



The Feasibility and Implementation Mode of the Power of Consumer Evaluation Right

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Abstract. In the “Internet + era”, consumers have gradually formed the consumer rights named “consumer evaluation right” through the needs of their own reasonable and legal information acquisition and the consumption evaluation channels provided by the e-commerce platform. The right to consumer evaluation is based on consumers’ freedom of expression as citizens, reflects the independent and autonomous will of consumers in the “Internet + era”, makes up for the unequal disadvantage of consumers in online transactions, reflects the spirit of protecting consumers’ right to information and independent choice, improves the market environment, and improves the quality of products and services. It also reflects the spirit of protecting consumers’ rights to information and choice, improving the market environment, and improving the quality of products and services. Consumer evaluation right should be regarded as an independent legitimate rights and interests of consumers, and should not be tied together with the concepts such as market supervision and consumption restrictions. However, it should be noted that the scale of consumer groups has expanded rapidly with the booming development of the e-commerce industry, and has formed a powerful force around the market trading behavior and ideas. How to prevent the abuse of consumer rights, how to protect the legitimate rights and interests of operators when consumers abuse their rights, more and more people pay attention to. For the consumer evaluation right, the legislative gap should be filled from the legislative perspective to form a unique legislative model and framework for online consumption. While paying attention to the protection of consumer rights, it is necessary to balance the obligations of e-commerce platforms and operators, pay attention to the protection of operators’ rights, and establish a system of market transaction information sharing.

Keywords: Consumer · evaluation right · poor evaluation right · e-commerce · consumer rights protection

1 Introduction

Thanks to the rapid development of Internet information technology brought about by the third Industrial Revolution, the 21st century is called the “Internet + era”. In this era of barrier-free communication and rapid circulation of materials around the world, the combination of “electronic computers + international Internet + business behavior” has formed a boom called “e-commerce”, which has triggered a great change in the way

of consumption and trading in the new era. With the help of the booming development of e-commerce, there are many well-known e-commerce platforms such as Taobao, Tmall, Jingdong and Maoyan in China alone, forming the “platform economy” effect. The e-commerce platform unprecedentedly focuses the division of labor tasks originally belonging to multiple functional departments, dramatically shortens the industrial chain of traditional business transaction behavior, greatly improves the operation and business benefits, and effectively reduces costs. An important part of the “Internet + era” is the acquisition and collection of information. However, due to the professional nature and information asymmetry, there is often a large gap between the information collection and processing capacity of consumers offline trading face to face behavior to the online. Network transactions cannot be seen as real, virtualized and imagined like traditional transactions, and consumers can only draw an abstract image of the goods and objects of transactions in their minds with limited information, making consumers’ right to know, autonomy and protection of equal trading rights encounter unprecedented difficulties. By the rapid evolution of information technology, huge amount of information is flooded in the market, and there are few enterprises who are trying to offer abundant information to consumers by increasing exposure opportunity and diversification of contact method [2]. Consumer online consumption evaluation (hereinafter referred to as “consumer evaluation”) is born in such a background, the most intuitive embodiment is that some e-commerce platforms launched the “buyer show” and other activities, in an intuitive, open, easy to understand the form, which won the majority of consumers praise. Consumer evaluation on the basis of the public, the real experience of users, to a certain extent to make up for the information disadvantage of consumers in the transaction, the implementation of consumer checks and balances on business information, is conducive to protecting the legitimate rights and interests of consumers from infringement, and the public mechanism of consumer evaluation, in fact, plays a role in monitoring the trading behavior of businesses and the quality of goods, is conducive to optimizing the market trading environment, promote the role of evolution, and maintain a fair and just market order.

E-commerce behavior unprecedentedly concentrates the division of labor tasks that originally belong to multiple functional departments. While improving efficiency, the disadvantages of consumer evaluation mechanism also gradually emerge, and gradually become an important problem that cannot be ignored in e-commerce behavior. In the evaluation of goods in the e-commerce platform column can often be seen, merchants praise and consumers malicious bad reviews of the phenomenon is common, and even gave birth to the “water release” professional and “brush single” bad behavior, in recent years, the media has reported the “paid praise or paid bad reviews” trading behavior, greatly affecting the integrity of network transactions and market ethics. What is the original intention of establishing the consumer evaluation mechanism? Does this mechanism do more harm than good or do more good than harm? These questions call for deep thought.

The appearance and spread of the Internet have a big influence on the purchasing behavior of Consumers [1]. Most developed countries have their own unique and sound legislative and judicial systems for the protection of the right of consumer evaluation. Capitalist countries and regions represented by the United States, Japan and the European

Union (European Community) have started the development and research on online transactions as early as the emergence of the Internet, and related research has formed an independent and complete theoretical system. However, China did not connect to the International Internet until 1994, and joined the World Trade Organization in 2004. E-commerce is a familiar and unfamiliar emerging industry for China. Related research started later than the capitalist world but developed rapidly.

Why is the materialization of consumer evaluation right restricted? In the author's opinion, both parties, namely consumers and providers, have unshirkable responsibilities. How to change this phenomenon, we need to start from both consumers and providers, and then promote the role of national legislation, to achieve the goal of materialization of consumer evaluation right.

In this paper, the author will use the research methods of literature analysis and case combing to learn about consumer evaluation and related rights by consulting domestic and international literature, focusing on the rationality, legality and core content of the new rights, and elaborating the author's views on consumer evaluation rights in conjunction with the existing research results, so as to make our own contribution to the protection of legitimate rights such as consumer evaluation rights and the optimization of the market transaction environment.

2 Existing Legal Provisions and Theoretical Support

Whether it is traditional offline business or emerging e-commerce, operators and consumers are two indisputable bases. The quality and service attitude of the commodities provided by the business operators, and the consumers' requirements for the commodities and services provided by the business operators, constitute the main body of the buying and selling relationship in e-commerce. China mainly relies on the Contract Code of the Civil Code of the People's Republic of China (hereinafter referred to as the Contract Code) and the E-commerce Law of the People's Republic of China (hereinafter referred to as the E-commerce Law) to regulate e-commerce and related rights and obligations. Through reading and understanding the provisions of the law, the Contract Code standardizes the relevant rights and obligations between operators and e-commerce platforms on consumer evaluation and the protection of operators' rights. Article 39 of the E-commerce Law stipulates that: "e-commerce platform operators should establish and improve the credit evaluation system, publicize the credit evaluation rules, and provide consumers with ways to evaluate the goods sold or services provided on the platform. E-commerce platform operators shall not delete consumers' evaluation of the goods sold or services provided within their platforms." The law only stipulates the protection obligation of e-commerce platforms for consumer evaluation, but it does not mention whether the consumer evaluation behavior can be called a legal right, nor does it explain the rights and obligations of the actual sellers of e-commerce platforms. There is still a large legislative gap.

Consumers tend to be weaker and less capable of litigation than large, well-funded e-commerce platform operators and operators with complete legal teams, while e-commerce, as a new industry in China, has a consumer base that lacks legal and business knowledge, relevant expertise and awareness of rights. In view of the dominant

position of e-commerce platforms in transaction behavior, it is necessary to implement appropriate preferential protection of consumer rights. This is not only the obligation of e-commerce platforms and operators, but also the responsibility of the legislature and the government.

We need to realize that whether a right can be reasonably used in people's hands depends on whether the user has the necessary knowledge and literacy to correctly use the right. E-commerce involves all aspects of social life. We have solved the technical and economic problems needed for e-commerce operation, so the main problem now is whether consumers have the knowledge and quality necessary to correctly use the right to evaluate. This problem needs to be solved through organized and planned education and training, and take this opportunity to promote the decision of government decision-makers and e-commerce platform management. At the same time, it can also stimulate the understanding and understanding of e-commerce among the vast consumer groups, provide the talents and management experience needed for business development, and promote the healthy and orderly development of e-commerce.

In the process of online trading behavior, influenced by factors such as network virtualization and online communication time difference, consumers cannot confirm the information of goods and merchants face-to-face like offline transactions, and cannot guarantee the authenticity and validity of the information, making consumers' right to know and choice vulnerable to infringement. The emergence of consumer evaluation behavior can make up for the information difference between consumers and the platform and merchants to a certain extent. Therefore, it is necessary to treat consumer evaluation alone as an independent legal right of consumers.

If consumer evaluation is regarded as a legal right, the impact of this right on consumers and business operators should be comprehensively and carefully considered. In fact, it can be learned from daily life that consumer evaluation can not only bring direct material benefits to consumers, but also generate indirect information benefits. First, consumer review goods and services. If the situation is true, one can get material compensation from the platform and the merchants the comments made by other consumers can also affect how the consumers themselves view the goods and services and make their purchase decisions. Second, as a right, consumer evaluation is also at risk of infringement. If consumers are maliciously retaliated against by business operators for publishing bad reviews, gratuitous harassment and infringement caused due to bad reviews, consumers may have their concerns about experiencing similar situations if they post a bad review, thus publishing a contrary evaluation then the authenticity and validity of the evaluation are not guaranteed. It affects the subjective judgment of other consumers. Third, as a right, the main body of consumer evaluation is naturally the consumers who have bought the corresponding products and received the corresponding services, other subjects should not be included in this column. Fourth, the Constitution of the People's Republic of China stipulates that Chinese citizens shall enjoy freedom of speech as Chinese citizens, consumers should enjoy the right of evaluation from the perspective of the fundamental national law. Fifth, Article 39 of the E-commerce Law stipulates that e-commerce platform operators shall provide consumers with the evaluation of goods and services, consumers have autonomy over how to evaluate them.

When not infringing upon the legitimate rights and interests of others and the collective Consumers' right to evaluation should not be limited.

3 Case Analysis

On the Chinese Judicial Documents website, the author took "malicious evaluation" as the search keyword, and retrieved "evaluation right" as 89 articles in the search keywords. A representative case is selected below as an example to study:

Case: Xu bought a down jacket from Zhang on the Taobao purchase platform. Zhang claimed on the product promotion page that the down jacket content reached 95%, and there are formal purchase channels and certification methods. After self-inquiring the relevant industry standards and information platform, Xu believed that Zhang was suspected of false publicity and fraudulent customers, and commented in the evaluation column under the home page of the goods. Zhang immediately hit back at Xu, with insulting remarks that Xu fraud. Taobao, an e-commerce platform, blocked Xu's peaceful comments, but showed Zhang's fighting back at insulting comments. Xu believes that Zhang and Taobao company infringed on their right to comment, and filed a lawsuit. The first-instance court upheld Xu's request to refund the shopping money, but rejected Xu's other claims. Xu Mou appealed against the verdict. After the trial, the court of second instance believed that the facts of the original judgment were clear and the judgment procedure was not improper, and rejected Xu's lawsuit to maintain the original judgment.

By studying the judgments and combing them, the author found that the theoretical sources of the court judgments are mainly the consumer supervision provisions in the Consumer Rights and Interests Protection Law, the regulations on citizens' freedom of expression in the Constitution, the rules of relevant online platforms, and the subjects of litigation in the Civil Procedure Law. We can see that the court did not completely rely on the above laws, but objectively analyzed the facts, and took the protection of civil liberties and the legitimate rights and interests of consumers and judicial interpretation as the basis of regulation. At the same time, it fully considered the principle of humanitarianism and taking care of the vulnerable groups, reflecting the legal spirit of safeguarding fairness and justice.

4 The Core Essence of Consumer Evaluation Right

Article 39 of the Electronic Commerce Law provides that e-commerce platforms shall provide corresponding consumer evaluation channels, and e-commerce platforms shall set up corresponding columns as required, with the original intention of establishing a mechanism for evaluating the business reputation of operators with the help of consumers' own consumption experience, safeguarding consumers' right to information and the right to choose, thereby regulating market order and promoting healthy competition in the market, and holding up the legal level for operators and consumers "umbrella". This system is an important institutional change in the era of online shopping, which is reasonable. Under this system, consumers only need to release goods and service evaluations based on their real consumption experience, and the released evaluations are actually administered by the e-commerce platform itself. The management of negative

reviews still seems to be a thorny issue. The use of e-commerce platform management negligence and loopholes in relevant laws and regulations, in the name of “consumer evaluation rights”, consumers maliciously bad reviews in an attempt to seek benefits, and the resulting harassment and retaliation by operators is increasing, forming the phenomenon of “consumers afraid of unnecessary trouble for themselves because of bad reviews, operators afraid of damaging their business image because of bad reviews”. The continued development of this phenomenon could easily lead to the collapse of the original consumer credit system, and even with a higher rating, consumers will not be able to trust it.

Protecting the consumer’s right to evaluation is, on a factual level, protecting the consumer’s “right to a bad review”. A good or a service must be either good or bad. If there is only false praise in the column of the online consumption platform, it will not only reduce consumers’ desire to consume, but, most importantly, affect the business reputation of online consumption. The core difficulty of protecting consumers’ right to poor reviews lies in how to make operators face the bad reviews calmly, and how to make consumers dare to make business reviews to express their real consumption feelings.

5 The Necessity and Implementation Method of Protecting Consumer Right of Poor Evaluation

Respecting and protecting consumers’ right to bad reviews is actually necessary to protect the healthy and reasonable development of e-commerce and platforms. First, the conduct of e-commerce behavior requires both consumers and operators to truthfully provide their own relevant information. Operators provide information for consumers to let consumers understand their own needs, while consumers provide information for the need to complete the transaction. The difference between the two is that operators require real-name online identity verification, while consumers do not. Providing information and publicity to the platform is one of the offer conditions for commercial transactions, while the information provided by consumers is for specific operators. The information provided by consumers to specific operators is still personal private information from the perspective of other operators, which is protected by law. In fact, evaluating business trips in e-commerce behavior can be seen as a similar situation of offline reporting behavior. Consumers do not need to reveal their true situation when publishing the evaluation. The whole evaluation process is completed anonymously. The characteristic of anonymity reflects the spirit of protecting consumers’ privacy. In recent years, most local state organs have taken measures to protect the personal privacy of informants. The author believes that consumers’ privacy rights on online platforms should also be protected. Although e-commerce behavior requires consumers to provide corresponding information, e-commerce platforms should also take measures to protect consumer privacy information from disclosure and reduce relevant impacts and risks. Second, the consumer evaluation mechanism, as a measure of prior supervision and subsequent remediation, plays a role in recovering and reducing consumer losses. However, some people with ulterior motives take advantage of the loopholes in the platform management and the law to seek improper benefits for themselves in the name of reasonable evaluation. The emergence of behaviors such as malicious bad reviews does not protect

the rights and interests of consumers, but infringes on the legitimate rights and interests of operators. Mercenaries have flooded into the comment section, forcing operators to exempt their bills and even demand compensation with blackmail and threats, and seriously infringing on the legitimate rights and interests of operators. As the provider of online trading venues, the e-commerce platform should shoulder the responsibility of managing the network order. E-commerce platform can establish a screening mechanism of malicious bad evaluation by summarizing the characteristics of malicious bad evaluation phenomenon, and play the positive role of consumer evaluation mechanism. Third, the reason why operators are so concerned about bad reviews is that the publisher of bad reviews itself will not suffer any actual loss, but the operators themselves will lose greatly because they can not judge whether an objective bad reviews, and a malicious bad review can even destroy the efforts of a small and medium-sized shop for a long time. To sum up, it is the loss and cost imbalance caused by publishing bad reviews for consumers and operators. When consumers make bad comments, they often use rude words and deliberately amplify the facts, while operators are often afraid to respond positively and are considered guilty of bad service if they are not careful. Therefore, it is necessary to reform the operator behavior management standard mechanism and the screening mechanism of consumers. The frequency, content, and reasons for the bad reviews are distinguished from normal bad reviews from other consumers by the presence of peer competition. Fourth, in recent years, malicious bad reviewers are common, and even under the emergence of “professional bad reviewers and teachers” and other improper occupations and industrial chain under the temptation of interests. The author learned from the data that by 2019, the number of IDs identified as professional negative reviewers by Alibaba, an e-commerce platform, had reached 5 million, and at the peak, 40000 new ones were added each week, and 150000 negative reviews each week. These people publish a large number of bad reviews to earn material compensation from the platform and the operators, which is actually a kind of fraud against the operators and the platform. Therefore, it is necessary to severely investigate and crack down on the relevant behaviors and relevant personnel, increase the cost of malicious bad reviews, and thoroughly define the illegal and criminal charges of malicious bad reviews.

6 Conclusion

The right to consumer evaluation is a kind of right to submit the suggestions taken by the public security organ and the judicial department to the legislature for clear definition after receiving public attention in daily life. It is a process from life to justice. In most cases, because of the unequal material basis and information collection, consumers occupy a weak position in the trading behavior, and ensuring fair trading has become an important means to make up for the gap between strength and strength. Consumers and operators are also the subjects of e-commerce behavior, and their subject status should be equal. With the development of the network industry, consumers' demands have been transformed into changing the unequal state of information collection, and the pursuit of market information openness and transparency has become the mainstream. As the legal right of consumers, the right of consumer evaluation is the result of consumers' efforts to change the unequal market status. Even so, as the author's research results,

this paper still has some limitations. For example, there is no exclusive interview and questionnaire survey of the actual consumer groups, and the conclusions drawn are not detailed and specific enough. The author hopes to have the opportunity to make up for the defects of this article in the future research.

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