



# 大成奢侈品与时尚法律专递

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大成 DENTONS

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## 市场动态

### Market Movements

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#### 刚泰控股拟收购某国际高端珠宝品牌 50% 以上股权

甘肃刚泰控股（集团）股份有限公司（上证 600687）重大资产重组公告显示，公司拟通过收购国际高端珠宝品牌，提升公司整体品牌形象与影响力，进一步增强公司珠宝首饰设计开发能力。该海外珠宝品牌在欧洲、美国及亚洲均有直营或经销商门店分布。刚泰控股拟收购该珠宝品牌 50% 以上之股权，获得对公司的控股权。

此前，刚泰控股分别进行了多次收购行动。其于 2016 年 1 月和 3 月分别通过定增收购广州市优娜珠宝首饰有限公司（以下简称“优娜珠宝”）股权，现持有优娜珠宝 51% 的股权，是优娜珠宝的第一大股东和实际控制人。优娜珠宝主要从事高档珠宝首饰产品的设计、研发、生产及销售，拥有珠宝首饰 3D 打印业务，主要产品为彩宝类的 K 金珠宝首饰，核心业务是对“米莱”珠宝品牌的经营管理。该公司主要采用“网络店 + 实体店”、“社区 + 电商”的销售方式，该公司是电商中细分领域彩宝类的龙头企业。2015 年，刚泰控股收购了国内最大的黄金珠宝电商平台（www.kela.cn）所有者上海珂兰商贸有限公司 100% 股权，并与运营 3D 打印高端定制网站（www.3DCITY.com）的上海曼恒数字技术股份有限公司达成《股权合作框架协议》，对曼恒电子进行增资扩股及共同出资设立新公司。刚泰控股线上线下结合的珠宝 O2O 销售平台正加快运行。

#### Gangtai Holding Is to Acquire over 50% Shares of An International High-end Jewelry Brand

The major assets restructuring announcements showed that Gansu Gangtai Holding (Group) Company Limited (SHEX 600687) is acquiring an international high-end jewelry brand to improve the company's overall brand image and the capabilities for jewelry design and development. The target jewelry brand has its self-owned stores and distributors' stores in Europe, the U.S. and China. Gangtai Holding is to acquire more than 50% of the shares of the target jewelry brand to become a controlling shareholder.

Before that, Gangtai Holding had made several acquisitions. The announcements of Gangtai Holding showed that it had accumulatively acquired 51% of the shares of Guangzhou Youna Jewelry Co., Ltd. ("Youna Jewelry") by means of private placement, and it has become the largest shareholder and actual controller of Youna Jewelry. Youna Jewelry focuses on the design, R&D, manufacture and sale of high-end jewelry products. It has the business of 3D printing of jewelry, and its main products are K gold color jewelry, with the core business of managing the jewelry brand of MYRAY. Youna Jewelry mainly adopts the sales mode of "online store + offline store" and "society + e-commerce", leading the color jewelry amongst online retailers of jewelry. In 2015, Gangtai Holding acquired 100% shares of Shanghai Lela Commercial Trading Co., Ltd, the owner of the largest domestic online sale platform of gold and jewelry (www.kela.cn), and reached the equity cooperation master agreement with Shanghai Manheng Digit Electronics Technology Company Limited by Shares, which runs the 3D printing of high-end custom made products (www.3DCITY.com), to invest Manheng by means of acquiring newly issued shares and setting up a new company with Manheng. The O2O sales platform combining online and offline sale of jewelry of Gangtai Holding moving forward quickly.

## 丸美中国上市申请被否，L Capital Asia 退出将推迟

上月 16 号，中国证监会发布公告，否决广东丸美生物技术股份有限公司主板发行申请。公告中，证监会不仅要求发行人披露发行人经销的具体模式以及经销商模式下，非自营专卖店与自营专卖店数量及销售占比等；并且，要求保荐代表人将发行人经销和直销两种销售模式与传销进行对比分析，并就发行人及其经销商是否涉嫌从事传销和涉嫌违反《禁止传销条例》的相关规定出具审核意见。

LVMH 旗下 L Capital Asia 于 2012 年通过占比 96.75% 的子公司 L Capital Guangzhou Beauty Ltd. 对丸美持股 10%。据本次丸美招股书，L Capital Asia 本希望通过此次丸美主板上市实现减持 60% 至 100% 的股份。原因可能在于 L Capital Asia 近年来投资中心已从化妆品、时尚行业转向酒店、餐饮行业。

(本图片来自中国证监会官网)

## 主板发审委2016年第161次会议审核结果公告

中国证券监督管理委员会主板发行审核委员会2016年第161次发审委会议于2016年11月16日召开，现将会议审核情况公告如下：

### 一、审核结果

- (一) 贵州省广播电视信息网络股份有限公司（首发）获通过。
- (二) 广东丸美生物技术股份有限公司（首发）未通过。

### 二、发审委会议提出询问的主要问题

## MARUBI Was Not Granted Approval For Listing; L Capital Asia's Withdrawal Might Delay

On 16<sup>th</sup> November, China Securities Regulatory Commission (hereinafter refer to 'CSRC') issued a public notice, announcing that it refused the application for listing made by Guangdong MARUBI Biotechnology Co., Ltd. In the notice, CSRC did not only ask the issuer to expose its detailed operation mode and the number and the percentage of market share of its outsourced exclusive shops and self-conducted exclusive shops, etc. Also, CSRC asked the Sponsor to make contrast analysis between the mode of sell-on-commission of the issuer and the mode of direct sales, but also ask for a report regarding whether the issuer is suspected of illegal pyramid selling or is suspected of violating the *Regulations for the Prohibition of Pyramid Selling*.

LVMH owned L Capital Asia held 10% share in MARUBI through its 96.75% owned subsidiary L Capital Guangzhou Beauty Ltd. According the prospectus of MARUBI, L Capital Asia hoped to decrease 60% to 100% of its share in MARUBI originally. The reason may be that L Capital Asia is no longer focusing on the industry of cosmetic or fashion but turning to the industry of hotel and catering in recent years.

## American Apparel 将全面退出中国

美国潮流服饰品牌 American Apparel 于上月宣布已向美国特拉华地区法院申请破产保护，进行全面债务重组，于本月清理北京芳草地、三里屯两家门店的库存，这也是 American Apparel 位于中国内地的最后两家门店，最后的关店日期则定在了 12 月 18 日。

American Apparel 由加拿大商人 Dov Charney 创立于 1989 年，针对青少年主打的是“美国制造”与性感营销。目前的报道中将其走向衰弱的主要原因归结为管理层丑闻、扩张策略失误、产品缺乏创新以及广受诟病的性感营销策略。

## **American Apparel Withdraws from Chinese Market**

The famous American fashion apparel brand American Apparel announced that it has applied for bankruptcy protection to the court in Delaware, the U.S. last month and has started to conduct overall debt re-organization. It has been selling its inventories in the two stores in Beijing Fangcaodi and sanlitun, which were the last two stores in Mainland China. The last day of the two stores was this December 18.

American Apparel was established by a Canadian businessman Dov Charney in 1989, which promoted itself by “made in USA” and sexy promotion. According to recent reports, the main reasons for its decline are the scandals of the management team, faults in expansion strategy, lack of innovation and the widely-blamed sexy promotion.

## **Mulberry 力推在华业务，将增开门店及中文网站**

Mulberry Group PLC ( 迈宝瑞 ) 宣布与其最大股东 Challice Ltd. 成立新的合资公司 Mulberry (Asia) Ltd. 运营中国大陆、香港和台湾整个大中华区的业务。据报道，Mulberry Group PLC 和 Challice Ltd. 分别持有 Mulberry (Asia) Ltd. 60% 和 40% 的股权。Challice Ltd. 是新加坡商业巨子 Ong Beng Seng 及其妻子 Christina Ong 的控股公司。而由 Christina Ong 创办的时尚零售集团 Club 21 是 Mulberry 以及多个奢侈品牌在亚洲不同市场的分销商。

Mulberry (Asia) Ltd. 的初期计划包括将在大中华区开设 4 间门店、开拓批发和多渠道网络以及建立一个中文网站。

## **Mulberry Moves forward in The Chinese Market by Opening New Stores And Chinese Website**

Mulberry Group PLC announced to establish a joint venture, Mulberry (Asia) Ltd., with its largest shareholder Challice Ltd. to run its business in Mainland China, Hong Kong and Taiwan. It was reported that Mulberry Group PLC and Challice Ltd. hold 60% and 40% of Mulberry (Asia) Ltd., respectively. Challice Ltd. is controlled by the Singapore business giant Ong Beng Seng and his wife Christina Ong. And the fashion retail group Club 21 established by Christina Ong is the distributor of Mulberry and many other luxury brands in the Asia market.

The initial plans of Mulberry (Asia) Ltd. include opening four stores, developing wholesale and multi-channel, and opening a Chinese website.



## 案例研究 Case Study

### 广州知识产权法院一审判决格力经销商维持转售价格行为不构成纵向垄断协议

8月30日，广州知识产权法院对原告东莞市横沥国昌电器商店（“横沥公司”，格力空调零售商）诉被告东莞市晟世欣兴格力贸易有限公司（“晟世公司”，格力电器在东莞市的总经销商）、东莞市合时电器有限公司（“合时公司”，晟世公司批发商）纵向垄断协议纠纷一案做出一审判决，判决驳回原告全部诉讼请求。法院认为，原告和两被告签订的三方协议及相关证据显示被告晟世公司在东莞市实施了限定原告等交易相对人向消费者出售格力品牌电器最低价格的行为；但是，涉案三方协议不属于《反垄断法》第十四条第（二）项规定的垄断协议，晟世公司被诉行为不构成该法所定义上的垄断行为。理由如下：

#### 判决理由

在竞争市场和消费者的角度，根据生活常识，东莞市空调电器市场除了国外品牌，还存在多个知名度和美誉度等各方面与格力品牌实力相当的国内品牌。即使格力空调品牌限定最低销售价格，消费者完全可替代选择其他同类品牌。

在产业链上，也无证据显示空调产品关联产业的竞争关系会因格力空调的销售限价而有所影响。

晟世公司提供的格力空调参与促销活动等证据可证明东莞地区空调电器市场竞争充分，格力品牌在该地区空调市场并未占据绝对优势的份额，更不足以形成市场支配地位。

晟世公司限定格力品牌每一款空调产品区域内最低销售价格的行为也许限制了众多如横沥公司的经销商之间在同一空调品牌内部的价格竞争，但横沥公司与其他该地区的格力空调经销商仍然可以在售前宣传、售中促销和售后服务等多方面参与竞争。换言之，即便面对同一空调品牌，消费者也仍存有选择的空间。

由此可见，被告晟世公司与原告签订含有销售限价内容的三方协议不是出于排除、限制竞争的目的，不论对横向的空调品牌市场，抑或纵向的空调关联产业供给市场，均没有产生排除、限制竞争的效果。

值得注意的是，本案一审判决中法院采用了“合理原则”进行分析有关协议是否排除、限制竞争的目的和效果。而在发改委等有关部门的实践操作中，则通常以实施了《反垄断法》上禁止的

#### 晟世公司主要证据

- 一份名为《中国空调市场回顾与展望：格力的份额过半》的报告，证明中国家用空调市场竞争相当激烈，空调品牌众多。
- 深圳市国美电器有限公司东莞市分公司《说明》，证明格力家用空调在知名家电零售企业国美电器东莞地区的销售占比不足四分之一。
- 2012年至2015年东莞格力“万人空巷抢格力”活动广告，证明东莞格力并不具有强势的市场支配地位，需要通过每年度的大范围广告来促进销售。
- 晟世公司下属其他零售商的四份《说明》。证明东莞格力下属零售商并不单一经营格力品牌空调，可以基于自己的经营需要经营多种品牌空调，东莞格力并不强迫下属零售商只经营格力品牌空调。
- 横沥公司店面照片，证明横沥公司实际在经营格力品牌空调的同时也在经营其他品牌空调，晟世公司并未禁止其他多品牌经营行为，横沥公司可以通过其他品牌经营获取经营收入利润。
- 《创维进军空调首台产品下线》广告，证明空调行业处于竞争激烈状态，行业准入门槛不高，其他家用电器品牌制造商进入空调行业障碍较小。

行为即认定为实施了垄断协议。比如茅台、五粮液限制其经销商低价出售白酒行政处罚案。因此，即便本案被告在民事诉讼中胜诉，仍有受到行政处罚的风险。

## Guangzhou Intellectual Property Court Ruled in The First Instance RPM Adopted by GREE Distributors Did Not Constitute Vertical Monopoly Agreement

On 30 August, Guangzhou Intellectual Property Court reached a first instance decision in dismissing the lawsuit filed by a retailer of GREE electrical appliances, Dongguan Hengli Guochang Electrical Appliance Store (“Hengli”, retailer of GREE air conditioner), against a wholesaler, Dongguan Shengshi Xinxing GREE Trading Ltd. (“Shengshi”, an exclusive distributor of GREE electronic appliances in Dongguan city) and a general distributor of the GREE brand of air conditioners, Dongguan Heshi Electrical Appliance (“Heshi”, whole-seller of Shengshi), alleging vertical monopoly agreements. The court ruled that plaintiff’s tri-party agreement (“Tri-Party Agreement”) with the two defendants together with other evidence proved that Shengshi had adopted resale price maintenance (“RPM”), setting the minimum price of plaintiff’s resale of the GREE air conditioners; however, the Tri-Party Agreement did not constitute vertical monopoly agreement stipulated under paragraph 2 of Article 14 of *China’s Anti-Monopoly Law* (“AML”) and Shengshi’s conducts did not constitute monopolistic activities according to the definition under the AML. The reasons are as follows:

### Grounds of decision

From perspective of the competitive market and consumers, there were not only foreign brands but also other domestic brands of air conditioners in the air conditioner market in Dongguan city based on common sense. Even if Shengshi fixed the minimum retail price of GREE air conditioner, the consumers would still have the opportunity to purchase other brands of air conditioner.

From the perspective of industry chain, there was no evidence showed that the competition relationship in the related industries of air conditioner was impaired by fixing the minimum retail price of GREE air conditioner.

The evidences such as the GREE advertisement of promoting activities submitted by Shengshi showed that the competition in air conditioners in Dongguan city was sufficient, and GREE brand did not have a preferential market share in the air conditioner market in Dongguan city, not to say a dominant

### Main evidences submitted by Shengshi

- A report called “review and prospect of China’s air conditioner market: GREE and Midea accounts for half of the market share”, showing that there was a high competition amongst various brands in china’s domestic air conditioners.
- A statement issued by GOME Dongguan Branch, a well-known domestic home appliances shopping mall, that the sales volume of GREE domestic air conditioner accounts for less than ¼ amongst famous domestic appliances brands in Dongguan city.
- The promoting advertisements from 2012 to 2015, showing that GREE did not have a dominant market position in Dongguan city, and spent a wide range of advertisement to promote the sale annually.
- Four statements issued by other retailers under Shengshi, showing that the retailers of GREE had the freedom

market position.

The limitation of the minimum retail price of GREE air conditioners by Shengshi might restrict the price competition amongst the sub-distributors like Hengli within the same brand of air conditioner. However, Hengli could still compete with other retailers of GREE air conditioner in Dongguan city in terms of advertisement before sale, promotion and after-sale services. In other word, there was room for consumers' choices of purchasing GREE air conditioner in light of the competition amongst the retailers.

In conclusion, the tri-party agreement amongst the two defendants and the plaintiff was not made for the purpose of excluding or restricting competition, and there was no effect of excluding or restricting the competition in the horizontal air conditioner market or in the related supplying market of air conditioner.

It is noteworthy that the court adopted the "rule of reason" approach in deciding whether the vertical agreement is for the purpose of excluding and restricting competition and the effect of the same in the first instance of this case. However, in the practice of related government bodies such as development and reform commission, the administrative enforcement authorities are inclined to take the "per se rule" approach i.e. conducting the prohibited acts would constitute enforcing the monopoly agreement. The typical cases were the administrative punishment of huge amount on Maotai and Wuliangye wine due to restricting the minimum resell price of their distributor. Therefore, although the civil decision was in favor of the defendants in this case, they might still face the risk of administrative investigation and punishment.

and right to sell other brands in accordance with its own needs of business operation, and they were not enforced to sell GREE air conditioner only.

- Photos of the stores of Hengli, showing that Hengli was also selling air conditioners of other brands to make profits.
- A advertisement of Skyworth launched its first air conditioner, showing the high competition in the industry of domestic air conditioner and relative low threshold, and that it was not difficult for other domestic appliances manufacturers to do this business.



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## 立法动态

### Regulation Update

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#### 《消费者权益保护法实施条例(送审稿)》发布公开征求意见——四大看点解读

2016年11月16日，国务院法制办公室发布了《消费者权益保护法实施条例(送审稿)》(以下简称“送审稿”)，公开征求意见。送审稿的发布是为了更好地细化和补充新消法中的一些条款，解决消费者维权和相关部门在监管实践中遇到的难题。从1994年消法开始在中国正式施行以来，消法虽然几经修改，但从未出台过相关实施条例。因此，条例的最终出台，具有里程碑意义。

#### 或成“职业打假人”之拐点？

此前公布的征求意见稿规定，“金融消费者以外的自然人、法人和其他组织以营利为目的而购买、使用商品或者接受服务的行为不适用本条例”。这被很多人解读为，职业打假人将不再受新消法保护。而此次送审稿将这一条款修改为，自然人、法人或其他组织以牟利为目的购买、使用商品或接受服务的，不适用本条例。相关部门表示，将“营利”改为“牟利”是从立法层面回应社会关切，更准确地表达立法本意。不过，一些法学专家直言，这种措辞的改变在本质上没有变化，都可能会剑指职业打假人群体。

对此，有关专家建议相关部门应对职业打假人群体给出明确定义。在法律框架下理性引导、有效规范和制约这一群体，使其在消费者权益保护方面发挥积极作用。

#### 增设网约车平台多重责任

2016年11月1日，交通运输部，工业和信息化部，公安部，商务部，国家工商行政管理总局，国家质量监督检验检疫总局，国家互联网信息办公室共同颁布的《网络预约出租汽车经营服务管理暂行办法》正式施行，将网约车这种具有创新意义的事物纳入出租汽车管理范围，从国家法规层面首次明确了网约车的合法地位。

此次送审稿特别强调，网约车平台要保证线上提供服务的车辆、驾驶员与线下提供服务的车辆、驾驶员一致。此外，送审稿还对网约车平台“要保证提供服务车辆安全性能可靠；要公布确定符合国家有关规定的计程计价方式，实行明码标价，不得违规收费”等作出了规范，同时要求平台建立服务评价体系，为消费者提供投诉渠道。网约车将迎来规范化的发展。

#### 加强消费者信息保护

针对商家的信息骚扰，新消法有明确规定，经营者未经消费者同意或者请求，或消费者明确表示拒绝的，不得向其发送商业性信息。但这一规定在实际中却被一些商家故意“曲解”，以打电话不是发送信息为由，持续对消费者进行电话骚扰。对此，此次送审稿明确规定，未经消费者明确同意或请求，经营者不得向其发送商业性电子信息或者拨打商业性推销电话。

相比新消法中发送信息的简单描述，送审稿将消费者的固话、手机、电脑、邮箱等可能接受到信息的渠道全部纳入其中，为消费者拒收商家推销信息进行了全方位的保护。

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## The Publishing of Implementation Regulations for The Consumer Rights Protection Law (draft) And Soliciting Public Comments — Four Major Points

The Legislative Affairs Office of the State Council has published *Implementation Regulations for the Consumer Rights Protection Law (Draft)* (Hereinafter referred to as “the Draft”) on Nov. 16<sup>th</sup> 2016 to solicit public comments. The Draft is published in order to better refine and supplement some of the provisions of the new Consumer Rights Protection Law, and to solve the problems encountered in the practice of regulation. Since 1994, the formal implementation of Consumer Rights Protection Law in China, the law has been amended several times, but the relevant regulations have never been issued. Therefore, the final introduction of the regulations should be treated as landmark.

### Might be the inflection point of “Professional Anti-counterfeiting Person”?

Before the Draft, the Draft for comments published as, *apart from financial consumer, natural persons, legal persons and other organizations who purchase goods, use of goods or services for the purpose of operation, not applicable to the provisions of the Regulations*, which interpreted by lots of people that Professional Anti-counterfeiting Person won't be protected by the Consumer Rights Protection Law anymore. However, the provision in the Draft is modified as, *natural persons, legal persons and other organizations who purchase goods, use of goods or services for the purpose of profits, not applicable to the provisions of the Regulations*. Relevant departments said that the changing operation to profit, which responded to social concerns from the legislative level, and it was more accurate to the legislative intent. Nevertheless, some legal experts said, there was no change in nature, and it would not prove safety to the group of Professional Anti-counterfeiting Person.

Therefore, experts suggested that relevant departments should give a clear definition of *Professional Anti-counterfeiting Person*. Under the framework of law, government should use rational guidance and effective regulation to control this group, so that it can play a positive role in the protection of consumer rights.

### Adding multiple responsible of online car-hailing platforms

Ministry of Transport, Ministry of Industry and Information Technology, the Ministry of Public Security, Ministry of Commerce, State Administration for Industry and Commerce, General Administration of Quality Supervision, Inspection and Quarantine published *Provisional Measures for Administration of E-Hailing Services* together, and it came into effect on Nov. 1<sup>st</sup> 2016. From the national regulations, the Provisional Measures for the first time defined the legal status of online car-hailing services and managed it in the scape of taxi.

The Draft emphasized that the online car-hailing platform should ensure the accordance of the vehicles, drivers between online and offline. Moreover, the Draft provides that an online

car-hailing platform shall ensure the safety of the vehicles providing service; issue the valuation method which according to the national rules and determine the transport price of E-hailing reasonably, mark the prices clearly. Also, online car-hailing platforms shall set up service evaluation system and provide complaint system for consumer. Online car-hailing services will develop in standardization.

#### Enhancing protection of Consumer private information

For seller's promotion information harassment, the new Consumer Rights Protection Law stipulates that operators without the consent or request of consumer, or consumer expressly rejected, are prohibited to send commercial information. However, this provision has been deliberately distorted in practice for some operators that making the phone calls does not mean sending information. As a result, they are still using telephone harassment to consumer. In this regard, the Draft clearly stipulates that without the explicit consent of the consumer or request, the operator shall not send commercial electronic information or call commercial sales calls.

Comparing with the description of sending information in new Consumer Rights Protection Law, the Draft included all the methods that consumer may use like fixed-line telephone, mobile, computer and email, which providing a Omni-directional protection to consumer against seller's promotion harassment.

#### Proposed to prohibit operator's unilateral interpretation

The Draft clearly stipulates that operators that provide goods or services to consumer shall use a significant way to draw the attention about the information has major concerns for consumer when using standard terms, notices, announcements, shop notices, etc. Meanwhile, in accordance with the requirements of consumer, the operator shall not unilaterally explain or final interpret. Additionally, provisions shall neither contain restrictions on consumer to change the law, nor has the right to terminate the contract, or to exclude, limit consumers to complain and report or to choose litigation or arbitration or the performance of other rights.

如需咨询任何相关问题或针对本文发表任何意见，请联系：

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