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## 市场动态|Market movement

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### 汇美集团向证监会申请公开发行股票和创业板上市 ——或将成为“淘品牌”第一股

7月1日，汇美集团正式向中国证监会申请公开发行股票并在创业板上市。

汇美集团是一家互联网时装品牌公司，在天猫商城上已孵化十多个自主品牌，包括：茵曼、初语、生活在左、samyama、达丽坊、秋壳（原名秋壳）、Pass等，同时开发了多个相关子品牌，如家居品牌茵曼 HOME、童装品牌茵曼 Kids。集团旗下产品品类还延伸至女鞋、箱包、运动装、家居装饰品、家具等。

该公司上市后募集到的资金，将投入三大重要项目，包括交易与交互全渠道升级改造项目（即O2O项目）、时尚品牌孵化建设项目、信息化建设项目。

在传统时装品牌纷纷争相进军电子商务时，众多“淘品牌”如汇美集团旗下“茵曼”正逆势而动，建立线上线下互动式营销体系，以专柜和连锁拓展品牌疆域。

我们乐观展望，继汇美集团之后将有更多的“淘品牌”将力争品牌销售渠道资源整合，并会带动该行业的融资潮。

### Huimei Group applied to China Securities Regulatory Commission for the public offering of stocks and being listed on the Growth Enterprises Market ——It may become the first public offering of ‘Tao Brands’

On 1<sup>st</sup> July, Huimei Group formally applied to China Securities Regulatory Commission (CSRC) for the initial public offering (IPO) of stocks and listing on the Growth Enterprises Market of Shenzhen Stock Exchange.

Huimei Group is an internet fashion brand company and it has independently developed more than ten brands on Tmall.com, including INMAN, TOYOUTH, A Life On The Left, samyama, DL.FANG, QIUMAI, Pass, etc. In the meantime, it has developed a large number of sub-brands, including the household brand INMAN HOME and the brand of children's clothes, INMANE Kids. The group-owned products also range from women's shoes, bags and suitcases, sportswear to household decoration and furniture, etc.

The funds raised in the IPO will be injected into three important projects, including the overall upgrade and renovation project on transaction and interaction (i.e. O2O project), fashion brands extension construction project and information construction project.

When a large number of traditional fashion brands are heading for e-commerce, for example, many 'Tao brands' such as INMAN owned by Huimei Group, are going 'backward' by creating an online to offline interactive sales system and extending the market to the greatest extent by establishing boutiques and chain stores.

We expected that, subsequently to Huimei Group's achievement, more 'Tao brands' will succeed in pursuing resources reorganization through a combination of marketing channels, and this will take the lead of financing in that industry.



## Michael Kors 以 5 亿美元收购大中华区代理商

2016 年 6 月 1 日 Michael Kors 宣布以 5 亿美元收购曹其峰所有的大中华区代理商 Michael Kors (HK) Limited，准备在中国市场亲力亲为。

1990 年代曹其峰在 Michael Kors 濒临破产时入股。2003 年以其私募基金 Sportswear Holding 购入 Michael Kors 85% 股份，并于香港成立总部。2010 年 Michael Kors Holding Ltd. (NYSE: KORS) 在纽约证券交易所挂牌上市。2014 年在该公司股价一路高歌时曹其峰抛售了其持有的全部股份。

目前，为保持利润增长和品牌形象，Michael Kors 正逐步减少百货分销。

## Michael Kors acquired the distributor in Greater China in US\$ 500 million

On 1st June 2016, Michael Kors announced to acquire Michael Kors (HK) Limited, the distributor in Greater China, from Mr. Silas Chou in US\$ 500 million.

In the 1990s, Mr. Silas Chou purchased shares when Michael Kors was almost bankrupt. In 2003, he purchased 85% of the shares of Michael Kors through the private placement of Sportswear Holding and created the headquarters in Hong Kong. In 2010, Michael Kors Holding Ltd. (NYSE: KORS) was listed on the New York Stock Exchange. In 2014, when its share price kept a steady increase, Qifeng Cao sold off all the shares he held.

At the moment, in order to keep the growth of profit and brand image, Michael Kors is decreasing the consignment.

## 中国独立设计师品牌的崛起与原创保护

中国第一夫人彭丽媛出访各国时穿着的得体雅致的服饰成功聚焦全球目光，引领了“彭丽媛 Style”，中国独立设计师品牌“无用”、“例外”等因此被广为知晓并受到热烈追捧。随后，中国独立设计师品牌如雨后春笋般活跃在各大时装周，成了众多明星的红毯战衣。近日有媒体报道，连卡佛内的中国设计师品牌到年底将接近 50 个！目前，连卡佛内共有 30 个中国品牌，包括时装、配饰及家居品类。尽管零售商在甄选新品牌进驻时非常挑剔，但仍然割舍不了极具新引力的中国设计师品牌。

原创设计是独立设计师品牌的核心。中国独立设计师品牌面对的重要问题之一就是抄（撞）袭（衫）。2014 年 11 月 11 日，设计师吉承通过网络发表了一封至马云的公开信，信中讲述在“双十一”阿里园区内天猫员工集体穿着的天使翅膀红色卫衣盗版了她的设计款式，并提起了司法诉讼。2015 年 8 月，设计师张娜通过微信、微博等平台发布维权宣言，称其 2015 春夏系列《漫·行》中一款非洲鹤鹤蚕丝印花图案的裙装被深圳一家服装品牌抄袭并在门店内销售。

事实上，在模特登上 T 台的那一刻，原创设计的“防护墙”就可能瞬间土崩瓦解。有高明的设计师将品牌 logo 隐藏在其作品图案中，也起到了自我保护作用。还有些比较好的做法是保留设计底稿，首次发表之前进行公证或进行著作权登记（登记不是享有著作权的要件）、和面料商签订保密协议。我们也注意到，上海服装设计协会在 2015 年年底发布了应对措施，同时，上海时装周上也要求参展商签署一份尊重原创、保护知识产权承诺书。

## The growth of Chinese independent designers' brands and the protection of their original design

The country's First Lady, Liyuan Peng's elegant clothes in her visit to many foreign countries has attracted a community of people around the world, establishing the trend of 'Liyuan Peng Style'. Accordingly, the Chinese independent designers' brands of 'Wu Yong' and 'EXCEPTION' are becoming increasingly popular. The brands of Chinese independent designers are increasingly active at a large number of Fashion Weeks and are chosen by many stars as their choice of attire on the red carpet. Recently, it is reported that Chinese designers' brands are approaching fifty at Lane Crawford, a top fashion brands retailer in Asia. At the moment, Lane Crawford has thirty Chinese brands including fashionable dresses, accessories and household appliances. Though retailers are selective when choosing new brands to come in, they still cannot help declining the extremely attractive Chinese independent designers' brands.

Original design is at the core of designer's brands. The most important problem that Chinese designers face is plagiarism. On 11th November 2014, the designer, Miss Cheng Ji issued on the website a notice to Mr Jack Ma, the CEO of Alibaba (NYSE: BABA). The uniforms worn by the employees of Tmall at Ali Park on 'Double 11 Day' (namely, November 11) copied her design and filed the litigation. In August 2015, the designer Miss Na Zhang claimed through Weibo and WeChat that a dress in her series for spring and summer Man Xing(漫·行) with the printing of silk showing a wading bird of Africa was copied by a fashion brand in Shenzhen and sold in its store.

In fact, at the moment that the model wears a new design on a T stage, the protection collapses immediately. Nevertheless, there are still brilliant designers who conceal the logo in the design of their works for protection. Other good ways include keeping the original scripts, making notarization before publication, registering the copyright, though the registration is not a condition of having copyright, and making a confidentiality agreement with fabric suppliers. We are also aware that at the end of 2015, the Shanghai Fashion Design Association made related measures against plagiarism. Meanwhile, Shanghai Fashion Week also asked the displayers to sign a confirmation letter for respect of originality and the protection of intellectual property rights.

### 受到奢侈品大牌青睐的线上销售科技

刚刚过去的巴黎电子消费品展（Viva Technology Paris）上，有两项新在线销售科技吸引了奢侈品时尚界大佬们。

- （一）移动端 app 开发商 Selectionnist。消费者只需使用该公司开发的 app 就能迅速找到纸媒杂志上刊登的照片所对应的线上商品。Selectionnist 2015年刚刚成立，现与包括《ELLE》在内的 30家法国女性杂志已实现合作。目前，公司正与美国出版商洽谈合作事宜，拓展业务市场。
- （二）触摸式视频购物平台 Cinematique。公司已与时尚文化线上平台 Nowness 以及 LVMH 旗下的一些品牌展开合作。

根据麦肯锡近日发布的有关奢侈品电商的分析报告，奢侈品发展电商将是未来趋势。而新技术的运用将增加顾客线上购物的良好体验感。

### The online sale technology that is appreciated by big luxury brands

In the past Viva Technology Paris, two of the new online sales technologies attracted big luxury and fashion brands.

- i. The mobile app developer, Selectionnist. By using its app, consumers are easy to find the same products online as the ones shown on paper magazines. Selectionnist was incorporated in 2015, however, it has established cooperation with thirty women' s magazines in France including ELLE. At present, the company is approached by an American publisher with any eye to the expansion of the market.
- ii. The shopping platform with touch-sensitive screens, Cinematique. The company has already started co-operation with Nowness, an online platform of fashion and culture, and some brands under LVMH.

According to a report of analysis on e-commerce and luxury products by McKinsey & Company, e-commerce will be a trend of development of luxury brands in the future. In addition, the application of new technology will improve consumer' s online shopping experience.

## 案例研究|Case Study

### 宜家宣布在中国召回“夺命柜”

**事件回顾** 因倾倒并致多名儿童死伤，宜家马尔姆（Malm）等系列抽屉柜在北美地区被召回。但宜家中国称因该系列抽屉柜符合中国相关国家标准的要求，拒不在中国市场进行召回。7月7日下午，宜家中国宣布针对购买了该系列抽屉柜的消费者采取补救措施：一是免费提供墙体连接配件并提供免费上门安装支持；二是有条件退货，即如果墙体不能满足上墙固定的要求，宜家接受退货。经国家质检总局约谈后，宜家于7月12日宣布在中国召回该系列抽屉柜，消费者可获得全额退款。

2016年上半年，宜家已6次在中国召回玩具、儿童安全门、灯具、食品等，但此次宜家认为拒绝召回该系列抽屉柜的理由似乎很充分。我们看看宜家一开始拒绝召回的理由。

宜家中国回应，该系列抽屉柜如果固定在墙上则是安全的，符合中国强制性标准，因此不存在缺陷。据查，其依据是中国国家强制标准《GB/T10357.4-2013 家具力学性能试验第4部份：柜类稳定性的标准》，该标准没有规定柜子必须固定在墙面上。但宜家认为，其提供连接件协助消费者固定该系列抽屉柜后，该系列抽屉柜不存在安全隐患。事实上，中国有针对儿童家具的稳定性要求，《GB28007-2011 儿童家具通用技术条件》规定，“所有高度大于600mm的柜类产品，应提供固定产品于建筑物上的连接件，并在使用说明中明示安装使用方法。”由于宜家该系列抽屉柜并非儿童家具，其无需符合该标准的要求。宜家称，这次北美市场的召回是基于一个非强制性的ASTM标准（美国材料实验协会标准），该标准要求柜体不固定在墙上时也必须不能倾倒。



**我们认为**，根据《中华人民共和国产品质量法》（1993）、《中华人民共和国消费者权益保护法》（2014）等法律法规，缺陷有两个判断标准，一是存在危及人身、他人财产健康、安全的不合理危险，二是不符合保障人体健康、人身、财产安全的国家标准、行业标准。对缺陷的正确理解应当是，符合国家标准是产品不存在缺陷的必要条件而非充分条件：不符合保障人体健康、人身、财产安全的国家标准的产品必然是存在缺陷的产品，而符合国家标准的产品未必是不存在缺陷的产品。宜家对产品缺陷的理解显然是狭隘的。尽管中



国缺陷产品召回制度不完善，仅有对汽车、儿童玩具、食品、药品的召回进行了专门立法，但是《中华人民共和国消费者权益保护法》（2014）第十九条原则性地规定了针对所有类别的缺陷产品召回制度，要求经营者发现其提供的商品或者服务存在缺陷时，立即向有关行政部门报告和告知消费者，并采取停止销售、警示、召回、无害化处理、销毁、停止生产或者服务等措施。

因此，在目前中国缺陷产品召回的法律框架下，该系列抽屉柜即使符合相关的强制性标准但仍然存在危及人身安全的不合理的危险的，要求宜家召回该系列抽屉柜有法可依。

## IKEA announced to recall ‘the dangerous cabinets’ in China

**Review of the case** A number of cabinets including ‘IKEA Malm’ were recalled in North America because of safety issues that the cabinets fell and caused the injuries and deaths of many children. However, IKEA China claimed that the cabinets concerned corresponded to the relevant national standards in China and refused to recall them. On 7<sup>th</sup> July, IKEA China declared to make remedies for the consumers who purchased these series of cabinets. This includes (a) providing free fittings for fixing on the wall with free door-to-door installation services; and (b) conditional return and refund, i.e. if the wall is not fit for fixing, IKEA China will accept a return. After the meeting with the General Administration of Quality Supervision, Inspection and Quarantine of PRC, nevertheless, IKEA China finally declared to recall the cabinets concerned and make full refund to the consumers.

In the first half of the year 2016, IKEA has made six recalls of toys, children’s safety doors, foods, etc. However, in this case, IKEA seemed to have sound reasons to refuse the recall of the cabinets. The following explanations were given:

IKEA responded that the cabinets are safe if they are fixed on walls, corresponding with the national standard in China named *GB / T10357.4 - 2013 Test of Mechanical Properties of furniture – Part 4: Stability of Storage units*. While this standard does not require cabinets to be fixed on walls, IKEA provided fittings to ensure wall strength and considered it to be safe. However, there are requirements of steadiness towards children’s furniture. According to *GB28007 - 201 General Technical Requirements for Children’s furniture*, all cupboard products featuring a height of over 600mm, shall be offered with fittings for fixing on the wall and the methods of the installation shall be shown in an instruction book. However, IKEA’s cabinets concerned are not children’s furniture, so latter is not applicable to the case. In addition, IKEA declared that the recall is based on a non-mandatory ASTM standard (American Society for Testing Materials), which requires that cabinets shall not fall even fixed on the wall.

**In our opinion**, in accordance with the *Law of the People's Republic of China on Product Quality (1993)*, *Law of the People's Republic of China on the Protection of Consumer Rights and Interests (2014)*, etc, there are two standards of judging a defect, including (a) there is unreasonable danger which is a serious threat to the security of the lives and property; and (b) the failure to meet national standards and trade standards of health, the security of life and properties. The right understanding of a defect shall be that meeting the requirements of national standards is a necessary condition for a product but not a sufficient one. This means that a product that fails to meet the requirements of ensuring health, life and property well is certain to be a product with defect, while a product that meet the requirements in national standards is not necessarily free from a defect. IKEA obviously narrowed the concept of the defect. The recall system of defective products in China is not complete, and there are only special rules regarding the recall of cars, children's toys, foods and medicines. However, Article 19 of the PRC Consumers' Protection Law provides the responsibilities of the business operators of reporting to related administrative departments, informing customers, and taking the measures of stopping the sale, warning, recall, innocent treatment, destroying, stopping the producing or the service, etc.

Therefore, under the legal system of recall of defect products in China, the cabinets shall be recalled since there still exists unreasonable danger that threatens life safety in the cabinets although they comply with the related mandatory standard.

### “新百伦”商标侵权案赔偿金额从 9800 万锐减至 500 万理由何在？

案情回顾 2013 年周乐伦起诉美国 New Balance 公司在中国的关联公司新百伦贸易（中国）有限公司（以下称“新百伦公司”）使用“新百伦”来标识和宣传其产品，侵犯其“百伦”和“新百伦”商标专用权。广州市中级人民法院（以下称“一审法院”）判决按新百伦公司在周某主张的侵权期间的获利数额的 1/2 进行赔偿即人民币 9800 万。新百伦公司不服，提起上诉，广东省高级人民法院（以下称“二审法院”）于今年 6 月 23 日改判为新百伦公司赔偿周某经济损失及制止侵权行为所支付的合理开支共计人民币 500 万元。本案一审法院和二审法院对于计算商标侵权赔偿数额的方法上存在较大争议。

二审法院的该案承办法官对改判的依据进行了说明：

- （一）本案周某主张的侵权期间在《商标法》（2014.5.1）修订生效之前，应适用 2001 年《商标法》。2001 年《商标法》第五十六条规定了侵犯商标权的两种赔偿标准，

一是侵权人在侵权期间因侵权所获的利益，二是被侵权人在被侵权期间因被侵权所遭受的损失，包括被侵权人为制止侵权行为所支付的合理开支。两种赔偿标准是并列关系，如果侵权人所获利益或被侵权人所受损失难以确定的，由法院依据侵权行为的情节判决五十万元以下的赔偿。

- (二) 在此基础上，首先，周某没有证据证明因其商标权被侵犯所遭受的经济损失，且经济损失难以确定，因此不能将周某因被侵权所遭受的经济损失作为确定赔偿数额的依据。
- (三) 其次，不能以侵权人获利作为赔偿依据。在计算侵害商标专用权赔偿数额时，应当注重侵权人的产品利润总额与侵权行为之间的直接因果关系。因为考虑到新百伦公司本身的经营规模、销售量、企业声誉，消费者在购买新百伦公司商品时，更多地考虑“N”、“NB”、“New Balance”商标的声誉、良好的商品质量和商品设计。因而新百伦公司的经营获利并非全部来源于侵害周某的“百伦”、“新百伦”商标。一审以新百伦公司在被诉侵权期间所获销售利润的 1/2 为基础计算赔偿数额，忽略了侵权行为与侵权人总体利润之间没有直接因果关系，明显不当。二审认为该等直接因果关系应当由原告周某提交证据证明，然而周某主张以新百伦公司被诉期间的全部利润作为计算赔偿数额的依据，缺乏充分依据。
- (四) 第三，鉴于两项商标侵权的赔偿标准均不能被采用，二审法院认为应根据侵权行为的情节酌定赔偿金额。新百伦公司委托第三方评估公司确认，“新百伦”标识对新百伦公司的利润贡献率为 0.76%，因此其在被诉侵权期间因商标侵权获利至少 145 万元，明显超过法定赔偿限额 50 万元。综合考虑了新百伦公司的主观恶意、“新百伦”标识在侵权期间对新百伦公司的利润贡献率的评估等，二审法院认为应根据周某的请求综合考虑全案证据，本案应在法定最高限额以上酌情赔偿。据此，综合考虑新百伦公司的主观恶意、周某的经济损失、新百伦的侵权方式、新百伦公司的销售规模、侵权持续时间、周某为制止侵权行为的合理开支，二审法院酌定新百伦公司赔偿周某经济损失及制止侵权行为所支付的合理开支共计人民币 500 万元。

鉴于案件的特殊性、事实的复杂性和重大社会影响，二审法院对“新百伦”商标侵权案的判决为计算侵害商标专用权赔偿数额提供了新的思路。从本案可见，不同法院对同一案件中商标侵权赔偿数额的判定会大相径庭。



## What are the reasons of the decrease the compensation from RMB 98 million to RMB 5 million in the trademark infringement case of ‘新百伦’ ?

**Review of the case** In 2013, Mr. Lelun Zhou filed the lawsuit against the affiliated company of New Balance in China, namely, New Balance Trade (China) Co. Ltd. (hereinafter referred to as New Balance Company) for infringement of the right to exclusive use of the trademarks of ‘百伦’ and ‘新百伦’ by using ‘新百伦’ to mark the products and make promotion. Guangzhou Intermediate People's Court , i.e. the court of first instance, found that New Balance Company shall make the compensation of RMB 98 million, accounting for half of the profits earned by New Balance Company during the period of infringement claimed by Mr. Zhou. New Balance Company appealed and the Guangzhou High People's Court, i.e. the appealing court, rendered a new decision that New Balance Company shall make the compensation for the economic losses and the expenses incurred by Mr. Zhou to stop the infringement of New Balance Company, totalling RMB 5 million. There is a large dispute in the calculations of the compensation for infringement of trademark between the court of first instance and the appealing court.

The host judge of the appealing court made an explanation of the new decision:

- i. In the case, the infringement period claimed by Mr. Zhou happened before the amended Trademark Law (1<sup>st</sup> May 2014) took effect, so the Trademark Law (2001 version) shall be applied to the case. Under Article 56 of the Trademark Law (2001 version), there are two calculation standards of compensation for trademark infringement, one is that the interest that the infringer gained during the period of infringement, the other is that the loss incurred by party

against whom the infringement was committed during the period of infringement, which shall include the reasonable expenses of stopping the infringement. The two standards are parallel. If the profits or the losses are difficult to calculate, the court shall, on the basis of the details of the infringement, make a determination on payment of compensation of RMB 500,000 or less.

- ii. On the basis of the aforesaid rules, firstly, Mr. Zhou did not submit any evidence to prove his economic losses caused by the infringement of trademarks, and the economic losses are hard to calculate. Therefore, the economic loss cannot be considered as the basis of calculation of the compensation.
- iii. Secondly, it is not reasonable to calculate the compensation based on the profits owned by the infringer here. When calculating the compensation of the infringement of trademark, it shall be noted in particular the direct causation between the total profits gained by the infringer and the infringement act. Considering the business scale, sale volume and the reputation of New Balance Company, consumers purchase the products of New Balance Company largely due to the good reputation of the trademark of 'N' , 'NB' and 'New Balance' , the nice quality and design of the products. Hence, not all the profits of New Balance Company are gained by the infringement of the trademarks of '百伦' and '新百伦' . The decision made by the court of first instance is obviously unjust as the calculation of the compensation is based on half of the profits gained by New Balance Company during the claimed period of infringement, but the court ignored that there is no direct causation between the total amount of its profits and the infringement. The appealing court also considered that such a direct causation shall be proved by the claimant. However, Mr. Zhou did not have sufficient evidence to prove that the calculation of the compensation shall be based on the total amount of profits gained by New Balance Company during the period of infringement that he claimed.
- iv. Thirdly, since the two calculation standards of compensation for trademark infringement are not applied, the appealing court held that the compensation shall be assessed on the basis of the details of the infringement. According to the evaluation made by an evaluation company consigned by New Balance Company, the contribution rate of the mark of '新百伦' to the profits gained by New Balance Company was 0.76%. Accordingly, the profits attributable to trademark infringement shall be at least RMB 1,450,000, which obviously

exceeded the limit of RMB 500,000 provided in Article 56 of the Trademark Law (2011). The appealing court held that the compensation amount shall be more than the such limit in consideration of the malice of New Balance Company and the evaluation of the contribution rate of the mark of ‘新百伦’ to the profits gained by New Balance Company, etc. Therefore, based on an overall consideration of the malice of New Balance Company, the economic loss incurred by Mr. Zhou, the methods of infringement, the sale scale of New Balance Company, the period of infringement and the reasonable expenses on stopping the infringement incurred by Mr. Zhou, the appealing court found that New Balance Company shall make the compensation of RMB 5 million for covering the economic loss of Mr. Zhou and his reasonable expenses on stopping the infringement.

Based on the particularity, the complexity of the facts and the big influence of the case, the appealing court found a new way to calculate the compensation amount for trademark infringement in the case of ‘新百伦’ . It is noted from this case that the courts may found different compensation amount for trademark infringement in a case.

## 立法动态|Legislation Update

### 《网络出版服务管理规定》

《网络出版服务管理规定》于2016年3月10日施行。该规定在现有的有关出版、互联网信息服务的法律框架下创设了一个新的行政许可项目，即网络出版服务许可。该规定的要点如下：

#### “网络出版物”的概念

该规定确定的“网络出版物”的概念有别于《著作权法》、《出版管理条例》中规定的作品、出版物的概念，极大地扩大了其内涵和外延。

网络出版物，是指通过信息网络向公众提供的，具有编辑、制作、加工等出版特征的数字化作品，并以列举的方式将“文学、艺术、科学等领域内具有知识性、思想性的文字、图片、地图、游戏、动漫、音视频读物等原创数字化作品”、“网络文献数据库”纳入“网络出版物”的范围。值得注意的是兜底条款，为应对快速发展的网络出版技术，国家新闻出版广电总局可将《规定》中未提及的新型数字化作品纳入“网络出版物”的范围，增加了适用范围的宽度。

#### 禁止外资从事网络出版服务

中外合资、中外合作和外资企业不得从事网络出版服务，据此，外商投资企业没有资格申请《网络出版服务许可证》，该证仅对内资企业开放。第十条第二款规定，外商投资企业或境外组织及个人如果与境内有资质的网络出版服务单位进行项目合作，应当事前报国家新闻出版广电总局审批。

同时，规定要求从事网络出版服务的相关服务器和存储设备必须存放在中国境内。

鉴于上述规定和诸多条件，《网络出版服务管理规定》会对VIE结构中的境内运营公司的安排造成一定程度的影响。本所近期为一家总部位于俄罗斯并在东欧、澳大利亚、东南亚等11个国家和地区投资经营的生活时尚界网络出版服务网站提供在华投资的法律意见和VIE架构设计。

### The Regulations on the Administration of Internet Publishing Services

*The Regulations on the Administration of Internet Publishing Services* was carried out on 10<sup>th</sup> March 2016. It creates a new event, which requires an administrative license, i.e. the administrative license on Internet publishing services under the current publication and Internet information services legal system. The main points of the *Regulations on the Administration of Internet Publishing Services* are the following.

### The concept of 'Internet Publication'

The concept of 'Internet Publication' in the *Regulations on the Administration of Internet Publishing Services* is different from that in *Copyright Law* and the *Administrative Regulations on Publishing*. Instead, it largely extends the intension and denotative meaning.

'Internet Publication' here refers to the digital works, that are offered to the public through internet, with the feature of editing, making and machining. The Regulation adopted the way of enumeration to include 'the original digital works of the words, pictures, maps, games, cartoon, audio-video books full of information and ideas in the areas of literature, art and science, etc.' and 'network and document databases' into its extension. It is worth noting that according to the general protection provision, the State Administration of Press, Publication, Radio, Film, and Television of PRC is authorized to consider newly digital works which are not mentioned in the Regulation as in the extension of 'Internet Publication', extending the scope.

### No foreign investment in Internet Publication Services

Chinese-foreign equity joint ventures, contractual joint ventures and foreign-owned enterprises are not allowed to invest in any Internet Publication Services. Accordingly, foreign companies are not qualified to apply the administrative license on internet publishing services. The license only open to domestic companies. Under the second paragraph of Article 10, if foreign companies or organizations and individuals outside the country have a project to co-operate with involving a qualified domestic company on internet publication services, it shall apply for administrative approval at the State Administration of Press, Publication, Radio, Film, and Television of PRC.

Meanwhile, the Regulation requires that the servers and storage devices that refer to the internet publication services shall be placed inside PRC.

Considering the rules and conditions above, the Regulations on the Administration of Internet Publishing Services will have influence to some extent on the operation of domestic companies as VIEs. Our law firm has recently given legal advice and has



facilitated the architecture design for a network station located in Russia, providing internet publication services on life and fashion. It has invested in 11 countries and areas including East Europe, Australia and South East Asia, etc.

### 《移动互联网应用程序信息服务管理规定》

国家网信办发布的《移动互联网应用程序信息服务管理规定》（“APP 新规”），于 2016 年 8 月 1 日生效，将给 APP 市场带来重大改变。

APP 新政第五条规定，APP 提供者应当依法取得法律法规规定的相关资质。相关资质说的就是主营 APP 业务的资质，比如医疗类 APP 要获得经营医疗业务的许可，视听类 APP 要获得《信息网络传播视听节目许可证》，音乐、娱乐、演出剧（节）目、游戏、表演、艺术、动漫等 APP 要获得《网络文化经营许可证》，广播电视节目 APP 要获得《广播电视节目制作经营许可证》等等。

此外，APP 新政明确规定了知识产权保护，不得制作、发布侵犯他人知识产权的应用程序，加强个人隐私保护，重申了个人信息保护，要求 APP 提供者对注册用户采取实名制，同时要求 APP 商店对上架 APP 提供者的信息采取实名制。

尽管 APP 新政的规定比较原则性，有待有关部门在执法和实践中进一步明确，但终于还是在治理突出的“乱象”方面终于有法可依了。

### The Regulations on the Administration of the Mobile Internet Application Information Services

The *Regulations on the Administration of the Mobile Internet Application Information Services* (the ‘New Regulations on APP’) promulgated by the Cyberspace Administration of China is effective as of August 1, 2016, and it will bring a dramatic change to APP market.

Under Article 5 of the *New Regulations on APP*, APP providers shall obtain certain licenses in accordance with the laws and regulations, which means that the licenses or permits shall be obtained for the purpose of conduct the main businesses of an APP. For example, an APP of medical care shall gain the license of practicing medical care; an APP of audio-visual services shall gain the *License of Audio-Visual Programs through Internet or Other Information Network*; a music, entertainment, play, game, performance, arts, comic and animation APP shall obtain the Permit for Cyber-Culture

Business; a TV program APP shall gain *the License of TV Programs' Making and Operation*, etc.

In addition, the *New Regulations on APP* clearly state the protection of intellectual property rights, forbids making or publishing any applications that infringe the intellectual property rights of other people, strengthens the protection of personal privacy and personal information, require APP providers to adopt the real-name registration system regarding users, and require APP shores to adopt the real-name registration system regarding APP providers.

Thought *the New Regulation on APPs* set out the general principles, which remain to be clarified by related government authorities during the enforcement practice, it sets the rules for the players to abide by and for the authorities to administer the 'disorder' on the APP market.

### 《互联网广告管理暂行办法》

7月8日，国家工商总局发布了《互联网广告管理暂行办法》，该办法将于9月1日起实施。《暂行办法》要求，互联网广告应具有可识别性、显著标明广告。其中付费搜索广告应当与自然搜索结果明显区分。据此，国家工商总局确认付费搜索广告的性质属于互联网广告，还需要遵守《中华人民共和国广告法》的规定。

### The Interim Measures for Administration of Internet Advertising

On 8th July, the State Administration for Industry and Commerce of PRC ("SAIC") issued the Interim Measures for Administration of Internet Advertising, which will take effect from 1st September. Under the Interim Measure, Internet advertisements are required to be identifiable, and mark its nature of advertisements in an obvious manner. Among them, paid-search advertisements shall be prominently distinguished from the natural search results. Accordingly, SAIC confirms that paid-search advertisement shall belong to Internet advertisements and shall comply with the provisions under the Advertisement Law of the PRC.

End

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大成律师事务所成立于 1992 年，是中国最早的合伙制律师事务所之一。2015 年 1 月，大成律师事务所与全球十大律所之一的 Dentons 律师事务所正式签署合并协议，共同打造一个新的、布局全球的世界领先国际律师事务所。这将是目前全球律师业规模最大的律师事务所。合并后的新律所在全球统一使用中文名称“大成律师事务所”（“大成”），英文名称“Dentons”。2016 年 4 月 25 日，大成与新加坡历史最悠久、最负盛名的律师事务所瑞德正式合并。目前，新律所执业律师人数超过 7300 人，新律所将在全球设有 125 多个办公室，遍及五大洲 55 多个国家和地区，为国内外客户带来更多的法律服务优势。

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Founded in 1992, Dacheng Law Offices is one of the first partnership law firms in China. In January 2015, Dacheng Law Offices and Dentons, one of the top 10 global law firms, signed their contract of combination in order to build a new and global leading international law firm in the world. The new law firm is now the largest law firm globally. The new law firm, after the combination, will be known as “大成律师事务所” in Chinese and "Dentons" in English. On 25th April 2016, Dentons and Rodyk, the most famous and oldest law firm in Singapore combined. Now, the new law firm has over 7300 lawyers. It will show more superiority to national and global clients in more than 125 locations serving 55-plus countries and areas over the five continents.

Dentons China Offices' network: Beijing, Changchun, Changsha, Chengdu, Changzhou, Chongqing, Dalian, Fuzhou, Guangzhou, Ha' erbin, Haikou, Hangzhou, Hefei, Hohhot, Huangshi, Jilin, Jinan, Kunming, Lhasa, Nanjing, Nantong, Nanning, Nanchang, Ningbo, Qingdao, Shijiazhuang, Shanghai, Shenyang, Suzhou, Shenzhen, Taiyuan, Tianjin, Wuhan, Urumqi, Wuxi, Wenzhou, Xiamen, Xi' an, Xining, Yinchuan, Zhengzhou, Zhoushan, Zhuhai and Taipei.