



跨境电商知识产权保护 Cross-border E-commerce Intellectual Property Rights Protection

主讲人：郭卫红 律师

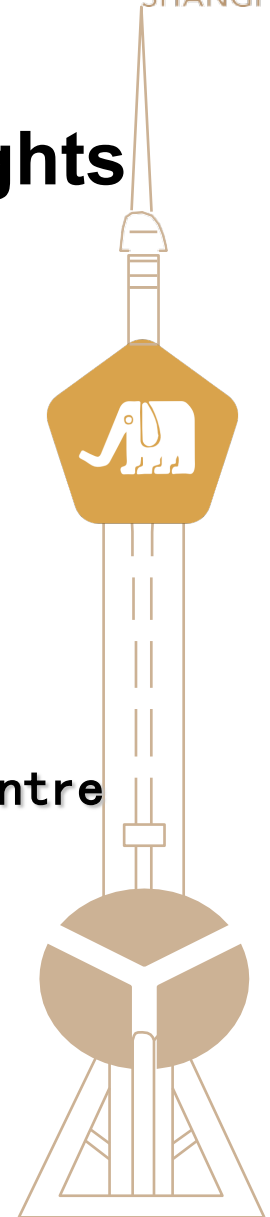
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主讲人介绍

Introduction of the Speaker



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社会职务 Social Positions :

中国网络空间安全协会个人信息专家

Personal Information Specialist, China Cyberspace Security Association

国家市场监督管理总局发展研究中心专家

Experts from the Development Research Centre of the State Administration of Market Regulation



主讲人介绍

Introduction of the Speaker



社会职务 Social Positions :

上海市互联网协会法律顾问

Legal Advisor, Shanghai Internet Association

上海市电子商务行业协会法律顾问

Legal Advisor, Shanghai E-Commerce Industry Association

上海市检察院专题专家 Subject Matter Expert, Shanghai Procuratorate

格理集团专家库专家 Expert from GLG Experts Pool

规格合规师工程讲师 Specification Compliance Engineer Lecturer

国家标准《信息安全技术 网络音视频服务数据安全指南》起草组成员

Member of the drafting group of the national standard "Information Security Technology Guidelines for Data Security of Network Audio and Video Services"



主讲人介绍

Introduction of the Speaker



社会职务 Social Positions :

上海市市场监管局《上海市盲盒经营活动合规指引》起草组唯一专家成员

The only expert member of the drafting group of the Shanghai Municipal Market Supervision Bureau's "Shanghai Blind Box Business Activities Compliance Guidelines"

国家市场监督管理总局《网络交易监督管理办法》上海研讨组成员

Member of the Shanghai Seminar Group on "Supervision and Administration of Internet Transactions" of the State Administration of Market Regulation

人民出版社《个人信息通识读本》编写组

People's Publishing House "Personal Information General Knowledge Reader" Writing Team

团队工作语言：普通话、闽南语、粤语、英文、日语、德语

Team working languages: Mandarin, Minnan, Cantonese, English, Japanese, German



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跨境电商知识产权保护
Cross-border E-commerce Intellectual Property Rights Protection

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- 商标侵权 Trademarks Infringement
- 平行进口侵权 Parallel Import Infringement

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- AliExpress 平台知识产权规则介绍 Introduction to the IPR of AliExpress
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三、跨境电商知识产权侵权风险分析
III. Analysis of the Causes of IPR Infringement Risks in Cross-border E-commerce

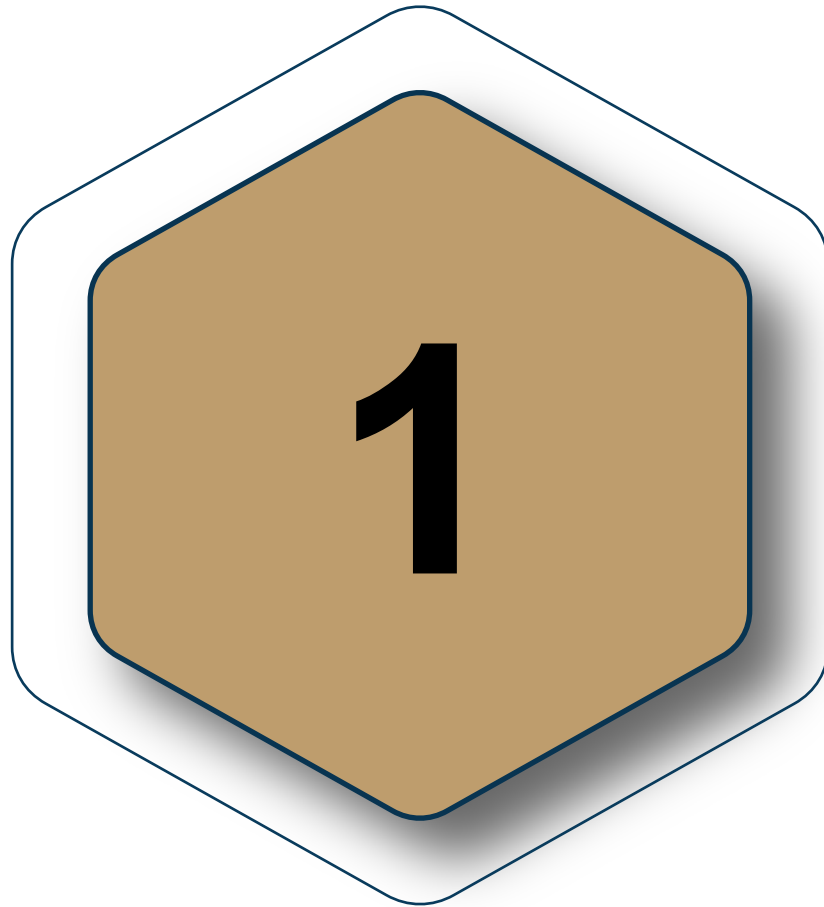
- 跨境电商的无界性与知识产权的地域性的矛盾
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- 主观上跨境电商企业知识产权保护意识不足
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- 电商平台层面流程 E-commerce Platform Process
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- 风险防范，提前布局 Risk Prevention and Advance Planning
- 向平台进行申诉 Make a Complaint to the Platform
- 积极应诉，主动和解 Active Response and Proactive Settlement



跨境电商知识产权侵权风险
Cross-border E-commerce IPR
Infringement Risks



01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

跨境电商知识产权侵权存在哪些风险？What kind of risks?

平台投诉风险 Platform Complaints Risk

- 有棵树因涉嫌违反亚马逊平台规则，公司资金被冻结**1.3亿**。
- 130 million in Youkeshu company' s fund was frozen due to alleged violation of Amazon platform rules.

诉讼风险 Litigation Risk

- 美国律所Greer, Burns & Crain，在2020年总共发起了**243件诉讼**，关闭了**2.2万**个卖家账户和**5900个网站**。
- The US law firm, Greer, Burns & Crain, initiated a total of 243 lawsuits in 2020, shutting down 22,000 seller accounts and 5,900 websites.

01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

跨境电商知识产权侵权存在哪些风险？What kind of risks?

在跨境电商圈子里，GBC (Greer Burns & Crain)、Keith (Keith Vogt, Ltd)、HSP (Hughes Socol Piers Resnick & Dym, Ltd.)、David (David Gulbransen) 等美国知识产权律师事务所被称作“黑律所”或是“钓鱼律所”。

In cross-border e-commerce circles, US IP law firms such as GBC (Greer Burns & Crain), Keith (Keith Vogt, Ltd), HSP (Hughes Socol Piers Resnick & Dym, Ltd.) and David (David Gulbransen) are known as “black law firms” or “fishing firms”.

最知名的律所当属GBC，李维斯、巴宝莉、魅可等品牌都曾委托GBC起诉侵权卖家。

The most well-known law firm is GBC, which has been instructed by brands such as Levi's, Burberry and Meeker to sue infringing sellers.



We're all about IP.

Innovative Practices

Experienced GBC lawyers innovate for clients, anticipating the potential effect of important patent, design patent, trademark, trade secret and copyright decisions, rule-changes, and legal reform. Intellectual property needs to maintain its value in an ever-changing and rapidly evolving global marketplace.

01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

跨境电商知识产权侵权存在哪些风险？What kind of risks?

行政处罚风险 Risk of administrative penalties

- 跨境运输侵权货物时海关会作出了**没收侵权货物并处罚款**的行政处罚决定。
- In the case of cross-border transportation of infringing goods, the customs authorities issued a decision to confiscate the infringing goods and impose a fine as an administrative penalty.

刑事犯罪风险 Risk of criminal offences

- 情节严重可能构成**知识产权犯罪**-被判处刑罚，并处罚金。
- Seriousness may constitute an intellectual property offence - sentenced to imprisonment and a fine

01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

- 跨境电商知识产权刑事犯罪风险
- Risks of criminal offences in cross-border e-commerce intellectual property



侵犯知识产权犯罪 Crimes against intellectual property

是指违反知识产权保护法规，未经知识产权所有人许可，非法利用其知识产权，侵犯国家对知识产权的管理秩序和知识产权所有人的合法权益，违法所得**数额较大**或者**情节严重**的行为。

It refers to the violation of intellectual property protection regulations, the illegal exploitation of intellectual property rights without the permission of the owner of intellectual property rights, infringement of the state order of management of intellectual property rights and the legitimate rights and interests of the owner of intellectual property rights, the amount of illegal **income is large or the circumstances are serious**.

01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 跨境电商知识产权刑事犯罪风险

➤ Risks of criminal offences in cross-border e-commerce intellectual property

当前国际对知识产权刑事保护的关注度明显提升，世界许多国家都建立了知识产权刑法保护制度。

The current international attention to the criminal protection of intellectual property has increased significantly and many countries around the world have established criminal law protection systems for intellectual property.

如中国、美国、英国和日本等国都是在商标法中规定相应的假冒商标犯罪及应承担的刑事责任。For example, China, the United States, the United Kingdom and Japan all provide for the corresponding offence of trademark counterfeiting and the criminal liability for it in their trademark laws.

在对专利权的保护上，中国、美国、英国、德国、日本等都是在专利法中规定了应承担的刑事责任。

In terms of the protection of patent rights, China, the United States, the United Kingdom, Germany and Japan all provide for criminal liability in their patent laws.

01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 跨境电商知识产权刑事犯罪风险

➤ Risks of criminal offences in cross-border e-commerce intellectual property

刑事责任：**监禁或罚金** Criminal liability: **imprisonment or fine**

- 例如：在**韩国**，如果是对计算机软件进行侵权，可处5000万韩元**罚金**，在有累犯情节的状况下，罚金可高达7000万韩元。
- For example, in **Korea**, infringement of computer software is punishable by a **fine** of 50 million won, or up to 70 million won in the case of repeat offences.
- 在**以色列**，违法人员可以被判处最高**5年的监禁**或者最高**200万**新谢克尔的罚金。
- In **Israel**, offenders can be sentenced to up to **five years** in prison or a fine of up to NIS **2 million**.
- **美国**的版权法规定，涉及犯罪者的刑罚最高可达**10年以上监禁**以及25万美元的**罚款**。
- **US** copyright law provides for penalties of up to **10 years in prison** and **fin**es of up to \$250,000 for those involved in the offence.
- **德国**规定，凡在法定许可的情况外，未经专利权人许可而使用其发明者，可对其处以**1年以下监禁或罚金**，或二者并处。
- **Germany** provides for a penalty of up to **one year's imprisonment** or a **fine**, or both, for anyone who uses his invention without the permission of the patentee outside the context of a statutory licence.

01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 跨境电商知识产权侵权类型 Types of Cross-border E-commerce IPR



专利侵权 Patent Infringement



版权侵权 Copyright Infringement



商标权侵权 Trademark Infringement



平行进口侵权 Parallel Import Infringement

01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

- 跨境电商知识产权侵权类型
- Types of cross-border e-commerce IPR infringement



专利侵权 Patent infringement

- **专利 Patent:**
- 一般是由政府机关或者代表若干国家的区域性组织根据申请而颁发的一种**文件**，这种文件记载了发明创造的内容，并且在一定时期内产生这样一种**法律状态**，即获得专利的发明创造在一般情况下他人只有**经专利权人许可**才能予以实施。
- A document issued on application by a governmental authority or a regional organisation representing a number of countries, which documents the content of an invention and which, for a certain period of time, creates a legal status whereby the patented invention can generally only be implemented by others with the permission of the patentee.

01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

- 跨境电商知识产权侵权类型
- Types of cross-border e-commerce IPR infringement

专利类型 Types of patents

- 专利的种类在**不同的国家有不同规定**
- The types of patents **vary from country to country**
- 在部分**发达国家（美国）**中分类：**发明专利**和**外观设计专利**；
- Classification in some **developed countries (USA): patents for inventions and design patents.**
- 在中国专利法中规定有：**发明专利**、**实用新型专利**和**外观设计专利**；
- In the Chinese Patent Law there are: invention patents, utility model patents and design patents.
- 在香港专利法中规定有：**标准专利**（相当于大陆的发明专利）、**短期专利**（相当于大陆的实用新型专利）、**外观设计专利**。
- There are provisions in the Hong Kong Patent Law for standard patents (equivalent to invention patents on the mainland), short-term patents (equivalent to utility model patents on the mainland) and design patents.

01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

- 跨境电商知识产权侵权类型
- Types of cross-border e-commerce IPR infringement

专利类型 Types of patents

- **发明专利--例如：发明了电话**
- **Patents for inventions - e.g. invention of the telephone**
- 对产品、方法或者其改进所提出的新的技术方案
- New technical solutions for products, methods or improvements thereto
- **外观设计专利--例如：把电话做成卡通外观或者动物外观**
- **Design patents - e.g. to make a telephone look like a cartoon or an animal**
- 是指对产品的形状、图案或其结合以及色彩与形状、图案的结合所作出的富有美感并适于工业应用的新设计
- A new design for a product that is aesthetically pleasing and suitable for industrial application in terms of shape, pattern or a combination thereof, as well as the combination of colour and shape or pattern

01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

- 跨境电商知识产权侵权类型
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专利类型 Types of patents

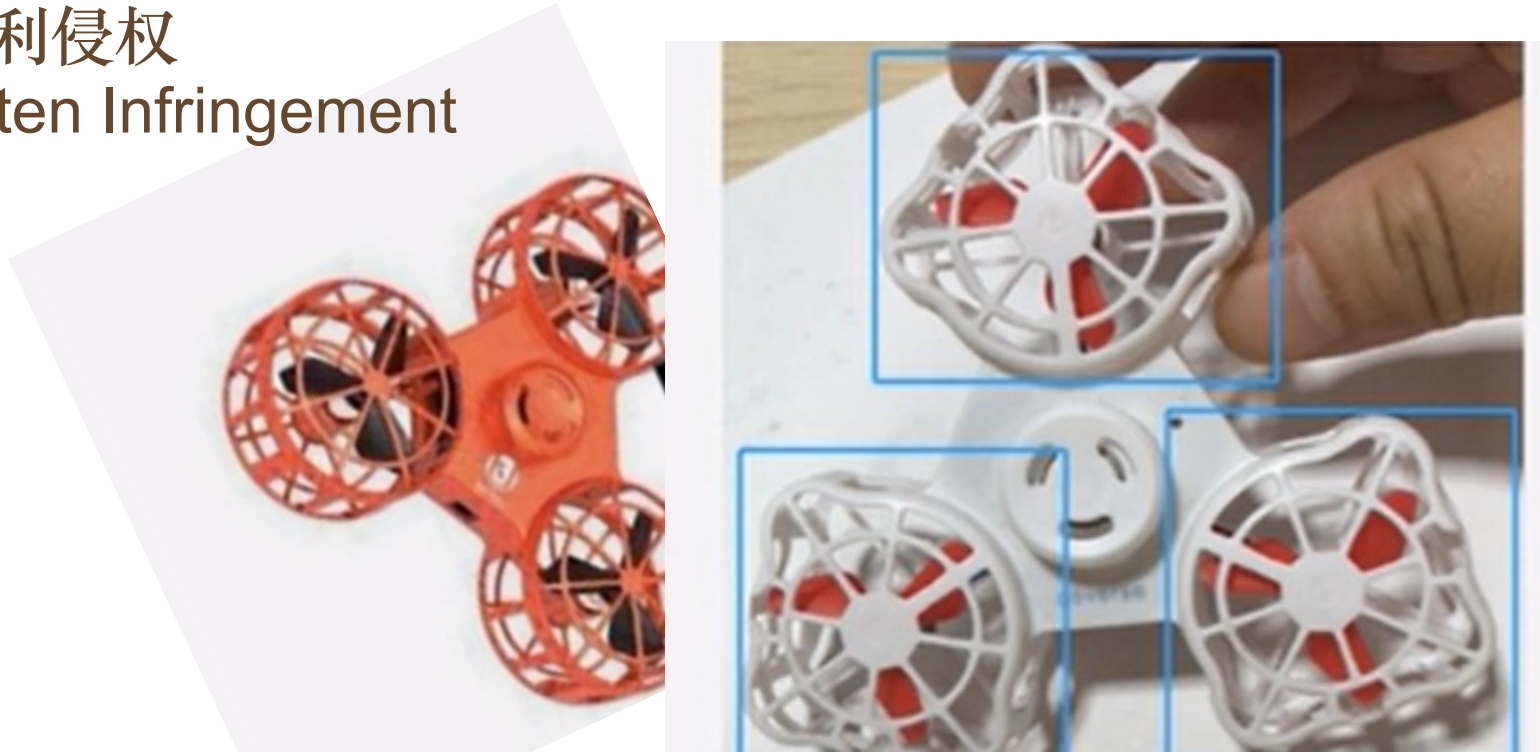
- 中国的实用新型专利--例如：发明了壁式电话
- China's utility model patents - e.g. the invention of the wall phone
- 实用新型是指对产品的形状、构造或者其结合所提出的适于实用的新的技术方案。
- A utility model is a new technical solution for the shape or construction of a product or a combination thereof, suitable for practical use.
- 在中国授予实用新型专利不需经过实质审查，手续比较简便，费用较低，因此，适用于日用品、机械、电器等方面有形产品的小发明
- The granting of utility model patents in China is not subject to substantive examination, and the procedure is relatively simple and inexpensive, and is therefore suitable for small inventions in tangible products such as daily necessities, machinery and electrical appliances
- 相当于美国的发明专利 Equivalent to a US patent for an invention

01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 专利侵权

Patent Infringement



➤ 左边红色的是有外观设计专利的，右边白色的是商家自制的
The red one on the left has design patent, the white one on the right is home-made by the merchant

➤ 请问：大家觉得商家的产品会侵权吗？
Do you think that the merchant's products infringe?

01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 专利侵权 Patent Infringement

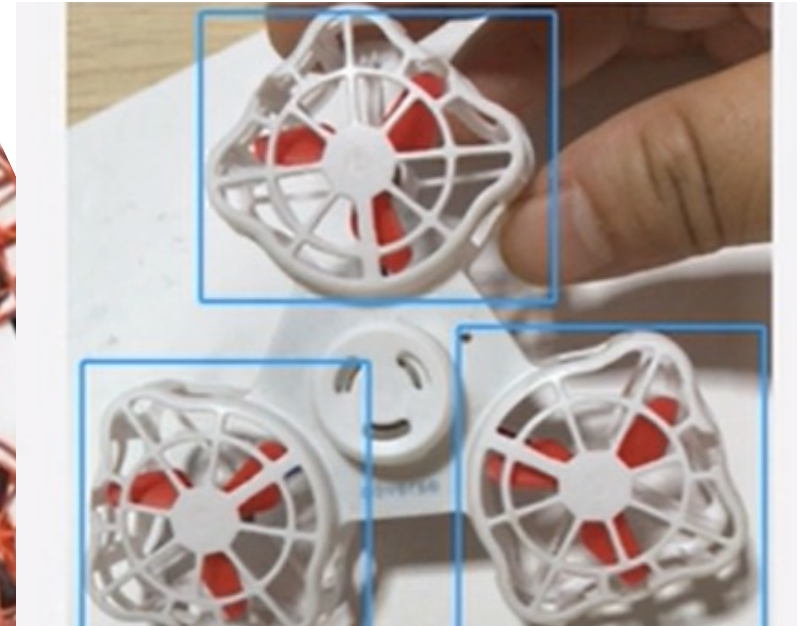
➤ 结果：不侵权外观设计专利 **Answer: No**

要点：从一般消费者角度，外形差异较大

Keypoint: Large differences in appearance from the general consumer's point of view

➤ 1.形状：方形--圆形 shape: square - round

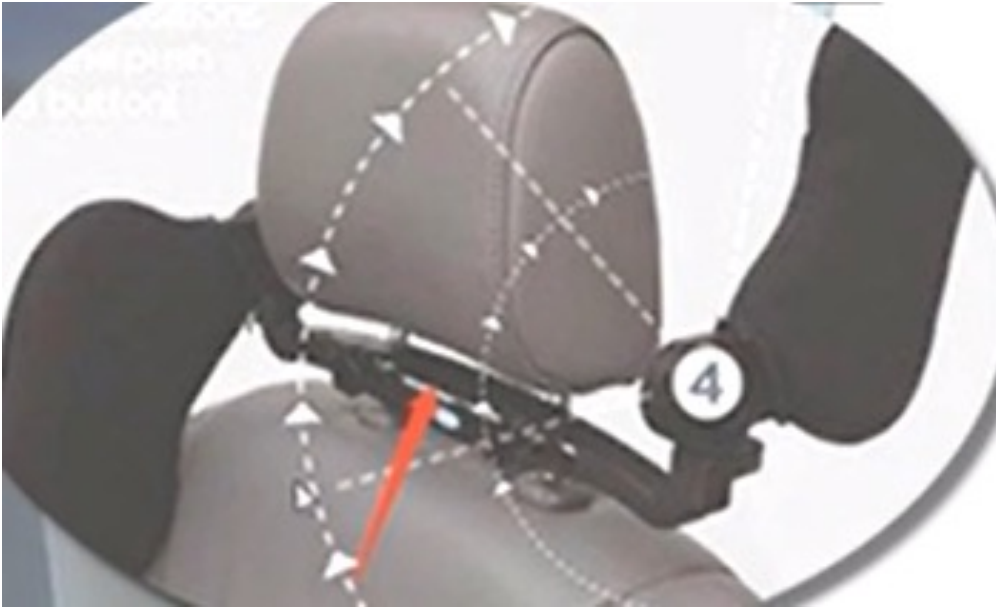
➤ 2.颜色：白色-红色 color: white - red



01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 专利侵权 Patent Infringement



- 左边的是有发明专利的，右边是商家自制的
- The one on the left has invention patent, the one on the right is home-made by the merchant
- 请问：大家觉得商家的产品会侵权吗？
- **Do you think that the merchant's products infringe?**

01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 专利侵权 Patent Infringement

➤ 结果：不侵权 Answer: No

要点：专利中的**权利要求书**中的特征有不一致的地方

Keypoint: Inconsistencies in the features of the claims in the patent

- 如果权利要求书中特征是完全一样的，则构成侵权
- Infringement if the features in the claims are identical
- 如果权利要求书中特征不一致，则很可能不构成侵权。
- If the features in the claims are inconsistent, may no infringement.



01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 专利侵权 Patent Infringement

➤ 什么是权利要求书？ What is a patent claim？

权利要求书是申请发明专利的和必须提交的申请文件

Patent claim is an application document that must be filed to apply for a patent for an invention

它是发明专利要求保护的内容，具有直接的法律效力，是申请专利的核心，也是确定**专利保护范围**的重要法律文件。

It is the content of the patent for the invention claimed to be protected and has direct legal effect. It is the core of the patent application and an important legal document for determining the scope of patent protection.

01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 专利侵权 Patent Infringement

- WowWee益智玩具手指猴被众多卖家仿制
- WowWee educational toy - finger monkey is copied by many sellers
- WowWee展开反侵权行动，超过1000多位速卖通、亚马逊卖家成为被告。
- WowWee launches anti-infringement campaign, more than 1,000 AliExpress and Amazon sellers become defendants
- 侵犯了外观设计专利 **Infringement of design patents**



01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 专利侵权 Patent Infringement

版权：

保护的**对象**为具有**创意性**的作品及表达，如**书籍、电影、图案、音乐、绘画作品及计算机软件等**

Copyright.

Protection for creative works and expressions, such as books, films, patterns, music, paintings and computer software

01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 版权侵权 Copyright Infringement

版权（著作权）：

采取**自动取得原则**，当作品创作完成后，只要符合法律上作品的条件，版权即产生。

Copyright (Copyright).

Adopting the principle of automatic acquisition, copyright arises when the work is created, provided the conditions for a work in law are met.

权利人可以申请对作品的版权进行登记，但登记不是版权产生的法定条件。

A rights holder may apply to register the copyright in a work, but registration is not a legal requirement for copyright to arise.

01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 专利侵权 Patent Infringement

➤ 小猪佩奇案 Peppa Pig case

➤ 商家在未取得授权的情况下，**销售**印有“小猪佩奇”形象玩具，被法院认定为侵犯了作品的版权，最终判赔**15万元人民币**。

➤ A merchant who sold toys bearing the image of "Peppa Pig" without obtaining authorisation was found by the court to have infringed the copyright of the work and was eventually fined 150,000 RMB.



01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 专利侵权 Patent Infringement

- “汽车总动员”和“小黄人”案 “Cars” and “Minion” case
 - 出口至哥伦比亚的一批涂层布布料印有“汽车总动员”和“小黄人”等卡通形象的图案。
 - A shipment of coated fabric for export to Colombia was printed with cartoon images such as "Cars" and "Minion".
 - 经相关著作权权利人确权，上述印有相关卡通形象的涂层布上均为侵犯美国迪士尼公司“汽车总动员”动漫形象著作权以及尤尼维瑟城电影制片厂有限责任公司《神偷奶爸》3d小黄人形象**著作权**的货物。
 - The copyright owner confirmed that the above coated cloth with the relevant cartoon image was an infringement of the copyright of the "Cars" cartoon image of the United States Disney Company and the copyright of the 3d "Minion" image of the Universal City Studios Ltd.
 - 海关作出了**没收侵权货物**并处罚款的行政处罚决定。
 - The Customs issued a decision to confiscate the infringing goods and impose a fine as an administrative penalty.



01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 专利侵权 Patent Infringement

➤ 乐高案 LEGO case

- 商家在未取得授权的情况下，复制乐高拼装积木玩具产品，以“乐拼”品牌进行销售，涉及金额人民币**3亿余元**。
- The merchant made unauthorized copies of LEGO building blocks and sold them under the brand name "LEGO Puzzles", involving an amount of more than RMB 300 million.
- 经鉴定，“乐拼”多款玩具与乐高玩具基本相同，图册也相同，构成**复制关系**。
- After identification, a number of toys of "LEPIN" and Lego toys are basically the same, the catalogue is also the same, belong to the act of copying
- 判决构成**侵犯著作权罪**--被判处**有期徒刑6年**，并处罚金**9000万元**。
- Convicted of copyright infringement - sentenced to six years in prison and fined RMB 90 million.



01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 版权侵权 Copyright infringement

- 侵犯网络文学著作权案
- Infringement of online literary copyright case
- 未经著作权人许可，在其运营的免费阅读APP平台上向用户提供侵权网络文学作品，并通过广告、付费阅读等方式牟利。
- Without the permission of the copyright owner, they provided infringing online literary works to users on the free reading app platform operated by them, and made profits through advertising and paid reading.
- 构成侵犯著作权罪，判处有期徒刑+有期徒刑
- constituted copyright infringement and was sentenced to a fine + a term of imprisonment



01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 版权侵权 Copyright infringement

➤ 销售侵权盗版图书案 Sale of infringing and pirated books

➤ 王某未经著作权人许可，购进用于**销售的侵权盗版图书**68种、930475册

➤ Wang purchased 68 types of infringing pirated books, 930,475 copies, for sale without the permission of the copyright owner

➤ 委托李某**印刷侵权盗版图书**59种、929314册，后通过网络对外销售，

➤ Commissioned Li to print 59 types of infringing pirated books, 929,314 copies, which were later sold to the public through the Internet.

➤ 判处两被告侵犯著作权罪：罚金+有期徒刑

➤ They were convicted of copyright infringement: fine + term of imprisonment



01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 版权侵权 Copyright infringement

- 侵犯影视作品著作权案
- **Copyright infringement of film and television works**
- 侵权人盗录传播413部电影，违法所得分别为404.4万余元
- The infringers pirated and distributed 413 movies, with proceeds of more than RMB 4,404,000 respectively
- 构成侵犯著作权罪，判处有期徒刑+罚金550万元。
- Constituted the offence of copyright infringement and was sentenced to imprisonment + a fine of RMB5.5 million.



01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 版权侵权 Copyright infringement

- 侵犯音乐作品著作权案
- **Copyright infringement of musical works**
- 未经著作权人许可，在互联网上下载大量音乐作品，在其经营的“DJ音乐网”上提供在线收听及下载服务。
- Downloading a large number of musical works on the Internet without the permission of the copyright holder and providing online listening and downloading services on the "DJ Music.com" operated by him.
- 以侵犯著作权罪判处有期徒刑+罚金
- Sentenced to imprisonment + fine for copyright infringement



01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 版权侵权 Copyright infringement

- 制作出售假冒他人署名美术作品案
- **Producing and selling of counterfeit signed works of art**
- 汪某等人制作大量假冒齐白石等名家署名的书法美术作品，送拍卖行拍卖或直接贩卖，涉案金额3000余万元。
- Wang and others produced a large number of calligraphy and art works signed by famous artists such as Qi Baishi and sent them to auction houses for sale or sold them directly, involving an amount of over RMB 30 million.
- 以侵犯著作权罪判处有期徒刑+并处罚金
- Sentenced to imprisonment for copyright infringement + fine



01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 版权侵权 Copyright infringement

➤ 计算机软件侵权案件 Computer software infringement cases

- 软件的著作权人主张：侵权人未经其许可，利用著作权人公司的**离职员工**获取权利软件，并在其生产、销售的产品中进行使用。
- The copyright owner of the software claimed that the infringer had used a departing employee of the copyright owner's company to obtain the copyrighted software without his permission and to use it in the products it manufactured and sold.
- 侵权人产品内嵌的计算机软件与权利人享有著作权的软件构**成实质性相似**，并且因为员工流动对软件**具有接触的可能性**。
- The computer software embedded in the infringer's product is substantially similar to the copyrighted software of the right holder and there is a possibility of access to the software due to employee turnover.
- 裁判结果：停止侵权，赔礼道歉，并赔偿经济损失及合理开支共计50万元。
- Judgment: Cessation of infringement, apology, and compensation for economic loss and reasonable expenses totalling RMB500,000.

01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 商标权侵权 Trademark Right Infringement

- 商标侵权一直以来都是跨境电商中知识产权侵权频发的“**高风险区**”。
- Trademark infringement has always been a "high risk area" for IPR infringement in cross-border e-commerce.
- 统计数据显示，在跨境贸易中，侵犯商标权的产品已占据了所有侵权产品总量的**95%以上**。
- Statistics show that trademark infringement has accounted for over **95%** of all infringing products in cross-border trade.

01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 商标权侵权 Trademark Right Infringement

商标权：

区别商品和服务不同来源的商业性标志

Trademark rights.

Signs of a commercial nature distinguishing between different sources of goods and services

01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 商标权侵权 Trademark Right Infringement

商标取得的原则

Principles of trademark acquisition

1. 使用取得原则

principles of Acquisition of Trademark Use

美国采取是商标使用取得原则

使用取得原则是指商标权的获得的依据是商标在商业活动中**被真实使用**，注册只是证明享有商标权的初步证据。

The United States has adopted the principle of acquisition trademark use

The doctrine of acquisition by use means that a trademark right is acquired on the basis that the mark is actually used in commerce and that registration is only prima facie evidence of entitlement to the mark.



01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 商标权侵权 Trademark Right Infringement

商标取得的原则

Principles of trademark acquisition

2.注册取得原则

principles of Acquisition of Trademark registration

中国采取的是注册取得原则

注册取得原则是指商标权的获得的依据是商标行政管理部门的核准注册，**未注册**的商标不能享有商标权的保护。

注册取得原则容易诱发商标的**恶意注册**，但该原则的优势在于安全和效率。

China has adopted the principles of Acquisition of Trademark registration

The principles of Acquisition of Trademark registration means that the basis for obtaining trademark rights is the approval of the trademark administrative department for registration, and unregistered trademarks cannot enjoy the protection of trademark rights.

The principle of acquisition of registration is prone to induce bad faith registration of trademarks, but the advantages of this principle lie in security and efficiency.



01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 商标权侵权 Trademark Right Infringement

商标的种类 Types of trademarks

(1) 商品商标和服务商标

Trade Marks and Service Marks

商品商标：将商标贴附在商品上或者商品的包装上，将商标用于广告宣传等。

Trade marks: attaching a trade mark to goods or to the packaging of goods, using a trade mark for advertising purposes, etc.

服务商标：使用于服务介绍手册、服务场所的照片、工作人员服饰等与服务有联系的文件资料上。

Service marks: used on service presentation brochures, photographs of the service premises, staff clothing and other documents associated with the service.



01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 商标权侵权 Trademark Right Infringement

商标的种类 Types of trademarks

(2) 集体商标和证明商标

Collective Marks and Certification Trademarks

集体商标：是指以团体、协会或者其他组织名义注册。

Collective trademarks: are registered in the name of a group, association or other organisation.

证明商标：用以证明该商品或者服务的原产地、原料、制造方法、质量或者其他特定品质的标志。

Certification mark: A mark used to prove the origin, raw materials, method of manufacture, quality or other specific qualities of the goods or services.



卫浴质量证明商标
Bathroom Quality Certification Mark



01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 商标权侵权 Trademark Right Infringement

商标的种类 Types of trademarks

(3) 注册商标和未注册商标 registered trademarks and unregistered trademarks

注册商标：是指经商标管理机构依法核准注册的商标。商标的注册需具备法定条件和经法定程序。在商标注册制度的国家内，商标一经注册便获得使用注册商标的**专有权**和排斥他人同一种商品或者类似商品上使用与其注册商标相同或者近似的商标的**禁止权**。

Registered trademarks: are trademarks that have been legally approved for registration by the trademark administration. The registration of a trademark is subject to statutory conditions and procedures. In countries with a trademark registration system, once a trademark is registered, it acquires the exclusive right to use the registered trademark and the right to exclude others from using the same or similar trademark on the same goods or similar goods as its registered trademark.

未注册商标：是指未获得国家主管机关的注册，使用人不具有商标专用权的商标。未注册商标**不享有商标的专用权，但是可以使用**，并可享受使用所产生的影响和信誉，受商标法和反不正当竞争法的保护。

Unregistered trademarks: are trademarks that have not been registered by the competent state authorities and for which the user does not have exclusive rights to use the trademark. Unregistered trademarks do not enjoy the exclusive right to use the trademark, but they can be used and enjoy the influence and reputation arising from their use, and are protected by the trademark law and the law against unfair competition.

01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 商标权侵权 Trademark Right Infringement

商标的种类 Types of trademarks

(4) 驰名商标 Famous Trademarks

驰名商标，是指在为相关公众所熟知的商标。驰名商标与一般商标相比，有其特殊性，一般商标只能在同类商品或服务上获得保护，而注册的驰名商标不仅可以获得同类保护，还可以获得**跨类保护**。

A famous trademark is a trademark that is well known to the relevant public. A well-known trade mark has its own special characteristics compared to a general trade mark. A general trade mark can only be protected for similar goods or services, whereas a registered well-known trade mark can be protected not only for the same type of goods or services, but also across categories.



01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 商标权侵权 Trademark Right Infringement

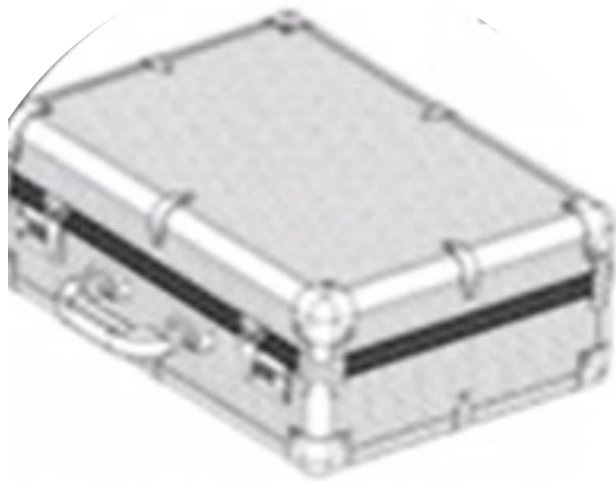


- 左图红色底的高跟鞋是在**欧盟注册的商标**
- The high heels with red soles on the left are **registered trademarks in the EU**
 - 注意：高跟鞋的红色底很可能侵权
 - Note: Red soles on high heels are likely to be infringing

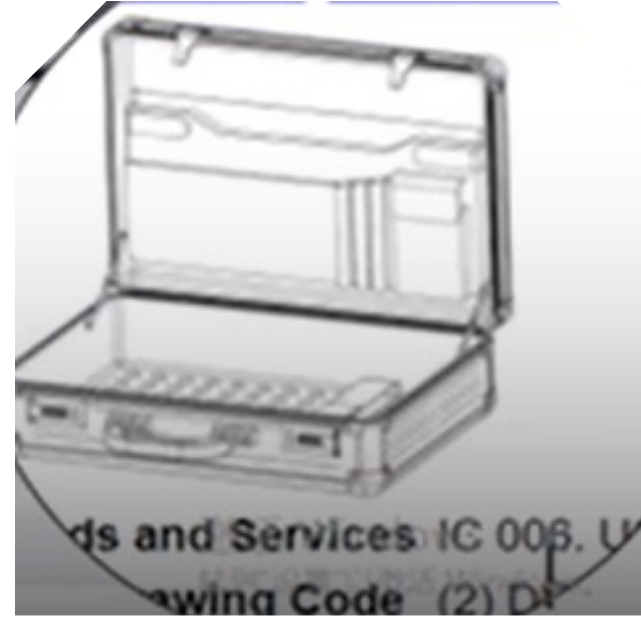
01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 商标权侵权 Trademark Right Infringement



ods and Services IC 006. US
Drawing Code (2) DES
Search Code 19



ds and Services IC 006. U
rawing Code (2) D

- 两个箱子的图片均也是在**欧盟注册的商标**
- The images of both boxes are also **registered trademarks in the EU**
- 如果随意使用可能构成侵权 May constitute infringement if used freely

01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 商标权侵权 Trademark Right Infringement



➤ 左侧为有商标权的正品，右侧为仿冒的

➤ **Genuine product with trademark rights on the left, counterfeit on the right**

01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 平行进口侵权 Parallel Import Infringement

- 平行进口产生的原因 Reasons for creation of parallel imports
- 平行进口的产生与各国（地区）经济发展水平不一和市场情况不同有关，同样的商品在不同的国家和地区的**销售价格**往往是有差异的。
- The creation of parallel imports is related to the different levels of economic development and market conditions in different countries (regions), where the same goods are often sold at different prices in different countries and regions.
- 当相同商品在甲国的售价低于在乙国的售价时，乙国的商人就愿意从甲国进口相同商品在乙国销售，以赚取更大的利润。
- When the same goods sell for a lower price in country A than in country B, traders in country B are willing to import the same goods from country A and sell them in country B to make a bigger profit.

01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 平行进口侵权 Parallel Import Infringement

- 平行进口的特点 Features of Parallel Import
- 第一，平行进口的对象是知识产权**产品**，而非知识产权本身。
- First, the object of parallel imports is the IP **product**, not the IP itself.
- 第二，平行进口的产品是合法制造并合法使用权利人商标的**真品**，而非假货。
- Second, parallel imports are **genuine products** that are legally manufactured and legally use the trademark of the right holder, not counterfeit products.
- 第三，平行进口的产品存在某项受保护的知识产权，通常是**商标权，也存在著作权、专利权**的情形。
- Third, there is a certain protected intellectual property right, usually a **trademark right, but also a copyright or patent right**, in the case of parallel imported products.
- 第四，平行进口商在进口国销售产品的行为**未经**知识产权权利人**授权**。
- Fourth, parallel importers sell products in the importing country **without the authorisation of the IP rights holder**.
- 第五，在进口国，同一产品由权利人或独家经销商经营，价格较高，而**平行进口的产品价格较低**，容易占领市场。
- Fifth, in the importing country, the same product is carried by the rights holder or exclusive distributor at a higher price, while **parallel imports are less expensive** and can easily capture the market.

01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 平行进口侵权问题的争议 The controversy over parallel import infringement

- 目前不同国家对该问题有不同的观点和态度，需要视具体情况而定。
- There are currently different views and attitudes on the issue in different countries, which need to be considered on a case-by-case basis.
- **美国 the US**
- 美国法院通过NEC电子公司诉Circuit Abco等一系列案例对平行进口逐渐确立了以下原则：对于不会导致消费者对商品**来源产生混淆**的平行进口应当允许。
- The US courts have gradually established the principle that parallel imports should be permitted where they do not lead to consumer confusion as to the source of the goods, through a series of cases such as NEC Electronics Inc. v. Circuit Abco.
- 但如果平行进口的商品与商标权人在美国市场上销售的商品之间存在**实质性差异**，或者平行进口会导致**消费者的混淆**，则除非平行进口商采取合理措施防止对商标权人声誉的损害，否则**构成侵权**。
- However, if there is a material difference between the goods imported in parallel and those sold by the trademark owner in the US market, or if the parallel importation would cause confusion among consumers, then the parallel importer infringes unless it takes reasonable steps to prevent damage to the trademark owner's reputation.

01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 平行进口侵权问题的争议 The controversy over parallel import infringement

➤ 中国 China

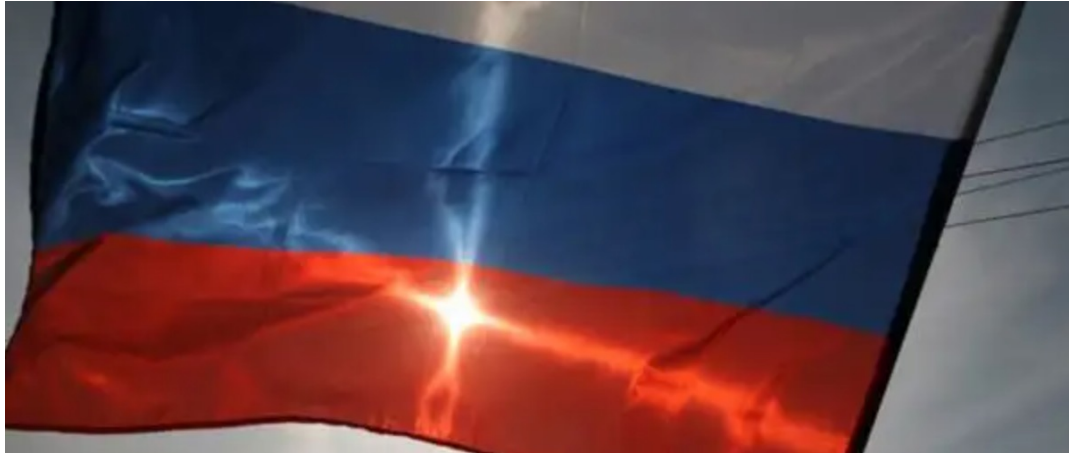
- 中国法院认为：对于进口商未经中国国内商标权人许可，将商标权人在国外生产的同一商标的产品进口到中国国内的行为，**法律没有明确的禁止性规定**。
- The Chinese courts held that there was no explicit prohibition in the law on importers importing products of the same trademark produced abroad by the trademark owner into China without the permission of the trademark owner in China.
- 该行为是否构成商标侵权应综合考虑以下因素：进口产品与商标权人在我国国内生产销售的产品是否存在“**实质差异**”，消费者**混淆的可能性**是否存在及商标权人的**商誉是否受到损害**等。
- The following factors should be taken into account to determine whether the act constitutes trademark infringement: whether there is a "substantial difference" between the imported product and the product produced and sold by the trademark owner in China, whether there is a likelihood of consumer confusion and whether the goodwill of the trademark owner has been damaged, etc.

01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 平行进口侵权 Parallel Import Infringement

- 2022年3月30日，**俄罗斯**政府宣布将平行进口货物（俗称水货）合法化。此前这些货物没有版权所有者的许可，禁止在俄罗斯销售。
- On 30 March 2022, the Russian government announced the legalisation of parallel imported goods (commonly known as parallel goods). Previously these goods were prohibited from being sold in Russia without the permission of the copyright owner.



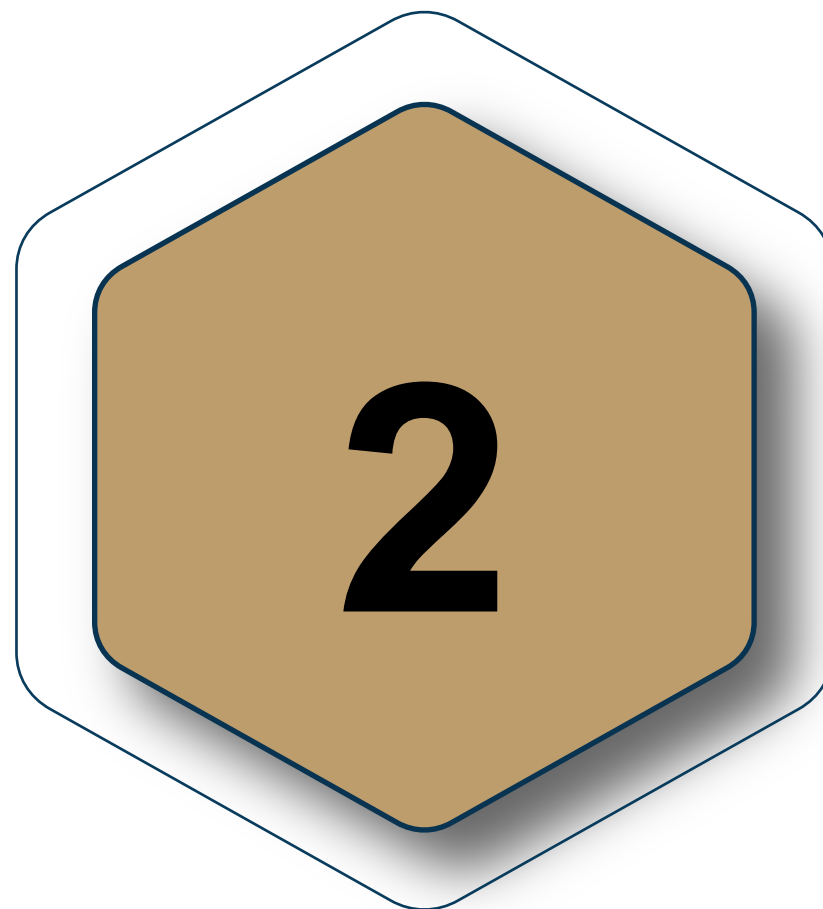
01.跨境电商知识产权侵权风险

Cross-border E-commerce IPR Infringement Risks

➤ 平行进口侵权 Parallel Import Infringement

- 俄罗斯工业和贸易部公布了允许平行进口的商品清单，其中包含音响设备、摄影和摄像设备、医疗工具、苹果智能手表、乐器和Xbox、PlayStation、任天堂等品牌的游戏机设备等。
- The Russian Ministry of Industry and Trade has published a list of goods that are allowed to be imported in parallel, which includes audio equipment, photographic and video equipment, medical tools, Apple smart watches, musical instruments and gaming console equipment from brands such as Xbox, PlayStation and Nintendo.





常见跨境电商平台知识产权规则介绍

Introduction to IPR Rules for Common Cross-border C-commerce Platforms



02. 常见跨境电商平台知识产权规则介绍

Introduction to IPR Rules for Common Cross-border E-commerce Platforms

- 常见跨境电商平台
- Common Cross-border E-commerce Platform

The Amazon logo, featuring the word "amazon" in a dark blue, lowercase, sans-serif font. A yellow curved arrow starts under the letter "a" and points to the right, ending under the letter "z".The eBay logo, consisting of the word "ebay" in a lowercase, sans-serif font. Each letter is a different color: 'e' is red, 'b' is blue, 'a' is yellow, and 'y' is green.The AliExpress logo, with "Ali" in orange, a red shopping cart icon, and "Express" in red, all in a bold, sans-serif font.The Wish logo, featuring the word "wish" in a lowercase, blue, sans-serif font with a slight italicized feel.The Gmarket logo, with a large green "G" followed by the word "market" in a blue, sans-serif font. Above "market" is the Korean text "대한민국 1등 온라인 쇼핑" in a smaller, black font.

02. 常见跨境电商平台知识产权规则介绍

Introduction to IPR Rules for Common Cross-border C-commerce Platforms

➤ Amazon平台 Amazon



- 是**美国**最大的一家网络电子商务平台，一开始只经营网络的书籍销售业务，现在则扩大了范围相当广的其他产品，已成为全球商品品种最多的全球跨境电商平台。
- It is the largest online e-commerce platform in the United States, having started with the sale of books on the internet, but has now expanded to include a wide range of other products, making it the largest global cross-border e-commerce platform with the largest range of products in the world.

02. 常见跨境电商平台知识产权规则介绍

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- 商标通常以商品详情页面上发布的商品和品牌名称的形式显示在亚马逊的商品详情页面上。
- Trademarks are usually displayed on Amazon's product detail pages in the form of product and brand names.
- 例如，亚马逊商标“Pinzon”出现在如图所示商品详情页面的品牌价值部分中的商品名称上方。
- For example, the Amazon trademark "Pinzon" appears above the product name in the brand value section of the product detail page as shown.

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amazon

- Pinzon 品牌所有者拍摄了毛巾照片，其拥有这些毛巾图片的**版权**。
- The owner of the Pinzon brand took the photographs of the towels and owns the copyright to the images of the towels.
- 如果某位卖家打算将这些图片**复制到其他商品详情页面**，用于销售自己的商品，那么该卖家可能会侵犯这些毛巾图片的权利所有者的版权。
- If a seller intends to reproduce these images on other product detail pages for use in selling their own products, then that seller may be infringing the copyright of the owner of the rights to these towel images.

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Product information

Package Dimensions	4.2 x 3.2 x 1.6 inches
Item Weight	3.98 ounces
ASIN	B088NX4HP8
Item model number	AUKEY-EP-T21
Batteries	1 Lithium Polymer batteries required. (included)
Customer Reviews	★★★★☆ 37 ratings 4.5 out of 5 stars
Best Sellers Rank	#13 in Earbud & In-Ear Headphones



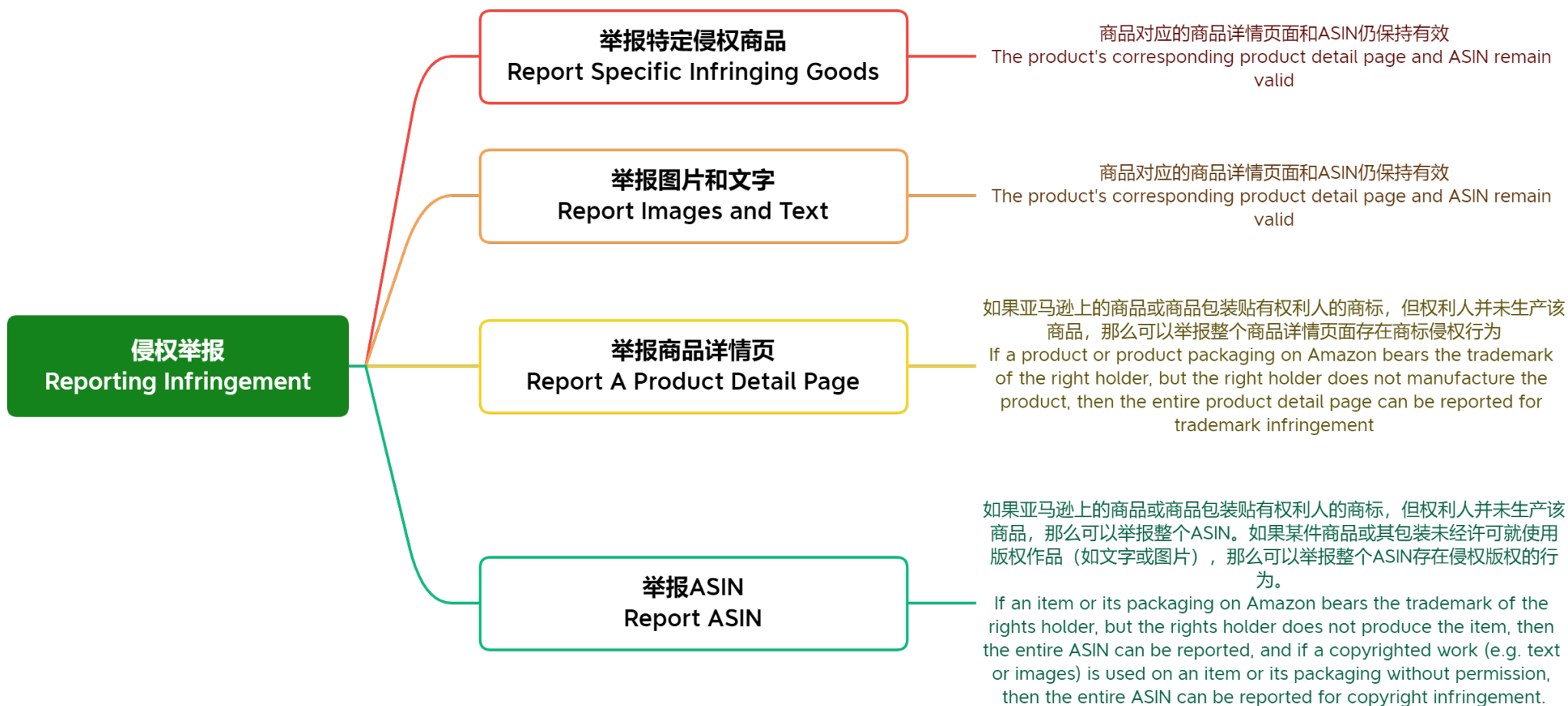
➤ 亚马逊ASIN Amazon ASIN

- ASIN 代表亚马逊标准识别号，它的功能是用于Amazon网站内部的产品识别。
- ASIN stands for Amazon Standard Identification Number and its function is for product identification within Amazon's website.
- ASIN 仅保证在当地市场中是唯一的。不同国家的亚马逊网站可能对于同一产品去使用不同的 ASIN 编码。
- The ASIN is only guaranteed to be unique in the local marketplace. Different Amazon sites in different countries may use different ASIN codes for the same product.

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- 平行进口商品
- **Parallel imported goods**
- 在亚马逊网站发布平行进口商品时，必须将这些商品信息与其他常规商品的商品信息区分开来。
- When listing parallel imported items on Amazon.com, it is important to distinguish the information on these items from that on other regular items.
- 平行进口商品在商品名称中显示为 [平行进口商品]，且具有独立于常规商品的单独商品详情页面 (ASIN)。
- Parallel imported products are shown in the product name as [Parallel Imported Products] and have a separate product detail page (ASIN) from the regular products.

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- **平行进口商品 Parallel imported goods**
- 权利所有者可以禁止第三方在未经其同意的情况下向**欧洲经济区 (EEA) 或巴西**进口他们的商品。但是，他们不能禁止转售经授权合法进口到 EEA 或巴西的商品。
- Rights holders can prohibit third parties from importing their goods into the European Economic Area (EEA) or Brazil without their consent. However, they cannot prohibit the resale of goods that have been legally imported into the **EEA or Brazil** with their authorisation.
- 例如，如果一件销售商品最初合法进口到英国，然后由第三方转售给意大利买家，则不属于侵犯知识产权的平行进口商品。
- For example, if a sale item is initially legally imported into the UK and then resold by a third party to an Italian buyer, it is not a parallel import that infringes IPRs.

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- **亚马逊不接受的投诉类型** Types of complaints not accepted by Amazon
- **1、商标地域** Trademark territory
- 一个国家的商标只能在一个国家的网站上形成保护
- A trademark from one country can only form protection on a website in one country
- 例如，如果您在**意大利注册了商标**，但是要求亚马逊从**美国的**亚马逊商城移除侵权商品，那么亚马逊会拒绝，但是你可以要求亚马逊从**意大利的亚马逊**商城移除侵权商品。
- For example, if you **register a trademark in Italy** but ask Amazon to remove the infringing goods from the Amazon Store in the United States, then Amazon will refuse, but you can ask Amazon to remove the infringing goods from the **Amazon Store in Italy**.

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➤ 商标地域性原因 Reasons for territoriality of trademarks

➤ 商标权利的地域性是指一个国家或地区依照其本国的商标法或本地区的商标条约所授予的商标权，**仅在该国或该地区有效**，对他国或该地区以外的国家**没有约束力**。

➤ The territoriality of trademark rights means that trade mark rights granted by a country or territory in accordance with its own trade mark law or the trade mark treaties of the territory are valid **only in that country or territory** and are **not binding** on other countries or countries outside that territory.

➤ 举例来说，一商标在日本注册了而未在美国注册，那么这个商标在日本是受法律保护的，在美国却不受保护。

➤ For example, if a trademark is registered in Japan but not in the United States, it is legally protected in Japan but not in the United States.

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➤ 亚马逊不接受的投诉类型 **Types of complaints not accepted by Amazon**

➤ 2、最低宣传价格 (MAP) 协议

➤ **Minimum Advertised Price (MAP) Agreement**

➤ 亚马逊尊重制造商为其商品签订独家经销协议的权利。但是，违反此类协议并不构成侵犯知识产权，因此亚马逊不会协助此类活动。

➤ Amazon respects the right of manufacturers to enter into exclusive distribution agreements for their goods. However, a breach of such agreements does not constitute an infringement of intellectual property rights and therefore Amazon will not assist in such activities.

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➤ 最低宣传价格 (MAP) 协议

➤ Minimum Advertised Price (MAP) Agreement

➤ 违反最低宣传价格 (MAP) 协议虽然不构成侵犯知识产权，但是权利人可以主张构成**合同**
违约，要求经销商承担**违约责任**。

➤ Although a breach of a minimum advertised price (MAP) agreement does not constitute an infringement of intellectual property rights, the right holder may claim that it constitutes a breach of contract and hold the distributor liable for breach of contract.

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➤ 亚马逊不接受的投诉类型 Types of complaints not accepted by Amazon

➤ 3、独家销售协议 Exclusive sales agreements

➤ 举例：Adidas旗舰店和生产Adidas的工厂签订了独家销售协议，但是生产Adidas的工厂把产品给了另外一卖家在亚马逊上销售，这个时候如果Adidas旗舰店想在亚马逊上投诉另外一个卖家，亚马逊是不予受理的。

➤ Example: Adidas flagship shop and the factory that produces Adidas signed an exclusive sales agreement, but the factory that produces Adidas gave the product to another seller to sell on Amazon, if the Adidas flagship shop wants to complain about another seller on Amazon, Amazon will not accept it.



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- **独家销售协议 Exclusive sales agreements**
- 但是，在亚马逊是不予受理的情况下，Adidas旗舰店可以基于与生产Adidas的工厂签订的独家销售协议**通过诉讼**等方式追究工厂的**违约责任**。
- However, in cases where Amazon is inadmissible, the Adidas flagship shop can **pursue** the factory for **breach of contract** through litigation etc. based on the exclusive sales agreement signed with the factory that produces Adidas.



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➤ 亚马逊不接受的投诉类型 Types of complaints not accepted by Amazon

➤ 4、平行进口或保修索赔（欧盟、巴西或土耳其的适用地区除外）

➤ Parallel import or warranty claims (except for applicable areas in the EU, Brazil or Turkey)

➤ 亚马逊不接受合法的平行进口投诉或保修索赔

➤ Amazon does not accept legitimate **parallel import complaints** or **warranty claims**

➤ 如果Adidas的一双鞋被合法进口到英国，然后由第三方转售给意大利买家，则不属于侵犯知识产权的平行进口商品，如果意大利的权利人向亚马逊投诉，则亚马逊不予受理。

➤ If a pair of Adidas shoes is legally imported into the UK and then resold by a third party to an Italian buyer, it is not a parallel import that infringes intellectual property rights and will not be accepted by Amazon if the Italian rights holder complains to Amazon.

➤ 只有当权利人提出有效的平行进口商品索赔时，亚马逊才会评估保修索赔。

➤ Amazon will only evaluate a warranty claim if the right holder has a valid claim for parallel imported goods.

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➤ 亚马逊不接受的投诉类型 Types of complaints not accepted by Amazon

➤ 5、条形码所有权 Bar code ownership

➤ 亚马逊不会强制施行条形码的所有权，例如A卖家要投诉B卖家使用了A卖家的条码，那么需要提供对应的证书证明这个条码是A卖家先完成购买的。

➤ Amazon does not enforce ownership of barcodes. For example, if seller A wants to complain that seller B has used seller A's barcode, then a corresponding certificate will need to be provided to prove that the barcode was purchased by seller A in the first place.

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➤ Amazon下架平衡车案例 made the balance bike out of list

2012年Shane Chen发明了平衡，向**美国**申请了专利

2012 Shane Chen invented balance and applied for a patent in the **US**

大量中国平衡车产品进入美国，并以低价优势迅速**占领市场**，卖家在进入亚马逊平台前，以10万元授权费从杭州骑手那里购买了专利使用权

A large number of Chinese balance bike products entered the United States and quickly **occupied the market** with the advantage of low prices. The seller purchased the patent usage rights from Hangzhou Rider for a licensing fee of 100,000 yuan before entering the Amazon platform

亚马逊收到投诉后将产品**链接删除**，并冻结账户

Amazon **removed product links** and froze accounts after receiving complaints

杭州骑客的创始人在**中国**申请了专利。

The founder of Hangzhou Rider **has applied for a patent in China.**

Shane Chen将独家销售权卖给了美国公司Razor，该公司向亚马逊**投诉**，称杭州骑手在内的多家中国厂商侵犯其专利权。

Shane Chen sold exclusive sales rights to the US company Razor, which **complained to** Amazon that a number of Chinese manufacturers, including Hangzhou Rider, had infringed its patent rights.

美国公司产品大卖特卖，抢占市场，中国**生产商损失惨重**，苦苦维权

Chinese **manufacturers suffer heavy losses** and struggle to defend their rights as US companies sell their products and seize the market

02. 常见跨境电商平台知识产权规则介绍

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- Amazon下架平衡车时间线
- Timeline of the balance bike case

1. 2015年12月11日
Razor公司向
Amazon**投诉**
11 December 2015
Razor has filed
a complaint with
Amazon
complaint

• 2. 2015年12月12日
Amazon将所有平衡
车产品**链接删除**
• 12 December 2015
Amazon **removed**
all links to
balance bike
products

• 3. 2015年12月13
日Amazon**冻结**卖
家账户内巨额货款
• 13 December 2015
Amazon **frozen**
huge amounts of
money in
sellers'
accounts

• 4. 2015年12月13日
卖家委托律师在美国对shane
chen 和Razor公司提出**专利无效**
诉讼。
4 On 13 December 2015, the
seller instructed its lawyers
to file a **patent invalidation**
lawsuit against shane chen
and Razor Corporation in the
United States.

提示：商家应该积极响应，积极利用行业协会、政府部门等多途径尽快解决问题。

Tip: Businesses should respond positively and actively use industry associations, government departments and other multiple channels to solve problems as soon as possible.

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- Amazon下架平衡车法律问题提示
- Legal tips about this case

- 1.同一个专利是可以在不同的国家申请
- The same patent can be applied for in **different countries**
- 2.建议专利权人申请**国际专利**，否则可能被别人在国外申请专利。
- Patent owners are advised to apply for **international patents**, otherwise they may be **patented by others in foreign countries**.
- 3.如果自己的发明创造不及时申请专利，很有可能**被别人申请**，反过来向法院或专利管理机构告你侵犯专利权。
- If you do not apply for a patent for your own invention in time, there is a high risk that **someone else will apply** and in turn sue you in court or the patent administration infringement of patent rights.

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➤ eBay平台介绍 Introduction to eBay



➤ eBay销售模式 eBay sales pattern. :

➤ 以B2C垂直销售模式为主，主要针对个人客户或小型企业

➤ B2C vertical sales pattern, mainly for individual customers or small businesses

➤ eBay热销品类 eBay hot selling products :

➤ 数码产品，时尚类别，家具及园艺品类，汽配，商业和工业品类

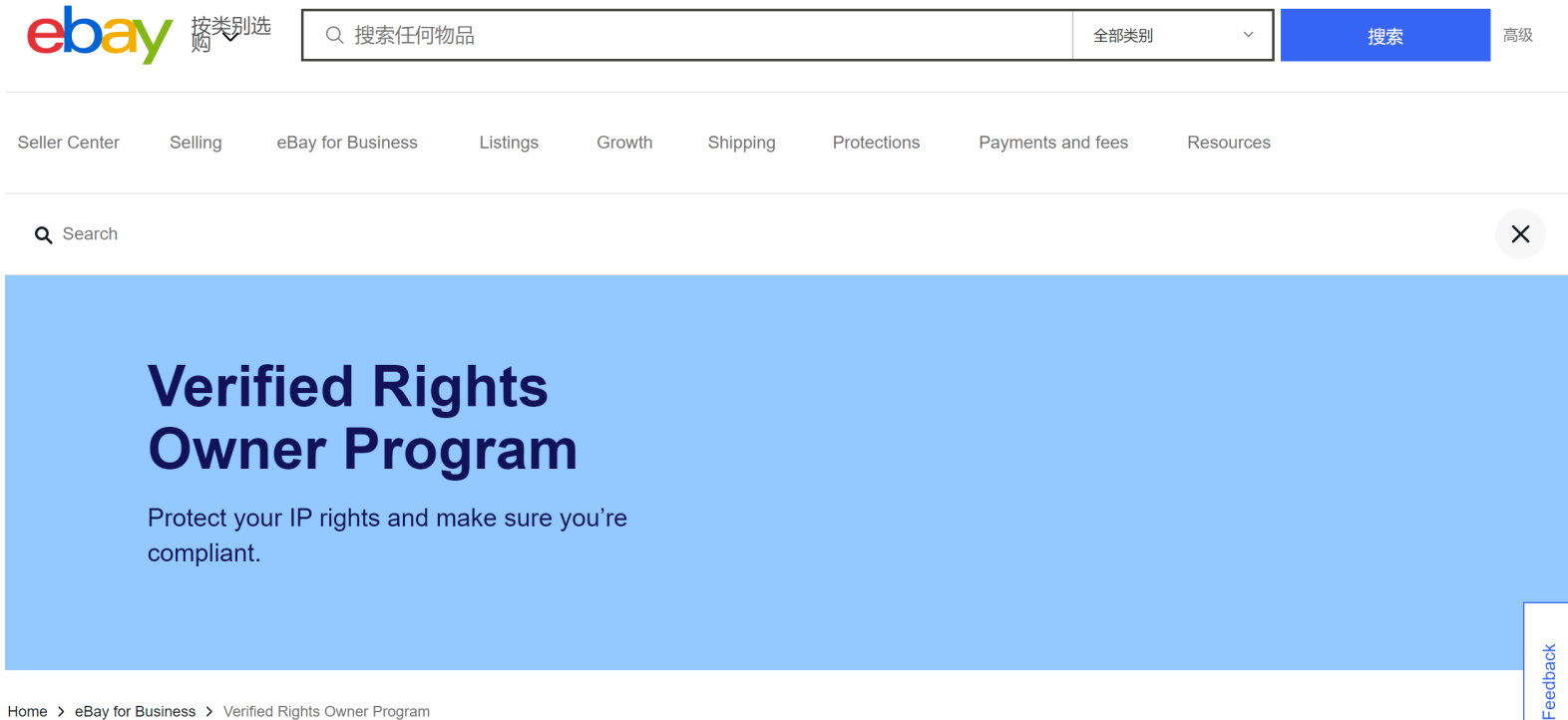
➤ Digital Products, Fashion Category, Furniture & Gardening Category, Auto Parts, Commercial & Industrial Category

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➤ eBay平台介绍 Introduction to eBay

- eBay是一个可让全球民众上网买卖物品的**线上拍卖及购物网站**，只要物品不违反法律或是在eBay的禁止贩售清单之内，即可以在eBay贩售。
- eBay is an online auction and shopping site that allows people all over the world to buy and sell items online, as long as they do not break the law or are on eBay's prohibited list.



The screenshot displays the eBay homepage. At the top, the eBay logo is on the left, followed by a search bar with the placeholder text "搜索任何物品" (Search any item) and a dropdown menu for "全部类别" (All categories). To the right of the search bar is a blue "搜索" (Search) button and a "高级" (Advanced) link. Below the search bar is a navigation menu with links for "Seller Center", "Selling", "eBay for Business", "Listings", "Growth", "Shipping", "Protections", "Payments and fees", and "Resources". A secondary search bar is located below the navigation menu. The main content area features a large blue banner for the "Verified Rights Owner Program" with the text: "Protect your IP rights and make sure you're compliant." At the bottom left of the page, there is a breadcrumb trail: "Home > eBay for Business > Verified Rights Owner Program". A vertical "Feedback" button is visible on the right side of the page.

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➤ eBay平台知识产权规则介绍 Introduction to the IPR of eBay



➤ eBay限制或禁止以下物品：

➤ eBay restricts or bans the following items:

- 复制品、仿制品和未经授权的模仿品
- Reproductions, imitations and unauthorized imitations
- 学术软件、测试版软件、OEM软件等相关物品;
- **Academic software, beta software, OEM software** and other related items;
- 名人产权物品，包括肖像、照片、姓名、**签名及亲笔签名**;
- Celebrity property, including portraits, photographs, names, **signatures and autographs**;
- 特定品牌的配饰、包装、保证书等其它未与该品牌产品一起出售的物品;
- Brand-specific accessories, packaging, warranties and other items not sold with the branded product;
- 媒体类物品，包括数字化产品、电影拷贝胶片(35mm,70mm)、**盗版唱片**、宣传品及可录制媒体等;
- Media items, including digital products, film prints (35mm, 70mm), **pirated records**, promotional material and recordable media, etc;
- 私制盗版录像或录音; Piracy of video or audio recordings;
- 可制作非法复制品的设备，包括可让会员复制版权产品的软件或硬件、芯片、游戏改装设置和启动盘
- **Devices that can make illegal copies**, including software or hardware, chips, game modifications and boot disks that allow members to copy copyrighted products

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➤ eBay平台知识产权规则介绍 Introduction to the IPR of eBay



- eBay限制对所售物品进行描述，以下行为涉及侵犯第三方知识产权：
- eBay restricts the description of items for sale to the following acts involving infringement of third party intellectual property rights:
 - 未经授权而使用来自其他eBay用户的物品描述或图片。
 - Unauthorised use of item descriptions or images from **other eBay users**.
 - 未经授权而使用来自厂商或其他互联网图片。
 - Unauthorised use of images from the **manufacturer** or **other internet sources**.
 - 不当使用eBay的知识产权，包括使用eBay名称、图标，或链接到eBay网站的链接。
 - Improper use of **eBay's intellectual property**, including the use of the **eBay name, icons**, or links to the eBay website.
 - 在刊登信息中包含“免责声明”，或者拒绝对刊登的物品负责
 - Inclusion of "**disclaimer**" in the listing, or disclaimer of liability for the item(s) listed", or disclaimer of liability for the item(s) listed

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➤ eBay平台知识产权规则介绍 Introduction to the IPR of eBay



- eBay用户不能使用他人创建的文字或图片内容——包括照片及其他图片，除非得到拥有文字及图片所有者、代理或相关法律的授权。
- eBay users may not use text or image content - including photographs and other images - created by others unless authorised by the owner of the text and image, an agent or the relevant law.
- eBay与其他平台不同，如果你认为知识产权人举报错误，**一般需要直接与知识产权人联系。**
- Unlike other platforms, **eBay generally requires you to contact the IP owner directly** if you believe the IP owner has reported a mistake.

02. 常见跨境电商平台知识产权规则介绍

Introduction to IPR Rules for Common Cross-border E-commerce Platforms

AliExpress 全球速卖通

➤ AliExpress平台介绍 Introduction to AliExpress

- 全球速卖通（英文名：AliExpress）是阿里巴巴旗下的面向国际市场打造的跨境电商平台，被广大卖家称为“国际版淘宝”。
- AliExpress is **Alibaba's** cross-border e-commerce platform for the international market, and is known as the "**international version of Taobao**".
- 全球速卖通面向海外买家客户，通过支付宝国际账户进行担保交易，并使用国际物流渠道运输发货，是**全球第三大英文在线购物网站**。
- Global Express is **the third largest English language online shopping site in the world** for overseas buyer customers, with guaranteed transactions through Alipay international accounts and shipping using international logistics channels.

02. 常见跨境电商平台知识产权规则介绍

Introduction to IPR Rules for Common Cross-border C-commerce Platforms

AliExpress™ 全球速卖通

➤ AliExpress平台介绍 Introduction to AliExpress

➤ 2022年2月, 《印度快报》列出了**印度政府**自2020年6月以来禁用的所有APP名单, 阿里巴巴集团旗下的**AliExpress**是其中之一。

➤ In February 2022, The Indian Express listed all the apps banned by the **Indian government** since June 2020, and **AliExpress**, owned by Alibaba Group, was one of them

02. 常见跨境电商平台知识产权规则介绍

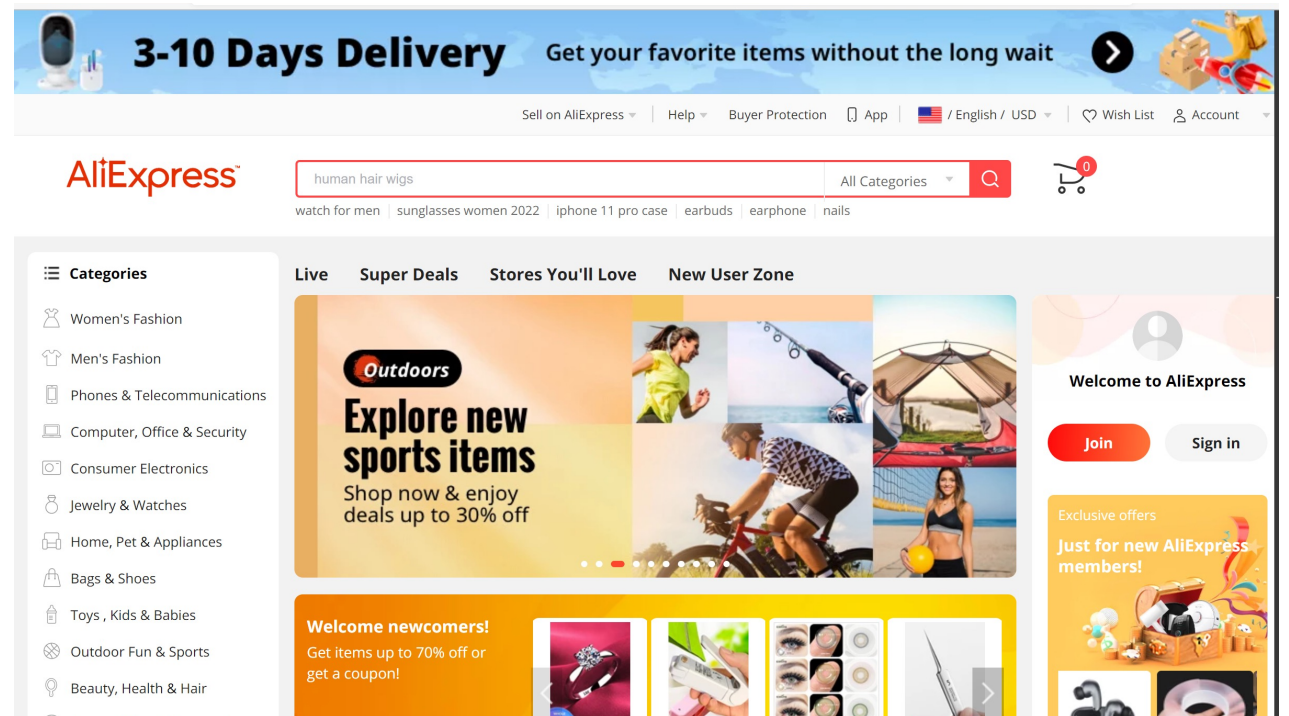
Introduction to IPR Rules for Common Cross-border C-commerce Platforms

AliExpress™ 全球速卖通

➤ AliExpress平台介绍 Introduction to AliExpress

- 全球速卖通在俄罗斯卖得很好，俄罗斯是全球速卖通电子商务平台最大、增长最快的市场之一。

AliExpress is selling well in Russia, one of the largest and fastest growing markets for the Global Selling eCommerce platform.



02. 常见跨境电商平台知识产权规则介绍

Introduction to IPR Rules for Common Cross-border C-commerce Platforms

- AliExpress平台知识产权规则介绍
- Introduction to the IPR of AliExpress

- **速卖通禁售的商品**

- **Items Banned from Selling on AliExpress**

AliExpress™ 全球速卖通

- 毒品及相关用品 Drugs and related supplies
- 医药相关商品 Medicine Related Products
- 枪支、军火及爆炸物，管制武器，警察用品
- Firearms, arms and explosives, controlled weapons, police supplies
- 间谍产品 Spy products
- 医疗器械 Medical devices
- **美容仪器及保健用品 Beauty Equipment & Health Care Products**
- 酒类及烟草产品等 Alcohol and tobacco products, etc.

02.常见跨境电商平台知识产权规则介绍

Introduction to IPR Rules for Common Cross-border C-commerce Platforms

➤Wish平台介绍 Introduction to Wish

- Wish于2011年在美国创立，是一款移动电商购物**APP**。
- Founded in 2011 in the United States, Wish is a mobile e-commerce shopping app.
- Wish适合具有一定经验的贸易商、B2C企业、品牌经销商
- Wish is suitable for traders, B2C companies and brand distributors with some experience



02. 常见跨境电商平台知识产权规则介绍

Introduction to IPR Rules for Common Cross-border C-commerce Platforms

➤ Wish平台介绍 Introduction to Wish



➤ Wish平台优势 Advantages of Wish :

➤ 1. 精准客户 Precise clients :

➤ Wish的主要市场是北美地区，客户群体比较集中，卖家进入wish市场后可进行精准营销。

➤ Wish's main market is North America, where the customer base is more concentrated and sellers can enter the wish marketplace for precise marketing.

➤ 2. 移动端前景大 Big prospects for mobile

➤ Wish目前大量的客户成交单都来自**移动端**，且现在移动端的发展趋势，潜力巨大。

➤ Wish currently has a large number of customer transactions from mobile, and now the trend of mobile, the potential is huge.

02. 常见跨境电商平台知识产权规则介绍

Introduction to IPR Rules for Common Cross-border E-commerce Platforms

➤ Wish平台介绍 Introduction to Wish



➤ **Wish平台劣势 Disadvantages of the Wish :**

- **1. 佣金费用较高 Higher commission fees**
- 目前wish的成交订单需要缴纳产品**成交费**以及**提现费**
- Currently there is a product delivery fee and a withdrawal fee for completed orders on wish.
- **2. 产品审核时间长，审核严格 Long product review time and strict auditing**
- Wish对于产品质量有较高的要求，对于仿品的审查极为严格。如果卖家被平台抓到销售侵权或假冒产品的的话，有很大的风险会被关店封号。
- Wish has high requirements for product quality and is extremely strict about scrutinising counterfeit products. If a seller is caught selling infringing or counterfeit products on the platform, there is a high risk that the account will be shut down.
- **3. 物流发货方式单一 Single logistics delivery method**
- Wish物流主要是以**自发货**为主。
- Wish Logistics is predominantly self-shipped

02.常见跨境电商平台知识产权规则介绍

Introduction to IPR Rules for Common Cross-border C-commerce Platforms

➤ Gmarket平台介绍 Introduction to Gmarket



- Gmarket是**韩国**最大的综合购物网站，在韩国在线零售市场中的商品销售总值方面排名第一，主要销售书籍、MP3、化妆品、电脑、家电、衣服等。
- Gmarket is the largest comprehensive shopping site in **Korea**, ranking number one in terms of total merchandise sales in the country's online retail marketplace, selling books, MP3s, cosmetics, computers, home appliances, clothes and more.



02.常见跨境电商平台知识产权规则介绍

Introduction to IPR Rules for Common Cross-border C-commerce Platforms

➤ Gmarket平台知识产权规则介绍

➤ Introduction to the IPR of Gmarket

➤ 禁止使用特定的店铺名称

➤ Prohibit the use of specific shop names

➤ 1.禁止使用易与Gmarket混淆的所有名称。如下：

➤ All names that are easily confused with Gmarket are prohibited. As follows

➤ G마켓, 지마켓, 지market, gmarket, g-market, 지몰, gmall, g-mall等(英文中包括大写字母, 与Gmarket有混淆可能的所有名称)

➤ (All names in English, including capital letters, that have a potential for confusion with Gmarket)

➤ 2.禁止使用其他销售会员的店铺名称相同的店名

➤ It is forbidden to use a shop name that is the same as the name of another shop selling members

➤ 3.违反时公司可以要求修改店铺名称,卖家有义务协助修改。不回应时可采取**删除全部商品**等措施。

➤ In the event of a breach, the company may request that the name of the shop be changed and the seller is obliged to assist with this. In case of non-response, measures such as the removal of all products may be taken.





跨境电商知识产权风险原因分析

Analysis of the Causes of IPR Infringement
Risks in Cross-border E-commerce



03.跨境电商知识产权风险分析

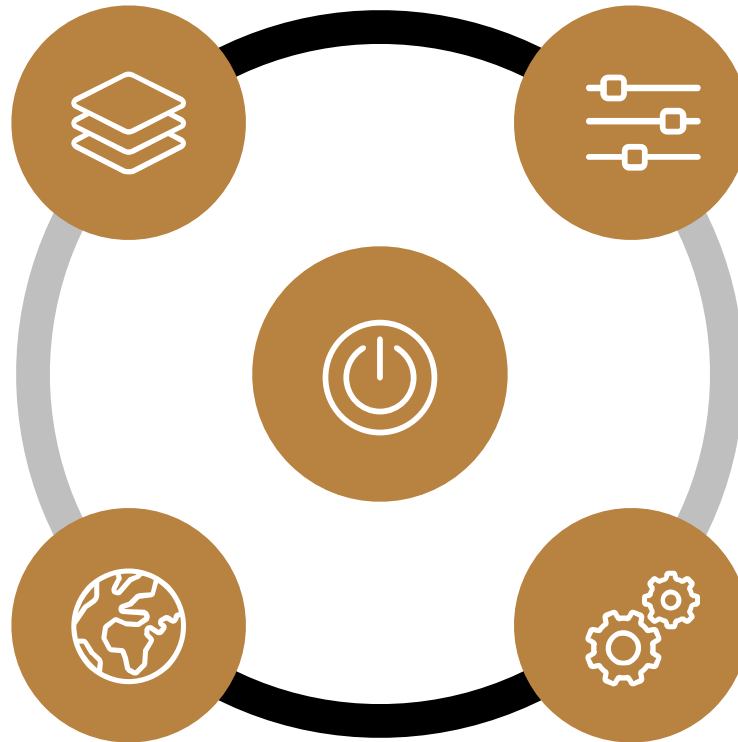
Analysis of the Causes of IPR Infringement Risks in Cross-border E-commerce

跨境电商的无界性与知识产权的地域性的矛盾

The conflict between the borderless nature of cross-border e-commerce and the territoriality of intellectual property rights

不熟悉域外法律和实践

Unfamiliarity with extraterritorial laws and practices



主观上跨境电商企业知识产权保护意识不足

Subjective lack of awareness of IP protection among cross-border e-commerce enterprises

贸易壁垒措施

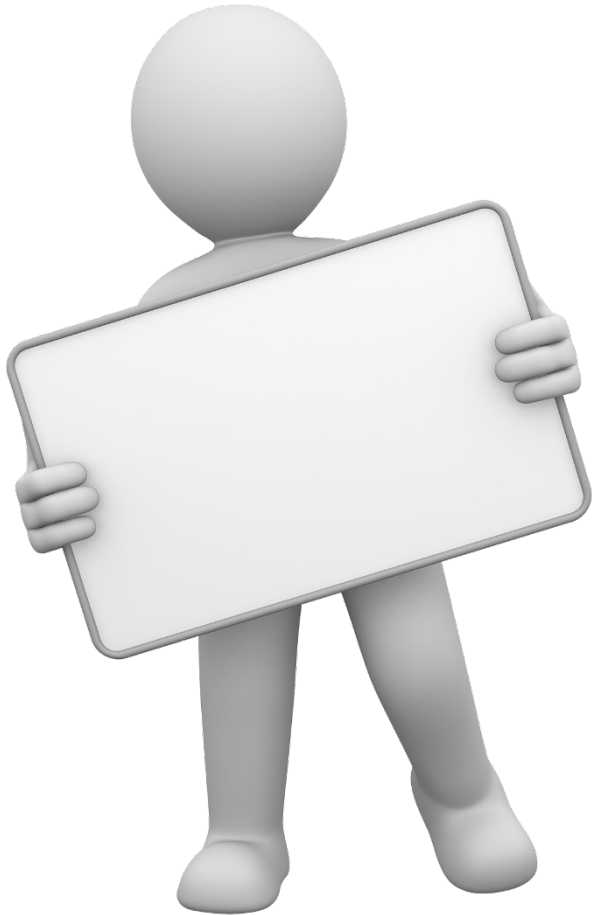
Trade Barrier Measures

03.跨境电商知识产权风险原因分析

Analysis of the Causes of IPR Infringement Risks in Cross-border E-commerce

跨境电商的无界性与知识产权的地域性的矛盾

The conflict between the borderless nature of cross-border e-commerce and the territoriality of intellectual property rights



交易地点往往不受地域、国界限制，交易对象也不仅限于境外的单一的国家或地区。

The location of transactions is often not restricted by geography or national borders, nor are they limited to a single country or region outside the country.

03.跨境电商知识产权风险原因分析

Analysis of the Causes of IPR Infringement Risks in Cross-border E-commerce

➤ 跨境电商的无界性与知识产权的地域性的矛盾

The conflict between the borderless nature of cross-border e-commerce and the territoriality of intellectual property rights

➤ 案例 Cases :

- 德国汽车工业协会起诉某公司未经其许可在国内外电商平台上突出使用其“ADBLUE”、“AdBlue”注册商标，用于宣传、售卖其产品车用尿素等，侵害了德国汽车协会的商标权。
- The German Association of the Automotive Industry sued a company for infringing the trademark rights of the German Association of the Automotive Industry by prominently using its registered trademarks "ADBLUE" and "AdBlue" on domestic and international e-commerce platforms without its permission to promote and sell its products, such as automotive urea.
- 中国公司抗辩：“ADBLUE”、“AdBlue”的中文是车用尿素，是一种通用名称，不构成侵权
- The Chinese company argued that the Chinese words "ADBLUE" and "AdBlue" are car urea, which is a generic name and does not constitute infringement
- 原告于1970年在德国注册的商标，后通过马德里注册申请国际商标，已获得中国商标权保护。
- The plaintiff's trade mark, registered in Germany in 1970 and later applied for international trade mark protection through the Madrid registration, has been granted trade mark rights in China.
- 最终，中方侵权成立 Ultimately, the Chinese infringement was established



03.跨境电商知识产权风险分析

Analysis of the Causes of IPR Infringement Risks in Cross-border E-commerce

- 跨境电商的无界性与知识产权的地域性的矛盾
- The conflict between the borderless nature of cross-border e-commerce and the territoriality of intellectual property rights
- **马德里国际商标 Madrid International Trademark**
- 申请人到国外申请注册商标有两种途径：
 - There are two ways for an applicant to apply for a registered trademark abroad.
 - 1. 一种是逐一国家注册，即分别向各国商标主管机关申请注册；
 - One type of registration is country-by-country, i.e. applying for registration with the competent national trademark authorities separately
 - 2. 一种是**马德里商标国际注册**，即根据马德里协定、议定书，在马德里联盟成员国间所进行的商标注册。（目前成员国有120多家包括：**中国、日本、韩国、朝鲜、英国、美国、印度等**）
 - One is the **Madrid International Registration of Trade Marks**, i.e. the registration of trade marks among the member countries of the Madrid Union in accordance with the Madrid Agreement and Protocol. (Currently there are more than 120 member countries including: **China, Japan, Korea, North Korea, UK, USA, India, etc.**)

03.跨境电商知识产权风险原因分析

Analysis of the Causes of IPR Infringement Risks in Cross-border E-commerce

- 跨境电商的无界性与知识产权的地域性的矛盾
- The conflict between the borderless nature of cross-border e-commerce and the territoriality of intellectual property rights
- **马德里国际商标的优点 Advantages of the Madrid International Trademark**
 - 覆盖范围广
 - Wide range of coverage
 - 方便快捷
 - Convenient and quick
 - 周期可预期
 - Predictable cycle time
 - 可主张优先权
 - Priority can be claimed



03.跨境电商知识产权风险分析

Analysis of the Causes of IPR Infringement Risks in Cross-border E-commerce

- 跨境电商的无界性与知识产权的地域性的矛盾
- The conflict between the borderless nature of cross-border e-commerce and the territoriality of intellectual property rights
- **马德里国际商标的缺点 Disadvantages of the Madrid International Trademark**
- 国际申请受限于基础申请及指定国法律；
- International applications are subject to the underlying application and the law of the designating State.
- 基础申请被驳回或者撤销，效力及与所有成员国；
- The rejection or withdrawal of a basic application shall have effect in all Member States.
- 若有后续复审、异议或答辩程序，则有额外费用产生；
- Additional costs are incurred in the event of a subsequent review, objection or defence procedure.
- 纸质注册证明需另外要付费。
- There is a separate fee for paper registration certificates.

03.跨境电商知识产权风险分析

Analysis of the Causes of IPR Infringement Risks in Cross-border E-commerce

- 跨境电商的无界性与知识产权的地域性的矛盾
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➤ 总结 Conclusion

- 采取单独国家申请亦或马德里体系申请，各有利弊，申请人可依据自身情况予以确定。
- There are advantages and disadvantages to filing a separate national application or a Madrid system application, depending on the applicant's circumstances.
- 但是一定要及时注册，保护自身权益
- But be sure to register in time to protect your rights



03.跨境电商知识产权风险分析

Analysis of the Causes of IPR Infringement Risks in Cross-border E-commerce

- 主观上跨境电商企业知识产权保护意识不足
- Subjective lack of awareness of IP protection among cross-border e-commerce enterprises
- 跨境电商业务中有较多**中小型企业**，并且绝大多数跨境电商**中小型企业**主要出口产品为**日用品、纺织品和玩具**等产品，而这些产品因较低的产品附加值，使其在竞争力上并不具有优势，这也导致一些中小型企业**为了提高销量**，往往会以国外知名产品为样本来进行**模仿和设计**，从而频繁出现侵犯知识产权事件，随之而来的是大量的诉讼以及高额司法赔偿。
- There are many **small and medium-sized enterprises** in the cross-border e-commerce business, and most of **them** mainly export products such as **daily necessities, textiles and toys**, which do not have an advantage in terms of competitiveness due to their **low added value**. This has also led to frequent infringements of intellectual property rights by small and medium-sized enterprises who, **in order to increase sales**, tend to **imitate and design** their products using well-known foreign products as models, which has led to a large number of lawsuits and high judicial awards.

03.跨境电商知识产权风险原因分析

Analysis of the Causes of IPR Infringement Risks in Cross-border E-commerce

- 不熟悉域外法律和实践 Unfamiliarity with extraterritorial laws and practices
- 不知道可能会面临美国高额的惩罚性赔偿，会采取置之不理的态度对待
Unaware that it may face high punitive damages from the US and will take a hands-off approach
- 案例 Cases:
 - 2014年以来，美国各联邦地区法院受理了数以千计的知名品牌商诉各国跨境电商商标侵权的案件。在某品牌的一次反假冒诉讼中，法院缺席判决了**2亿美元的赔偿金**。
 - Since 2014, thousands of cases of trademark infringement by well-known brand names against cross-border e-commerce companies in various countries have been filed in various federal district courts in the United States. In one anti-counterfeiting lawsuit against a brand, the court awarded **\$200 million in damages** in absentia.
 - 在缺席判决之前的临时禁令（TRO）中，**12,800个域名被冻结**。
 - **12,800 domain names were frozen** in a temporary injunction (TRO) prior to the default judgment.

03.跨境电商知识产权风险原因分析

Analysis of the Causes of IPR Infringement Risks in Cross-border E-commerce

➤ 贸易壁垒措施 Trade Barrier Measures

➤ 一些国家为了支持自己国内电商发展，对于跨境电商交易活动监管愈加严格，有的甚至设置了一些贸易壁垒措施。In order to support the development of their own domestic e-commerce, some countries have become more stringent in regulating cross-border e-commerce transactions, and some have even set up some trade barriers.

- 俄罗斯--建议用AliExpress Russia - AliExpress is recommended
- 东南亚--建议用SHOPEE South East Asia - SHOPEE is recommended
- 美国周边--建议用Amazon Around the USA - Amazon is recommended
- 韩国---建议用Gmarket Korea - Gmarket is recommended
- 印度--禁用AliExpress India - AliExpress is baned



跨境电商知识产权侵权处理流程

Cross-border E-commerce IPR Infringement
Handling Process



04.跨境电商知识产权侵权处理流程

Cross-border E-commerce IPR Infringement Handling Process

虽然各电商平台知识产权规则略有不同，但是总体上的侵权处理流程确大致相同
Although the IP rules vary slightly from one e-commerce platform to another, the overall process for dealing with infringement is indeed broadly the same



诉讼流程
Litigation
Process

电商平台流程
E-commerce Platform
Process

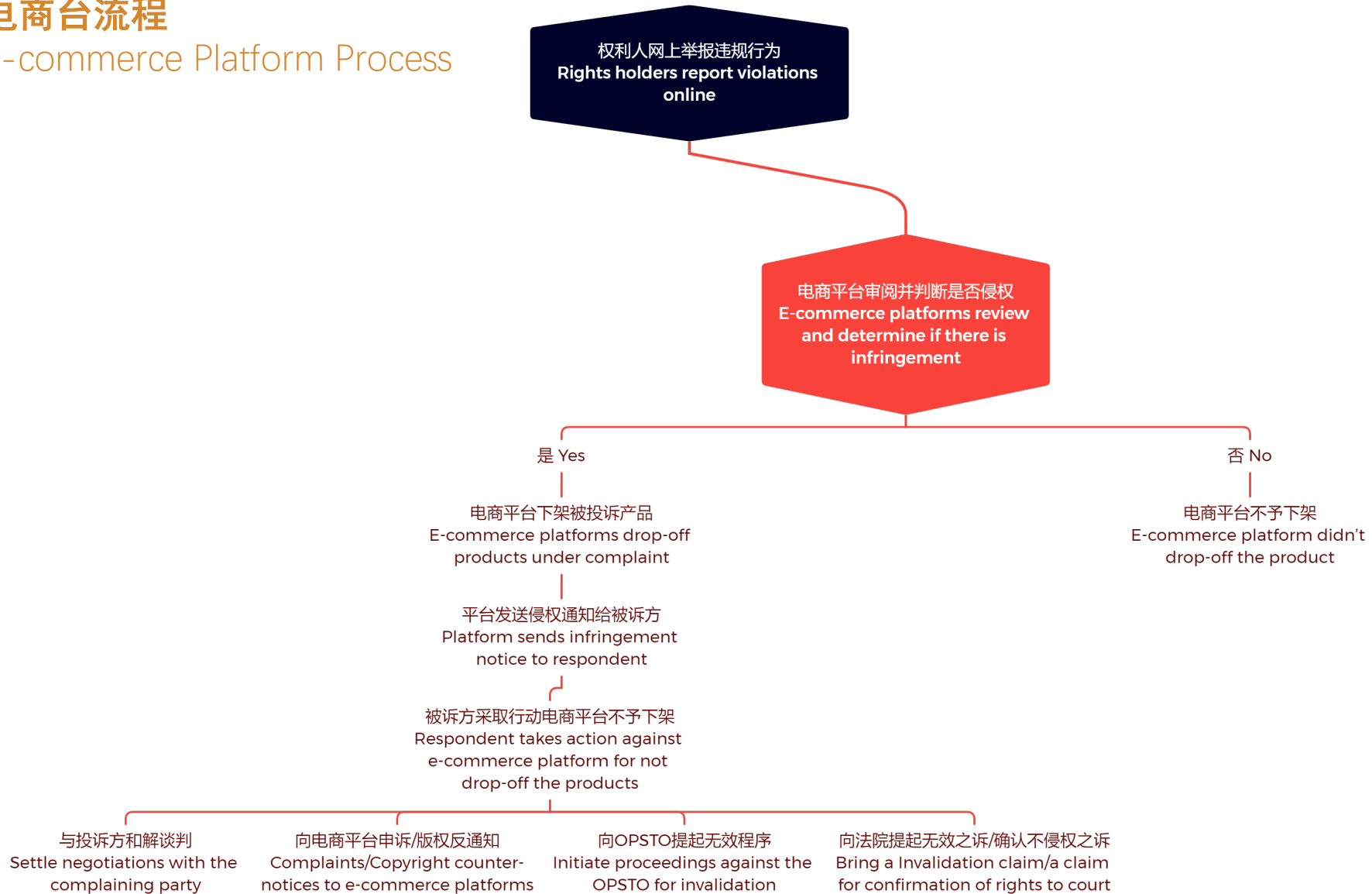


04.跨境电商知识产权侵权处理流程

Cross-border E-commerce IPR Infringement Handling Process

电商台流程

E-commerce Platform Process



04.跨境电商知识产权侵权处理流程

Cross-border E-commerce IPR Infringement Handling Process

诉讼层面流程 Litigation level process

第一步：临时禁令（TRO）冻结电子商户的店铺和支付平台账户

Step 1: Temporary injunction (TRO) to freeze e-merchants' shops and payment platform accounts



第二步：法院发出传票，被告通常须应诉（出庭，或递交答辩状），否则法庭作出缺席判决

Step 2: The court issues a summons and the defendant is usually required to answer (appear in court, or file a statement of defence), otherwise the court issues a judgment in default

第三步：法院作出判决，冻结的资金被划扣，或者其他强制执行程序

Step 3: A court judgment, a transfer of frozen funds, or other enforcement proceedings



04.跨境电商知识产权侵权处理流程

Cross-border E-commerce IPR Infringement Handling Process

➤ 诉讼层面流程 Litigation process

➤ 临时禁令 Temporary injunction

- 临时禁令是指在诉讼过程中，人民法院应权利人的请求而发出的迫使侵权行为人**临时停止侵权行为**，法院发布的责令一方当事人作为或者不作为的**强制措施**。
- A temporary injunction is a compulsory measure issued by the People's Court at the request of the right holder in the course of litigation to compel the infringer to **temporarily cease** the infringing act and the court to order a party to act or refrain from acting.
- 其目的是为了制止即将发生的侵权行为。
- Its purpose is to stop an imminent infringement

04.跨境电商知识产权侵权处理流程

Cross-border E-commerce IPR Infringement Handling Process

➤ 诉讼层面流程 Litigation process

➤ 临时禁令 Temporary injunction

➤ 1.维护知识产权人合法权益

➤ 各国知识产权法均允许权利人对**即发**侵权行为提起诉讼并申请临时禁令。

➤ National IP laws allow rights holders to sue for summary infringement and apply for a temporary injunction.

➤ 例如：某一专利产品市场中享有较高的市场份额和利润空间，行为人为追求利益，未经专利权人许可即开始实施**仿制**该专利产品的**准备活动**，如购买仿制该产品所必须的原材料、设备等。

➤ For example, if a patented product enjoys a high market share and profit margin in the market, the perpetrator, in pursuit of profit, starts **preparatory** activities to **imitate** the patented product without the permission of the patentee, such as purchasing raw materials and equipment necessary for the imitation of the product.

➤ 在上述过程中，行为人虽然尚未真正开始制作侵犯专利权的产品，但种种行为已经充分表明他即将生产该专利产品，则构成专利侵权领域中的**即发**侵权行为。

➤ In the above-mentioned process, although the perpetrator has not actually started making the product that infringes the patent right, the acts are sufficient to indicate that he is about to produce the patented product, which constitutes an act of immediate infringement in the field of patent infringement.

04.跨境电商知识产权侵权处理流程

Cross-border E-commerce IPR Infringement Handling Process

- 诉讼层面流程 Litigation process
- 临时禁令 Temporary injunction
- 2.临时禁令具有更强的保护力 Temporary injunction has a stronger protective force
Temporary injunctions have a stronger protective force
- 临时禁令依据权利人的**单方申请**，**无需经实体**审理即可作出
- Temporary injunctions are granted on the basis of **an ex parte application** by the right holder and do not require a **substantive hearing**
- 临时禁令一旦颁布，被控侵权人必须**中断**与争议相关的**生产、制造以及销售**等行为
- Once the interim injunction is granted, the alleged infringer must **discontinue** the **production, manufacture and sale** of the goods in question

04.跨境电商知识产权侵权处理流程

Cross-border E-commerce IPR Infringement Handling Process

➤ 诉讼层面流程 Litigation process

➤ 缺席判决 Judgement in absentia

- 缺席判决是指开庭审理案件时，只有一方当事人到庭，法院依法对案件进行审理之后所作出的判决。
- A judgment in absentia is a judgment rendered after the court has heard the case in accordance with the law, when only one party is present at the hearing of the case.

04.跨境电商知识产权侵权处理流程

Cross-border E-commerce IPR Infringement Handling Process

➤ 诉讼层面流程 Litigation process

➤ 强制执行程序 Enforcement procedures

➤ 是指人民法院的执行组织依照法律规定的程序和方式，运用国家的强制力量，在负有义务的一方当事人拒不履行义务时，强制其履行义务，从而实现生效法律文书内容的一种诉讼活动。

➤ The enforcement organisation of the People's Court, in accordance with the procedures and means provided for by law, uses the coercive power of the State to compel a party who is under **an obligation to fulfil** that obligation when it refuses to do so, thereby realising the content of the legal instrument in force.

04.跨境电商知识产权侵权处理流程

Cross-border E-commerce IPR Infringement Handling Process

- 诉讼层面流程 Litigation process
 - 强制执行程序 Enforcement procedures
 - 采取查封、扣押、冻结财产等措施
 - Taking measures such as seizure, seizure and freezing of property
 - 限制出境 Restrictions on leaving the country
 - 征信系统记录 Credit system records
 - 限制高消费等 Restrictions on high spending, etc.



跨境电商知识产权合规意见

Cross-border E-commerce IPR
Compliance Advice



05. 跨境电商知识产权合规意见

Cross-border E-commerce IPR Compliance Advice

风险防范，提前布局
Risk prevention and
advance planning



提前查询评估
积极注册申请
Advance Enquiry Assessment
Active registration
application



向平台进行申诉 Make
a complaint to the
platform

抗辩证据
销售记录
知识产权许可协议
产品官方供货发票
Evidence of defences
Sales records
Intellectual property
license agreements
Official product supply
invoices

积极应诉，主动和解
Active response and
proactive settlement



在法院缺席判决的情况下，商户的
败诉率极高

In the event of a default
judgment in court, merchants
have an extremely high rate of
losing their cases



05. 跨境电商知识产权合规意见

Cross-border E-commerce IPR Compliance Advice

➤ 风险防范，提前布局 Risk prevention and advance planning

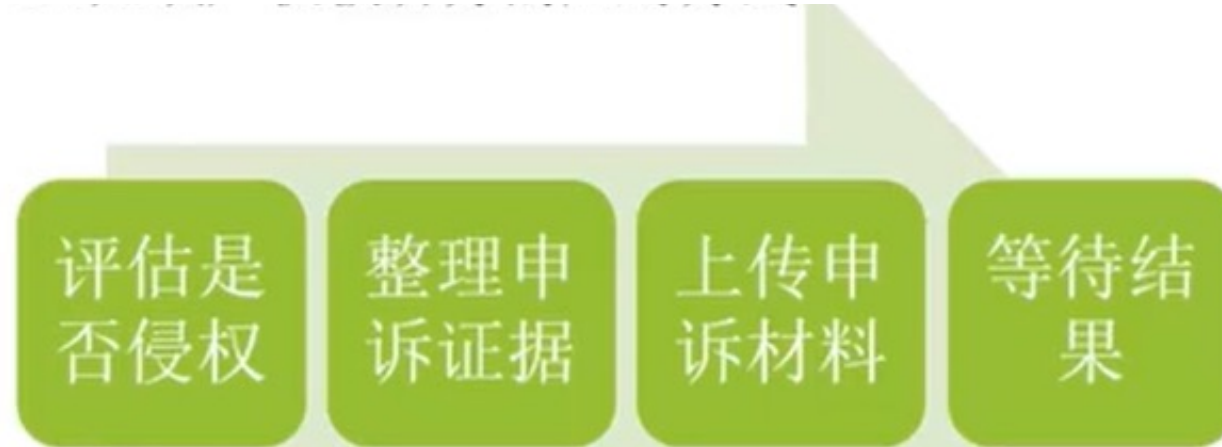
➤ 各个国家知识产权局网站 Various national IP office websites

- 中国SIPO <http://www.sipo.gov.cn/> SIPO China
- 世界知识产权组织 <http://www.wipo.int/portal/en/> World Intellectual Property Organization
- 美国USPTO <http://www.uspto.gov/patent> United States USPTO
- 欧盟EPO <http://www.epo.org/> EU EPO
- 日本JPO <http://www.jpo.go.jp/> JPO Japan
- 德国DE <http://www.dpma.de/> DE Germany
- 澳大利亚AU <http://www.ipaustralia.gov.au/> AU Australia
- 新西兰NZ <http://www.iponz.govt.nz/cms> New Zealand NZ
- 英国UK <https://www.gov.uk/government/organisations/intellectual-property-offic> 英国UK

05. 跨境电商知识产权合规意见

Cross-border E-commerce IPR Compliance Advice

➤ 积极向平台申诉 Actively complain to the platform



评估是否侵权
Assessing for
infringement

整理申诉证据
Collating
evidence
for complaints

上传申诉材料
Upload appeal
materials

等待结果
Awaiting
results

05. 跨境电商知识产权合规意见

Cross-border E-commerce IPR Compliance Advice

➤ 积极向平台申诉 Actively complain to the platform

➤ 申诉策略 Complaint strategy

➤ 版权 Copyrights

- 撤销通知 Notice of withdrawal
- DMCA反通知 DMCA counter-notification

05. 跨境电商知识产权合规意见

Cross-border E-commerce IPR Compliance Advice

➤ 积极向平台申诉 Actively complain to the platform

➤ 申诉策略 Complaint strategy

➤ 商标 Trademarks

- 365天内的形式发票，且名称与店铺相匹配

Pro forma invoices within 365 days and with names matching the shop

- 商标授权书 Trademark Authorization Letter
- 销售的记录 Records of sales

05. 跨境电商知识产权合规意见

Cross-border E-commerce IPR Compliance Advice

➤ 积极向平台申诉 Actively complain to the platform

➤ 申诉策略 Complaint strategy

➤ 专利 Patents

- 中立评价机制 Neutral evaluation mechanisms
- 独立的仲裁员 Independent arbitrator

05. 跨境电商知识产权合规意见

Cross-border E-commerce IPR Compliance Advice

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05. 跨境电商知识产权合规意见

Cross-border E-commerce IPR Compliance Advice

➤ 积极应诉，主动和解 Active response and proactive settlement

据统计，目前卖家应诉率不到5%，应诉量很小。

According to statistics, less than 5% of sellers are currently responding to lawsuits, and the volume of responses is small.

在某品牌的一次反假冒诉讼中，法院缺席判决了**2亿美元的赔偿金**。

In an anti-counterfeiting lawsuit against a brand, the court awarded **US\$200** million in damages in absentia.

但是如果积极谈判、沟通，将很可能减少赔偿金额。

However, with active negotiation and communication, it will be likely that the amount of compensation will be reduced.

05. 跨境电商知识产权合规意见

Cross-border E-commerce IPR Compliance Advice

➤ 积极应诉，主动和解 Active response and proactive settlement

➤ 向法院提起无效之诉

➤ Bring a Invalidation claim to court

➤ 向法院提起确权之诉

➤ Bring a claim for confirmation of rights to court



05. 跨境电商知识产权合规意见

Cross-border E-commerce IPR Compliance Advice

➤ 积极应诉，主动和解 Active response and proactive settlement

- 无效之诉：可以向法院提起投诉人的商标权、专利权、版权无效的诉讼；
- Invalidation claim: a claim for invalidation of the complainant's trademark, patent or copyright can be brought to court.
- 确权之诉：可以要求法院确认自己是商标、专利、版权的权利人，提起确权之诉。
- Claim for confirmation of rights: you can ask the court to confirm that you are the owner of a trademark, patent or copyright and bring a claim for confirmation of rights.



05. 跨境电商知识产权合规意见

Cross-border E-commerce IPR Compliance Advice

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05. 跨境电商知识产权合规意见

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➤ 积极应诉，主动和解 Active response and proactive settlement



注意：店铺冻结时如果**销售活动不暂停**，冻结资金会越来越多，钱只能进，不能出。

Note: If sales activity is not suspended when the shop's fund is frozen, money can only go in, not out.

05. 跨境电商知识产权合规意见

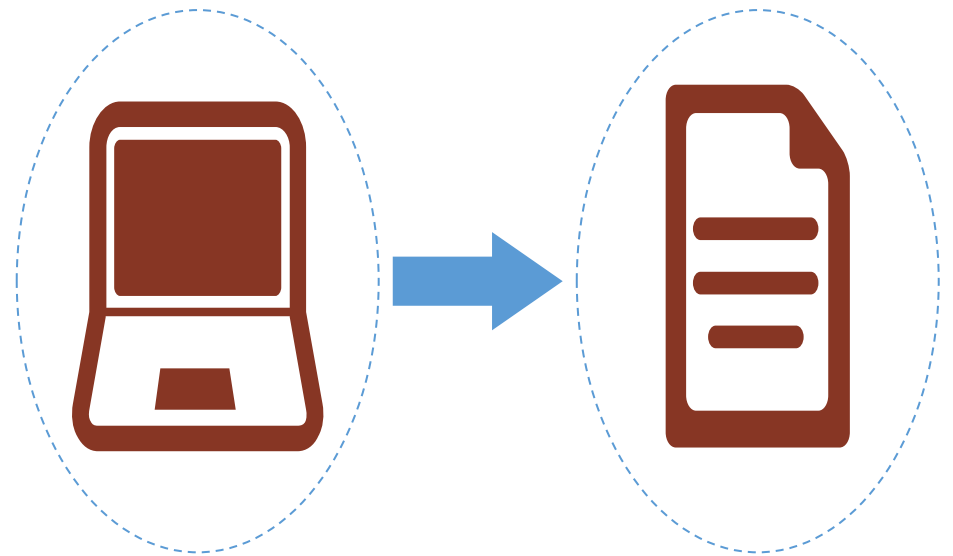
Cross-border E-commerce IPR Compliance Advice

➤ 积极应诉，主动和解 Active response and proactive settlement

提示 Attention !!!

为了避免商家在沟通期间的陈述构成对侵权或其他事实的承认，且该等承认可能在后续诉讼案件中被对方利用来攻击商家，建议商家**注意话术**。

In order to avoid that statements made by the merchant during the communication constitute admissions of infringement or other facts, and that such admissions may be used by the other party to attack the merchant in a subsequent litigation case, merchants are advised to be careful about their language.





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