某虎、郭某强邀约张某珂搭建“717魔域私服发布站”(www.717my.com)和“535魔域私服发布站”(www.535my.com)两个游戏发布站。邀约何某负责观察魔域私服游戏发布站的网络排名、对接广告代理商和维护发布站数据。邀约宗某伟作为广告代理商，负责联系魔域私服运营商在上述发布站发布广告并收取费用。

截至2020年1月，被告人吴某虎、郭某强等人利用上述两个发布站收取魔域私服运营商张某、兰某平、白某龙（以上二人另案处理）等多人广告费用，非法经营额共计1600余万元。被告人宗某伟非法经营额共计300余万元。被告人张某经营魔域私服收取玩家资金10万余元。被告人兰某平、白某龙经营魔域私服收取玩家资金71万余元。涉案金额达1980余万元。

处理结果：

2021 年 6 月，徐州市中级人民法院以犯侵犯著作权罪判处吴某虎有期徒刑四年，并处罚金人民币 820 万元；判处郭某强有期徒刑三年六个月，并处罚金人民币 820 万元；判处何某有期徒刑二年，并处罚金人民币 15 万元；判处张某珂有期徒刑二年、缓刑三年，并处罚金人民币 50 万元；判处宗某伟有期徒刑三年，并处罚金人民币 40 万元；判处张某有期徒刑一年、缓刑二年，并处罚金人民币 11 万元。

（本案由江苏省版权局提供）

分析点评：

本案涉及私服游戏全链条产业，包括私服游戏运营商、发布商，是全链条打击侵害著作权犯罪案件的典型案例，对行业内类似犯罪起到了强有力的震慑作用，对净化和规范信息网络，优化营商环境起到了积极作用，取得了良好的法律效果和社会效果，彰显了我国法律最严格保护知识产权的鲜明态度和坚定决心。

本案涉及计算机软件作品在信息网络传播中的刑法保护问题以及对作品复制发行行为界定问题。网络游戏作为易复制的计算机软件作品，信息网络作为信息传播便捷的新型传播媒介，被告人通过信息网络方式复制发行私服游戏作品更加容易，导致权利人的损失和社会影响更大。被告人吴某虎、郭某强尽管没有直接运营私服游戏，但是其通过信息网络上发布站为私服游戏运营站发布推广信息的行为，属于侵犯著作权罪意义上的复制发行。司法机关从严格保护知识产权角度，重拳打击了信息网络领域的计算机软件著作权犯罪，保护了权利人的知识产权和消费者的合法权益。

案 件 七 ：

周某甲等销售假冒注册商标的商品罪案

案情介绍：

自 2017 年起，周某甲伙同其胞弟等家族成员未经“长城”注册商标权利人中国石化润滑油有限公司的许可，从刘某乙等人处购买带有“长城”商标的空油桶和防伪标识，再到周某丙、朱某丁夫妇实际负责的公司处灌装散油，以“长城”品牌工业润滑油通过线下实体店和线上网店的方式公开销售。

刘某乙明知周某甲等人没有获得注册商标权利人的许可，仍然按照周某甲等人的要求，制造带有“长城”商标的空油桶和防伪标识并销售给周某甲等人。

周某丙、朱某丁夫妇及其实际负责的公司明知周某甲等人上述假冒“长城”品牌工业润滑油行为，仍然积极为周某甲犯罪团伙提供原料油并帮助灌装。

2020 年 5 月，常州市公安机关根据江苏省公安厅的要求及其提供的犯罪线索，对属地制造销售假冒知名品牌机油证据线索开展研判，锁定了以周某甲、刘某乙、周某丙、朱某丁夫妇及其负责的公司等为核心的完整制造、销售假冒“长城”品牌润滑油产业链的犯罪团伙。常州市公安机关于2020年8月组织落地打击。出动 100 余名警力，兵分六路，同步实施抓捕，13 名主要犯罪嫌疑人无一漏网，一举捣毁制假机油窝点 2 个、制假机油桶窝点 1 个、销售假机油窝点 1 个及售假网店 13 家，查获润滑油原料 400 余吨、假冒“长城”等知名品牌成品 200 余桶，润滑油桶 500 余个、印刷设备 119 个、商标标识 14500 余张。周某甲及其家族成员实际控制的网络平台店铺销售假冒“长城”品牌润滑油涉及江苏、浙江、

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安徽、上海等 16 个省市，涉案价值达 5000 余万元。

处理结果：

周某甲及其家族成员犯罪团伙中有 3 人被认定为主犯，被依法判处有期徒刑三年至五年六个月，并处罚金人民币 140 万元至 200 万元。

刘某乙被依法判处有期徒刑二年、缓刑二年六个月，并处罚金人民币 20 万元。

周某丙、朱某丁被依法判处有期徒刑一年六个月、缓刑二年六个月，并处罚金人民币 18 万元，两人实际负责的公司被依法判处罚金人民币 54 万元。

（本案由江苏省公安厅提供）

分析点评：

本案是全链条打击侵害注册商标犯罪的典型案件，对行业内类似犯罪起到了强有力的震慑作用，对净化和规范销售市场，优化营商环境起到了积极作用，取得了良好的法律效果和社会效果，彰显了公安机关最严格保护知识产权的鲜明态度和坚定决心。机油具有润滑、密封、散热、防锈、清洁等功效，堪称发动机的血液，而假冒品牌机油因质量不达标，会带来润滑效果不够、发动机温度过高、机械故障、排放增加等一系列危害。公安机关从保护人民群众安全生活、企业安全生产、维护注册商标权利企业合法利益角度出发，成立专案组，利用传统和现代侦查手段，准确锁定犯罪团伙，并一网打尽，重拳打击了机油领域侵权假冒犯罪分子的嚣张气焰，保护了权利企业的知识产权和广大消费者的切身利益。

案 件 八 ：

美贝尔公司假冒专利、不正当竞争案

案情介绍：

2021 年 1 月 8 日，南京市市场监督管理局执法人员发现南京美贝尔美容医院有限公司（以下简称美贝尔公司）在其美团 APP 店铺首页宣传拥有 23 项专利，并附有专利证书图片，核查发现，部分专利证书不真实，涉嫌假冒专利，遂于 1 月 18 日立案调查。

南京市市场监督管理局执法人员查清了如下事实：

1、2020 年 8 月开始，美贝尔公司在其一楼走廊内陈列 6 个专利灯箱，将其灯箱内专利证书的发明人标注为其三名院长，其中 2 项专利并未授权。此外，在咨询室和三名院长的办公室等场所也分别存在上述伪造、变造的专利证书宣传牌。

2、2020 年 12 月开始，美贝尔公司在其美团店铺首页上传 23 项专利证书，宣称拥有 23 项专利技术，实际只有 5 项专利证书真实。2 月 1 日，美贝尔公司再次上传 23 项专利证书（其中 17 项专利证书为之前专利证书），所有专利均为 2017 年以后申请，专利证书上国家知识产权局局长姓名标注为田力普，与实际明显不符（2013 年 12 月至今，国家知识产权局局长为申长雨）。

3、2020 年 12 月起，美贝尔公司在并未使用专利技术的情况下（该项专利技术所对应的专利也不存在），在美团店铺的产品中宣传使用了吸脂专利技术，称使用后多吸 30%–60%，缩短 50% 以上的恢复时间，并在同一网页中宣称院

内医生为“韩国首尔大学医学院特聘外籍教授”等虚假内容。此外，为吸引消费者，美贝尔公司对涉案产品组织员工进行刷单，虚构销售状况。

南京市市场监督管理局于 2021 年 4 月 27 日向美贝尔公司送达了《行政处罚告知书》，美贝尔公司提交了书面申辩材料但未要求听证。在申辩材料中，承认了假冒专利的行为，但对虚假商业宣传的定性有异议。

处理结果：

南京市市场监督管理局于 5 月 8 日作出了行政处罚决定书，认定美贝尔公司的上述行为构成假冒专利、发布虚假广告以及虚假商业宣传，依据《中华人民共和国专利法》（2008 年修正）第六十三条、《中华人民共和国广告法》第五十五条第一款第一项及《中华人民共和国反不正当竞争法》第二十条第一款规定，责令美贝尔公司改正违法行为，并作出罚款人民币 303868 元的行政处罚。

（本案由江苏省市场监督管理局提供）

分析点评：

本案是典型的假冒专利案件，假冒专利是指对于非专利产品或以非专利方法生产的产品，行为人在包装上标注专利标记、在宣传材料上假称为专利产品、伪造或变造专利证书等文件的行为。本案中假冒专利的行为有多种：1、在宣传材料上假称为专利产品和专利技术；2、虚构并不存在的专利；3、伪造、变造专利证书；4、将未授权的专利申请称为专利。假冒专利除了承担民事责任和行政责任以外，情节严重的，还需承担刑事责任。假冒专利是骗取消费者信任的一种欺诈行为，本案中的假冒专利行为情节严重，宣传范围广，扰乱了专利管理秩序和社会经济秩序。

本案同时伴随着虚假广告和虚假商业宣传行为，本案中美贝尔公司利用

广告、电商平台等对商品或服务作出与实际情况不符的公开宣传，足以导致购买者产生误解。这类行为不仅仅是对个别消费者利益的损害，也损害了其他竞争者的利益，通过虚假宣传欺骗误导大量消费者购买自己的产品或服务，必然导致其他同类产品或服务的合法经营者的机会丧失，这也是对整个竞争秩序和社会公共利益的损害。

2021

案 件 九 ：

埃科特莱茵公司、杨森公司与艾康公司专利侵权纠纷案

案情介绍：

埃科特莱茵药品有限公司（以下简称埃科特莱茵公司）于 2008 年 11 月 12 日获得名称为“新颖的磺酰胺类化合物及其作为内皮素受体拮抗剂的应用”的发明专利权，专利号为 ZL01820481.3。2020 年 7 月 17 日，埃科特莱茵公司与西安杨森制药有限公司（以下简称杨森公司）签署非独占专利许可协议，授予杨森公司在中国境内使用涉案专利的非独占许可，并就侵犯涉案专利权的行为与专利权人一起通过诉讼、行政投诉等方式维护合法权益。

江苏艾康生物医药研发有限公司（以下简称艾康公司）在网站上推广销售马昔腾坦化合物（以下简称为涉案产品），权利人经比对，认为涉案产品与涉案专利权利要求 11 要求保护的产品“丙基氨基磺酸（4–（5–（4–溴–苯基）–6–{2–[2–（5–溴–嘧啶基）氧基]乙氧基}）嘧啶基）酰胺”相一致，落入其保护范围。埃科特莱茵公司发现艾康公司正在销售涉案产品后，遂自艾康公司处公证购买了该化合物。埃科特莱茵公司与杨森公司认为艾康公司的行为已构成了对涉案专利的专利权的侵犯，给请求人带来了损失，应承担停止侵权的法律责任，遂向南京市知识产权局提出处理请求。

南京市知识产权局于 2020 年 11 月 9 日受理， 2020 年 12 月 1 日，依

职权追加合肥天瑞药物化学有限公司（以下简称天瑞公司）为本案第三人。2021 年 1 月 7 日进行了公开口头审理，请求人陈述，涉案专利处于无效宣告程序中，且专利权人拟对本案涉及的权利要求 11 做出修改，南京市知识产权局于 2021 年 1 月 12 日决定中止审理。2021 年 2 月 24 日，请求人提交了恢复审理请求和国家知识产权局出具的无效宣告请求审查决定书(第 48183 号)，南京市知识产权局于 2021 年 3 月 23 日依法恢复审理。

艾康公司陈述：第一，曾在其网站上推广涉案产品的有关信息，但其之前不知晓该化合物是专利产品，没有侵权故意，在接到答辩通知书后已经第一时间进行了下架处理，并销毁了库存；第二，艾康公司并未制造涉案产品，其所销售的涉案产品系 2019 年 9 月 24 日从第三人处合法采购而来；第三，被请求人主营业务是给国内外医药研发企业提供研发原料，所推广的所有产品，都是 1g、5g、10g 的数量，仅供研发使用。

处理结果：

2021 年 3 月 23 日，南京市知识产权局作出行政裁决，认定涉案产品落入修改后的专利权利要求 1 的保护范围，艾康公司的行为构成许诺销售及销售。责令艾康公司立即停止侵害涉案发明专利权的行为。艾康公司收到行政裁决书后，未在法定期限内向法院提起行政诉讼，行政裁决生效。

（本案由江苏省知识产权局提供）

2021

分析点评：

本案是一起涉外专利侵权行政裁决案件。行政裁决制度是中国知识产权保护制度的重要组成部分，海外企业也注意到行政处理的快捷性和有效性，越来越重视通过提起行政处理请求方式解决专利侵权纠纷。2022 年 1 月 14 日颁布

的《江苏省知识产权促进和保护条例》就特别规定了建立知识产权行政裁决指导机制。

本案处理中行政裁决机关严格适用法律，在对请求的主体资格进行适当审查中考虑到本案的特殊性,鉴于涉案专利为国外专利权人对国内公司普通许可，要求被许可人与专利权人共同提起处理请求。针对涉案专利处于无效程序中，是否需要中止审理的问题，本案处理机关充分考虑了专利权人在口审时明确其在无效程序中放弃了部分权利要求，导致涉案专利的保护范围发生变化，决定中止审理，符合原则。针对被请求人的“专为科学研究和试验”的侵权例外抗辩，处理决定中也明确抗辩的主体限为使用方，行为目的应是“专为科学研究和试验”，行为方式应当是“使用”而非其他方式。应该说本案的裁决理论联系实际，具有典型意义，对此类案件的审理起到示范和指导作用。

2021

案件十：

南京海关查办涉嫌侵犯某滤芯外壳专利权案

案情介绍：

2021年5月13日，慈溪众博塑业电器有限公司（以下简称众博公司）向南京关区连云港海关举报海南承泰贸易有限公司（以下简称承泰公司）出口到美国的家用净水器滤芯外壳侵犯该公司发明专利权，申请海关知识产权保护，同时提交货物等值担保金。根据众博公司的保护申请，连云港海关在出口渠道查获涉嫌侵犯众博公司发明专利权的滤芯外壳73080套，合计219240个。经众博公司确认，连云港海关于2021年5月28日对该批货物予以扣留。

承泰公司认为其出口的滤芯外壳使用的外观设计取得了外观设计专利权人的授权，并且滤芯外壳没有侵犯众博公司的发明专利权；依据（《中华人民共和国海关关于〈中华人民共和国知识产权海关保护条例〉的实施办法》第二十条第一款的规定，于2021年6月4日向连云港海关提出书面申请并提交货物等值担保金，申请海关放行该批货物。

2021

处理结果：

经审核，连云港海关认为承泰公司的申请符合《实施办法》第二十条第二

款的规定，依法于 2021 年 6 月 9 日，对涉案滤芯外壳解除扣留，恢复上述货物通关手续，同时协助公证机构对滤芯外壳进行了证据保全公证。

（本案由南京海关提供）

分析点评：

本案是南京海关开展“龙腾行动”的典型案例。海关总署高度重视知识产权保护工作，连续多年开展“龙腾行动”，依托“大数据 + 人工智能 + 专家智慧”，通过联合风险研判、关际合作等形式，不断完善制度措施强化进出口环节专利权保护。该案中，海关从专利权人保护申请提出，到风险布控，到扣留侵权嫌疑货物，到恢复货物通关手续，严格高效按照法定流程处理本案，为开展进出口货物专利权保护积累了经验，也为完善专利权保护制度措施提供了实践基础。

本案体现了知识产权海关保护对双方当事人权利义务的有效平衡。2021 年 2 月 1 日出版的《求是》杂志发表习近平总书记重要文章《全面加强知识产权保护工作 激发创新活力推动构建新发展格局》。文章强调，知识产权工作要坚持以我为主、人民利益至上、公正合理保护，既严格保护知识产权，又防范个人和企业权利过度扩张，确保公共利益和激励创新兼得。世界贸易组织《与贸易有关的知识产权协定》规定，成员可采取适当措施以防止知识产权权利人滥用知识产权。该案中，众博公司向海关提出专利权保护申请同时提交担保金，以用于赔偿可能因申请不当给当事人造成的损失，防止权利人不当滥用专利权等知识产权，侵害其他当事人的合法权益；在承泰公司提出其出口货物没有侵犯众博公司专利权并提交担保金后，海关依法予以及时放行，担保金可用于将来可能发生的知识产权侵权赔偿。通过平衡双方当事人的权利与义务，有效促进权利人合理使用知识产权，在不影响货物流通的同时，保证知识产权权利人合法权益得以保障。

本案体现了依申请保护执法模式兼具公平与效率的优势。海关在审核众博公司专利权保护申请符合保护条件后依法及时予以扣留；在承泰公司提出其出口货物没有侵犯众博公司专利权并提交担保金后，海关依法予以及时放行，并将放行情况及时书面通知众博公司，充分保障知识产权权利人的合法权益；同时，为有效解决民事侵权争议，协助公证机关对滤芯外壳进行证据保全公证，为将来的民事诉讼提供有力的证据支撑，有效实现了知识产权保护公平与效率的平衡，既保护了知识产权，又促进了贸易流通。

2021

Preface

The year 2021 witnessed a major milestone in the development of China's intellectual property. In 2021, CPC Central Committee and State Council issued the *Outline for Establishing an Intellectual Property Power* and the 14th Five-Year Intellectual Property Development Plan. The Sixth Plenary Session of the 19th CPC Central Committee incorporated "to intensify the creation, protection and utilization of intellectual property" into its resolution, which has highlighted attached importance of CPC Central Committee to IP work. ; the *Intellectual Property Development Plan of Jiangsu Province for the 14th Five-Year Plan Periodhas been issued; the Outline of Establishing a Powerful Province with Strong IP Work in Jiangsu Province (2021-2035) has been completed; The first provincial regulation on IP promotion and protectionRegulations of Jiangsu Province on Promoting and Protecting Intellectual Property* has passed preliminary examination; With remarkable achievements in intellectual property work, Jiangsu ranked second among all China's provinces, municipalities and autonomous regions in comprehensive intellectual property development indexed, marking a successful beginning of the fighting toward the goals of the "14th Five-Year Plan".

In 2021, under the leadership of the CPC Jiangsu Provincial Committee and the Jiangsu Provincial People's Government, the members of Jiangsu Intellectual Property and Trademark Strategy Implementation Leading Group made continuous efforts accordingto their respective duties on strengthening administrative law enforcement and judicial protection of intellectual property. They worked together to establish a coordinated mechanism for the enforcement of intellectual property rights, which

has formed deterrence against intellectual property rights infringements. In terms of administrative law enforcement, cases and penalties: 4,564 patent infringement disputes have been investigated; 3,908 patent and trademark infringement cases involving administrative penalties, with an amount of RMB 87.626 million in fines and confiscation in total; 641 infringement and piracy cases, with an amount of more than RMB 160 million; and 66 seed infringement cases, with an amount of RMB 2.29 million in fines and confiscation. Nanjing Customs seized 3,882 batches of infringing goods, involving 617,800 items worth RMB 4.155 million. In terms of judicial protection, the courts across the province accepted 31,137 new intellectual property cases, including 80 cases to which punitive damages applied. The procuratorial organs handled 1,193 intellectual property cases. The public security organs investigated 2,609 infringement and counterfeiting crimes, solved 1,637 cases, and arrested 5,488 suspects, involving an amount of more than RMB 2 billion.

As the World Intellectual Property Day 2022 approaches, we have compiled a collection of ten typical cases selected from the cases handled by Jiangsu High People's Court, Jiangsu People’s Procuratorate, Jiangsu Provincial Copyright Administration, Public Security Department of Jiangsu Province, Jiangsu Provincial Administration for Market Regulation, Intellectual Property Office of Jiangsu Province, and Nanjing Customs. This collection aims to provide case studies of effective legal solutions, raise public awareness of the rule of law, and guide the province's intellectual property work. The ten typical cases include civil, criminal and administrative cases related to copyright, patent, trademark, trade secrets and other fields. Some of them are new infringement cases that emerged with the new environment and new business forms. They feature complex case details, difficult fact-finding, a complicated handling processand great social impact,. Their inclusion

in the collection demonstrates Jiangsu's effects in achieving "strict, coordinated, fast and equal protection" of intellectual property. To let these cases sink in, each case is presented with details, the court ruling, and comments of IPR experts.

We hope that the efforts and achievements of Jiangsu's judicial organs and administrative departments in IPR protection will further boost the confidence of enterprises and the public in IPR protection, promote the creation, protection and utilization of intellectual property across the province, and contribute to the establishing of a new Jiangsu that is strong, prosperous, beautiful, and highly civilized.

General Office of Jiangsu Intellectual Property and
Trademark Strategy Implementation Leading Group
April 2022

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Case No. 1

Universal Pictures (Shanghai) Trading Co., Ltd. v. Cangzhou Qianchixue Food Co., Ltd. et al.: Case of Dispute over Infringement of the "Minions" Copyright

Case Brief:

The Minions film series, which were produced by the world-renowned Universal City Studios LLC, have become one of the highest-grossing animated films after they were successively released since 2010. The "Minions" cartoon images have gained great popularity around the world. Universal Pictures (Shanghai) Trading Co., Ltd. (hereinafter referred to as "Universal Pictures") has been authorized to use the "Minions" cartoon images and protect its rights against infringement of the aforesaid cartoon images. On April 16, 2017, Universal Pictures granted an outsider a license to use the "Minions" cartoon images.

Cangzhou Qianchixue Food Co., Ltd. (hereinafter referred to as "Qianchixue") is a large food production and sales company, and its products have been sold in 153 cities and counties of 22 provinces in China. Jing XXjiang, the company's legal representative and shareholder, registered "Minibit" cartoon images that are similar to "Minions" cartoon images as personal artworks on April 19, 2018, and used the cartoon images on five dairy products produced and sold by Qianchixue, including

"Wangzi Ca-Fe-Zn Minibit". Qianchixue also used on the aforesaid products the trademark "Wangzi" which was licensed to Guangdong ThaiBull Vitamin Drinks Co., Ltd. (hereinafter referred to as "ThaiBull") by Wangzi Beverage (Guangzhou) Group Co., Ltd. (hereinafter referred to as "Wangzi Group") and sublicensed by ThaiBull to Qianchixue, and marked Wangzi Group as the trademark licensor on the products. Qianchixue repeatedly promoted and sold the infringing products through national food fairs, food merchants advertising websites and other channels, and used the copyright registration certificate provided by Jing XXjiang and the Trademark License Certificate provided by Wangzi Group and ThaiBull in its promotion and sales.

On May 17, 2018, the WeChat official account " 食品招商网 " (food merchants advertising website) reposted an article published on its website (www.spzs.com) and entitled "A children's drink distributors wouldn't want to miss: a hot seller in supermarkets, maternal and infant stores, and special sales channels", which reads: "Since it was launched, the product has quickly gained popularity in the market, making record sale of 250,000 boxes worth RMB 15 million within 3 months in China". The article also provided the records of payments to the bank account of Qianchixue's shareholder Jing XXsong and the company's hotline. Jing XXxiang, a director and shareholder of Qianchixue, reposted this article several times in his WeChat Moments. Wuxi Weineng Food Co., Ltd. (hereinafter referred to as "Weineng") sold the infringing products.

On April 25, 2019, Universal Pictures filed a lawsuit with Suzhou Intermediate People's Court, requesting the court to order the six defendants, namely Qianchixue, Jing XXjiang, Jing XXsong, Wangzi Group, ThaiBull, and Weineng, to immediately cease the infringement; to order the first five defendants, namely Qianchixue, Jing XXjiang, Jing XXsong, Wangzi Group, and ThaiBull, to jointly compensate Universal

Pictures for its economic loss and bear reasonable expenses, totaling RMB 5 million, and assume civil liabilities including eliminating the impacts thereof; and to order the sixth defendant, Weineng, to compensate Universal Pictures for its economic loss and pay reasonable expenses, totaling RMB 100,000. In addition, Universal Pictures applied for act preservation when the case was accepted by the court.

Outcome：

On June 28, 2019, Suzhou Intermediate People's Court rendered a civil ruling, ordering the six defendants, Qianchixue, Jing XXjiang, Jing XXsong, Wangzi Group, ThaiBull, and Weineng, to immediately cease the production or sale of the dairy products that infringed the copyright of the "Minions" cartoon images, and ordering Qianchixue to immediately cease the publicity and promotion using the "Minions" cartoon images, until the legal instrument made in the final instance of this case becomes effective. The ruling on act preservation injunction was served on all defendants on July 5, 2019. However, there were still "Wangzi Ca-Fe-Zn Minibit" products sold on Alibaba's 1688.com on June 3, 2020, when a court session was opened.

On July 1, 2020, Suzhou Intermediate People's Court rendered a first instance judgment, supporting the claims of Universal Pictures, and ordering the first five defendants—Qianchixue, Jing XXjiang, Jing XXsong, Wangzi Group, and ThaiBull—to jointly make a compensatory payment of RMB 5 million to the plaintiff, and the sixth defendant, Weineng, to make a compensatory payment of RMB 100,000 to the plaintiff. The first five defendants—Qianchixue, Jing XXjiang, Jing XXsong, Wangzi, and ThaiBull—filed an appeal, alleging that the amount of damages awarded in the

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first instance was too high.

On August 10, 2021, Jiangsu High People's Court made a second instance judgment, ruling that the appeal shall be dismissed and the original judgment shall be maintained.

(This case is provided by Jiangsu High People's Court.)

Analysis and Comment:

This case involves the infringement of the copyright of cartoon image works derived from the high-grossing animated films which are of high market value. The act preservation injunction made by the court upon the application by the plaintiff with regard to the infringing acts of the defendants stopped the infringing acts of the defendants in time, prevented a large number of infringing products from flowing into the market, and avoided further loss of the right holder, thus cracking down on the infringement and piracy in a timely and effective manner.

Based on the sales announced by the infringer and the profit margin reflected by the price list, the court calculated that the defendants have obtained RMB 16 million of illegal gains. In addition, in consideration of the popularity and influence of the "Minions" cartoon images involved in the case, the reasonable royalties payable for the use of such works, the defendants' obviously malicious and serious infringement and refusal to perform the act preservation injunction, and the reasonable expenses incurred by the plaintiff in stopping the infringement, the final judgment rendered by the court supported the claim filed by Universal Pictures for damages of RMB 5.1 million in full. This case has received extensive attention and high praise from all walks of life, and has been reported by many intellectual property media organizations

including IPLead. The way this case was handled has achieved good legal and social effects, and demonstrates judicial authorities' vision for the strictest protection of intellectual property rights.

In the case, the plaintiff is an American company, and the defendants are Chinese companies and citizens. The judgment in favor of the foreign company rendered by the judicial authority in accordance with the law demonstrates China's equal protection of intellectual property rights, and shows the sound legal and business environment in China. This case has a profound impact on discouraging piracy in the film derivatives market and protecting the sales of genuine derivatives, and will also set a good example in promoting the sound development of China's film derivatives market.

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Case No. 2

Nanjing Sheyi Network Technology Co., Ltd. v. Shanghai Wangtuo Network Technology Co., Ltd.: Case of Dispute over Infringement of the Copyright of Derivative Works

Case Brief：

Nanjing Sheyi Network Technology Co., Ltd. (hereinafter referred to as "Sheyi") is the operator of " 建 E 室内设计网 " (www.justeasy.cn), which is a web portal for interior design materials, with more than 1 million registered members and an industry coverage rate of more than 40%. Materials/Services available on the web include original models, mapping, construction drawings, VR panoramic synthesis, and cloud rendering. Sheyi mainly adopts the following two business models: (i) an ordinary user needs to pay 30 to 40 "gold points" to download a 3D model file and can buy 10 gold points for RMB 1; and (ii) an member, after paying an annual membership fee, can enjoy 10% off upon any purchase.

The business models of Shanghai Wangtuo Network Technology Co., Ltd. (hereinafter referred to as "Wangtuo") are similar to those of Sheyi, and the company's legal representative Lu XXyuan was one of the founders of Sheyi. Four 3D model files involved in the case that were published on the website of Wangtuo were identical to the four works claimed by Sheyi, and were uploaded later than those of Sheyi. Sheyi

admitted that the four floor plans used for 3D modeling were downloaded from other websites and that it had not obtained a license from the relevant copyright owners, but it claimed that these four 3D model files were re-created by its employees, so they were derivative works and should be protected by law.

Sheyi claimed that Wangtuo's uploading of the 3D model files created by Sheyi to its website " 知 末 网 " (www.znzmo.co) without permission infringed Sheyi's copyright in related works and constituted unfair competition against Sheyi, and thus it requested the court to support its claims.

During the second instance of the case, Sheyi obtained the license for one work from the original copyright owner.

Outcome：

The court of first instance held that Sheyi's reproduction and conversion of the floor plans without permission infringed the copyright of the original copyright owners, and Sheyi's claim that the four 3D model files involved in the case were derivative works lacked the legal basis. Therefore, the court of first instance dismissed all clams of Sheyi. Later, Sheyi filed an appeal with Jiangsu High People's Court against the first-instance judgment.

In the second instance of the case, Jiangsu High People's Court held that the 3D model files claimed by Sheyi in the case were derivative works and Sheyi had copyright in these works; and that though the unauthorized adaption of these works by Sheyi constituted an infringement of the copyright of the original copyright owners, it did not prejudice Sheyi's right to prevent others from reproducing and distributing its adapted works without permission. The court of second instance amended the

original judgment and ordered Wangtuo to compensate Sheyi for its economic loss and reasonable expenses, totaling RMB 60,000.

(This case is provided by Jiangsu High People's Court,and Jiangsu Provincial Copyright Administration.)

Analysis and Comment：

This is a new case that defines the determination and right boundary of 3D model files as intelligent achievements, the relationship between the copyright protection of 3D works and that of the prior 2D works, and other related issues.

The judgment held that whether the intelligent achievements created with techniques were new works defined under the Copyright Law or derivative works should be determined, taking into account the creation process, creative ideas, and approaches, the application of techniques, and the methods, content, and presentation and in combination with the original 2D works.

Another highlight of this case is that the nature, right boundary, and protection scope of the unauthorized derivative works, i.e., the 3D model files, were reasonably defined. A derivative work is a re-creation of the original work, which is attributable to the contributions of both the owner of the original work and that of the derivative work. In determining the nature and extent of protection that should be granted to an unauthorized derivative work, the legal rights and interests of the two owners and the public interests derived from the dissemination of the works should be considered.

This case defines, on the one hand, that the adaption of a prior original work without the permission of the copyright owner infringes the copyright of the original work's owner; and on the other hand, that the corresponding copyright protection may

be granted to the derivative work in accordance with the law based on the creative efforts made by the creator of the unauthorized derivative work, and the creator of the unauthorized derivative work still has the right to prohibit others from using the derivative work without authorization, and to require others to cease the infringement and make compensation for damages. In determining the specific amount of damages, the respective original contributions of the owner of the original work and that of the derivative work should be distinguished, and the amount of damages payable to the owner of the derivative work should be separately determined based on the original contribution of the owner of the derivative work.

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Case No. 3

Nature Home (China) Co., Ltd. v. Fujian Nature MXJ Home Co., Ltd., Zhou XXliang et al.: Case of Dispute over Trademark Infringement and Unfair Competition

Case Brief：

The plaintiff Nature Home (China) Co., Ltd. (hereinafter referred to as "Nature") has been authorized by Nature Home Holding Company Limited (hereinafter referred to as "Nature Holding") to use the trademarks " 大 自 然 ", "Nature", " ", and " " according to law, and to protect its rights against infringement of the aforesaid trademarks. After years of use and promotion, the "Nature" brand of Nature has gained a very high reputation and great influence in the flooring industry, and has been recognized as a well-known trademark by the State Administration for Industry and Commerce of the People's Republic of China.

Since 2017, the defendant Fujian Yinerxin'an Wood Co., Ltd. (hereinafter referred to as "Yinerxin'an"), formerly known as Fujian Nature MXJ Home Co., Ltd. (hereinafter referred to as "Fujian Nature"), not only used the word "Nature" in its company name, but also registered "naturemxj.com" as the domain name of its website, and used marks such as " " and " " on its flooring products and in its promotional materials. The defendant also placed advertisements

on chinafloor.cn and other platforms, and authorized multiple flooring manufacturers to process flooring products as original equipment manufacturers (OEMs) and then sold them to 47 distributors from all over the country.

In 2018, after the trademark " 大自然美学家 " owned by Zhou XXliang, the legal representative of Fujian Nature, was declared invalid by the judgment ([2017] J. 73 X.C. No. 2521) rendered by the Beijing Intellectual Property Court, Zhou XXliang preemptively registered the trademark " 大自然美学家 " (literally "nature aesthetician") on 37 categories of goods on the same day. As of the time of filing the lawsuit in the case, Fujian Nature and Zhou XXliang had applied for registration of more than 50 series trademarks " 大 自 然 XX 家 " (nature XX), 12 of which were related to flooring. Therefore, Nature filed a lawsuit with the court, requesting the court to order Fujian Nature et al. to cease the trademark infringement and unfair competition, and compensate Nature for its economic loss of RMB 15 million.

Outcome：

Upon trial, the court held that the " 大 自 然 美 学 家 " flooring products manufactured and sold by Fujian Nature and the goods on which the use of Nature's trademarks involved in the case have been approved were under the same category, and the marks such as " 大自然美学家 " and " 大自然美学家地板 Nature Mxj " that Fujian Nature used on the packaging of flooring products and in external publicity were similar to Nature's trademarks such as " 大 自 然 " (nature) and " 大自然地板 Nature ", which was likely to cause confusion among the public as to the source of the goods. Therefore, the acts of Fujian Nature constituted a trademark infringement. Fujian Nature registered "naturemxj.com" as the domain name of its website and used it for promotion of

the alleged infringing products, and registered the trademark " 大　自　然 " as the trade name, which constituted unfair competition. In addition, after a trademark of Fujian Nature that was similar to those of Nature was declared invalid, Fujian Nature continued to maliciously register a large number of other similar trademarks, and escalated the infringement by way of franchising, which constituted a serious malicious infringement, thus punitive damages should apply. In view of the above, the court ordered the defendant to cease the trademark infringement and unfair competition, and supported the plaintiff's claim for damages of RMB 15 million in full.

(This case is provided by Jiangsu High People's Court,and Jiangsu Provincial Administration for Market Regulation.)

Analysis and Comment：

This is a typical case where trademark infringement and malicious preemptive registration and hoarding of trademarks were regulated through judicial judgment. The court determined the gains obtained by the infringer from infringement under the franchising model, applied punitive damages by taking into account the malicious preemptive registration and hoarding of trademarks, and supported the claim for damages filed by Nature in accordance with the law. In this case, the highest amount of damages was awarded in the area of intellectual property rights in the domestic flooring industry, which has provided constructive solutions to problems related to damages for infringement of intellectual property rights such as "difficulty in calculating the amount of damages" and "low amount of damages". The case also provides a useful guide for the trial of similar cases.

The trial court also sent judicial suggestions to the Trademark Office of China National Intellectual Property Administration and the Internet platforms in the flooring industry such as chinafloor.cn and chinabm.cn, and the Trademark Office has taken measures against the illegal registration and hoarding of trademarks by Fujian Nature, which has injected strong impetus to the establishment of a joint working mechanism for the sweeping crackdown on malicious trademark registration and the social governance in the crackdown on malicious trademark registration. The measures help further create a good atmosphere where intellectual property rights are respected and a fair and orderly law-based business environment, guiding market players and consumers in heightening their awareness of intellectual property rights protection and prompting market players to achieve innovation-driven development through trademark and brand strategies.

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Case No. 4

Jiangsu Sanjili Chemical Co., Ltd. v. Jiangsu Hongyuan Chemical Co., Ltd., Zhang XXlong, Feng XXsheng, Yang XXsheng, Cao XXqiu, and Pan XXxiang: Case of Dispute over Infringement of Know-how Trade Secret

Case Brief：

Jiangsu Sanjili Chemical Co., Ltd. (hereinafter referred to as "Sanjili") owns the production process of "hydroxylation of phenol to produce catechols and co-produce hydroquinones", and protects it as know-how. Yang XXsheng, Cao XXqiu, and Pan XXxiang were former employees of Sanjili, and they worked at Jiangsu Hongyuan Chemical Co., Ltd. (hereinafter referred to as "Hongyuan") after leaving Sanjili. Feng XXsheng once, as a representative of Tianjin University, carried out the research and development of the benzenediol separation techniques with Sanjili for a long time. Later, he signed a Memorandum of Understanding with Zhang XXlong, the actual controller of Hongyuan, and provided the benzenediol separation techniques that he knew of to Zhang XXlong.

Sanjili believed that Yang XXsheng et al. violated the non-disclosure agreement by disclosing Sanjili's trade secrets they knew to Hongyuan, and Hongyuan installed the equipment for producing benzenediol by using the trade secrets disclosed to it,

which constituted an infringement of know-how. Therefore, Sanjili filed a lawsuit with the court, requesting the court to order Hongyuan, Yang XXsheng, et al. to cease the use of the know-how involved in the case, remove the installed equipment that infringed the know-how of Sanjili, and compensate Sanjili for its economic loss and reasonable expenses incurred.

Outcome：

Upon trial, the court held that part of the technical information in the benzenediol production process claimed by Sanjili constituted the know-how, and the acts committed by Hongyuan, Zhang XXlong, et al. in the case infringed the know-how of Sanjili, and thus it ordered Hongyuan, Zhang XXlong, et al. to immediately cease the infringement, ordered Hongyuan to immediately remove the installed equipment that infringed the know-how of Sanjili and compensate Sanjili for its economic loss and reasonable expenses incurred, totaling RMB 1.2 million.

(This case is provided by Jiangsu High People's Court.)

Analysis and Comment：

This case concerns a dispute over know-how in a large chemical production process, which involves complex technical facts and legal issues. With a large amount of subject matter and multiple alleged infringers, this case involves multiple infringements, including the infringement committed by job-hoppers, the infringement committed by the technical representative engaged in the cooperative research and development in violation of the non-disclosure requirements, and the organization and planning of the infringements by the actual controller of the infringing entity. This case has undergone criminal procedures

before the right holder Sanjili filed a civil lawsuit. Given that this case was accepted before the alleged infringing devices that had been installed were put into use, it was difficult to determine the illegal gains of the infringers, so the procuratorial organ decided not to prosecute the infringers. As the sole enterprise in China that used the know-how involved in this case to produce catechols at the time of occurrence of the infringements, Sanjili claimed that the infringers should assume the corresponding infringement liability on the ground of its loss of more than RMB 10 million arising from the research and development costs. Based on multiple focuses of dispute in this case and the facts ascertained, the court finally ruled that the alleged infringers had committed infringements, especially that the actual controller of the infringing entity and other infringers had committed the joint infringements.

Given that the infringements did not result in the disclosure of the know-how to the public, the court did not support the right holder's claim for damages related to research and development costs, but it did not deny the major loss caused to the right holder merely due to the decision not to prosecute the infringers in the criminal case. In consideration of the differences between the evidence rules and proof standards for determining illegal gains in criminal proceedings and the relevant rules and standards for determining the amount of damages for infringement in civil proceedings, the court did not take the determination standards in criminal cases as the basis for determining the amount of damages in civil infringement cases, and finally determined the amount of damages in this case based on the maximum amount of statutory damages in accordance with the Anti-Unfair Competition Law and relevant judicial interpretations applicable at the time of occurrence of the infringements, which fully protected the legitimate rights and interests of the right holder and demonstrated the judicial attitude of severely cracking down on malicious infringements.

Case No. 5

Case of Copyright Infringement Related to Beijing Xinsheng Jianda Books Co., Ltd. and Beijing Hongrui Jianxing Cultural Communication Co., Ltd.

Case Brief：

From April 2017 to February 2019, during which the defendant Wang XX operated the defendant entities Beijing Xinsheng Jianda Books Co., Ltd. (hereinafter referred to as "Xinsheng") and Beijing Hongrui Jianxing Cultural Communication Co., Ltd. (hereinafter referred to as "Hongrui"), the defendant Wang XX entrusted the defendant Li XXxiong to print a total of 929,314 copies of 59 infringing and pirated books for sale without the permission of copyright owners, in order to make profits. Knowing that the two companies were engaged in the sale of infringing and pirated books, the defendant Qi XXjuan, who was in charge of the finance, human resources, and customer services of the two companies, the defendants Wang XXxing and Wang XXfu, who were in charge of the two companies' warehouses in Huai'an, and the defendant Fan XXxin, as the book purchaser of the two companies, actively participated in the above acts. Knowing that the books printed under the arrangement by the defendant Li XXxiong lacked a copyright license and other authorization, the defendant Zhang XXmei, who was in charge of page makeup of Langfang Haitao

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Printing Co., Ltd. (hereinafter referred to as "Haitao"), the defendant Cai XXkai, who was in charge of production of Haitao, the defendant Liu XXying, who was the actual operator of Langfang Luode Xingkong Color Printing Co., Ltd. (hereinafter referred to as "Luode"), and the defendant Yang XXkuan, who was in charge of page review and makeup of Luode, assisted the defendant Li XXxiong with the page makeup, provided him with sample books/manuscripts, and arranged for employees to print the infringing and pirated books. According to the anti-counterfeiting label sample provided by the defendant Li XXxiong, the defendant Wu XXqing made 1 million anti-counterfeiting labels for the counterfeit Pipilu series books (registered trademark of " 皮皮鲁总动员 " (Pipilu Story)) without authorization.

The defendant entities Xinsheng and Hongrui did not only have a legal license to sell books but also enjoyed certain popularity in this industry. As planned by Wang XX who was in charge of the two companies, relevant persons at the two companies, in collaboration with others, purchased and printed the pirated books/manuscripts, sold them through e-commerce platforms, and shipped them from the warehouse to buyers through logistics, thus forming a coordinated industry chain covering plate-making, printing, storage, transportation, sales, and making of anti-counterfeiting labels. A total of 929,314 copies of 59 infringing and pirated books, including the Pipilu Story series books written by the children's book writer Zheng Yuanjie, were printed.

Outcome：

After Zheng Yuanjie, known as the "King of Fairy Tales", reported the case in real name, the Copyright Administration under the Publicity Department of the

CPC Central Committee, the Office of the National Working Group for Combating Pornography and Illegal Publications, the Bureau of Public Order under the Ministry of Public Security, and the Fourth Procuratorial Department of the Supreme People's Procuratorate jointly supervised the handling of this case. The judgment of the court is as follows:

The defendant entities Xinsheng and Hongrui committed the crime of copyright infringement, and shall be fined RMB 500,000 respectively; the ten defendants, Wang XX, Li XXxiong, Qi XXjuan, Wang XXxing, Fan XXxin, Wang XXfu, Cai XXkai, Zhang XXmei, Liu XXying, and Yang XXkuan, committed the crime of copyright infringement, and shall be sentenced to fixed-term imprisonment ranging from one year and six months with a two-year reprieve to four years and a fine ranging from RMB 40,000 to RMB 3 million; the defendant Wu XXqing committed the crime of illegally manufacturing and selling illegally manufactured registered trademark labels, and shall be sentenced to a fixed-term imprisonment of three years with a four-year reprieve and a fine of RMB 60,000; and the detained books that infringed the copyright shall be forfeited in accordance with the law.

(This case is provided by Jiangsu People's Procuratorate, Jiangsu High People's Court, and Jiangsu Provincial Copyright Administration.)

Analysis and Comment：

Different from the previous infringement and privacy cases, this case involves a new crime where genuine books and pirated books were sold together. Two principal criminals in this case were given substantial punishments, the defendant entities and the defendants were fined more than RMB 7 million in total. This case severely cracked down

on a large pirate gang that produced and sold pirated books based on the division of labor in a specialized industry chain, and has effectively deterred infringement and piracy, and achieved good legal and social effects.

The judgment of this case upholds the strictest judicial protection of intellectual property, provides an example for cracking down on new crimes of copyright infringement, and helps raise the public awareness of protection of intellectual property rights, especially copyright, as well as form an atmosphere across society where intelligent achievements, labor, knowledge, and innovation are respected.

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Case No. 6

Case of Copyright Infringement Related to Wu XXhu, Guo XXqiang et al.

Case Brief：

In December 2019, the public security organ of Xuzhou found an online game called "Demon Realm", which involved a complete, private server industry chain, including private server game operators and publishers. In January 2020, after filing a case for investigation, the public security organ arrested 25 suspects. Upon investigation, "Demon Realm: The Summit of the Gods" (hereinafter referred to as the "Demon Realm") is an online game operated by Fujian NetDragon Computer Network Information Technology Co., Ltd., and the company has the copyright of the game. In the second half of 2018, the defendants Wu XXhu and Guo XXqiang conspired to set up Demon Realm (private server) informational websites to promote the game and collect fees from Demon Realm (private server) operators.

In October 2018, the defendants Wu XXhu and Guo XXqiang invited Zhang XXke to set up two informational websites including "717 Demon Realm Private Server Information Site" (www.717my.com) and "535 Demon Realm Private Server Information Site" (www.535my.com). He XX was invited to observe the online rankings of the two websites, communicate with advertising agencies, and maintain data on the websites. They invited Zong XXwei as an advertising agent to be

responsible for contacting Demon Realm private server operators about the publishing of advertisements on the aforesaid informational websites and collecting fees from them.

As of January 2020, the defendants Wu XXhu, Guo XXqiang et al. used the aforesaid two websites to collect advertising fees from Demon Realm private server operators including Zhang XX, Lan XXping, and Bai XXlong, and obtained illegal gains totaling more than RMB 16 million. The defendant Zong XXwei obtained illegal gains totaling more than RMB 3 million. The defendant Zhang XX collected more than RMB 100,000 from players for the operation of the Demon Realm private server. The defendants Lan XXping and Bai XXlong collected more than RMB 710,000 from players for the operation of the Demon Realm private server. The amount involved in the case was up to RMB 19.8 million more.

Outcome：

In June 2021, Xuzhou Intermediate People's Court sentenced Wu XXhu to a fixed-term imprisonment of four years and a fine of RMB 8.2 million; sentenced Guo XXqiang to a fixed-term imprisonment of three years and six months and a fine of RMB 8.2 million; sentenced He XX to a fixed-term imprisonment of two years and a fine of RMB 150,000; sentenced Zhang XXke to a fixed-term imprisonment of two years with a three-year reprieve and a fine of RMB 500,000; sentenced Zong XXwei to a fixed-term imprisonment of three years and a fine of RMB 400,000; and sentenced Zhang XX to a fixed-term imprisonment of one year with a two-year reprieve and a fine of RMB 110,000, for their crime of copyright infringement.

(The case is provided by Jiangsu Provincial Copyright Administration.)

Analysis and Comment：

This case, which involves the whole industry chain of private server games, including private server game operators and publishers, is a typical case that cracked down on copyright infringement across the chain. It has a strong deterrent effect on similar crimes in the industry, has played a positive role in purifying and regulating informational websites and optimizing the business environment, and achieved good legal and social effects. It demonstrates the clear-cut attitude and steadfast determination of Chinese judicial authorities towards the strictest protection of intellectual property rights.

This case concerns the criminal law protection for promoting computer software works via informational websites and the definition of reproduction and distribution of the works. Online games are computer software works that are easy to reproduce, and informational websites are convenient new media for information dissemination, through which the defendants can easily reproduce and distribute private server games, thereby causing great loss to the right holder and wide social impact. Though the defendants Wu XXhu and Guo XXqiang did not directly operate the private server game, they published promotional information for the private server game on their websites, which can be classified into the reproduction and distribution in the sense of the crime of copyright infringement. From the perspective of strict protection of intellectual property rights, judicial authorities clamped down the crime of computer software copyright infringement on informational websites, and protected the intellectual property rights of the right holder and the legitimate rights and interests of consumers.

Case No. 7

Case of Selling Products with Counterfeit Registered Trademarks Related to Zhou XXjia et al.

Case Brief：

From 2017, Zhou XXjia, in collusion with his brother and other family members, began to purchase empty oil drums bearing the trademark " 长城 " (Great Wall) and anti-counterfeiting labels from Liu XXyi et al. without the permission of Sinopec Lubricant Company, the owner of the registered trademark " 长城 ". Then these empty oil drums were filled with lubricating oil at the company actually operated by the couple Zhou XXbing and Zhu XXding, and sold as "Great Wall" industrial lubricating oil through offline and online stores.

Knowing that Zhou XXjia et al. had not obtained a license of the owner of the registered trademark " 长城 ", Liu XXyi still produced empty oil drums bearing the trademark " 长城 " and anti-counterfeiting labels and sold them to Zhou XXjia et al. according to their requirements.

Knowing that Zhou XXjia et al. counterfeited the "Great Wall" industrial lubricating oil, the couple Zhou XXbing and Zhu XXding and the company they own still provided raw lubricating oil and assisted with the filling for the criminal gang led by Zhou XXjia.

In May 2020, according to the requirements of and clues provided by the Public Security Department of Jiangsu Province, the public security organ of Changzhou carried out investigation and analysis of the evidence and clues of producing and selling counterfeit lubricating oil, and targeted a criminal gang led by Zhou XXjia, Liu XXyi, the couple Zhou XXbing and Zhu XXding, and the company operated by the couple, which established a complete industry chain of producing and selling counterfeit "Great Wall" lubricating oil. The public security organ of Changzhou organized the crackdown on the criminal gang in August 2020. More than 100 policemen who were divided into six groups were dispatched to arrest the suspects simultaneously. The policemen arrested all of the 13 principal suspects, destroyed two dens for producing counterfeit engine oil, one den for producing counterfeit engine oil drums, one den for selling counterfeit engine oil, and 13 online stores that sold counterfeit engine oil, and seized more than 400 t raw lubricating oil, more than 200 counterfeit oil drums (finished products) of "Great Wall" and other famous brands, more than 500 lubricating oil drums, 119 printing devices, and more than 14,500 trademark labels. The counterfeit l"Great Wall" lubricating oil was sold through online stores actually controlled by Zhou XXjia and his family members to 16 provinces and cities including Jiangsu, Zhejiang, Anhui, and Shanghai, and the value involved in the case reached more than RMB 50 million.

Outcome：

In the criminal gang of Zhou XXjia and his family members, three persons were determined as the principal criminals and were sentenced to a fixed-term imprisonment ranging from three years to five years and six months and a fine ranging

from RMB 1.4 million to RMB 2 million in accordance with the law.

Liu XXyi et al. were respectively sentenced to a fixed-term imprisonment of two years with a two-year-and-six-month reprieve, and a fine of RMB 200,000 in accordance with the law.

Zhou XXbing and Zhu XXding were respectively sentenced to a fixed-term imprisonment of one year and six months with a two-year-and-six-month reprieve, and a fine of RMB 180,000 in accordance with the law, and the company actually operated by the couple was fined RMB 540,000 in accordance with the law.

(This case is provided by the Public Security Department of Jiangsu Province.)

Analysis and Comment：

This is a typical case that cracked down on the infringement of registered trademark across the industry chain. It has a strong deterrent effect on similar crimes in the industry, has played a positive role in purifying and regulating the sales market and optimizing the business environment, and achieved good legal and social effects. It demonstrates the clear-cut attitude and steadfast determination of the public security organs towards the strictest protection of intellectual property rights. Engine oil is generally used for lubrication, sealing, heat dissipation, rust prevention, and cleaning, and is known as the "blood of the engine". Due to the poor quality, counterfeit engine oil will bring a series of hazards such as bad lubrication, overly high engine temperature, mechanical breakdown, and excessive emissions. To protect the safety of the people, the production safety of enterprises, and the legitimate interests of registered trademark owners, the public security organ set up a special investigation team which accurately targeted and smashed the criminal gang by traditional and modern investigation means, thus clapping down

on the infringement and counterfeiting criminals in the engine oil area, and protecting the intellectual property rights of registered trademark owners and the vital interests of consumers.

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Case No. 8

Case of Patent Counterfeiting and Unfair Competition Related to Nanjing MEBEL Beauty Hospital Co., Ltd.

Case Brief：

On January 8, 2021, law enforcement officers of Nanjing Municipal Administration for Market Regulation found that Nanjing MEBEL Beauty Hospital Co., Ltd. (hereinafter referred to as "MEBEL") advertised on the homepage of its store in the Meituan app that it had 23 patents, and attached pictures of the patent certificates thereto. Upon verification, they found that some patent certificates were false and MEBEL was suspected of counterfeiting patents. Therefore, a case was filed for investigation on January 18, 2021.

Law enforcement officers of Nanjing Municipal Administration for Market Regulation ascertained the following facts:

1. From August 2020, MEBEL displayed six patent light boxes in the corridor on the first floor and marked the inventors on the patent certificates in the light boxes as its three directors, but two of the patents had not been granted. In addition, advertising boards for the aforesaid forged or altered patent certificates were also found in the consulting room and the offices of the three directors.

2. From December 2020, MEBEL uploaded 23 patent certificates on the

homepage of its store on Meituan, claiming that it had 23 patented technologies, but actually only five patent certificates were true. On February 1, 2021, MEBEL uploaded 23 patent certificates again, 17 of which had previously been unloaded. All applications for these patents were filed after 2017, and the commissioner of the China National Intellectual Property Administration ("CNIPA") indicated on these patent certificates was Tian Lipu, which was obviously inconsistent with the actual situation (Shen Changyu has been serving as the commissioner of CNIPA since December 2013).

3. Since December 2020, MEBEL has claimed that it used a patented liposuction technology (which was actually not used by MEBEL and whose patent did not exist) on the product page of its store on Meituan, and that the said patent technology could help increase the amount of excess fat removed by 30% to 60% and shorten the recovery time by more than 50%. It also claimed on the same product page that a doctor of MEBEL was a "distinguished foreign professor from Seoul National University Hospital", which is also untrue. To attract consumers, MEBEL also organized employees to conduct click farming to fabricate sales.

Nanjing Municipal Administration for Market Regulation served a Notice of Administrative Penalty on MEBEL on April 27, 2021. MEBEL submitted written defense materials but did not request a hearing. MEBEL admitted its act of counterfeiting patents in the defense materials, but had an objection to the definition of false commercial promotion.

Outcome：

Nanjing Municipal Administration for Market Regulation issued a Written

Decision of Administrative Penalty on May 8, 2021, affirming that the aforesaid acts of MEBEL constituted patent counterfeiting, placement of false advertisements, and false commercial promotion, and in accordance with Article 63 of the Patent Law of the People's Republic of China (revised in 2008), Item 1 of Paragraph 1 of Article 55 of the Advertising Law of the People's Republic of China and Paragraph 1 of Article 20 of the Anti-Unfair Competition Law of the People's Republic of China, ordering MEBEL to correct its violations and imposing a fine of RMB 303,868 on it.

(This case is provided by Jiangsu Provincial Administration for Market Regulation.)

Analysis and Comment：

This is a typical patent counterfeiting case. Patent counterfeiting means that the perpetrator indicates a patent mark on the package of a non-patented product or a product produced by non-patented methods, falsely claims in promotional materials that the product is a patented product, or forges or alters documents such as patent certificates. In this case, MEBEL committed multiple acts of patent counterfeiting: (1) falsely claiming in promotional materials that its product was a patented product and used the patented technology; (2) making up a patent that did not exist; (3) forging or altering patent certificates; and (4) indicating a patent application that had not been granted a patent as a patent. In addition to assuming the civil and administrative liabilities, whoever commits an act of patent counterfeiting shall assume the criminal liability if the violation is serious. Patent counterfeiting is a fraudulent act to gain the trust of consumers. In this case, the patent counterfeiting constitutes a serious violation as the counterfeit patents were widely advertised, which disturbed the patent management order and social and economic order.

This case also involves false advertising and false commercial promotion. In this case, MEBEL promoted fabricated product or service information by means of advertisements, e-commerce platforms, or other ways, which was highly misleading. These acts damaged the interests of both individual consumers and other competitors. Misleading a large number of consumers to purchase MEBEL's products or services through false advertisements would certainly result in the loss of opportunities of other legal operators of the same products or services, and also damage the whole competition order and public interests.

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Case No. 9

Actelion Pharmaceuticals Ltd. and Xi'an Janssen Pharmaceutical Ltd. v. Jiangsu Aikon Biopharmaceutical R&D Co., Ltd.: Case of Patent InfringementDispute

Case Brief：

Actelion Pharmaceuticals Ltd. (hereinafter referred to as "Actelion") was granted an invention patent (No.: ZL01820481.3) entitled "novel sulfamides and their use as endothelin receptor antagonists" on November 12, 2008. On July 17, 2020, Actelion and Xi'an Janssen Pharmaceutical Ltd. (hereinafter referred to as "Janssen") entered into a non-exclusive patent license agreement, according to which, Janssen was granted a non-exclusive license to use the patent involved in the case within the territory of China and to work with the patentee against infringement of the patent involved in the case through litigation and administrative complaints, so as to protect their legitimate rights and interests.

Jiangsu Aikon Biopharmaceutical R&D Co., Ltd. (hereinafter referred to as "Aikon") promoted and sold Macitentan (hereinafter referred to as the "product involved") on its website. Upon comparison, the patentee found that the product involved was consistent with the product "Propylsulfamic acid (4-(5-(4-bromo-

phenyl)-6-{2-[2-(5-bromo-pyrimidinyl)oxy]ethoxy})pyrimidinyl) amide" in claim 11 of the patent involved in the case, and thus fell within the scope of protection of claim 11. After finding that Aikon was selling the product involved, Actelion purchased, in the presence of a notary, the compound from Aikon. Actelion and Janssen believed that the acts of Aikon had constituted an infringement of the patent involved in the case, and brought loss to them, and Aikon should assume the legal liability to cease the infringement, so they filed a request with Nanjing Intellectual Property Office for resolving the dispute.

After accepting the request on November 9, 2020, Nanjing Intellectual Property Office, according to its functions, named Hefei TianRui Pharmaceutical Chemical Co., Ltd. (hereinafter referred to as "TianRui") as the third party in this case on December 1, 2020. Nanjing Intellectual Property Office held a public oral hearing on January 7, 2021, during which the applicants stated that the patent involved in the case was in an invalidation procedure, and the patentee intended to modify claim 11 involved in the case. So Nanjing Intellectual Property Office decided to suspend the hearing on January 12, 2021. On February 24, 2021, the applicants submitted a request for resumption of the hearing and an Examination Decision on Request for Invalidation (No. 48183) issued by the China National Intellectual Property Administration. Nanjing Intellectual Property Office resumed the hearing on March 23, 2021, in accordance with the law.

Aikon stated that: (1) it once promoted the product involved on its website, but it did not know that the compound was a patented product and had no intention of infringement, and it had immediately removed the product from its website after receiving a notice of defense and destroyed the inventories; (2) Aikon did not manufacture the product involved and the product involved was legally purchased

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from a third party on September 24, 2019; (3) Aikon's main business was to provide raw materials for research and development ("R&D") of domestic and foreign pharmaceutical R&D enterprises, and all products Aikon promoted were sold in a quantity of 1 g, 5 g, or 10 g for R&D purposes only.

Outcome：

On March 23, 2021, Nanjing Intellectual Property Office rendered an administrative decision, affirming that the product involved fell into the scope of protection of the modified claim 11, and the acts of Aikon had constituted an offer for sale and sale, and ordering Aikon to immediately cease the infringement of the invention patent involved in the case. After receiving the administrative decision, Aikon did not file an administrative action with the court, and thus the administrative decision came into force.

(This case is provided by the Intellectual Property Office of Jiangsu Province.)

Analysis and Comment：

This is a case of administrative adjudication on a dispute over patent infringement concerning international companies. The administrative adjudication system is an integral part of China's intellectual property rights protection system. Overseas enterprises have also noticed the convenience and effectiveness of administrative resolution, and more and more of them are filing requests for administrative resolution to resolve patent infringement disputes through administrative adjudication. The *Regulations of Jiangsu Province on Intellectual Property Promotion and Protection* issued on January 14, 2022, specifies the establishment of a guiding mechanism for administrative adjudication on

disputes over intellectual property rights.

In this case, the administrative adjudication authority strictly abode by laws. In consideration of the particularity of this case, that is, an ordinary license of the patent involved in the case was granted by a foreign patentee to a domestic company, the administrative adjudication authority, when reviewing the status of the applicant, required the licensee and the patentee to jointly file the request for administrative resolution. Given that the patent involved in this case was in an invalidation procedure, and the scope of protection of the patent changed due to the patentee's waiver of some claims in the invalidation procedure as stated by the patentee during the oral hearing, the administrative adjudication authority decided to suspend the hearing of the case, which complied with the relevant principle. With respect to the respondent's defense for infringement exception that the product was "specially used for scientific research and experiments", the administration decision also specified that the subject of defense should be limited to users, the purpose of the act should be "specially used for scientific research and experiments", and the way of act should be "use", rather than anything else. The administrative adjudication authority of this case combined theory and practice, which is of great significance and plays a guiding role in the hearing of similar cases.

Case No. 10

Case of Suspected Infringement of the Patent for a Filter Element Shell Investigated by Nanjing Customs

Case Brief：

On May 13, 2021, Cixi Zhongbo Plastics and Electric Appliance Co., Ltd. (hereinafter referred to as "Zhongbo") reported to the Lianyungang Customs under the Nanjing Customs District that the filter element shells of the household water purifiers exported by Hainan Chengtai Trading Co., Ltd. (hereinafter referred to as "Chengtai") to the United States infringed its invention patent, and thus it applied for customs protection of intellectual property rights and submitted a security deposit in an amount equal to the value of the goods. According to the protection application filed by Zhongbo, Lianyungang Customs seized 73,080 sets of filter element shells (219,240 shells in total) that were suspected of infringing the invention patent of Zhongbo at the export channel. Upon confirmation by Zhongbo, Lianyungang Customs detained this batch of goods on May 28, 2021.

Chengtai claimed that it had obtained a license from the design patentee for the design of the filter element shell it exported and the filter element shell did not infringe the invention patent of Zhongbo. In accordance with Paragraph 1 of Article

20 of the *Measures of the General Administration of Customs of the People's Republic of China for the Implementation of the Regulation of the People's Republic of China on the Customs Protection of Intellectual Property Rights* (hereinafter referred to as the "Measures"), Chengtai filed a written application with Lianyungang Customs and submitted a security deposit in an amount equal to the value of the goods on June 4, 2021, requesting the customs to release the batch of goods.

Outcome：

Upon review, Lianyungang Customs held that the application filed by Chengtai was in compliance with the provisions of Paragraph 2 of Article 20 of the Measures. Therefore, it released the filter element shells involved in the case and resumed the customs clearance formalities for the goods in accordance with the law on June 9, 2021, and at the same time, assisted the notary authority with the evidence preservation notarization for the filter element shells.

(This case is provided by Nanjing Customs.)

Analysis and Comment：

This is a typical case under the "Longteng Operation" carried out by Nanjing Customs. The General Administration of Customs attaches great importance to the protection of intellectual property rights, and has carried out the "Longteng Operation" for consecutive years. By virtue of "big data + artificial intelligence + experts", it has continuously improved systems and measures to strengthen the protection of patents during import and export through joint risk investigation and analysis, inter-customs cooperation, etc. The customs efficiently handled this case in strict accordance with legal

procedures throughout the process from the acceptance of the protection application filed by the patentee, to the risk monitoring and control, the detention of the suspected infringing goods, and the resumption of the customs clearance formalities. The way this case was handled has broadened the customs' experience in patent protection for imported and exported goods, and provided a basis for practically improving the patent protection systems and measures.

This case demonstrates that the customs protection of intellectual property rights has achieved an effective balance between the rights and obligations of the parties. The magazine Qiushi (literal translation "Seeking Truth") published on February 1, 2021, published an important article by General Secretary Xi Jinping "Stepping Up Intellectual Property Rights Protection to Stimulate Innovative Vigor for Fostering a New Development Dynamic". The article stressed that regarding the intellectual property rights efforts, China must continue to act based on the actual situation, put the interests of the people above all else, and defend fairness and equity. While rigorously protecting intellectual property rights, China must also prevent the rights of individuals and enterprises from becoming overextended, thereby safeguarding public interests and encouraging innovation at the same time. In accordance with WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights, members may adopt appropriate measures to prevent the abuse of intellectual property rights by right holders. In this case, when filing an application for patent protection with the customs, Zhongbo submitted a security deposit to compensate the other party for the possible loss arising from the improper application, which prevented the abuse of the patent and other intellectual property rights by the right holder, and the infringement of the legitimate rights and interests of the other party. After Chengtai claimed that the goods it exported did not infringe the patent of Zhongbo and submitted a security deposit which can be used for compensation for the

future possible infringement of intellectual property rights, the customs released the goods in time in accordance with the law. The customs effectively promoted the right holder's reasonable use of intellectual property rights by balancing the rights and obligations of the parties, and protected the legitimate rights and interests of the intellectual property rights holder while making sure the circulation of goods was not obstructed.

This case demonstrates that the law enforcement model, under which protection is provided upon application, is fair and efficient. After reviewing and verifying that the patent protection application filed by Zhongbo met the protection conditions, the customs promptly detained the goods in accordance with the law. After Chengtai claimed that the goods it exported did not infringe the patent of Zhongbo and submitted a security deposit, the customs released the goods in time in accordance with the law and promptly informed Zhongbo in writing of such release, which fully protected the legitimate rights and interests of the intellectual property rights holder. To effectively resolve the civil infringement dispute, the customs also assisted the notary authority with the evidence preservation notarization for the filter element shells, which provided powerful evidence support for the future civil litigation, effectively achieved the balance between the fairness and efficiency of intellectual property rights protection, and protected intellectual property rights while promoting the trade flows.

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