

Research on the Current Situation of Unfair Competition on the Internet and Countermeasures to Protect Rights and Interests

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Abstract: This paper studies the legal issues of anti-unfair competition from the perspective of Internet+ according to the idea of “proposing a problem - analyzing the problem - solving the problem”. Firstly, the current situation of new types of unfair competition from the perspective of Internet+ in recent years is analyzed and categorized. Then, based on the analysis of the current situation, the legal issues of unfair competition from the perspective of Internet+ are proposed. Finally, relatively comprehensive suggestions are provided from four aspects: the scope of legal protection, consumer interest clauses, Internet consumers’ rights to appeal, and the dynamic balance between the interests of Internet consumers and the interests of Internet operators and social public interests.

1. Introduction

The arrival of the Internet+ era has made important contributions to help China’s economic development and change the market competition model.[1] However, at the same time, it has also brought unprecedented new types of unfair competition to the market.[2] These new types of unfair competition have seriously infringed the legitimate rights and interests of market operators and consumers and have undermined the order of market competition.[3] In fact, traditional unfair competition behaviors are rare in reality. [4] The real threat to the market competition order is precisely the new type of unfair competition represented by the Internet+, but unfortunately, even the new “Anti-Unfair Competition Law” implemented this year expresses a little about the regulation of unfair competition from the perspective of Internet+ and it is too principle, which can’t meet the practical needs of building a free and fair market competition order.

2. The current situation of unfair competition on the Internet

With the continuous development of the Internet economy, the unfair competition of the Internet has been increasing year by year, showing a growing trend. [5] For example, the unfair competition on the Internet in 2013-2018 is not only an extension of the traditional unfair competition in the Internet field, but involves more and more new types of Internet unfair competition, as shown in table 1.

Table 1 Consumer rights infringed in the unfair competition on the Internet

Types \ Rights infringed	Right to know	Right to choose	Right of privacy
Market confusion	✓		
Business discrediting	✓		
False propaganda	✓		
Free ride	✓		
Illegal link		✓	
Misleading, cheating, compelling	✓	✓	
Interfering, damaging		✓	
Illegal capture of big data			✓
Malicious reduction of ranking	✓		
Discriminatory treatment		✓	

From the statistics of types, market confusion, false propaganda, interfering and damaging and business discrediting are at the highest rates, becoming most frequent events in the field of unfair competition on the Internet.[6][7] Other Internet unfair competition behaviors have also shown various trends in recent years, especially the free-riding behavior. And the illegal capture of big data has evolved from illegally capturing the operator's service data to capturing the user's private data.

3. Countermeasures to protect the rights and interests in unfair competition from the perspective of Internet+

3.1. Clarifying the specific scope of the protection of interests of Internet consumers by the anti-unfair competition law

From the perspective of business order, we should pay attention to protecting the overall interests and long-term interests of unspecified consumer groups. Only in this way, the anti-unfair competition law can be effectively implemented under the background of the Internet. So, what is the overall interests and long-term interests of an unspecified consumer groups? Without clarifying this issue, it is difficult to determine the specific scope of the anti-unfair competition law to protect the interests of consumers.[8] The Internet economy is widely known as the "attention economy", and its diversity and innovation are unmatched by the traditional real economy. Similarly, consumers' consumption behavior will change in this environment characterized by the free model, which is represented by the free choice based on the full understanding of product information, and the right of consumers to know and choose will not be lost because of changes in consumer behavior and the consumption environment, but will have even greater significance. Therefore, the specific scope of the anti-unfair competition law to protect the interests of consumers should be limited to the consumers' overall rights to know and choose.

3.2. Reconstructing consumer interest clauses in anti-unfair competition law

3.2.1. Adding consumer interest factors to specific clauses

Article 2 of China's Anti-Unfair Competition Law, as a general clause, defines the unfair competition behavior from multiple aspects. This article clarifies the legislative purpose of the anti-unfair competition law with the interests of the operators as the main protection object, and regards the principles of honesty and credit, recognized business ethics and orderly social and economic order as the corresponding criteria. The revised draft of the anti-unfair competition law has clearly responded to this point. Article 2 of the revised draft states: "Operators shall follow the principles of voluntariness, equality, fairness, honesty and credibility in their business activities and abide by recognized business ethics. The unfair competition referred to in this Law refers to the behavior of the operator who violates the provisions of this Law, damages the legitimate rights and interests of other operators or consumers, and disrupts the market order". From this modification, the legislature has realized the importance of consumer interest factors in the definition of unfair competition. If the revised draft can be finally passed, it will be a huge advancement in the anti-unfair competition law legislative technique, and it will play a very positive role in protecting the interests of consumers in unfair competition.

3.2.2. In the relief measures, establishing the priority compensation system for the loss of Internet consumers' interests

In the trial of unfair competition cases on the Internet, the Internet consumer interest should be recognized as an important criterion for identifying unfair competition from the judicial concept, and at the same time, in the area of Internet consumer interest relief, a priority compensation system for the loss of Internet consumers' interests should be established. Firstly, in the trial of unfair competition on the Internet, when the interests of Internet consumers are damaged by unfair competition, Internet consumers have the right to participate in litigation as a third party with independent claims and can directly request the provider of value-added products or service or the unfair competition agent to preferentially compensate the consumer for the corresponding loss, and

the provider or the agent can't refuse the consumer's claim for compensation. If the consumer requests compensation from the provider, the provider shall pay the compensation first, and then the consumer can ask recovery from the unfair competition agent. Secondly, in the case of Internet unfair competition involving Internet basic products and service providers, the compensation priority of such Internet consumer benefits has different characteristics. No matter whether the product or service involved is provided by the infringer or by the infringed, the court should proceed from the interests of the Internet consumers and prohibit the parties involved in making changes to the business status or business strategy of the product or service.

3.3. Improving the right of appeal of Internet consumers

3.3.1. The need to give Internet consumers the right to appeal

The anti-unfair competition law only provides relief channels for operators. As one of the objects protected by unfair competition law, neither traditional consumers nor Internet consumers have corresponding rights relief measurement. The current "Anti-Unfair Competition Law" pays far from enough attention to the protection of consumer interests. The purpose of consumer interest protection in Article 1 only has a declarative effect. When the consumer's interests are impaired, it cannot achieve the purpose of protecting the consumer's interests according to the article. The law does not mention any specific factors such as the basis of consumer rights relief, the basis of claims, and the object of the request. Therefore, it is particularly urgent and necessary to construct a reasonable right relief system which can give the consumers self-rescue right when the interests of Internet consumers are damaged due to unfair competition. It is an inevitable choice to construct a consumer appeal system for Internet consumers to obtain the right to appeal for relief. Therefore, the anti-unfair competition law should make corresponding provisions, giving Internet consumers the right to appeal, to fully protect the interests of consumers on the Internet and achieve the legislative purpose of the anti-unfair competition law.

3.3.2. The specific path of using Internet consumers' right to appeal

The protection of the interests of Internet consumers by the anti-unfair competition law is limited to the overall right to know and to choose. The specific infringements suffered by Internet consumers may be resolved through other laws. In the case of damaging the overall interests of Internet consumers, the competitive behavior that causes such damage can be directly characterized as unfair competition. Then, in response to the damage caused by the unfair competition on the Internet to the interests of Internet consumers, it is necessary to distinguish between the relief of individual rights of consumers and the maintenance of the overall interests of consumers. In other words, it should distinguish between consumer individual litigation and consumer group litigation, and clarify that the right to appeal under the context of unfair competition is the Internet consumer group's right to appeal, rather than individual rights, in order to realize the purpose of protecting the overall and long-term interests of Internet consumers.

3.4. Paying attention to the dynamic balance between the interests of Internet consumers and the interests of Internet operators and social public interests

3.4.1. Balancing the interests of Internet consumers and the interests of Internet operators

Due to the limited number of users, Internet companies strive to improve the quality of products or services through innovation, provide more personalized user experience for Internet consumers, and increase the welfare of Internet consumers, thus achieving the goal of competing for user groups. From this point of view, it seems that the interests of Internet operators and Internet consumers can fully coexist in a short period of time, and the interests are also aligned. There is no possibility of conflict. However, it is not. After in-depth analysis, it can be found that in the Internet field, the direct economic cost is not the only cost paid by Internet consumers. Internet consumers have no economic expenditures for obtaining free products or services, but they have paid considerable time and attention. Therefore, in order to achieve a basic balance between the two, it is even more necessary to protect the overall interests and long-term interests of Internet consumers by

the anti-unfair competition law. Only when the interests of Internet consumers are truly protected, can Internet consumers truly compete against Internet operations.

3.4.2. Paying attention to the distinction between Internet consumer interests and social public interests in the case of unfair competition on the Internet

The social public interest is a combination of independent values such as market structure, competition order and business ethics. It is not a simple superposition of the interests of the operators and the interests of the consumers. The single item alone is enough to constitute the legal benefits of the protection of the unfair competition law. Different from the relationship between the interests of the operators and the interests of the consumers, the social public interest and the other two are more inclined to a state of mutual promotion and mutual condition, and a good environment for realizing the interests of the operators and consumers can be provided by stabilized market and healthy competition order, and the realization of interests of the two can also nurture the social public interests centered on market structure and competition order. The interests of the operators and the interests of the consumers are always in a state of mutual game. As long as the competition mechanism can function normally, “price” can become the key to balancing the interests of the market players. This is the biggest magic of the market economy. And if the competition order is to play its role, it must be based on the healthy and stable competition order contained in the public interest. Therefore, from this perspective, the premise and conditions for the realization of the interests of operators and consumers are social public interests.

4. Conclusion

With the development of the times, the form of unfair competition on the Internet has become increasingly complicated and diversified, and its situation of infringement of consumer rights has also deteriorated. How to deal with the balance of interests between consumers and operators on the Internet and protect consumers’ legitimate rights and interests from infringement will greatly promote the prosperity of the Internet economy and the improvement of the Internet competition order. This paper proposes countermeasures against unfair competition from the view of Internet+, in order to protect the legitimate rights and interests of consumers under the Internet economy.

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