

On The Application and Improvement of the Cooling-off Period Clause in the Health Products Direct Selling Mode in China

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Abstract—The direct selling model, after entering Chinese market, has gradually combined with health products industry and become its main choice. Despite the emergence of a series of problems, such as false advertising and pyramid schemes, the existence of the cooling-off period system has become a reasonable compensate for consumers' information disadvantage in the market and an important legal way to clarify between direct and pyramid selling. As the direct selling market of health products continuously develops, it is hard for the relatively obsolete cooling-off period system to adapt to the current demand for direct selling transactions. According to the actual conditions in China, the paper borrows some legislation experience from other countries, studies the cooling-off period system as well as its application in our country and puts forward improving suggestions in terms of timeliness restrictions, transaction value and meaning expression limits and unified supervision of returns, classification of application and so on.

Keywords—direct selling, health products, cooling-off period system, direct distributors, consumers

I. OVERVIEW OF COOLING-PERIOD CLAUSE IN THE DIRECT SELLING MODE

A. Concept and foundation of the cooling-off period system in the direct selling mode

The cooling-off period system of direct selling, also known as the system on right of rescission or hesitation period clause, refers to the system that in the direct selling mode, after signing the contract, one party has the right not to subject it within a legal time limit and without the consent of the other party, making the contract not valid since then. From the broad sense, it includes the system of unilateral termination between consumers and sellers, sellers and direct selling enterprises. The cooling-off period system of direct selling has been established on the basis of the special sales mode---direct selling. And the so-called direct selling is essentially a market conduct to pursue the maximum of interest through de-intermediation of the supply chain, and it is defined in *World Code of Conduct* that the mode directly takes place in houses or work places of consumers or others, as well as outside of retail stores to sell goods. It is usually by detailed description or demonstration to the product or service from direct sellers on scene. It is actually a distribution method with unfixed places and relatively passive consumers, and its characteristics causes the existence of information asymmetry

problems, prompting the establishment of cooling-off period clause, that is to entitle consumers to return or exchange goods unconditionally within a certain period to avoid loss caused by impulse spending or false exaggerated publicity.[1]

B. Comparison of cooling-off clauses between Chinese and foreign direct selling

Article 7 of Business rules from *World Code of Conduct* clearly requires that, no matter whether the law stipulates, direct selling enterprises should establish the hesitation period clause that customers can terminate the contract at any time within a certain period and take back all the loans. The existence of this system has also become one of the characteristics of the direct selling market. Article 25 of Direct Selling Regulations (hereinafter referred to as Regulations) issued by the State Council of China in 2005 clearly stipulates the changing or refunding system of direct selling enterprises, namely the cooling-off period clause, which is also widely established in countries that have enacted laws on direct selling. Compared with the United States, South Korea, Malaysia and other major countries on the legislation concerning direct selling, China's cooling-off period system has the following characteristics:

First, on the subject of application, it shall distinguish between consumers and direct sellers. As for it, most countries set up legislative provisions between consumers and sellers, such as direct-selling regulations between consumers and distributors in Malaysia, direct-selling regulations between buyers and direct sellers in South Korea, etc. And article 25 of the regulations in China, based on different subjects of application, has respectively established two cooling-off period systems in terms of the relation between consumers and direct selling enterprises as well as the relation between direct sellers and direct selling enterprises.

Second, in terms of applicable conditions, product integrity shall be the main limiting condition. [2]Corresponding constraints of cooling-off period causes in most countries have been established for their great application, which, however, have mainly concentrated in price limit and meaning expression limits. For example, regulations in South Korea points out that in article 7, prices lower than that set by executive order and purchasing behavior conducted in marketing unit shall not apply to relevant provisions on changing or refunding, and there are similar restrictive

regulations in Cooling-off Period Regulations of the United States, *Civil Code* in Germany and so on. However, in China, product integrity shall be the most important factor, that is, unopened products are required to be applied, and there are no provisions on other similar prices or meaning expression.

Third, its available period is relatively long. Statistics show that in most European countries, available period of the cooling-off period clause is 7 or 8 days, while in Asian countries, it is 10 days in Malaysia, and South Korea, according to difference of single and multilevel marketing, set 10 and 20 days respectively[3]. According to the provisions of article 25, our country set 30 days, longer than most of the countries with the cooling-off period clause of direct selling.

II. PRESENT SITUATION AND DILEMMA OF THE DIRECT SALE MARKET OF HEALTH PRODUCTS AND THE COOLING-OFF PERIOD CAUSE IN CHINA

A. Present situation of direct sale market of health products in China

Direct selling mode landed in China market the first time in 1990 when the cosmetics co. Ltd --- Avon came to our country, and in article 5 on trading rights of WTO Agreement in China has also committed the regulations that during 3 years in WTO, China will empower those including direct contact with the end users national treatment. Since then, our country has transferred the attitude towards the direct sales model from the

original negative one to positive recognition and norms, and this model has also constantly integrated with health products market and become the main forces to push the industry's development. As of December 31, 2018, a total of 91 legitimate direct selling enterprises have been registered in China, according to data from the direct selling industry management platform of the ministry of commerce in China. By integrating their business scope through the national enterprise credit information publicity system, it can be seen that currently 73 direct selling enterprises are engaged in health care products, accounting for 80%. Direct sales model with its non-store sales, disinter-mediation and easy to operate make direct selling enterprises bring huge benefits with low cost of commodity circulation. Therefore it has been highly adopted by profiteering health products industry. Most of legitimate direct selling enterprises in China have involved in the production and operation of health care products, and the leading enterprise in health products market is also Infinity Film from the direct selling enterprises.

While the direct selling mode has become the mainstream choice in China's health products market, a series of problems in its development process have made it controversial. The paper summarizes the current problems in China's direct selling market of health products by sorting out and analyzing a series of events such as Quan Jian and interview information of some direct sellers.

TABLE I. ARRANGEMENT OF INTERVIEW INFORMATION OF DISTRIBUTORS

Name	Direct Selling Brands	Direct Selling Ranks	Original Jobs	Entry Reasons	Entry Ways	Family Reactions
Xie	Contrex	China total distribution	WeChat businessman	Loss money	through tutors	for
Wu	Alphay	agents	laying hens industry	sub-health	through friends	against
Li	Pro-Health	agents	doctor	With sick child	volunteer	for
Guo	Tongrentang	agents	peasant laborer technology training	the need to start business	through friends	against
Zhang	BabyCare	agents	—unknown—	sub-health	through friends	against
Sun	Pro-Health	customer manager	individual household	sub-health	through friends	for
Wu	Perfect	customer manager	electric welder	sub-health	through friends	against
Liang	Pro-Health	agents	—unknown—	post-natal care	through friends	against
Li	BabyCare	executive agents	real estate sales	sub-health	through friends	for
Xu	BabyCare	chief agents	medical workers	sub-health	through friends	for

First, confuse the concept of health care. Health products refer to functional products that have certain regulating effects on human body functions. Generally, they can be divided into health care products and health food. In essence, they are complementary health products that are not designed to treat diseases. However, in the direct marketing market of health products, some enterprises often take the way of flaunting "magic medicine" to confuse the difference between health food and clinical medicine, and induce consumers to replace medicine with food. For example, the so-called anti-cancer drugs in the Quan Jian event and the living energy drinks in the Nu Skin event lead to the delay of patient's illness and then their invalid death. This actually infringes on the personal and property security rights of consumers.

Second, exaggerative advertise of efficacy. Some direct selling enterprises, when promoting their health care products,

have often made exaggerated claims that their products can treat or even cure some modern medical and technological incompetents of refractory diseases, or popularized the use of some theories such as acid-base balance, in fact, none of which have been recognized by modern medicine, so as to achieve the result that attract consumers to buy. We found that most of the distributors had never been in contact with or had a deep understanding of the relevant knowledge of nutrition and health, but after they were employed, they all had extremely "professional" research on the ingredients, efficacy and applicable groups of the health products they were promoting, and they called themselves the "mentors" of health. This actually violates the right of consumers to know the real situation.

Third, involve in illegal pyramid schemes. In the development of direct sales market of health products, some companies adopted the way of multilevel marketing, which has not been recognized by our law, namely, direct sellers form a

multi-level direct selling team to advocate for their health care products. We also found in the interview that most distributors expressed that they have corresponding teams or studios, which actually belong to the multi-level marketing, and in the process, this behavior is easy to alter from selling health care products to expanding the pool of suckers in the form of illegal pyramid schemes. This actually makes the direct selling mode into the vortex of edge ball.

B. The application of the cooling-off period clause in the direct marketing of health products

According to the industrial organizational theory, market goods under imperfect competition can be divided into search goods, experience goods and credence goods. The first refers to the products that consumers can know the quality before using, such as fruits and vegetables. The second refers to the products that consumers can know the quality after use, such as computers and credence products, or post-experience products, are products whose quality is difficult for consumers to determine even after use and shall depend on the degree of personal trust in them, such as education. [4]The division reflects the differences of information equivalence degree between buyers and sellers in market economy. Health care products belongs to the typical types of credence goods, which aims not to treat diseases, and the characteristics of its direct sales model--unfixed places, relatively passive consumers make the difference worse and become the gap between the two sides.

The original intention of the cooling-off clause is to solve the problem of information asymmetry. According to sociology of law, law does not create interests, but finds and protects certain interests, and the generation of social interests is the result of the game of interest groups. [5]In the process of direct trade, due to the subjective motivation of seeking profit and avoiding harm, consumers will pursue cheaper and nicer products, the distributors is bound to do their best to realize the maximization of interests, and then conflicts and problems of interest in the transaction process shall be created between the two sides. At the same time, due to passive localization of consumers, their information disadvantage has provided the possibility of taking advantage for some direct selling enterprises. In this process, consumers' legitimate interests, such as the right to know the real situation are violated. Therefore, the cooling-off period system, which aims to balance the social interests by giving the passive purchasers time to know the market situation and relatively independent space for their self-thinking, has emerged at the right moment. To some extent, this system which is clearly applicable to the direct selling model has become one of the important characteristics to distinguish the direct selling enterprises.

C. The dilemma of cooling-off period clause in the direct market of health products

Looking at the trend of direct selling legislation in the world, it is undoubtedly the mainstream to establish and improve the cooling-off period clause. However, in China, the direct selling cooling-off period system, which has been established since 2005, has fallen into dilemmas in practical operation:

The first lies in its available time. Due to the need of maintaining social stability, law making and enforcement in China will be to fully consider and protect the interests of vulnerable groups. Up to 30 days of cooling-off period will be undoubtedly conducive to the protection of the consumers' rights and interests, but also objectively also cause the damage to the rights and interests of the sellers and block the market trading behavior. The cooling-off period system itself is a kind of unilateral termination right given, therefore, in actual operation, it is often deliberately ignored. Combined a long-term decline of the direct selling market of health care products with low personal quality of the distributors and consumers in general, people usually misunderstand that they can even return or exchange goods after a month.

The second is the limitation of product integrity. There is a cooling-off period clause of direct selling only applying to unopened products. Product integrity is the important premise of return requirement. But in the direct sales market of health care products, due to its limitation as a credence product, if consumers want to know the quality of products they have bought, they will inevitably go through personal experience, rely on the degree of trust established during this experience, and finally evaluate the quality of the health care products. The requirement of product integrity actually blocks the application of the cooling-off period system in most direct selling transactions. To some extent, under this condition, the cooling-off period system is not universally applicable.

Finally, there is a problem in time to count. In the regulations, it works since the date of direct selling products purchasing for consumers or direct sellers, and since the claim of a request for replacement or return for direct selling enterprises, which certainly applies to the traditional and local direct transaction, that is, consumers or sellers can directly deal with relevant formalities from the direct selling enterprises their branch offices as well as service outlets. However, with the popularity of Internet technology and the development of network marketing, most health products direct selling companies have also began to use third party trading platforms, network chat tools and self-built websites for sale, resulting in a problem in remote transaction, that is time to count. For example, does the date of purchase of direct selling products refer to the date of payment or the date of receipt? Is the delivery time taken by mail in the return and exchange service included in the cooling-off period? The vague rules on time to count are not suitable for the diversification of modern trading methods.

III. IMPROVEMENT OF THE COOLING-OFF PERIOD CLAUSE IN THE DIRECT MARKETING OF HEALTH PRODUCTS IN CHINA

It is beneficial that the cooling-off period system could compensate for consumer information disadvantages, contain false advertising problems in the direct sales market of health care products and, as an important characteristic of the direct sales model, is conducive to practice for clarify the direct and pyramid selling. At the same time, however, the cooling-off period clause in China does not meet the current demand for direct selling transactions due to the relatively outdated provisions of the regulations it relies on. Therefore, we compare the relevant provisions of foreign direct selling

legislation and put forward the following improvement and suggestions according to national situation in China.

First, the limitation of time should be improved. On the one hand, make appropriate reduction of the cooling-off period. Longer cooling-off period is based on the regulation of the current direct sales market, especially for illegal pyramid selling in the health products market and false advertising. In fact this system belongs to the category of consumer rights of return, and its implement can't do without effective support and coordination from distributors, but the longer cooling-off period also objectively damages rights of trading distributors and then leads to difficulties in actual operation; On the other hand, it is necessary to make clear time to count of the direct selling cooling-off period: the universalization of long-distance transaction and the emergence of separate mode of goods and money cause a great difficulty for the setting of time to count. Thus, the improvement of this content should pay more attention to the influence of the remote delivery period in the mail mode on the cooling-off period system.

Second, transaction price and meaning expression limits should be set. The cooling-off period system aims to protect legitimate rights and interests of consumers, especially their economic interests and real information of transactions. However, the behavior of small transactions and consumers' actively expressing their intention of transaction should be appropriately limited in the application of the cooling-off period. For one thing, for consumers, there is no great loss of economic interests in small transactions, while for distributors, daily and trivial transactions will inevitably cause a lot of time and labor costs in the return and exchange procedures when the cooling-off period is applicable. For another, from the more general sense, if consumers standing in the active status in transactions, they shall choose businessmen, after a certain degree of understanding of products and market information, which does not exist impulse purchase due to exaggerated and false propaganda from direct sellers.

Third, the government should implement a unified supervision and control system of returns. The unified management system of return receipt originates from article 24 of direct selling law of Malaysia that both sides should attach the notification of canceling the contract before the cooling-off period and the content, specification and other items of the notification are uniformly stipulated by the state[6]. In the current regulations of our country, returns and exchanges of consumers shall hold the invoice or the sales voucher issued by direct selling enterprises. Due to the current ill-defined problems in direct and pyramid selling models, some non-direct selling enterprises will also be involved in the name of direct selling. Therefore, in the cooling-off period system, the return clause, which is guaranteed by the public power of the state, is a powerful evidence to define the nature of enterprises for consumers, and can also accurately distinguish the difference between direct selling and illegal pyramid selling in the process of law enforcement for government supervision.

Finally, it lies in the classification of application system. Due to ageing problem in our country and more attention of the health problems in the elderly market, in the direct selling market, the elderly population tends to buy some inappropriate

and even invalid healthcare products, and at the same time, due to the sellers' propaganda and even affection marketing, these consumers are unaware of the damage of their own rights and interests but become matchless trustful for those products. Therefore, the classification of application system should be issued:

In terms of product types, general health care products only for supplementing certain vitamins can be appropriately relaxed for the cooling-off period, while for some special health care products that are advertised for certain hypoglycemic, lipid and other related sensitive diseases or senile diseases should be strictly applied. For the audience group, the cooling-off period system can be classified according to age and cognitive ability of consumers, so as to promote the system to protect vulnerable consumer groups and balance economic interests of distributors.

IV. CONCLUSION

With the popularization of the direct selling mode in the world, the cooling-off period system has been widely established in the countries that carry out direct selling legislation. Meanwhile, it has been formally recognized in *Administration of Direct Selling Regulations* of China. [7] This system, as the result of game equilibrium reached in repeated games between the two sides of direct selling transactions is established to make up the inferior position of consumer information to achieve the balance of social interests, and has objectively become one of the remarkable characteristics of the direct selling mode. However, with a series of problems in the development of the direct selling market of health care products and the difficulty in adapting the cooling-off period clause to the current direct selling transactions, it is an important means to improve and innovate the cooling-off period clause for direct selling and promote the healthy and orderly development of this market. We believe that in the improvement of China's cooling-off period clause, we can learn from the existing legal experience of the main countries with direct selling legislation, carry out localization innovation based on China's actual situation, and truly realize the protection of consumer rights and interests and the effective implementation of the cooling-off period system.

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