

China Insight



New Judicial Interpretation Strengthens Protection of Online Consumers

Dear Sir or Madam,

New provisions on consumer online business come into force on 15 March 2022, the World Consumer Rights Day. Please find below the key points.

Kind regards,
CMS, China

The *Provisions on Several Issues Concerning the Application of Law in Hearing Cases Involving Online Consumer Disputes (I)* (the "**Provisions**"), promulgated by the Supreme People's Court, come into force on 15 March 2022, the World Consumer Rights Day. Focusing on the new legal issues emerging in the e-commerce industry, the Provisions have regulated the rights and obligations of online consumption contracts, civil liabilities in livestreaming marketing, civil liabilities in takeaway catering, and other aspects. The key points included in the Provisions are as follows:

1. Invalidity of certain standard clauses

The Provisions list four specific instances of invalidity of standard clauses in Article 1 to strike a balance between the interests of e-commerce operators and consumers. Two of these instances are notable. The first is "*the quality of commodities shall be deemed to conform to the contract upon receipt by the recipient*", based on the fact that consumers cannot timely check the quality of commodities when they sign the receipts. Such clauses being invalid means that after unpacking and inspection consumers can still return the goods according to Article 24 of the *Consumer Protection Law* under the circumstances that the goods do not meet the quality requirements. The second is "*the e-commerce operator has the right of unilateral interpretation or final interpretation*", aiming to avoid the e-commerce operators' usage of their advantageous position to impair the rights and interests of consumers.

2. Return policy

According to Article 3 of the Provisions, if consumers unpack and inspect the commodities due to the necessity of checking and do not affect their integrity, e-commerce operators are not allowed to refuse the application of unconditional return policy on the excuse of the unpackaging of the commodities. Such regulation can supplement the mandatory compliance of the e-commerce operators with the 7-day unconditional return policy stipulated in Article 25 of the *Consumer Protection Law*.

3. Civil liability of platforms in self-operated business

According to Article 37 of the *E-commerce Law*, e-commerce platform operators shall distinguish their proprietary business from the business conducted by in-platform operators in a conspicuous manner. The Provisions further clarify the responsibilities of e-commerce platform operators based on the *E-commerce Law*: whether or not they

have distinguished their proprietary business from other businesses, e-commerce platform operators who are actually conducting proprietary business should take the responsibilities as product sellers or service providers under Article 4. The significant problem is that labels made by e-commerce platform operators sometimes make consumers misbelieve that some businesses belong to e-commerce platform operators' proprietary business. Article 4 also states that in this case, the court shall support consumers' claim that e-commerce platforms shall be liable as product sellers or service providers.

4. Promotional prizes, gifts and promotional products

E-commerce operators often use gifts as a means of promotion but refuse to accept the liability for damage they cause to consumers. According to Article 8 of the Provisions, e-commerce operators cannot be exempted from that liability even though the prizes or gifts are offered free. The same applies to redemption products, which are obtained by consumers with points or at a small cost on the basis of the original consumption.

5. Online consumption fraud

The rapid development of online consumption also has raised irregular operations, infringing consumers' right to know and disrupting market order. Some e-commerce operators conduct false advertising using fictitious transactions, fictitious clicks, and fake user feedback. Article 9 of the Provisions states that any contract signed between an e-commerce operator and others for false advertising shall be invalid and parties to the contract shall bear their respective liabilities in accordance with Article 157 of the *Civil Code*.

In addition to the consequences mentioned in Article 9, false advertising can also affect the validity of contracts between consumers and e-commerce operators. Consumers may request the court to determine that contracts between them and e-commerce operators are invalid due to false advertising based on Article 143 of the *Civil Code*. Then consumers can continue to claim compensation from e-commerce operators according to Articles 55 of the *Consumer Protection Law*.

6. Livestreaming marketing

To guide the development of livestreaming marketing, the Provisions have introduced a division of responsibilities of different entities in livestreaming marketing:

- Responsibilities of In-platform Operators (Article 11): where an in-platform operator sells goods via livestreaming, and any its staff causes damages to consumers due to false advertising, it shall be liable for compensation.
- Responsibilities of Livestreaming Room Operators (Article 12): if the livestreaming room operator cannot prove that it has indicated in an obvious way that it is not the real seller and who the real seller is, it shall bear the responsibility as product sellers.
- Responsibilities of Livestreaming Marketing Platforms:
 - First payment responsibilities (Article 14): where a livestreaming marketing platform fails to provide the real name, address, and valid contact information of the livestreaming room operator, consumers can request compensation from the livestreaming marketing platform. After the livestreaming marketing platform undertakes the responsibility, it may ask the livestreaming room operator to recover its payment for compensation.
 - Joint and several liability (Article 16): where a livestreaming marketing platform fails to take necessary measures when it knows or should have known the unlawful practice harming rights and interests of consumers, it shall bear joint and several liability with the livestreaming room operator under Article 38 of the *E-commerce Law*.

7. Takeaway catering

Where takeaway catering service platforms fail to conduct real-name registration or to review licenses of online catering service providers, or fail to fulfill responsibilities of reporting or stopping providing online trading platform services, thereby causing damage to consumers, the online catering service platform and the online catering service provider shall bear joint and several liability under Article 18 of the Provisions. Article 18 requires platforms to strictly fulfill their regulatory responsibilities when the catering service providers enter the platform to better prevent the catering service providers from operating without licenses.

Conclusion

The new judicial interpretation has strengthened the protection of online consumers. Relevant operators should comprehensively fulfill the corresponding compliance obligations to reduce disputes.

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