

# Judicial Empirical Research on Disputes over Online Live Streaming with Goods

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**Abstract:** Online live streaming with goods is an emerging economic development model that has played a significant role in promoting economic development under the pandemic. Infringement and imagination are constantly emerging, and the dilemma of consumer rights protection is becoming increasingly prominent. This article analyzes the current situation of consumer rights protection through judicial cases, understands the difficulties in the process of consumer rights protection, and clarifies the responsibilities of merchants and platforms.

**Keywords:** Protection of Consumers' Rights and Interests; Live with Goods; Operator; Operator Responsibility; Platform Responsibility; E-commerce Law

## 1. Introduction

In recent years, online live streaming products have been constantly developing like mushrooms after rain, and the vitality of upward growth is poised to emerge, becoming an emerging industry of the Internet. By June 2022, the number of netizens nationwide will reach 1.051 billion, and the number of Online shopping users will reach 841 million, accounting for 80.0% of the total number of netizens. In the first quarter of 2022, Kwai e-commerce transactions reached 175.1 billion yuan, showing explosive growth; In the past year, the sales volume of Tiktok platform has exceeded 10 billion, and the total transaction volume is 2.2 times that of the same period last year. [1] Online live streaming and sales have promoted economic development and facilitated people's lives under the epidemic.

With the vigorous development of online live broadcast with goods, problems such as false network traffic, false propaganda to deceive consumers, product quality problems and the relative lack of legal supervision emerge in endlessly. The bird's nest sold by Simba was exposed by consumers in Tiktok as "all sugar water"; Li Jiaqi claimed in the live broadcast that persisting in using Chupu beauty equipment for one month is equivalent to playing a hot horse game. Due to incorrect comparison of therapeutic effects with medical products, there have been commercial fraud, fraud, and misleading commercial dissemination. Misleading consumers and damaging their rights and interests have emerged one after another. This article takes 172 civil judgments of people's courts involving disputes over online live streaming and sales as samples, analyzes the infringement issues in online live streaming and sales in China, clarifies the responsibilities of various aspects, and then regulates live streaming behavior to effectively safeguard the legitimate rights and interests of consumers in online live streaming and sales.

## 2. Empirical Analysis : Basic Situation of Disputes over Online Live Delivery

The case studied in this article comes from the China Judgment Document Network. Through the website of "China's Judgment Documents", input the keyword "live broadcast", and search for judgment documents for the cause of action of "Online shopping contract dispute", and it shows that there are 320 judgment documents in total, of which 207 are the keyword "contract" and 112 are "fraud". Since the paper discusses the protection of consumers' rights and interests in online live broadcast delivery, 172 civil judgments were screened out of 320 judgment documents, including 140 first instance judgments, 32 second instance judgments. The distribution of case disputes between 2020 and 2022 reflects the rapid development trend of online live streaming and sales under the epidemic, and the increasing awareness of consumer rights protection. This article will use these 172 civil judgments as statistical samples.

### **2.1. Temporal and Spatial Distribution of Cases**

To objectively detect the situation involving online live streaming and sales in such cases, analyze the temporal and spatial distribution. In terms of time distribution, the number of sample cases is mostly concentrated between 2020 and 2022, which is consistent with the booming development of the Internet and the social background of the outbreak of the epidemic. From a spatial distribution perspective, based on the jurisdiction of the courts that adjudicate cases, the distribution of cases is as follows: 18 cases, accounting for 10%, in the Northeast region; 33 cases in North China, accounting for 20%; 37 in East China, accounting for 22%; 24 in Central China, accounting for 14%; 36 in South China, accounting for 21%; 17 items in the southwest region, accounting for 10%; 5 items in the northwest region, accounting for 3%. As shown in the figure, the cases are widely distributed in space, and the cases are mainly concentrated in North China, East China and South China, while the cases in Northwest China are the least. The data shows that economically developed regions have a higher number of cases and stronger consumer awareness of rights protection. And there are internet courts in Beijing, Shanghai, and Guangzhou, which are convenient for consumers to file lawsuits.

### **2.2. Purchase Object and Infringement Principal Type**

Based on the objects purchased by consumers, they can be divided into the following types: the first is jadeite, Hotan Jade, jewelry and other valuables, with 84 cases in total; The second type is supplements, health products, drugs and other foods, with a total of 52 cases; The third type is second-hand luxury goods, beauty products, and clothing, with a total of 14 cases; The fourth type is digital products such as computers, cameras, and household appliances, with a total of 15 cases; The fifth type is daily necessities, with a total of 5 items.

From the perspective of consumers purchasing the subject matter, it can be seen that when the amount of the involved item is high, consumers are more willing to choose judicial litigation channels to protect their rights; When the amount of the goods involved in the case is low, consumers consider the cost of safeguarding their rights and expected benefits, and feel that more is better than less, so they choose to give up the lawsuit.

The platform situation involved in the case is: there are 51 cases on Taobao platform; 51 cases of Tiktok platform; 20 cases of Kwai platform; Pinduoduo platform 14 cases; 8 cases on WeChat platform; 7 cases on Tmall platform; 19 other platforms; Two examples of JD platform. It can be seen that consumers' consumption preferences are Taobao and Tiktok platforms. As the first batch of e-commerce platforms, Taobao's technology and products have become more mature and more popular with consumers. As an APP for recording a better life, Tiktok will have about 809 million users in 2022, with a wide audience. For jade and jewelry products, there have been 13 cases of consumer litigation disputes on other platforms (such as Wepaitang trading website or Zhuangzhuang Jade APP).

From the perspective of the Principal type of infringement, the number of cases in which the defendant is a company is 76, accounting for 44.1% of the total, and the number of cases in which the defendant is an enterprise is 5, accounting for 0.02% of the total; There are 36 cases where the defendant is a natural person, accounting for approximately 20.9% of the total; There are 22 cases where the defendant is an individual business, accounting for approximately 12.8% of the total; The number of cases involving defendants and platform operators is 33, accounting for approximately 19.1% of the total.

According to the data, it can be seen that the proportion of infringing parties is the highest among companies, which reflects that the company is often behind internet celebrities and influencers. There is a signed agreement between the company and internet influencers, a service agreement or commission contract between the anchor and the merchant, and a commission to commission relationship between the anchor and the merchant. The anchor uses their own influence to promote and sell related products in the live broadcast room. As a merchant, we should not only be responsible for product quality, but also take responsibility for actions that harm consumer rights such as false advertising by live streaming hosts. The second is natural persons. As anchors, businesses produce and sell their own products online. They are producers and operators who sell their products<sup>[2]</sup>. According to the principle of Privity of contract, they form a buying and selling relationship with consumers, and have the obligation to deliver the subject matter that meets the quality as agreed in the contract, as well as the obligation to inform them reasonably. Some consumers may consider the platform as a defendant in litigation, believing that platform operators have not fulfilled their regulatory obligations and should bear joint or supplementary liability for consumer losses. Consumers shop in the online virtual

environment. The e-commerce platform knows more about the specific situation of merchants than consumers. It is in a strong position in the online trading environment and has greater control power. It not only needs to create a safe and stable Online shopping environment, but also should assume the obligation to supervise merchants.

### ***2.3. Basic Facts and Controversial Points of the Case***

The plaintiff watched the live shopping on Taobao, Tiktok, Kwai or Pinduoduo and other live platforms. After receiving the goods, the plaintiff found that the commodity information publicized and promised by the defendant's live platform was not consistent with the one watched, and the difference between the products led to a huge difference in prices, or the products did not meet the food safety standards. The plaintiff complained to the platform to protect the rights and asked the platform to remove the infringing goods without success, so it filed a lawsuit.

The main points of dispute in the case are as follows: firstly, whether the product in question is consistent with the seller's display and commitment in the live broadcast room; Secondly, whether the content promoted by the defendant in the live broadcast room constitutes fraud; Thirdly, whether the goods involved in the case are labeled as false; Fourthly, should live streaming platforms bear corresponding responsibilities; Fifth, the defendant shall bear corresponding responsibilities.

### ***2.4. Litigation Outcome and Main Reasons***

Based on the claims of the plaintiff's consumers, the court supported the plaintiff's claims in the first category of jadeite and jewelry, with 26 successful cases; The court rejected the plaintiff's lawsuit, resulting in 40 unsuccessful cases; The plaintiff claims a refund of one to three or one to ten, and the court has ruled in 18 cases supporting the refund of goods. In the second category of food, the court supported the plaintiff's lawsuit request, with 24 successful cases; The court rejected the plaintiff's lawsuit request and lost 18 cases; The plaintiff claims a refund of one to three or one to ten, and the court has ruled in 11 cases supporting the refund of goods. In the third category of digital electronic products, the court supported the plaintiff's lawsuit request, and there were 2 successful cases; The court rejected the plaintiff's lawsuit request and lost 9 cases; The plaintiff claims a refund of one to three or one to ten, and the court has ruled in support of five cases in which some of the litigation claims are supported. The fourth category is luxury goods and cosmetics, and the court supports the plaintiff's lawsuit request, with 3 successful cases; The court rejected the plaintiff's lawsuit request and lost 5 cases; The plaintiff claims a refund of one to three or one to ten, and the court has ruled in support of six cases in which some of the litigation claims are supported. The fifth category is daily necessities, and the court supports the plaintiff's lawsuit request, with one successful case; The court rejected the plaintiff's lawsuit request and lost two cases; The plaintiff claims a refund of one to three or one to ten, and the court has ruled in support of two cases in which some of the litigation claims are supported.

The court, in accordance with laws such as the Consumer Rights Protection Law, the E-commerce Law, and the Civil Procedure Law, combined with the facts of the case and the evidence provided by the plaintiff and defendant, reached a judgment result, with a support rate of 33% for all litigation requests and a rejection rate of 67% for litigation requests.

## **3. Analysis of the Dilemma of Consumer Rights Protection**

### ***3.1. Difficulty in Safeguarding Consumers' Right to Know***

The right to know of consumers is closely related to their rights. Article 8 (1) of the Consumer Rights Protection Law stipulates that "consumers have the right to know the true situation of the goods they purchase, use, or services they receive. Consumers watch online live streaming to gain a more comprehensive understanding of the specific situation of the goods. False advertising by merchants in online live streaming products infringes on consumers' right to know. Merchants or anchors show the goods in live broadcast and communicate with consumers through bullet screen, but there is still widespread false publicity, especially in jadeite, Hotan Jade, jewelry and food. On the one hand, the promotion of products by merchants or anchors is vastly different from the physical items received by consumers. For example, when merchants are promoting Hotan Jade, jadeite and other valuable commodities, they live introduced that the sapphire rings and pendants involved in the case are all

natural sapphires and unburned in Mogu, Myanmar, and the Emerald rings involved in the case are natural unburned and originated in Colombia. After testing by a professional organization, the sapphire ring in question was found to be burnt and originated in China; The origin of the Emerald ring involved is Zambia. The products sold by merchants to consumers involved in the case are shoddy. As an ordinary consumer, they do not have professional knowledge and purchasing experience in gemstones. The jewelry industry is "immortal and difficult to break", and without professional testing agencies, it is impossible to distinguish merchants who are shoddy. For example, the jadeite color displayed in the merchant's live broadcast was transparent, and a jewelry appraisal certificate was also provided. The appraisal result showed that it was "jadeite A goods", and consumers believed it to be true to place an order. After receiving the goods, they found that they were completely different from the displayed goods, indicating a clearly inferior product. The same is true for food products. In order to attract consumers' attention, businesses described the products in webcasts - Ipoh white coffee drinks are low-fat drinks, which are not advertised by businesses after consumers receive the goods. According to "III. Requirements and conditions for nutrition claims" in Annex 3 of the Nutrition facts label Management Specification for Food, the low-fat food standard is: fat content  $\leq 1.5\text{g}/100\text{ml}$  (liquid), and the products are not actually low-fat drinks. For example, the merchant's introduction and promotion of the product are not comprehensive. The promotional face of the merchant's live streaming room product is printed in large font with the words "imported whole cut beef tendrils", highlighting the information of beef tendrils. The introduction webpage does not clearly indicate that the product is seasoned meat, but consumers receive the product after taking pictures in the live streaming room, but it is seasoned meat. When consumers make a purchase, the webpage does not pop up to select whether to purchase beef or prepared meat, and the merchant does not remind the consumers. Consumers should reasonably believe that they are purchasing beef tendrils.

On the other hand, online live streaming shows the characteristics of products through video live streaming, leading consumers to turn a blind eye to issues such as false advertising. During the viewing process in the live broadcast room, the anchor continuously stimulates consumers' purchasing desire, uses exaggerated and humorous language to stimulate consumers' psychology, and stimulates consumers' purchasing enthusiasm of "buying is making money, missing this village does not have this store". Merchants use luring language such as "guaranteed no loss", "resale on behalf of others", "exaggerated returns", and "investment" to promote each transaction, causing consumers to make incorrect judgments. The merchant promised in the live broadcast that if consumers buy raw stones together with the merchant, the processed bracelets will be given priority to recycling and will also be sold on behalf of the merchant. Consumers believe it, but the raw stones received by consumers are not as described by the merchant. After selling the product, the merchant refuses a refund on the grounds that the product has no questions, the consumer has not provided evidence, or affects secondary sales. The platform does not support consumers' after-sales applications on the grounds that the after-sales period has exceeded. Consumers are trapped on all sides.

### ***3.2. Difficulty in Realizing Consumer Claims***

Consumers' right to safety is a basic right of consumers, so protecting consumers' right to safety is an important area of consumer protection. Online live streaming shows products through video, which is spatially and spatially separated from consumers' purchasing behavior, and cannot effectively guarantee product quality, resulting in serious consequences that harm consumers' personal and property safety. Under the influence of the epidemic situation in recent years, online live delivery is not only available on Taobao platform, but also on Kwai, Tiktok, Pinduoduo and other platforms. Some non-professional Online shopping platforms rely on price advantages to attract consumers, which makes it difficult to guarantee the product quality and belongs to "three no" products. Among the sorted cases, there were a total of 53 cases involving food related products. Merchants illegally added drugs to food, added ingredients that cannot be added to ordinary food, and products did not meet national food safety standards and quality standards. Some manufacturers even did not have corresponding qualifications or business licenses.

Consumers' legitimate rights and interests in live streaming often lag behind their live streaming behavior. Due to subjective and objective circumstances such as limited knowledge level and the end of live streaming, they are unable to provide favorable evidence to support their claims, resulting in the court not supporting their litigation claims and ultimately losing the lawsuit. Among the 170 judicial documents sorted out, there were 84 cases related to precious commodities such as jadeite and Hotan Jade, but the winning rate was only 30%. The judge's trial of the case is based on the principle of "who claims, who provides evidence", and the burden of proof stipulated in civil litigation. Consumers

should not only provide evidence of the damage result and the infringement behavior of the platform operator, but also provide evidence to prove that the damage result and the infringement behavior of the platform operator have a causal relationship, and prove that the platform operator is at fault, in order to request them to bear the burden of proof. However, in real life, compared to platform operators, Consumers' ability to provide evidence is weak. Consumers are in a weak position in front of the virtual network and the e-commerce platform with team division of labor, and are deeply affected by the negative impact of information asymmetry. At present, there is no law to stipulate the burden of proof for Online shopping contract disputes arising from live shopping with goods, which leads to the problem that consumers have great difficulty in providing evidence and safeguarding their rights. For example, when consumers purchase jadeite raw stones from merchants, they only rely on visual observation and the introduction of jadeite raw stones by live broadcast hosts to determine the transaction. Such a transaction is quite risky, and consumers need to bear this risk themselves. The court found that during the transaction with consumers, the merchant had fulfilled the duty of warning and attention to the transaction risks, so there was no fundamental breach of contract. The legal consequences arising from consumers voluntarily gambling profits with risks should be borne by consumers themselves. Therefore, in the online environment, how to protect consumer rights has become an urgent matter. For this reason, China's "E-commerce Law" and "Internet Information Service Management Measures (Trial)" both stipulate that network trading platform providers should conduct authenticity checks on the goods or services they provide and provide written vouchers; For Online shopping third-party service providers, it is stipulated that "third-party service providers engaged in online retail business activities" shall comply with relevant laws and administration.

From a platform perspective, the entry threshold for the platform is low. With the rapid iteration of network updates, many operators can register accounts on the platform for live streaming at a lower cost. The products sold in live streaming rooms often do not pass the platform's screening and supervision, and their quality cannot be guaranteed. After obtaining high profits through live streaming sales, platform operators shift their responsibilities by changing product links, removing products, or closing online stores. The platform will avoid legal liability on the grounds that it is neither the seller of the involved goods nor the counterparty to the involved information network sales contract, and has previously reminded the platform anchor not to make false propaganda, so there is no fault. In judicial practice, consumers claim joint and several liability with live streaming platforms and live streaming platform operators as joint defendants. The court often finds that the platform is not the seller of the goods involved in the case, that is, the counterparty to the information network sales contract, nor the publisher and operator of the product information involved in the case, but the service provider that provides the seller's information. It has fulfilled the formal examination obligation of the seller's qualification. The fact and legal basis for the plaintiff consumer's claim of joint and several civil liability to the platform are insufficient, and the court does not support it, making it difficult for consumers to protect their rights.

### ***3.3. Difficulty in Identifying the Nature of "Fraud" by Operators***

Among the 170 judgments sorted out, it was found that the focus of controversy in 106 judgments revolves around whether the merchants engaged in fraud in selling the products involved, and whether the merchants falsely promoted the products in the live broadcast room. Among them, the plaintiff and consumer claimed that the defendant's business operator was fraudulent and requested the termination of the contract relationship for return and refund, and demanded that the defendant's business operator pay compensation. Among them, the court supported all consumer litigation requests in 35 cases, supported some litigation requests (agreeing to terminate the contract relationship for return and refund) in 30 cases, and lost 41 cases. It can be seen from the data that the winning rate of courts supporting consumers to claim Punitive damages for fraud is only 33%. It can be seen that in practice, it is difficult for consumers to claim Punitive damages.

How to determine whether an operator constitutes fraudulent behavior is worth our deep consideration. The so-called "fraud" refers to the subjective and malicious behavior of contracting or performing a contract, intentionally reporting false information to the other party, or intentionally concealing the true situation of the product, luring the other party to purchase the product. In this case, consumers can file a lawsuit for damages to the court through litigation channels. Looking at consumer winning cases, we know that in order to determine operator fraud, the court requires consumers to provide sufficient evidence to prove it. There are two situations: firstly, consumers present sufficient evidence to prove that the merchant has engaged in fraudulent behavior. Consumers submit the administrative penalty letter issued by the Market Supervision Administration to the court, proving that

the merchant engaged in false advertising and inducing consumers to make incorrect expressions of intention. The court has ruled that the operator's fraudulent behavior. Or the consumer provided WeChat Chat log, physical product photos, original order details, original logistics delivery records, original payment records and other evidence to determine the basic facts of the case, and then the court found that the defendant had committed fraud, and the court further supported the plaintiff consumer to terminate the contract, and proposed a claim of refund, compensation and three claims. Secondly, the operator failed to fulfill a reasonable obligation to inform. For example, in the process of selling raw stones, without displaying the full view of the physical object in daily light, only exaggerating and promoting the window opening area, causing inexperienced consumers to make incorrect judgments based on incomplete information display, which should be considered fraudulent behavior.

During the trial of the case, operators generally put forward a defense that the plaintiff's consumers did not conform to the "consumers" in the Law of the China on the Protection of Consumers' Rights and Interests, but were "professional Debunker". Their purchase behavior was not necessary for living consumption and did not belong to the legal interests protected by law. Professional Debunker bring a lawsuit when they find that the business is fraudulent. How to identify the behavior of "knowing and buying fake goods" and whether to protect the rights and interests under this role are worthy of our deep consideration. If only consumers can apply the provisions of Article 55 (1) of the Consumer Law, and those who know and buy fake goods do not apply this provision, the functional significance of Article 55 of the Consumer Law will be greatly weakened. The reason is as follows: Firstly, ordinary consumers in a virtual online environment find it difficult to detect fraudulent behavior by merchants due to insufficient purchasing experience. Secondly, even if the fraudulent behavior of merchants can be effectively identified, ordinary consumers may lack confidence due to the need to provide evidence and give up initiating judicial proceedings. Third, even if it is determined that the business has fraud, ordinary consumers will think that the expected benefits in a single lawsuit are not large because of the cost of money and time. The lower the price of goods or services, the lower the expected benefits brought by Punitive damages. Fourthly, the general consumer is unable to speak up and is afraid of retaliation from merchants due to litigation. They develop anxiety and choose to swallow the merchant's fraudulent behavior, believing that more is better than less. In summary, ordinary consumers who do not belong to those who know and buy fake products are less likely to use punitive clauses<sup>[3]</sup>.

In real life, consumers usually do not record live videos when purchasing goods in the live broadcast room, nor do they record unpacking and inspection videos after receiving the goods. The defendant's merchant's description of the goods in the live broadcast room will be seamless as the live broadcast ends. The evidence submitted by consumers cannot prove that the quality requirements of the purchased goods do not meet the standards. The appeal of canceling the online transaction contract and returning the goods for refund could not be fulfilled, and it was like fishing for the moon in a haystack to claim Punitive damages for the fraud of merchants. However, when purchasing precious commodities such as agate and jadeite, consumers with rich experience and certain recognition ability have a certain understanding of the trade rules of the industry. According to the transaction records and subjective cognitive ability of consumers on their web pages, consumers are not artificially induced to make false ideas. In this case, the court does not confirm the fraud of operators, and does not support the Punitive damages required by consumers to sue.

For the scope of the operator's obligation to inform, that is, the platform operator has provided detailed and truthful information about the product, and has fulfilled reasonable notification obligations in the live broadcast room. Consumers communicate and communicate in detail with the sales anchor through the live broadcast room. For example, in daily life, consumers who purchase jadeite raw stones online often cannot provide evidence due to lack of experience. Due to the unique nature of raw stones, operators stipulate that they cannot return or exchange them after placing an order. Merchants clearly inform consumers in the live broadcast room that the shape and weight of the purchased raw stones can be informed, but internal changes cannot be predicted. Only after cutting and slitting can they know. The introduction of the original stone by the anchor is limited to their personal views and is not the final conclusion of the original stone. Consumers need to carefully consider and comprehensively evaluate it before making a purchase decision. The operator informed in the live broadcast room that the investment risk of Yuanshi is high, and they are cautious in making purchases; Alternatively, when each stone is sold, the live broadcast host requests to take a screenshot of the buyer and send a note with the words "purchase original stone on behalf, no return" in red, And it is also indicated on the Taobao store and ordering link page that "purchasing goods on behalf of others (jadeite raw stones) Once taken, no return or exchange is allowed, and no 7-day return or exchange without reason is supported. The operator has fulfilled reasonable reminder obligations, and the consumer confirms that they are aware of and purchase, and there is no fraudulent behavior against the consumer. The court

does not accept the plaintiff's consumer's claim that the defendant's operator is fraudulent, and consumers often have to bear adverse legal consequences.

For example, although the products involved in the case do not violate food safety standards, the outer packaging only generally indicates that the ingredients contain maca, without specifying the scope of use, dosage, and method of use, which does not comply with legal provisions. Consumers have the right to request the termination of the online transaction shopping contract with the operator and request a refund from the operator. Merchants should also bear the necessary transportation costs for consumers. However, when consumers claim that the involved goods did not meet the food safety standards, they demand that the operator compensate ten times the price of the involved goods. If consumers do not provide sufficient evidence to prove that the goods did not meet the food safety standards, the court ruled that the ten times compensation claim made by consumers is not supported.

#### **4. The Road to Solving Difficulties : The Path to Protecting Consumer Rights and Interests in Online Live Streaming**

##### ***4.1. Clarify Platform Responsibilities***

The rise of platforms is a key element of the new economic form. Even if platforms are intermediaries, their function is to provide business premises and bridge the gap for transactions. Although platforms are not the counterparties of transactions, they are duty-bound to protect consumer rights and interests<sup>[4]</sup>. Therefore, China's legislative trend is gradually expanding the obligation of platforms. The expansion of platform obligations in China's legislation is reflected in the Consumer Rights Protection Law and the Food Safety Law. Article 44 of the Consumer Rights Protection Law stipulates that online trading platforms should be able to provide sellers or service providers with their true names, addresses, and effective contact information. The Food Safety Law clearly limits the entry threshold for third-party institutions engaged in online food trading. According to Article 62 of the Food Safety Law, third-party platforms engaged in online food trading should register real name operators and review their licenses. If the platform fails to truthfully disclose product information or engages in false advertising behavior towards the online operators, they shall bear legal responsibility in accordance with the law. The operators on the platform fulfill their obligation to inform, not only presenting the product itself in the live broadcast room, providing detailed introductions and effective labeling of the product, but also clearly introducing the product information to consumers in a prominent form, so that consumers can have a more intuitive understanding of the product, and the purchased product is consistent with their consumption proposition<sup>[5]</sup>. For example, in China's "Product Quality Law" and the relevant opinions issued by the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China, specific provisions have been made for the labeling methods on products or their packaging, requiring product labeling to be truthful and trustworthy, and indicating meaningful information such as product quality inspection certificates for consumers. Some unscrupulous merchants intentionally use small fonts that are difficult to distinguish from the background color, or use easily blurry expressions to identify, all of which will have a direct impact on consumers' judgment. In this case, the merchant's subjective malice cannot be considered as fulfilling a reasonable obligation to inform. Labeling is not applicable to all products, such as some naked products and services that are difficult to attach and therefore inconvenient to use. The operator intentionally conceals the main information of goods or services subjectively and fails to fulfill the obligation of disclosure, which leads to misunderstanding of consumers, and the purchase of goods constitutes fraud, so it shall bear Punitive damages.

With the introduction of the obligation to ensure the security of e-commerce platforms, it will effectively solve the problem of consumers' difficulty in providing evidence, which makes it difficult to protect their rights and legitimate rights and interests. The E-commerce Law stipulates that the operators within the platform have the responsibility to register market entities in accordance with the law.<sup>[6]</sup> The platform needs to verify and register the information of the operators' entities. When the e-commerce platform violates its security obligations, it should bear relevant supplementary responsibilities. As a network transaction manager, the e-commerce platform has the role of organizing, coordinating, and promoting the legality of network transactions. E-commerce platforms generally conduct pre-examination of the qualifications of operators who enter the platform, which is based on the business category of the operator when they enter the platform. For some special category operators, corresponding qualification certificates need to be provided. For ordinary goods or services, daily supervision is sufficient; However, for goods or services closely related to consumer life and health,

specific business qualifications need to be strictly reviewed<sup>[7]</sup>.

The platform takes preventive measures and efficiently supervises the operators in the platform. E-commerce platforms shall fulfill corresponding supplementary responsibilities in accordance with the law for consequences such as insufficient scrutiny of the qualifications and qualifications of internal operators on the platform, or failure to fulfill safety and security obligations to consumers, resulting in damage to consumer rights and interests.

#### ***4.2. Determine the Scope of the Operator's Disclosure Obligation***

Because consumers are in a weak position in the transaction, and because of the negative impact of information asymmetry, the disclosure obligation of the contract operators of Online shopping is based on this premise. The problem of information asymmetry in online transactions has a long history. With the development of social economy and information technology, this phenomenon has become increasingly prominent. However, information asymmetry is not immutable, and the original situation of consumer information blockage may gradually become familiar. Therefore, the scope of the obligation of operators to inform will also change accordingly<sup>[8]</sup>. The operator's obligation to inform should have a certain scope and fulfillment time. When displaying goods or services in the live broadcast room, they should fulfill their obligation to inform, so that consumers can access key information for screening and purchasing. The Consumer Law generalizes the obligation to inform, corresponding to consumers' right to know, adopts general provisions, and stipulates that operators must provide information on the actual situation of goods or services, in order to achieve the goal of unifying consumers' right to know with operators' obligation to inform. Business operators shall bear the obligation to inform consumers, and shall bear the responsibility of pricing review, usage methods, and other basic information that is of significant interest to consumers for the goods or services provided. Online live streaming with goods refers to the communication between the host and consumers through the live broadcast room, which has the virtual nature of the network space. The scope of its obligation to inform should be wider than the ordinary obligation to inform. Operators should clarify the content of goods and services in writing when conducting sales activities. According to specific legal regulations, operators should provide consumers with business addresses, indicating safety precautions, risk warnings, and after-sales service information. When operators need to collect and utilize consumer personal information, they not only need to be explicitly informed, but also need to obtain consumer permission.

Subjectively, operators should proactively provide key information about products or services, rather than fulfilling consumer requests. The obligation to inform is a legal obligation that can only be adjusted based on different transaction methods. The performance standards cannot be lowered due to different transaction partners, and it will not be waived due to consumers' knowledge. Even if consumers have knowledge of goods or services due to their own level of knowledge, operators cannot use this as a defense<sup>[9]</sup>.

#### ***4.3. Improve the Consumer Proof System***

On the one hand, consumers should uphold the concept of legality, validity, objectivity, and truthfulness in providing evidence that objectively reflects the true situation of the case, such as timely provision of shopping order records, electronic invoices for goods, and audio and video recordings of live streaming goods from merchants. Seize the best opportunity for evidence collection, such as recording inquiries about products during purchase in the live broadcast room, and recording when receiving and unpacking packages. Obtain key evidence within the legal liability period to safeguard legitimate rights and interests. The comprehensive and sufficient evidence is more conducive to safeguarding one's legitimate rights and interests in judicial practice. In food related cases, the labels of deer blood wine and deer paste sold by the merchant to consumers did not include the name, address, or contact information of the producer, and the merchant failed to provide evidence to prove that the deer blood wine and deer paste sold to consumers were qualified products. Merchants with subjective malice knowingly sell products that do not meet food safety standards, in violation of legal regulations. Consumers who provide evidence of losses caused by food not meeting standards can request compensation from the operator or demand compensation from the producer. The consumer's purchase case involves deer blood wine and deer paste. Due to their non-compliance with food safety standards, the consumer claims compensation from the merchant, which has factual and legal basis.

On the other hand, there is virtuality in online live streaming sales. Consumers shop by watching live streaming, and anchors interact and bargain with their fans in the live room to initiate flash sales, which has strong interactivity. Consumers are immersed in it and ignore the preservation of evidence. When it is discovered that there are quality issues with the products promoted by live streaming



merchants, it is too late for consumers to provide evidence. In practice, consumers must bear the burden of proof if they want to win the lawsuit. However, in some specific cases, it is difficult to apply the principle of "who claims, who gives evidence", which can not even ensure the fairness and equality of the case trial. The application of consumers' claims with Reverse onus is easier to achieve, and their legitimate rights and interests are more effectively protected.

It is necessary to invert the Reverse onus in Online shopping transactions<sup>[10]</sup>. Firstly, it is more convenient for operators and online trading platforms to provide evidence. For Online shopping contracts, operators develop transaction rules. For example, merchants will draw up format contracts in advance, and consumers, as participants, have no choice. Obviously, it is more convenient for operators to obtain evidence, which is beneficial for improving the efficiency of evidence collection, reducing the inability to provide evidence, and protecting the legitimate rights and interests of consumers. Secondly, the operator has a strong ability to provide evidence. Operators possess electronic data and are proficient in online transactions. For most ordinary consumers, they do not have such professional judgment ability, especially for overseas purchasing products. Some products do not have sales points in China, and regulatory authorities cannot test whether the quality of the products meets the standards. Therefore, operators should bear the burden of proof regarding product quality, performance, and whether it is genuine, and if proof is impossible, they should bear the corresponding adverse consequences<sup>[11]</sup>.

Establish and improve a public interest litigation system for consumer damage compensation, leverage the auxiliary function of public interest relief, safeguard individual consumer rights, and safeguard social public interests. Establish a qualified consumer group to handle public interest litigation related to consumer compensation for damages. Consumer groups have rich experience in safeguarding rights and ensuring the stability of public interest litigation; In terms of professionalism, a professional committee is formed with personnel with professional knowledge to ensure the ability to negotiate on behalf of consumers and operators, in order to reduce the risks of excessive litigation and loss.

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### References

- [1] Citation page: Expert interpretation of the 50th Statistical Report on the Development of China's Internet, <https://www.cnnic.net.cn/n4/2022/0916/c135-10595.html>.
- [2] Ge Jiangqiu. Knowing and Buying Fake: Construction and Practical Application of Evaluation Standards Based on Functionalism [J]. *The Jurist*, 2020, (01):160-172.
- [3] Yu Shaoqi. An Empirical Study on the Rules of Security Obligations for E-commerce Platforms: From the Perspective of Article 38 (2) of the E-commerce Law[C]. *Shanghai Legal Research Collection*, 2021, 14: 317-324.
- [4] Zhou Xiping. Security Obligations and Legal Responsibilities of E-commerce Platforms [J]. *Academic Journals*, 2019, (06): 66-73.
- [5] Ma Gengxin. Criteria and concretization for determining the "corresponding responsibilities" of platform operators: Analysis of Article 38 (2) of the Electronic Commerce Law [J]. *Oriental Law*, 2021, (02): 86-97.
- [6] Zhao Chao, Zhou Quanquan, Sun Pengcheng. Judicial Practice and Exploration of Civil Liability on E-commerce Platforms [C]. *Shanghai Legal Research Collection*, 2022, 4:39-53.
- [7] Pan Jun. The Legal Structure of the Operator's Notification Obligation in Consumer Contracts [J]. *Journal of Central South University (Social Sciences Edition)*, 2018, 24 (01): 48-54.
- [8] Wan Fang. Legal Application of the Obligation to Inform Operators under the Consumer Rights Protection Law of China [J]. *Political Science and Law*, 2017, (05): 151-160.
- [9] Ye Ziqiang. The Constituent Elements and Application of the Reverse Onus Rule [J]. *Hebei Law Science*, 2011, 29 (05): 71-75.
- [10] Li Shuai. Analysis of the Attribution of the Burden of Proof in Online Transaction Disputes [J]. *Journal of Sichuan College of Education*, 2010, 26 (11): 47-49+54.
- [11] Ren Chao, Jin Binbin. Research on the Public Interest Litigation System of Consumer Damages in Japan [J]. *Economic Law Review*, 2019, (01):337-382.