

Unfair Competitive Behaviors under the Network and Its Rule of Law

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under the network market, the unfair competitive behaviors do not only include traditional unfair competitive behaviors and the unfair competitive behaviors exclusively under the network market are derived, which greatly restrict the development progress of network market economy and break the network economic order. Therefore, the research of the current situation of the rule of law of unfair competitive behaviors under the network is of important realistic significance. First, the unfair competitive behaviors under the network are summarized, then, the traditional and new forms of unfair competitive behaviors under the network are introduced, next, the current situation of China's laws and regulations with regard to the unfair competitive behaviors under the network is analyzed; finally, the development direction and perfection strategy of the rule of law of unfair competitive behaviors under the network are put forward, hoping to provide certain reference to the construction of laws and regulations on unfair competitive behaviors under the network in China.

Key words: Network; unfair; competitive behaviors; rule of law

Since the occurrence of Internet, it has developed rapidly and promoted the economic development process of China and its position in people's daily life has improved significantly. At present, it can be seen everywhere in the daily life and is widely used in production and life. It has significantly improved people's living standard and intensely impacts the existing social systems. With the occurrence of Internet, a new network market occurs. We know the market and competition are accompanied by each other. Due to its specificity, the network market has increasingly prominent competition and unfair competitive behaviors. Based on the traditional unfair competitive behaviors, the unfair competitive behaviors under the network market are enlarged, but the construction of corresponding laws and regulations is lagged behind the unfair competitive behaviors. There are some deficiencies in the construction of laws and regulations on network in China, which is the main cause for the unfair competitive behaviors. At present, all countries all over the world pay more and more attention to the construction of laws and regulations on network and the legislative subject also begins to perfect the relevant laws and regulations so as to build a legal and good competitive environment of network market.

I. Overview of unfair competitive behaviors under the network

Unfair competitive behaviors under the network mean that the operator violates the relevant provisions in the anti-unfair competition law, infringes the legal interests and rights of others and disrupts the operation order of network market under the network.

(I) Features of unfair competitive behaviors under the network

1. Concealed behavior and fuzzy definition

The virtuality and anonymity of network provide the opportunity of unfair competitive behaviors. If no professional modern technological means are used, it is hard to identify the unfair competitive behaviors under the network, investigate the legal responsibilities of illegal behaviors and obtain evidence through investigation. In addition, at present, the relevant laws and regulations in China are blank and the anti-unfair competition law is applicable only after enlarging interpretation if there are any unfair competitive behaviors, thus leading to fuzzy concept definition of such behaviors.

2. Wide range and diversified means

Compared with the physical competitive market, the implementation cost of unfair competitive behaviors is reduced under the network because the legal rights and interests of operator can be infringed only by virtue of network information technology. In addition, the decrease of implementation cost increases the implementation probability of unfair competitive behaviors. Therefore, the scope of application increases.

3. Serious harm and far-reaching influence

Due to the concealment and anonymity of network, the majority of the victims realize the problem after the occurrence of unfair behaviors, so the harm is serious. With timeliness, Internet can disseminate information quickly and is a broad and open platform, in which there is no an international boundary for the enterprises' operating behavior under the network environment. Therefore, the influence is far-reaching.

4. Unique application of law

The unfair competitive behaviors under the network are actually the unfair competitive behaviors. However, due to the virtuality and universality of network, the unfair competitive behaviors under the network are different from the common unfair competitive behaviors and unique in the application of law. The uniqueness is mainly embodied in the application object, application scope, responsibility understanding and other levels. With the increasing popularization of computer network, the difficulty of definition of country of unfair competitive behaviors under the network increases. Therefore, in addition to reference to the domestic law, the corresponding laws and regulations should refer to the foreign excellent articles of law, thus leading to contradictory jurisdiction of regime inevitably.

(II) Key component of unfair competitive behaviors under the network

The unfair competitive behaviors under the network will not only restrict the development of network market, but also infringe the legal rights and interests of consumers and operators, which is not conducive to the stable operation of market economy. The unfair competitive behaviors under the network is formed in the network environment as the operator violates the trading principle and anti-unfair competition law to infringe the legal rights and interests of others and disrupt the market operation order. It can be seen that its key components mainly include the following aspects:

1. Network operator is the behavior object. As the network environment is different from the physical market, the range of operator in this paper is wider, mainly including the relevant organization and personnel that are engaged in the operating activity for the sake of benefits under the network.

2. Consumers, legal interest and market order constitute the behavior object. Under the network, the illegal operator implements unfair competitive behaviors by informal means to infringe the legal rights and interests of others and obtain certain benefit. At the same time, the behaviors also affect the corresponding commodity and service.

3. The unfair competitive behaviors under the network are illegal acts and unfair competitive behaviors essentially. Therefore, the behaviors should abide by the corresponding standard about whether the behaviors violate the principle of fair and free will and business ethics.

II. Form of unfair competitive behaviors under the network

(I) Traditional form

1. Commercial confusion

Commercial confusion, also called network confusion, means that the operator pretends to be others to register the trademark or use the relevant information of famous commodity privately in the network environment to cause misunderstanding and make people think the commodity of others is unfair competition;

2. False propaganda

Cumulative propaganda means the operator misleads the consumers by false advertising or induces the consumers by the past or partial real information. The common technique is to take a part for the whole;

3. Infringement of business secrets

Today when the network information technology develops rapidly, the enterprise's business information transmitted by network is possibly stolen and disclosed. In addition, there are commercial bribe, mandatory transaction and other behaviors.

(II) New forms

1. Dispute of domain name

Recently, domain squatting is the most frequent dispute, which refers to the debates around domain name right specifically and is divided into meritorious registration and malicious registration;

2. Unfair competition by virtue of hyperlink

Deep hyperlink, which is the main form of unfair competitive behaviors, means that the user can directly access to the contents at deeper level of the home page of a website. This link mode avoids the home page and can interfere the advertising access number and economic benefits of the website. This unfair competitive behavior occupies the fruits of labor of others illegally.

3. Unfair competition by virtue of frame transmission technology

Frame transmission, also called frame link, belongs to hyperlink. By virtue of this technology, the business information of this website can be displayed in the view box of computer screen, the information of other networks can be displayed in a certain view box or region and the business information of other websites is excluded so as to conduct unfair competitive behaviors.

III. Current situation of the laws and regulations on unfair competitive behaviors under the network

(I) Current situation of legislation and deficiencies

At this stage, for the unfair competitive behaviors under the network, the daily behavior is regulated mainly

by reference to the anti-unfair competition law and trademark law. At the same time, China also enhances the network monitoring, intensifies the research on relevant laws and regulations and accelerates the launching of new laws and regulations. It can be known by analyzing the features of unfair competitive behaviors under the network that China has the following deficiencies in legislation:

1. Diversified legislative subject and low legal efficiency

At this stage, for China's laws and regulations on the unfair competitive behaviors under the network, only decision on maintaining internet security belongs to laws and others are standardizing system. The systems with regard to the unfair competitive behaviors have the judicial explanation of the supreme law. The situation that the legislative subjects are diversified and the legislative level is low weakens the authority of legal documents and restricts the regulation and crackdown on unfair behaviors under the network.

2. Lagged legislation

Lag is the intrinsic feature of laws, which restricts the economic development process of China to a great degree, so we should adjust and modify the laws in the shortest time. Anti-unfair competition law is equivalent to the constitution in the market economy, which was formed in the early establishment of our market economy system and then occurred in the network market with the continuous development of the society. However, anti-unfair competition law lacks of clear provisions with regard to the relevant behaviors in the network market and the law enforcement agencies lack of specific law enforcement basis, so the laws lose its value.

3. Lacking of democratic participation

At this stage, the laws and regulations on unfair competition under the network is mainly formulated by the administrative organs in China. In this legislation mode, the administrative organ is the subject and the administrative legislation is set and carried out independently, which violates the spirit of formulating laws and regulations. Therefore, there are some deficiencies and it is greatly possible that the law enforcement procedure of administrative organs lacks of reasonableness, which restricts the stakeholder's gaining of legal rights and interests to a great extent.

- (II) Current situation of law enforcement and deficiencies

1. Lacking of reasonableness in configuration of law enforcement agency

In China, only the industrial and commercial administrative department of municipal and above people's government is eligible to supervise the unfair competitive behaviors, which has obvious disadvantages because the industrial and commercial administrative department lacks of autonomous right and should obey the orders of local people's government of the same level in addition to accept the instructions of higher organs, thus leading to

government interference during the actual law enforcement inevitably.

2. Disordered regulation of industrial and commercial administrative department

At this stage, the regulation of industrial and commercial administrative department is disordered mainly because the industrial and commercial administrative department lacks of clear and well-organized regulation system. In China, the personnel that conducts unfair competitive behaviors under the network is diversified, including operator, network operation and network promotion contractor. There is no sound regulation system for the specific implementation personnel in China, the regulation level is fuzzy and the regulatory gap is big, thus providing the opportunity of unfair competitive behaviors under network.

3. Insufficient regulation timeliness

In the network, the network content is of strong timeliness and updated frequently, in which the network advertising is updated in real time. However, the network inspection method of industrial and commercial administrative department is old, mainly relying on the large-area netting. The comprehensive inspection in the grass-root industrial and commercial administrative department will take a lot of manpower and time, thus leaving a space for unfair competitive behaviors.

IV. Development direction and perfection strategy of laws and regulations on unfair competitive behaviors under the network

(I) Perfect the legislation

1. Supplement and perfect anti-unfair competition law

Clearly define the concept of unfair competitive behaviors under the network and properly enlarge its application scope. In addition, notice that the constraint scope of anti-unfair competition law should be around the features of network space and unitedly coordinate the traditional law and make modification continuously according to the basic concept of law and laws and regulations. The unfair competitive behaviors under the network is different from the unfair competitive behaviors in the traditional market, so the detailed regulations can enlarge the application scope of law and increase the pertinence of law. In addition, the law enforcement personnel and judicial personnel can rely on the articles of law in the real life and guide the operators. This requires that the articles for the unfair competitive behaviors under the network should be added in the law for the convenience of the development of the work of judicial organs and to better serve the masses.

2. Increase the definition of legal responsibility

Increase the legal investigation of tortfeasor and increase the obligations of network service supplier. By reference to the anti-unfair competition law, the unfair competitive behavior actor should bear the criminal, civil

and administrative responsibilities, in which the civil responsibility mainly refers to the general civil liability. In case of any unlawful act, only the personal interests of the actor is deprived. However, with deficiencies, there is no deterrent effect at this stage. Therefore, we should intensify the punishment of unfair competitive behaviors with great harm and clearly define the punishment amplitude increased to practically maintain the legal rights and interests and strongly impact the unfair competitive behaviors. In addition, the supreme people's court should make full use of its relevant judging experience and give judicial explanation consistent with the laws for unfair competitive behaviors under the network to relieve the disputes and contradictions.

(II) Perfect the law enforcement

Strictly regulate the daily behavior of law enforcement organ, reasonably configure the law enforcement organs, enhance the judicial review and pay attention to the legal guidance. At this stage, all countries all over the world have set up special anti-unfair competition law enforcement organs with jurisdiction and independence, different from the ordinary administrative organs. Therefore, we should conduct comprehensive monitoring and formulate effective bans and verdicts by reasonably referring to the foreign excellent behavior and closely combined with our national conditions.

V. Conclusion

Today when the science and technology develop rapidly, the network market is formed and develop rapidly, but the laws and regulations are lagged, so many unfair competitive behaviors under the network occur, which seriously interfere the operation and order of social market and restrict the development process of network market economy. Therefore, we should practically do the construction of network laws and regulations well, supplement and perfect the anti-unfair competition law, build the reasonable legislation system, enhance the law enforcement ability, clearly define the legal responsibilities, reasonably configure the law enforcement organs and increase the law enforcement supervision strengthen so as to effective regulate the competitive behaviors in the network market. In addition, we should make full use of modern technology to prevent the unfair behaviors under the network, improve the popularization of technology, positively refer to the experiences of the construction of laws and regulations of foreign advantaged countries, continuously perfect our network laws and regulations system and promote the systematization and standardization construction of network market.

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