www.dachenglaw.com
北京市东直门南大街 3 号国华投资大厦 5 层/12 层/15 层（100007）
5/F, 12/F, 15/F, Guohua Plaza, 3 Dongzhimennan Avenue,
Beijing 100007, China
Tel: +8610-58137799
Fax: +8610-58137788

DACHENG LAW OFFICES
大成律师事务所

中国法通讯
China Law Newsletter

跨境争议解决
Cross-border Dispute Resolution

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编者按：本刊旨在报道与中国有关的跨境争议解决的最新动态与我们的实务经验，但本刊不可替代个案的正式法律意见。您若重复收到本刊或者要订阅、退订或进一步了解本刊的内容，请与大成的有关律师联系。

Editor's note: the purpose of this publication is to report the most recent developments in the field of cross-border dispute resolution in connection with China, as well as our practical experience therein. However, this publication should not be treated as a substitute for a formal legal opinion in individual cases. If you have received this publication more than once, or would like to subscribe or unsubscribe to this publication, or follow up on any issues raised in this publication, please be in contact with the lawyer you usually deal with at Dacheng Law Offices.

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A case ruling from Guangzhou Maritime Court was cited by a UK court and recorded in the authoritative international law publication, the Lloyd’s Law Reports

立法新闻
LEGISLATIVE NEWS

- **《最高人民法院关于审理因垄断行为引发的民事纠纷案件应用法律若干问题的规定》公布（来源：人民法院报，2012 年 5 月 9 日）**

  Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in Hearing Civil Disputes Caused by Monopoly Behavior released (Source: RMFYB.chinacourt.org, May 9, 2012)

2012 年 5 月 8 日，最高人民法院发布了《关于审理因垄断行为引发的民事纠纷案件应用法律若干问题的规定》（《规定》），是最高人民法院在反垄断审判领域出台的第一部司法解释，将于 2012 年 6 月 1 日起正式施行。《规定》明确了垄断民事纠纷案件的两种基本类型：一是因垄断行为受到损失而引起的诉讼，二是因合同内容、行业协会的章程等违反反垄断法而发生争议引起的诉讼。

On 8 May 2012, the Supreme People’s Court promulgated Provisions on Several Issues Regarding the Application of Laws on Hearings of Civil Dispute Cases Caused by Monopolistic Behaviour (Provisions), which will become effective on 1 June 2012, and is deemed the first judicial interpretation issued by the Supreme Court in the field of antitrust trials. The Provisions clarifies the two basic types of monopoly civil dispute cases: the first type is lawsuits arising from losses due to monopolistic behaviour, and the second is

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lawsuits caused by violations of antitrust laws giving rise to disputes because of contents of contracts and regulations of industry associations.

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- **商务部发布《商务行政处罚程序规定》（来源：商务部网站，2012 年 5 月 18 日）**

  MOFCOM Releases Provisions on the Procedures for Business Administrative Penalties (Source: www.mofcom.gov.cn, May 18, 2012)

5 月 12 日，商务部发布了《商务行政处罚程序规定》(《规定》)，自 2012 年 7 月 1 日起施行。《规定》明确，商务主管部门实施行政处罚由其内设机构根据职责分工依法具体实施。内设机构应当在所属商务主管部门法定权限内，并以所属商务主管部门名义实施行政处罚。受委托组织应当在委托范围内，以委托商务主管部门名义实施行政处罚；不得再委托其他组织或个人实施行政处罚。

On May 12, the Ministry of Commerce (the "MOFCOM") released the Provisions on the Procedures for Business Administrative Penalties (the "Provisions"), effective as of July 1, 2012. As clarified in the Provisions, where commerce authorities intend to impose administrative penalties, their subordinate departments shall impose such penalties for them according to the law and based on labor division. Each such department shall impose administrative penalties in the name of its supervisor commerce authority within the legitimate authorization of such supervisor authority. Each entrusted organization shall impose administrative penalties in the name of the entrusting commerce authority within the authorization of such entrustment, and shall not further entrust any other organization or individual to impose administrative penalties.

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- **温州市中院出台《为温州市金融综合改革试验区建设提供司法保障的若干意见》（来源：新华网，2012 年 5 月 22 日）**

  Wenzhou Intermediate People's Court Announces Several Opinions on Providing Judicial Guaranty for the Development of Wenzhou Experimental Zone of Comprehensive Financial Reform (Source: www.xinhua.org, May 22, 2012)

温州市中级人民法院 21 日公布了《为温州市金融综合改革试验区建设提供司法保障的若干意见》的“30 条”法律意见，旨在从法律层面保障温州金融改革创新。《意见》共分 6 大部分 30 条。《意见》要求准确把握温州市金融综合改革试验区先试先行的政策精神，对有利于试验区建设，法律没有禁止性规定的措施，在确保金融安全的前提下，应给予司法支持。

On May 21, Wenzhou Intermediate People's Court announced 30 legal opinions, the Several Opinions on Providing Judicial Guaranty for the Development of Wenzhou Experimental Zone of Comprehensive Financial Reform, aiming to guarantee the financial innovation and reform of Wenzhou in legal respect. The Opinions include 30 articles in 6 sections in total. The Opinions require to adhere to the pioneering spirit of the policy for Wenzhou Experimental Zone of Comprehensive Financial Reform, and to provide the judicial support favorable to build the experimental zone on the basis of ensured financial security and no violation of the measures on prohibition.

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司法动态
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- **最高人民法院提高侵犯公民人身自由权赔偿金标准（来源：最高人民法院网站，2012 年 5 月 30 日）**

  SPC Raises Compensation Standard for Infringement of Citizen's Right to Personal Liberty (Source: Supreme People's Court, May 30, 2012)

最高人民法院 5 月 29 日公布了 2012 年作出国家赔偿决定涉及的侵犯公民人身自由权的赔偿标准，具体数额为每日 162.65 元。2011 年公布的数额为 142.33 元。

On May 29, the Supreme People's Court (the "SPC") announced the decision on the state compensation standard involving the infringement of citizen's right to personal liberty, that is, CNY162.65 per day. The compensation announced in 2011 was 142.33 per day.

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仲裁动态
ARBITRATION DEVELOPMENTS

- **加多宝集团被中国国际经济贸易仲裁委员会要求停止使用“王老吉”商标（来源：新华网，2012 年 5 月 14 日）**

  The JDB Group is ordered by China International Economic and Trade Arbitration Commission to cease its use of the “Wong Lo Kat” trademark (Source: Xinhua Net, May 14, 2012)

广州药业集团 5 月 11 日收到了中国国际经济贸易仲裁委员会于 5 月 9 日作出的裁决书，裁决书认定《“王老吉”商标许可补充协议》和《关于“王老吉”商标使用许可合同的补充协议》无效，要求香港加多宝集团停止使用“王老吉”商标。据了解，该裁决为终局裁决，自作出之日起生效。广药曾将红罐王老吉的生产销售权益租给了加多宝，双方继 2000 年签署第二份商标许可使用合同时约定“王老吉”商标的使用期截止到 2010 年 5 月 2 日，双方又于 2002 年至 2003 年续签补充协议约定将使用期延长到 2020 年。而该补充协议被指是时任广药总经理的李益民在收取了加多宝的投资方数百万元的贿赂签署的。李益民案件被查处后，广药认为该补充协议无效，商标使用期限已于 2010 年 5 月到期。

On May 11, 2012, Guangzhou Pharmaceutical Group Co., Ltd. (“GPG”) was issued an

arbitral award by China International Economic and Trade Arbitration Commission ("CIETAC") dated May 9, 2012, in which, CIETAC holds the "Wong Lo Kat" Trademark Supplemental License Agreement and the Supplemental Agreement to the "Wong Lo Kat" Trademark License Contract to be void, and orders the JDB Group to cease its use of the "Wong Lo Kat" trademark. The arbitral award is said to be final and effective as from the date of its issuance. GPG previously licensed the JDB Group to produce and sell the red-canned "Wong Lo Kat" herbal tea, and the parties signed a second trademark license contract in 2000, specifying the term of the trademark license to end on May 2, 2010. The parties signed supplemental agreements in 2002-2003, extending the term to 2020. However, the said supplemental agreements are alleged to have been signed by LI Yimin, the then general manager of GPG, after accepting bribery numbered millions (in Renminbi) from the shareholders of the JDB Group. After the LI Yimin case was litigated, GPG held the said supplemental agreements to be void, and the license term had expired in May 2010.

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典型案例
TYPICAL CASES

- **广州海事法院一案例被英国法院引用并载入国际法权威杂志《劳氏法律报告》（来源：人民法院报，2012 年 4 月 11 日）**

  A case ruling from Guangzhou Maritime Court was cited by a UK court and recorded in the authoritative international law publication, the Lloyd's Law Reports (Source: People's Court News, April 11, 2012)

近日，广州海事法院作出的一宗海事强制令裁定被英国王座法院的法官在判决中引用，并被载入国际航运界权威法律杂志之一的《劳氏法律报告》（Lloyd's law Reports）。据悉，中国法院作出的裁定被英国法院引用并刊登于《劳氏法律报告》尚属首次，说明该院海事审判已得到国际业界高度认可。

A maritime injunctive order of Guangzhou Maritime Court was recently cited by a judge of the Queen's Bench Division in UK, and was recorded in one of the authoritative legal publication in the international shipping arena, the Lloyd's Law Reports. It is unprecedented for a Chinese court ruling to be cited by a UK court and recorded in the Lloyd's Law Reports, which signifies international recognition of the trial of the Guangzhou Maritime Court.

这宗案件是一宗复杂的海上货物运输合同连环诉讼案，争议焦点是谁合法持有提单。卖家深圳燕加隆实业发展公司将一批瓷砖卖给非洲买家贝宁共和国的法度公司（SONAEC VILLAS CEN SAD FADOUL），马士基航运公司承运该批瓷砖，并签发了一套收货人为法度公司的提单。提单条款中明确因运输产生的任何争议由英国王座法院管辖。由于非洲买家没有在约定的时间内支付货款，应卖方深圳公司的要求，马士

基公司重新签发了一套以另外一买家为收货人的提单。

The case in question is a complicated series of cases involving maritime shipping contract, and at the center of the contention is who should be the rightful holder of the bills of lading. The seller, Shenzhen Yekalon Industry, Inc., sold a batch of tiles to an African buyer, SONAEC VILLAS CEN SAD FADOUL, and the carrier was Maersk Shipping who issued a set of bills of lading to the order of the consignee, SONAEC VILLAS CEN SAD FADOUL. The terms of the bills of lading specify that any dispute arising from or as a result of the shipping shall be under the jurisdiction of the Queen's Bench Division in UK. The African buyer defaulted on its payment, and at the request of the Shenzhen-based seller, Maersk Shipping issued another set of bills of lading with another buyer as the consignee.

同一批货物签发了指定的收货人不同的两套提单，且非洲买家和后手买家均主张提货，遂产生了纠纷。卖方深圳公司向广州海事法院申请强制令，请求法院强制马士基公司向卖方出具正本提单，并将货物交付给后手买家。广州海事法院经审查，依法作出裁定准许了卖方深圳公司的请求。

Two sets of bills of lading were issued for the same batch of goods for the benefit of different consignees, and both the African buyer and the second buyer claimed right to receive goods, as a result, a dispute erupted. The Shenzhen-based seller applied to Guangzhou Maritime Court for an injunctive order to compel Maersk Shipping to issue an original bill of lading to seller, and deliver the goods to the second buyer. After review and examination, the Guangzhou Maritime Court duly granted the application of the Shenzhen-based seller.

非洲买家因没有收到货物，遂在非洲法院起诉马士基公司。马士基公司依据提单中的纠纷管辖条款，将非洲买家告上英国王座法院。英国王座法院认为，其具有不可争议的管辖权。由于被告没有出庭，也没有提交证据，所以英国法官只能依据原告的证据作出判断。原告主要证据之一是广州海事法院的裁定，并以此证明原告行为的合法性。英国法院据此作出了判决。

Failing to receive the goods, the African buyer brought Maersk Shipping to court in Africa, and Maersk Shipping initiated a case before the Queen's Bench Division in UK according to the dispute resolution clause in the bill of lading. The Queen's Bench Division held that it has indisputable jurisdiction over the dispute, and as the defendant did not appear nor did it submit any evidence, the Queen's Bench Division cannot but rely on the evidence submitted by the plaintiff, and a major piece of the evidence is the injunctive order of Guangzhou Maritime Court which is used to prove the legality of plaintiff's conduct. On the basis of the evidence, the UK court made its ruling.

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Founded in 1992, Dacheng Law Offices is one of the largest law firms of full services in Asia. Headquartered in Beijing, Dacheng has the largest global legal services network of any law firm in China, with branch offices or alliance partners in Shanghai Wuhan Chengdu Jinan Chongqing Tianjin Ha'erbin Zhengzhou Yinchuan Xining Xiamen Hangzhou Haikou Shenzhen Nantong Guangzhou Changchun Xi’an Shenyang Hohhot Nanjing Changzhou Wuxi Qingdao Lanzhou Fuzhou Nanning Taiyuan Dalian Changsha Jilin Zhoushan Hefei Nanchang Suzhou Hong Kong Taipei Moscow Singapore Paris Seoul Washington Tokyo New York Chicago San Francisco Toronto Mexico St. Paul Lima London Brussels Berlin Amsterdam Madrid Stockholm Dubai Cairo Cape Town Abuja Tel Aviv Sydney.

争议解决与强制执行是大成的传统优势业务，大成曾获得《亚洲法律事务》（ALB）2009 年度“纠纷解决律师事务所大奖”。大成可以通过其全球化法律服务网络，帮助客户高效、经济地处理发生在中国各地及其法律服务网络内其他国家和地区的争议。大成在争议解决领域与强制执行可以提供如下法律服务：

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Representation in litigation and arbitration proceedings;

(7) 中国法院生效法律文书的强制执行；

Enforcement of effective legal instruments of the PRC courts;

(8) 中国仲裁机构（如中国国际经济贸易仲裁委员会）生效裁决的强制执行；

Enforcement of the effective awards of Chinese arbitration institutions (such as the China International Economic and Trade Arbitration Commission);

(9) 香港、澳门及台湾法院生效法律文书在中国的承认与执行；

Recognition and enforcement of the effective legal instruments of the courts of Hong Kong, Macau and Taiwan in mainland China;

(10) 外国仲裁裁决在中国的承认和执行；及

Recognition and enforcement of foreign arbitral awards in China; and

(11) 基于争议解决实务经验的法律风险管理。

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