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Antitrust and Intellectual Property
反壟斷與智慧財產權

CONVERGENCE, TENSION, AND ENFORCEMENT IN TECHNOLOGY DRIVEN MARKETS 在技術驅動型市場中的融合、衝突與維權

Intellectual property and antitrust share a common goal; consumer welfare through innovation. However, each body of law approaches that objective from different—and sometimes opposing—directions. IP promotes investment, innovation and competition from new technology and ideas by granting a lawful right to exclude others from practicing one's novel invention. On the other hand, antitrust regulates commercial conduct that restricts competition and that lacks a countervailing procompetitive justification. When IP rights are asserted or used in commercial transactions, tension can sometimes arise between the antitrust and IP laws. The friction is particularly apparent in technology markets where control over standards, platforms, or distribution channels can toggle between legitimate IP utilization and unlawful market foreclosure.

智慧財產權與反壟斷法擁有共同目標，即通過創新提升消費者福祉。然而，這兩大法律體系實現該目標的路徑不同，有時甚至相互對立。智慧財產權通過在法律層面賦予權利人排除他人使用其新穎發明的專有權，促進新技術與創意的投資、創新與競爭；反壟斷法則規制那些限制競爭且缺乏有利於競爭的正當理由的商業行為。當商業交易中主張或使用智慧財產權時，反壟斷法與智慧財產權法之間便可能產生衝突。這種摩擦在技術市場中尤為明顯，因為對標準、平臺或分銷管道的控制行為可能介乎於合法的智慧財產權運用與非法的市場封鎖之間。

In the U.S., two recent cases are illustrative of the ways in which courts handle lawsuits with antitrust and IP elements. In WhaleCo Inc. (conducting business as Temu) v. Shein, rival ultra fast fashion companies clashed over Shein conduct designed to allegedly prevent Temu's rapid U.S. growth.

美國近期兩起案件展示了法院如何處理兼具反壟斷與智慧財產權要素的訴訟。在 *WhaleCo Inc.*（以 Temu 的名稱開展經營）訴 *Shein* 案中，互為競爭對手的兩家超快時尚公司就 Shein 涉嫌阻撓 Temu 在美快速增長的行為對簿公堂。

Temu alleged that Shein improperly sent takedown notices to Temu for uncopyrighted images and engaged in a suite of other copyright/trade infringement activities related to Temu's offerings. Temu also alleged broader Sherman Act claims, including restraints on trade through a prolonged scheme to limit Temu's access to suppliers and monopolization through high market share in the ultra-fast fashion market. Notably, Temu's antitrust claims were predicated on Shein's conduct in China, allegedly restricting domestic Chinese ultra-fast fashion suppliers through loyalty statements, restriction on suppliers' IP rights through exclusivity arrangements, and price floor commitments, all designed to scare or prevent suppliers from partnering with Temu.

Temu 指控 Shein 在其對圖片並不享有著作權的情況下向 Temu 濫發下架通知，並對 Temu 產品實施一系列著作權/商標侵權行為。Temu 還基於《謝爾曼法》提出了更廣泛的反壟斷主張，包括指控 Shein 通過長期限制 Temu 獲得供應商的計畫實施貿易限制，以及憑藉超快時尚市場的高市場份額實施壟斷。值得注意的是，Temu 的反壟斷主張基於希音在中國境內的行為，指控其通過要求供應商簽署忠誠承諾、通過排他性協議限制供應商智慧財產權、最低價格承諾等手段，恐嚇或阻止中國國內的超快時尚供應商與 Temu 合作。

Against this backdrop, the court dismissed the antitrust claims and allowed the domestic IP disputes to proceed. The court did not address the merits of Temu's U.S. antitrust allegations. Instead, the court found that the challenged conduct flowed from activity in China that did not have a sufficient U.S. nexus. The Temu ruling illustrates that complex cross border disputes involving IP and antitrust are common, but the resolution will depend on a fact-specific inquiry on a case-by-case basis. Cases in US courts involving a foreign supply chain should expect to plead a clear U.S. connection.

在此背景下，法院駁回了反壟斷主張，但允許有關美國智慧財產權的爭議繼續審理。法院未實質審理 Temu 提出的美國反壟斷主張，而是認定爭議行為源自中國境內活動，與美國關聯不足。此判決表明，涉及智慧財產權與反壟斷的跨境糾紛雖常見，但在爭議解決過程中需基於個案具體事實逐案審查。在美國法院提起的涉及外國供應鏈的案件需明確闡明與美國的關聯。

Disney v. InterDigital is one of the latest examples of a FRAND antitrust action. Disney is faced with InterDigital IP claims that alleged InterDigital made fair, reasonable, and nondiscriminatory (FRAND) commitments in licensing its technology, but did not actually intend to abide by such promises. FRAND commitments are contractual assurances that create collaborative standards to access patent holders' technology and prevent against overwhelming market power.

Disney 訴 InterDigital 案則是近期 FRAND（公平、合理、無歧視）反壟斷訴訟的典型案例之一。Disney 面對 InterDigital 的智慧財產權主張時反訴，指控 InterDigital 雖對其技術許可作出 FRAND 承諾卻無意履行該承諾。FRAND 承諾是一種合同性保證，旨在通過協作性標準使專利持有人的技術可被獲取，防止市場力量過度集中。

In this case, the Trump administration's Department of Justice (DOJ) weighed in, supporting InterDigital. The DOJ filed a statement of interest in October urging the court not to presume market power solely on the basis of standard essential patent (SEP) status. The DOJ contended that possession of a patent, even one deemed essential to a particular industry or technology, does not automatically confer monopoly power. Instead, plaintiffs must still plausibly allege market and monopoly power and competitive harm. The filing reflects a sympathy towards SEP owners compared to SEP implementers.

在此案中，特朗普主政下的司法部介入並支持 InterDigital。司法部於十月提交利益聲明，敦促法院不應僅憑 InterDitigal 持有標準必要專利（SEP）就推定其擁有市場支配力，強調即便擁有特定行業或技術的必要專利，也不

自動賦予壟斷力量，原告仍須合理主張市場與壟斷力量以及對競爭的損害。此舉折射出對 SEP 權利人（與 SEP 實施者相比）更為同情的傾向。

These cases illustrate how courts are drawing clear lines between IP enforcement and antitrust, insisting on reasoned theories of harm. The landscape for analyzing antitrust and IP enforcement often changes over time and over political climates. As such, the best suited practitioners stay up to date on recent enforcement trends, outcomes, and subject matter developments to continue to provide comprehensive client advice.

上述案件表明，法院日益在智慧財產權維權與反壟斷之間劃清界限，要求有理有據的損害論證。反壟斷與智慧財產權維權的分析格局常隨時間與政治環境而變化。因此，優秀的從業者會持續關注最新維權動態、裁判結果與相關領域發展，從而為客戶提供全面的法律意見。