

Study on the Tort Liability of Electronic Commerce Platform

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Today, the rapid development of electronic commerce (E-commerce) has added a new driving force for China's economic development. However, all kinds of legal problems have followed, such as uncontrolled production and sale of fake goods, frequent malicious complaints, endless unfair competition, and illegal infringement, which have harmed the legitimate interests of consumers and seriously damaged the market order and fair competition. In order to provide some theoretical and realistic reference for the development of China's E-commerce industry, this paper focuses on the relevant problems in the field of "infringement" of E-commerce platforms for in-depth thinking, and puts forward suggestions for solving the existing problems based on the development status of E-commerce platforms.

Keywords: E-commerce platform, operator of E-commerce platform, tort liability

Introduction

E-commerce is one of the most mature tracks in China's Internet (CNNIC, 2012). According to global online retail data, China has topped consecutively the global list for eight years. In 2020, the size of China's market was \$2.3 trillion, with an annual growth rate of 27.5%. It will maintain a high growth rate of 21 percent in 2021, and will be the first country where online consumption will surpass brick-and-mortar retail (CNNIC, 2012). It can be seen that China's E-commerce industry presents a new development pattern. However, a series of legal problems have followed behind the rapid development. These problems are directly or indirectly related to the infringement liability of E-commerce platforms. The definition of these liabilities is closely related to consumers and needs to study carefully.

Qualitative Analysis to E-commerce Platform Operator

As a new thing in the development of internet science and technology, the academic research on E-commerce platform has not reached a very clear state, with various views.

In order to define the legal status of E-commerce platform operators under the new situation, it is necessary to sort out and understand its deficiencies of current theories, even redefine them.

This paper is funded by the Annual Project of National Social Science Foundation of China "Research on the Fundamental Theory of Intellectual Property Law Under the System of Socialist Civil Law With Chinese Characteristics in the New Era (Project Approval No. 18BFX162)".

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Theory of Seller or Joint-Venturer

This view holds that the consumers as the buyers have reason to believe that E-commerce platform and seller within the platform are in cooperation, so they are common party, both sellers (Sun & Yuan, 2019).

However, it is actually a little harsh for the operators of the E-commerce platform to assume same responsibility like the seller within the platform, which is contrary to the legal principles.

Theory of Intermediary-Contract

As far as “Theory of an Intermediary Contract”, it realized the difference between a platform operator and a seller within the platform. It is believed that E-commerce platform operator, as intermediaries or brokers only, for seller within the platform to complete transaction activities, is not the same as the role of a seller. Therefore, it is inequitable to put an E-commerce platform operator status on a par with a seller within the platform.

Theory of Counter-for-Lessee (Renting Out a Counter to Lessee)

Counter rental refers to the behaviour that businessmen, service, or other people as lessors lease counter and collect rent. At present, however, most E-commerce platform operators do not charge fees for the rental of virtual platforms, which makes the “Theory of Counter-for-Lessee” may lose its basis. Because rental counters need to be profitable and should be involved in specific business, it is clear that E-commerce platforms did not do so.

Theory of Service-Contract

A service contract is also called a “contract for providing services”. But unpaid service can also form a service contract to some extent. From this point of view, it is also acceptable that a service contract is existence between an E-commerce platform operator and a seller who depend on the platform. But the reality is often more complicated (Chen, 2021).

Theory of Platform-Owner

According to this theory, E-commerce platform operators have the ownership of the platform established by them based on network. When exercising their rights, they should not interfere with the legitimate rights and interests of other people, such as the relevant rights and interests of consumers. But E-commerce platform operators also need to undertake certain social public responsibility. However, this breaks through the absoluteness nature of real right (*jus ad rem*), and passive inaction cannot meet the development of E-commerce platforms.

Relevant Case Studies

The representative views mentioned above have all some rationality and are structured on the basis of named contract (the contract there is a specific name in *Civil Code*) in traditional civil law. However, with the deepening of our research perspective, some deficiencies are increasingly exposed, and it is difficult to cope with new situation in practice.

Case 1: Dispute over infringement of publisher’s rights between China Construction Publishing Media Co., Ltd. and Shanghai Dream-Seeking Information Technology Co., Ltd.¹

The question reflected in this case is whether it is reasonable and legal for China Construction Publishing Media Co., Ltd. to request Shanghai Dream-Seeking Information Technology Co., Ltd. to delete the relevant

¹ Final judgment (2019) of Shanghai Intellectual Property Court No. 273.

links and stop selling low-priced books pirated, and whether there is any basis. There are clear provisions in Article 42 and Article 43 of the new *Electronic Commerce Law* about this situation.²

Case 2: Dispute over Internet tort liability between Zhu Jiang and Zhejiang Taobao Network Co., Ltd.³

The problem reflected in this case is whether it is reasonable and legal for Zhu Jiang who launched the replacement application due to the quality problem of the product. The court eventually supported Zhu's request and Taobao Ltd. Should refund.⁴

Case 3: Dispute over liability of motor vehicle traffic accident between Wang Long and Huang Xinjian, Shenzhen Yishi- LaLa-Partner Technology Co., Ltd.⁵

The problem reflected in this case is whether it is reasonable and legal for Wang who requested Huang and the company to compensate for all kinds of losses, and be jointly and severally liable. In this case, the company did not review the driver Huang's relevant qualifications, and existed certain faults and mistakes, so the court held it responsible for supplementary liquidation.

Tort Liability Commitment of the E-commerce Platform Operators in View of Relevant Theory

The responsibility is stipulated for E-commerce platform operators in *Electronic Commerce Law*, and will not be repeated here.⁶ "The liability" is not a single form, and should be applied according to the specific situation of judicial practice, such as Joint and Several Liability, Supplementary Liability, Partial Liability, or a combination of them (Chen & Yang, 2020).

Joint and Several Liability for Breach of Proforma Examination Obligation

Generally speaking, in order to effectively maintain the operation order within the platform, E-commerce platform operators will formulate relevant entry rules to judge whether the conditions of the seller as a transaction party are complete.

Platform operators can preliminarily judge whether the seller is eligible based on the information provided by them on the platform. Failure to fulfil the duty of formal examination constitutes direct infringement (Sun, 2019).

Supplementary Liability for Violation of the Obligation of Substantive Examination

Proforma review obligation, as the name implies, is the preliminary judgment of platform operators on relevant qualifications of seller within the platform, as long as the platform operator performs the reasonable duty of care. However, the substantive examination obligation requires the platform operator to carry out the exact qualification inspection work for the resident merchant. If an administrative agency issues a business license in the context of proforma review obligation, as the name implies, and is the preliminary judgment of platform operators on relevant qualifications of seller within the platform review, then it is unjustifiable to require E-commerce platforms accountable for more stringent substantive scrutiny (Xue, 2019). Under these circumstances, E-commerce platform operators constitute indirect infringement and should only bear the corresponding supplementary liability.

² Article 42 of the *Electronic Commerce Law*.

³ Judgement of the first instance of Fengtai District People's Court of Beijing No. 3100.

⁴ Article 38 of the *Electronic Commerce Law*.

⁵ Judgement of the first instance of Bao'an District People's Court of Shenzhen No. 3266.

⁶ Article 38 of the *Electronic Commerce Law*.

Proportionate Liability for Breach of Security Guarantee Obligations

The obligation of security in Chinese legislation has gone through the development process from case law (precedent) to statute law, and now it is reflected in many laws. The original *Tort Liability Law* and the *Consumer Rights Protection Law* (as amended in 2013), provide for this. On the basis of the above-mentioned legal provisions, Article 1198 of the *Civil Code*, promulgated in 2020, also provides for this. From the provisions of *Civil Code*, the obligation of security has a further development trend, and will extend to cyberspace.

It is reasonable for operator of E-commerce platform to assume the security guarantee obligation, which is consistent with the legal presupposition of that (Mi, & Liu, 2020). But it is more reasonable for E-commerce platform operators to bear their proportionate liability according to their own fault, because setting more strict responsibilities for E-commerce platform operators is not conducive to the development of E-commerce industry.

Suggestions

The effective undertaking of infringement liability for E-commerce platforms needs the cooperation of relevant parties, namely, E-commerce platform operators, operators within the platform, and consumers. Too strict or too loose responsibility is not conducive to the sound development of E-commerce industry.

First, E-commerce platform operators should adapt to the new development trend as soon as possible, and strengthen residing and dynamic supervision of the platform.

Second, E-commerce platform should improve self-awareness and law-abiding. There are all kinds of infringement behaviours, so they should strictly control the legality review of goods and services to reduce the risk of being involved in infringement disputes. Operators should abide by the mandatory provisions of relevant trading systems, establish a sense of healthy competition, put an end to unfair competition, consciously safeguard the legitimate rights and interests of consumers, and assume social responsibility for public.

Third, force the operator to bear the corresponding tort liability. The reason lies in platform operators as well as sellers residing the platform who do not take the initiative to protect the legitimate rights and interests of consumers.

Consumers should dare and be good at using the rights entrusted by law, improve their awareness of rights protection, and force operators to assume the corresponding tort liability.

Conclusions

This paper mainly focuses on the legal status and corresponding responsibilities of E-commerce platform operators. It is believed that, in the increasingly open E-commerce development environment, the role of E-commerce platform operators is also diversified, and can no longer use traditional thinking to solve related issues.

The “comprehensive theory” of legal status of E-commerce platform operators adheres to the principle of case-by-case, and the interpretation of their legal status is relatively flexible, which can adapt to the diversified role of E-commerce platform operators.

All parties should assume the obligation of safeguarding legitimate rights and legal dignity, jointly build a good E-commerce ecological environment, and promote the high-quality development of China’s economy.

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