

On the Responsibility of Network Trading Platform Providers—Discussion on Article 44 of the Consumer Rights and Interests Protection Law of the People's Republic of China

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Abstract: *With the rapid progress of Internet information technology, the online transaction service platform, as a third party, has built a key bridge for the development of today's "Internet economy". While bringing convenience to consumers, many legal issues inevitably arise. This article interprets Article 44 of the Consumer Rights and Interests Protection Law of the People's Republic of China and summarizes the types of behaviors that providers of online trading platforms should bear civil liability for. Then this article will further propose the shortcomings and improvement suggestions of this clause to better protect the rights of consumers.*

Keywords: *Consumer rights protection; Online trading platforms; Electronic Commerce; civil liability*

1. Introduction

Article 44 of the Consumer Rights Protection Law of the People's Republic of China has always been plagued by issues such as determining whether the information provided by online trading platforms is sufficient, unclear information disclosure deadlines, illogical rules, and overly vague regulations. After revision and the promulgation of the Implementation Regulations of the Consumer Rights Protection Law of the People's Republic of China, there are still some shortcomings in addressing these issues. This article will analyze the above issues and propose improvement suggestions.

After the revision of the Consumer Rights Protection Law of the People's Republic of China in 2014, "providers of online trading platforms" were introduced into legislation for the first time. The Food Safety Law of the People's Republic of China refers to e-commerce platforms in the food industry as "third-party platform providers for online food transactions", while the E-commerce Law of the People's Republic of China refers to them as "e-commerce platform operators" to distinguish them from "platform operators". The traditional definition defines online trading platform providers as legal persons engaged in the operation of online trading platforms and providing transaction services to online trading entities. But it ignores that the provider of online trading platforms must be a network enterprise, and they are the builders and owners of the platform. The services provided by providers of online trading platforms are specific, so they mainly refer to network enterprise legal persons who establish and operate online trading platforms to provide online business premises, transaction matching, information dissemination, and other ancillary value-added services for buyers and sellers of online transactions.

Secondly, providers of online trading platforms are also regulatory channels for online transactions. Given the core role of platforms in the development of e-commerce, although they are still operated by private companies, they have a certain degree of public nature. Therefore, regulators also regard platforms as important regulatory "levers", intending to use platforms to achieve control over operators within the platform Regulation to a certain extent, in order to regulate market transaction order, protect the legitimate rights and interests of consumers, and promote the development of the internet economy.

2. Overview and Shortcomings of Article 44 of the Consumer Rights Protection Law of the People's Republic of China

2.1. The types of behaviors that network platform providers are responsible for

2.1.1. Violation of information disclosure obligations

Online transactions are filled with a large amount of information storage, interaction, and transmission. In this process, it is crucial for consumers to fully recognize the relevant data of the product and the necessary information of the operators on the platform, especially in situations where information on online trading platforms is extremely prone to inequality. [1] Moreover, due to the virtual nature of online trading platforms, it is difficult for consumers to truly understand the sellers they trade with. Therefore, it is reasonable for Article 44 (1) of the Consumer Rights Protection Law of the People's Republic of China to impose necessary information disclosure obligations on providers of online trading platforms. However, it is difficult to determine the criteria for identifying "real name, address, and valid contact information" from the above legal provisions. In reality, the information disclosure obligation of online transaction providers has not reached the level of substantive review. On the one hand, this is because it is already difficult to conduct formal review alone. After all, online transaction platform providers do not have relevant real power, and the review intensity cannot be as strong as that of relevant administrative departments. On the other hand, if the operators on the platform provide false materials, they do not have the ability to verify and cannot be held responsible for the consequences.

2.1.2. Failure to fulfill its promise that is more beneficial to consumers

Article 44 stipulates that the responsibility of online trading platform providers to fulfill their more favorable commitments is separated by semicolons in the textual description of the provision on the responsibility of platform providers for violating information disclosure obligations, which is relatively rough and has some application issues. The scope of regulation refers to more favorable responsibility commitments directly proposed by online trading platform providers to consumers, rather than responsibility commitments provided by sellers or service providers to consumers. Generally, it is a commitment made in advance to an unspecified majority of consumers or a certain type of consumer through various forms such as notifications, agreements, etc. on the trading platform. Better commitments should be divided into two categories: first, better commitments provided by online trading platform providers to maintain their own operations (mainly for their own benefit), such as platform management regulations and terms; Secondly, online trading platform providers provide better commitments (mainly altruistic) to assist sales (service) providers in their operations, and sales (service) providers agree or do not explicitly oppose them, such as advance compensation commitments. According to the principle of consistency of rights and obligations, for the first type of commitment, as it is voluntarily made by the online trading platform provider and ultimately beneficial to the operation and management of the platform itself, it has little to do with the seller (service provider). Therefore, if this commitment is violated, the online trading platform provider shall bear the liability for breach of contract and shall not pursue compensation; For the second type of commitment, as it is essentially intended to assist the operation (or service) of the seller (service provider), the online trading platform provider can seek compensation from the seller (service provider) after assuming breach of contract liability.[2]

2.1.3. Failure to take necessary measures despite knowing the infringement should have been known

According to the provisions of the law, there are three elements that constitute a behavior that knowingly or should have known of infringement but did not take necessary measures: firstly, the seller or service provider constitutes an infringement behavior; Secondly, providers of online trading platforms know or should know; Thirdly, the providers of online trading platforms have not taken necessary measures.

The necessity of "necessary measures" is not clearly defined by law. The author believes that as long as it can prevent infringement, there is no need for a fixed form. The method, implementation time, duration, etc. of the measures can be determined based on specific circumstances. However, the obligations of providers of online trading platforms cannot be infinitely expanded, and should be within the scope of measures that they can provide objectively and technically.

2.2. Shortcomings in legislation

2.2.1. Inconsistent information review standards for providers of online trading platforms

The Consumer Rights and Interests Protection Law of the People's Republic of China does not have clear standards for information review (it is impossible to determine whether it is a formal review or a substantive review), while the Electronic Commerce Law of the People's Republic of China has an obligation to review online transaction platform providers not only in terms of formal review, but also in terms of incidental substantive review. However, in judicial practice, the information review obligation of online transaction platform providers is not so strict. In the judgment, considering that online transaction platform providers face a large amount of operator and commodity information, substantive review is required, which poses technical and economic barriers. Therefore, this type of review is called formal review. The standards for the extent to which providers of online trading platforms should review the identity and qualification information of operators within the platform are not clear.

2.2.2. Uncertain deadline for information disclosure by providers of online trading platforms

Although the effective information disclosure obligations of online trading platforms are stipulated, there is a lack of regulations on the timing of disclosure, which leads to a lack of judgment standards in judicial practice on whether the providers of online trading platforms have fulfilled their disclosure obligations.

There are currently two ways to determine the timing: first, when consumers notify the platform, that is, as long as consumers claim a consumer dispute to the platform, regardless of whether consumers choose to file a lawsuit in court later, the platform should provide consumers with valid identity information of the seller or service provider; The second is for consumers to file a case with the court, that is, as long as the provider of the online trading platform discloses the true and valid identity information of the seller or service provider before the consumer files a lawsuit with the court, and the platform has not made a "more favorable commitment" or the situation specified in Article 44 (2) occurs, it can be deemed that the online trading platform has timely fulfilled its information disclosure obligation without assuming responsibility. The above two approaches each have their own advantages and disadvantages, and there is considerable controversy. Further thinking and practice are needed on how to address this issue. If not addressed, it will pose significant challenges for its future application.

2.2.3. The rules themselves have logical contradictions

According to Article 44, Paragraph 2 of the Consumer Rights and Interests Protection Law of the People's Republic of China, providers of online trading platforms who bear joint liability need to determine that the behavior of the seller or service provider constitutes infringement, and the infringement behavior of the seller or service provider has been established. The determination of whether an infringement is established or not belongs to the court. Before the court makes an effective judgment, the online trading platform must be unable to know or should have known the existence of the infringement, and require the online trading platform provider to take necessary measures based on the uncertain infringement. The rule setting itself has logical contradictions.

2.2.4. The provision of "necessary measures" is too vague

The adoption of necessary measures as stipulated in Article 44 (2) of the Consumer Rights Protection Law is one of the important criteria for determining whether online trading platforms should bear joint and several liability. However, this rule only stipulates obligations and does not provide detailed provisions on how to take necessary measures, what necessary measures to take, and when to take them. The lack of clear legal provisions makes it difficult for consumers to provide evidence, and judges have different standards for determination. Secondly, there is no relevant regulation on who is responsible for compensation and how to assume responsibility when necessary measures are taken by online trading platforms to cause damage to the legitimate rights and interests of sellers or service providers.

3. Suggestions for countermeasures

3.1. Promote the implementation of a public data rights confirmation and authorization mechanism

The current research on providers of online trading platforms is mainly limited to considering them

from the perspective of private law, and studying them from the perspective of transaction matchmakers, ignoring the important fact that they are objectively regulated and serve as regulatory channels. The latter, in fact, reshapes the obligations and legal responsibilities of platform providers towards consumers, and profoundly affects the structure and nature of their liability for consumer damage compensation.

At present, laws such as the Consumer Rights Protection Law of the People's Republic of China stipulate the regulatory obligations of providers of online trading platforms. From the perspective of public law, consider it as a regulator with certain administrative power. The E-commerce Law of the People's Republic of China requires online transaction platform providers to become regulatory channels for administrative supervision.[3] Network trading platform providers are not only creators but also regulators of trading platforms. In this context, based on the relevant provisions of the Opinions of the Central Committee of the Communist Party of China and the State Council on Building a Data Infrastructure System to Better Play the Role of Data Elements, it is possible to promote the implementation of a public data rights confirmation authorization mechanism, which conditionally grants public data generated during the performance of administrative organs or the provision of public services to providers of online trading platforms. This is not only conducive to stimulating market potential, but also facilitates market autonomy, and improves the authenticity and effectiveness of information disclosed by providers of online trading platforms in the event of consumer infringement.

3.2. Clarify the timeline for information disclosure

The information disclosure time of providers of online trading platforms should be at the time when consumers notify the platform. On the one hand, online trading platforms have the obligation to pre-verify the identity of merchants who have settled in, and they have access to valid identity information of merchants, making it easy to provide them; On the other hand, fulfilling information disclosure obligations as early as possible can provide favorable conditions for consumers to resolve disputes through self-remedies, thereby saving a lot of judicial resources. Secondly, to reduce the burden of proof on providers of online trading platforms, it is recommended to clarify the specific ways in which they fulfill their obligation to disclose the identity information of sellers or service providers. Online shopping is different from conventional modes, with virtual, non face to face, and non simultaneous delivery and payment. It is recommended that the notification method for disclosing information at this time should be by mail, email, or internal platform contact. The notification can include information other than the real name, address, and valid method to facilitate consumer rights protection.

In addition, there is a certain time limit requirement for the handling and resolution of any disputes after they occur. Therefore, Article 44 (1) of the Consumer Rights Protection Law of the People's Republic of China should set a limit on the time for providers of online trading platforms to fulfill their obligations, in order to facilitate the rapid resolution of transaction disputes.

3.3. Clarify the logical contradictions within the rules themselves

To address the logical contradictions inherent in this legal rule, it is recommended that the court provide guidance standards for determining infringement behavior, and transform the determination of infringement behavior by online trading platform providers into a preliminary examination of infringement behavior based on the guidance standards set by the court. This measure can also be linked with government data authorization measures, combined with authoritative government regulatory data, to clarify whether the product data of network platform operators is compliant, making it easier for network trading platform providers to determine various violations of consumer rights. In order to maintain the certainty of the law, legal norms must be typified, as it is impossible to deal with various infringement situations that have already occurred or are pending on a case by case basis.

For the guidance standards for determining infringement behavior, the author suggests referring to the "Red Flag Standard", dividing infringement behavior into significant infringement behavior and general infringement behavior based on whether the infringement behavior of the seller or service provider is very obvious, shining brightly like a red flag, and setting up a "list of infringement behaviors" in a listing manner to provide clear and specific guidance standards for the review of infringement behavior by online trading platform providers.[4]

3.4. Clarify the understanding of "necessary measures"

There are various types of infringement behaviors carried out by sellers or service providers on online trading platforms. Similar approaches to identifying infringement behaviors can be adopted, and combined with the degree of infringement on the legitimate rights and interests of consumers by specific behaviors, they can be divided into general infringement behaviors and significant infringement behaviors. Take necessary measures in a progressive manner to address significant infringement.[5] After accepting consumer complaints or reports, platform providers should clearly inform the seller or service provider to modify or delete the illegal behavior within the prescribed period. At this time, "notification" can confirm that the platform has taken necessary measures. However, after being informed by the platform provider, if the seller or service provider fails to modify or delete the relevant obvious infringement behavior within the prescribed time, the platform provider must further take stricter necessary measures.

Different necessary measures should be taken in stages for general infringement. In the first stage, after the platform provider accepts consumer complaints or reports, before the court makes a valid judgment, it is recommended that the platform provider adopt special labeling, filing and registration methods for the disputed goods or services. In the second stage, if the court makes a valid judgment confirming the infringement, the platform should take measures such as delisting and disconnecting the product within the prescribed period. In addition, it is necessary to clarify the consequences of taking necessary measures for errors, first of all, the liability for compensation for damage caused to the reputation of the seller or service provider; It is recommended to take measures such as eliminating the impact and issuing statements to remedy the reputation of the merchant. The second is the liability for compensation for damages caused by the expected benefits of the seller or service provider. Specific compensation suggestions are set based on the average sales of the goods or services involved within the corresponding period before the platform takes necessary measures.

4. Conclusion

With the rapid progress of Internet information technology, the online transaction service platform, as a third party, has built a key bridge for the development of today's "Internet economy". While bringing convenience to consumers, it is also inevitable to encounter many legal issues. Network trading platform providers are key infrastructure providers in the network economy, playing a core role in information sharing and dissemination, rooted in the inherent requirements of the development of the network economy, There are some loopholes in Article 44 of the Consumer Rights Protection Law of the People's Republic of China. In response to the issues of whether the information provided by online trading platforms is sufficient, the information disclosure deadline is unclear, the logic of the rules is not smooth, and the regulations are too vague, measures can be taken to promote the implementation of public data rights confirmation authorization mechanisms, clarify the time nodes for information disclosure, clarify the logical contradictions of the rules themselves, and clarify the understanding of "necessary measures" (different measures should be taken for different types of infringement).

References

- [1] Hu Fangqiong. *Research on Civil Liability for Online Consumer Fraud [J]. Application of Law*, 2023, (08): 93. (In Chinese)
- [2] Su Haopeng. *On the Application of Consumer Civil Public Interest Litigation to E-commerce Platforms [J]. Legal Application*, 2022, (03): 30. (In Chinese)
- [3] Lan Shourong. *The Security Obligations of E-commerce Platforms from the Perspective of Consumer Law [J]. Political and Legal Studies*, 2023, (02): 39. (In Chinese)
- [4] Yang Lixin, Li Yiwen. *The Duty of Care and Tort Liability of Operators of Online Ride hailing Aggregation Platforms [J]. Legal Application*, 2022, (06): 11. (In Chinese)
- [5] Zhang Junying, Han Jianing. *Construction and Optimization Path of Consumer Rights Protection Mechanism in Online Transactions [J]. Consumer Economy*, 2021, 37 (04): 50. (In Chinese)