

On the Legal Issues of Social E-commerce in China

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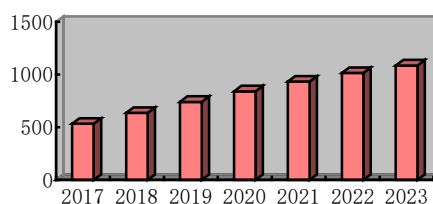
Key words: Social e-commerce; Wechat; Registration; Payment; Advertisement

Abstract. Doing business using social e-commerce is efficient and cost-saving, which is why social e-commerce platforms, especially, Wechat have become popular means of doing online business. However, social e-commerce is far less regulated than some other well-established platforms. This raises problems in terms of registration, payment and advertisement and, of course, customer security. Based on literature analysis and the writer's observance, some suggestions are made in order to shed light on some possible solutions to these problems.

I. Introduction to Social E-commerce in China

China's "internet+ commerce" campaign has changed our society dramatically in a variety of ways over the past decades. Thanks to "internet+commerce", the Chinese economy has developed significantly. Undoubtedly, China is leading the world in the e-commerce market. Furthermore, the Chinese e-commerce market is neither matured nor saturated, hence bearing a huge potential. "China's online retail B2C e-commerce market reached 1,526.76 billion yuan in Q4 2018, an increase of 28.4% year-on-year." ^① China's retail industry transformed from offline to online marketing smoothly and rapidly due to the apparent advantages of online sales, that is, much lower cost and much more choices and convenience for the consumers. China's large population and the penetration of the smart-phone provide the basis for the e-commerce industry.

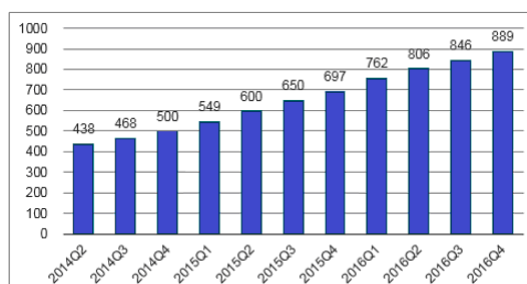
Figure 1. China: retail e-commerce revenue forecast from 2017 to 2023(in billion U.S. dollars)



Data source: <http://chinainternetwatch.com>

According to the data from China Internet Watch, Chinese retail e-commerce revenue will continue to increase steadily and rapidly. As barriers in the offline economy are rising, a growing number of businesses transfer online.

Figure 2. The active Wechat users (unit: million people)



Data source: www.chinabgao.com

The e-commerce market is dominated by some leading e-commerce platforms like Taobao and Jingdong, but there is still enough space for other platforms which are trying to get a market share. The popularity of some social e-commerce platforms like Wechat and Pinduoduo are expanding so fast that they have become powerful tools of online sale. The most remarkable platform is Wechat sale whose popularity is penetrating everywhere, across society. Wechat is a multi-functional social platform where businessmen and -women can advertise by presenting pictures and videos, offer e-payment and instant communication and can connect links to other platforms if necessary. Due to the popularity of Wechat, its users and business capacity is exploding. According to the data from Chinabgao. com, until 2018, the number of its active users has reached 1 billion all over the world. Some other self-media commercial platforms like Douyin, QQ, microblog and many netcastings can also be connected with Wechat. No other social media are as influential as Wechat whose users cover the young, the old, and whoever uses smart phones. It has become an indispensable part of life for the Chinese.

Unlike Taobao or Jingdong whose transactions are regulated and controlled by mature technological means, transactions by Wechat are much less regulated. The identity of the transaction parties is not clear, and money is transferred to the seller's account directly without the opportunity to withdraw if the transaction fails or in case of other issues. The buyers may find themselves in a desperate situation if they want to protect their rights by lawsuit, because the only information they know about the seller is their Wechat id number. Unsolicited promotion calls and emails are not legal commercial practice, however, in Wechat friend circles, the screens are filled with advertisement and finding information from real friends is often difficult. Lastly, the buyers usually make their purchasing decisions based on few pictures or videos, and the merchandise they receive is mostly quite different from the pictures, thus the exaggerated picture advertisements amount to false advertisement.

II. The Legal Issues in Social E-commerce

1. The Identity of the Wechat Seller is Obscure.

The scope of Wechat business is quite broad. Some are home-made items without registration or permission, some act as purchasing agents, some are multi-level agents for a wholesaler or retailer. It's often a case that you negotiate and pay a seller located in Beijing city, but the goods are delivered from Guangzhou city, because the seller you contact is only an agent for the seller in Southern China. In the offline business world, it is compulsory for all forms of business to be registered and there must be a brick and mortar store, however, in Wechat business, anyone can do business without registration. The threshold to enter the market is quite low or even no threshold at all. There is no problem if the seller and the buyer are friends, but now Wechat users' contact lists are filled with strangers who try to expand their clientele. Sometimes, the buyers have no idea with whom they are doing business. It is often reported that after a transaction is completed, and if the buyer is not satisfied and tries to complain, he would find himself to be blacklisted and shunned from making further comments. Since the seller is not registered as a Wechat business, it is very difficult to locate him, therefore, it is impossible for the consumers to obtain any means of remedy. Administration and supervision to the Wechat business is blank. With regard to the large scale of Wechat business, it is time to put it under supervision.

2. Direct Payment is not Controlled by a Third Party

Unlike doing shopping in some well-established platforms, namely, Taobao, Jingdong or Zhuanzhuan where buyers pay through a third-party intermediary, in Wechat transactions, buyers usually pay directly to the seller before delivery. Once the payment is finalized, there is no means to withdraw. If the goods are defective or don't conform with their description, and the buyers want to refund, the decisive power is in the seller's hands. In Wechat transactions, there is no buyers' feedback or comment on the goods or services, so the seller is not afraid of bad feedback if he refuses to refund. According to Consumer Protection Law of the PRC, article 25, where business operators sell goods via the internet, or by television, phone, mail order, etc., consumers are entitled to return the goods within seven days upon receipt thereof and are not required to provide reasons.

But this provision meets obstacles in Wechat transaction, where only the seller and buyer are involved in the process, without the interference of a third party. No one is able to push the seller to refund. It is a “hidden rule” that the buyer cannot ask for a refund if they are not satisfied with the goods they receive. Usually, the sellers would make a disclaimer in advance that they don’t accept refund requirements. In many cases, the buyers have to try their luck after payment, if the goods they receive are defective or of poor quality, they have no choice but to accept. On July, 21, 2016, in the Report on Information Analysis of 2016 issued by Gansu Provincial Bureau of Industry and Commerce Administration who clarified that Wechat shopping is not protected by the Consumer Protection Law of the PRC. “Although this is a Provincial regulation, this reflects the general attitude of the government. Social E-commerce is treated as a private transaction only, so the government is not to intervene or supervise. In case of disputes, the buyers’ rights cannot be protected by Consumer Protection Law.”^[1]

3. Advertisements are not Regulated

In Wechat business practice, sellers promote their commodities mainly by pictures or short videos, which are the only reference for buyers to make purchasing decisions. In most cases, the goods that buyers receive do not match their pictures that sellers present. Mostly, the pictures or videos that sellers use are “beautified” by software, in order to present the merchandise in better shape or form than they actually are. Sometimes the disparity between pictures and real goods is dramatic. Whether these “beautified” pictures constitute “false advertisement”, the law does not cover this issue. It is rather hard to standardize to which extent such “beautification” constitutes false advertisement.

Another problem in Wechat business is the way that the business operators publish their advertisement at will. An increasing number of Wechat users complain that their Wechat friend circle is filled with advertisement and information they want to know about their friends is obstructed and hard to find. According to Advertising Law of the PRC, article 43, no unit or individual shall send advertisements to consumers’ residence or vehicles without their approval or request, and it is illegal to send emails which carry advertisements. This is to prevent salespeople from sending out redundant emails in order to protect private computers from system overload. Wechat advertisement is uncharted territory for legal intervention so far. Besides, placing advertisement on Wechat is completely free, which constitutes the reason why there is an exploding number of advertisements on this social medium. Aside the flood of advertisements, Wechat users cannot distinguish which advertisements are false or fraudulent. No regulation, no supervision, no guarantee – hence the goodwill of this field of social commerce is damaged.

III. The Countermeasures to the Problems of Social E-commerce in China

There should be no unregulated area in social e-commerce and Wechat business platforms must not be exempted from that. With regard to Wechat’s overwhelming popularity and its large scale, countermeasures to solve the problems should be taken urgently.

1. Rules on Market Access and Real-name Registration

Up to 2018, there are 1 billion active Wechat users all over the world. Anyone can apply for one or more Wechat ids, which is connected with the users’ telephone number or QQ number. The registration is not connected with the users’ real names and in case of disputes, the buyers cannot trace back to the real person holding that Wechat number. Hence, any Wechat user can do business at will. They can present pictures or videos of their goods or services, send links of their products, promote their commodities at any time. In the event of fraud or default, it is difficult to obtain legal remedies because the offender cannot be identified. The registration of Wechat accounts should be confirmed by users’ ID card. Technically, this is feasible and necessary regarding its function of a dominant tool of social e-commerce. Wechat’s function is almost omnipotent, whereas its importance is still on the rise. However, there is a gap in its supervision and administration which should start with real-name registration. Besides, just like the practices in some other well-established e-commerce platforms, Wechat users’ goodwill or credit shall be recorded by their transactions, which can be realized by the R&D department of Wechat.

2. Wechat Payment should be Optimized by Intervention of the Platform.

At present, the payment of Wechat transaction is done by transferring money directly and instantly from the buyer to the seller before shipment, which is extremely risky for the buyers. The buyer has no guarantee of rightful conduct on behalf of the seller. Hence, Wechat should design a system by which the buyers have the opportunities to withdraw their money or receive a refund if the transaction is fraudulent. Wechat commerce is no longer a private transaction concerning its large scale and penetration. The majority of professional business operators or companies are doing business on Wechat.

Wechat is not only a means of social interaction, it has transformed into a major online market place. Wechat platform should have a timely reaction to that and take responsibilities to keep the transactions secure. Wechat buyers should be protected by Consumer Protection Law of the PRC. If the consumers are not satisfied with the goods and if they can prove that the advertisement of the goods is inconsistent with the actual merchandise, refund should be guaranteed.

3. Wechat Advertisement Should be Regulated.

It is not clarified whether the advertisements that are presented in Wechat friend circle are governed by the Advertisement Law of China. Advertisements that are published by Wechat are neither registered nor examined by any authority, so there is a lot of chaos. Many of the pictures and videos are “beautified” by software. It should be determined whether these “beautified” pictures or videos amount to misrepresentation and exaggerated advertisements. If the goods that buyers receive don’t match the pictures, the buyers shall be entitled to refund. Besides, there is no limit to the Wechat advertisements; so far, any one can publish advertisement by Wechat. People’s friend circle is flooded with advertisements which interfere people’s social life and overload users’ phones. Although people can choose to close some people’s friend circles, the problem is no authority examines the advertisements, it is hard to distinguish which advertisements are false or fraudulent. Doing business and promotion is free by Wechat and like social platforms, so the price to break the law is very small. The free social platforms can not be a paradise to escape supervision.

IV. Conclusion

Doing business by social e-commerce is efficient and cost-saving, that is why most business operators choose social e-commerce, especially, Wechat to do promotion, to negotiate and to pay. However, social e-commerce is far less regulated than some other well-established platforms. Some problems arise, namely, the identity of Wechat businessmen are not clear, the payment by Wechat is too risky, and the advertisements are not regulated by law. Some suggestions are made to try to solve these problems. That is, the Wechat users should be real-name registered; payment should be intervened by the platform so that the buyers have the right to refund in case of fraud; finally, advertisements by Wechat should be governed by Advertisement law so that the misled consumers can be protected in the event of false advertisements.

Notes

- ① <http://chinainternetwatch.com>

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