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Study on Punitive Compensation for Live Delivery Fraud

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Abstract

Internet economy with its high quality and high growth characteristics, has be-come an important driving force to promote the change of people's life style. In this context, the live broadcasting industry has developed vigorously, and the rapid integration with the e-commerce industry has formed a novel and dynam-ic business model, adding new growth drivers to the market economy. But while promoting economic prosperity, live streaming has also exposed a series of problems, such as fraudulent activities such as false advertising and product quality fraud, which have seriously damaged the legitimate rights and interests of consumers. Therefore, it is particularly important to introduce the traditional punitive compensation mechanism into the field of live streaming carry-on, carry out strict legal regulations on illegal operators, and compensate consum-ers for their losses. This is not only a necessary measure to maintain the fair trading market order and protect the rights and interests of consumers, but also an inherent requirement to promote the healthy and sustainable development of the live streaming carry-on industry. From the perspective of protecting the rights and interests of consumers, it is necessary for us to deeply study the ap-plication of punitive damages for fraudulent acts in live streaming to ensure that this emerging business model moves forward steadily on the track of rule of law.

Keywords

Live Streaming Carry-on; Fraudulent Behavior; Punitive Damages; Consumer Protection

1. Jurisprudential analysis of punitive damages for live delivery fraud

1.1. The connotation of punitive damages for live delivery of goods

Punitive damages originated from the Anglo-American law system, which refers to the defendant in assuming compensatory liability on the basis of additional additional damages of a certain amount, through this way to curb and punish wrongful acts. From the original intention of the design of the system, the punitive compensation system can help alleviate the "vacuum status quo" that the public authority has existed for a long time in this field, fill the gap of "good governance" with "good law", and make the mixed market environment Haiyan River clear. Punitive compensation for live broadcasting refers to the additional compensation paid to consumers by the people's court in accordance with the actual damage suffered by consumers or the amount of compensation judged according to the illegal gains of the operators in order to punish the illegal acts of the operators and curb similar acts.

1.2. The constituent elements of punitive compensation for live broadcast cargoes

There are two subjects that apply punitive damages in live streaming fraud, one is live streaming operators, the other is consumers. In the live shopping mode, the extension of consumers will also be expanded. The scope of consumers will not only include people who buy goods or receive services for their own needs, but also include family life and unit consumption. It includes not only the purpose of direct use of goods or services by individuals, but also other purposes: such as collection, giving to others for consumption purposes. The Law on the Protection of the Rights and Interests of Consumers does not stipulate the subject status of the business operator. The law only stipulates in Article 3 the conduct status of the business operator, that is, to provide consumers with the commodities or services produced or sold by the business operator. Article 2 of the Anti-Unfair Competition Law defines a business operator as a profit-making organization or individual. According to the systematic interpretation of the law, the business operator in the Consumer Rights and Interests Protection Law should also be profit-making. In the livestreaming mode, operators can be classified as merchants or anchors who provide goods or services to consumers for a fee.

The actor's psychological attitude toward the wrongful act he committed and its consequences, including intent and negligence. According to the provisions of Article 55 of the Law on the Protection of Consumer Rights and Interests, the application of punitive damages requires the operator to "know" that the goods or services are defective, that is, the operator must subjectively have the "intent" of fraud, including direct intent and indirect intent. In the live delivery mode, the subjective state of the operator's fraud can be expressed as the value of some anchors or merchants on the goods or services, performance and other core information is falsely described or deliberately concealed to meet the purchase needs of consumers, and there is a subjective intention to deceive others and hope to profit from deceptive behavior. In the special field of live trading, there are many uncertain factors in the determination of the subjective state of the operator, such as whether the subjective state of the operator can be expanded, and whether "fault" is included in the scope of consideration of the subjective state of the operator.

The objective elements of punitive damages include wrongful act, damage consequence and causation. First, the wrongful acts for which punitive damages are applicable are usually those with high imputability, which are represented as "fraudulent acts" in the Consumer Protection Law. Secondly, Article 55 of the Consumer Rights and Interests Protection Law clearly stipulates that "increase the compensation for the loss suffered by the consumer", that is, the operator's fraudulent behavior makes the consumer suffer actual losses, which is the premise and basis for the application of punitive damages. Such losses can be property losses or non-property losses. In addition, there is a causal relationship between the operator's fraudulent behavior and the loss suffered by the consumer. The subjective fraudulent intention of the operator and the actual fraudulent behavior taken by the operator are the "cause", while the actual loss suffered by the consumer is the "result". There must be a clear and strict logical connection between the two.

1.3. The value of punitive damages applicable to live delivery of goods

For the problems exposed in live streaming, it is necessary to introduce the punitive damages system to regulate. Through the application of the punitive compensation system, the market behavior of network operators can be regulated, the legitimate rights and interests of consumers can be protected, and the trading order of the live broadcast market can be maintained, and the healthy development of the live broadcast carry-on industry can be promoted.

Live delivery is an emerging form of development, it develops rapidly, but there are also a variety of unstable factors, among which, due to the low entry threshold of online shopping market, some operators in order to seek greater interests, intentionally hide their commodity information, and use some illegal methods to induce customers to participate in the transaction, often leading to the damage of consumers' legal rights. China's consumer rights and interests protection related laws and regulations are not perfect, the penalty for illegal acts of operators is not strong enough, and the amount of punitive damages can not stimulate the enthusiasm of consumers to take the initiative to protect their rights. The weak awareness of consumer rights and interests protection will enhance the "confidence" and "courage" of businesses against illegal infringements, so that the field of illegal infringements will continue to expand. Through the improvement of the punitive compensation system in the field of live streaming goods, give full play to its disciplinary and restraining role, which will help regulate the market behavior of e-commerce platforms and reduce its damage to consumers.

In the special environment of network broadcast, the relationship between network operators and consumers is not equal in essence, and network operators have more right to speak on goods and services. Consumers are often in a weak position and can only make choices based on the information provided by the operators. The unequal nature of information makes it difficult for consumers' right to know to be effectively guaranteed. The punitive compensation system is set up to protect the interests of the victim and increase the economic burden of the infringer for the infringer to take advantage of his own advantageous position for malicious infringement. 4The establishment of this system reflects the maintenance of fairness and justice and zero tolerance for illegal acts, which is conducive to promoting fair trade between consumers and operators, and fundamentally protecting the legitimate rights and interests of network consumers.

The law has the function of maintaining social order, and the punitive damages system is no exception. In the live delivery environment, operators and consumers rely more on the virtual network to support the transaction of both sides, which provides convenience to both sides of the transaction to a certain extent. However, some illegal operators manufacture and sell fake and shoddy products to earn more profits with less cost, forming a vicious circle in the online trading market, which can be broken through punitive damages. On the one hand, by clarifying the specific application details of punitive damages, the stability of the live trading market can be promoted; On the other hand, additional penalties should be imposed on illegal operators to reduce the infringement on the legitimate rights and interests of consumers, thus promoting the benign development of the trading order of the live streaming market.

2. Current situation and problems of the legal regulation of punitive compensation for live streaming fraud

Live streamers broadcasting false propaganda has become a focus issue, and all parties hope to find perfect legal regulation methods at the academic and practical levels. Existing laws, such as the Anti-Unfair Competition Law, the Advertising Law, and the Protection of Consumer Rights and Interests, have relevant provisions. In order to better regulate this new type of false publicity, the regulatory authorities have successively issued rules and regulations such as the Measures for the Administration of Network Broadcast Marketing and the Measures for the Administration of Internet Advertising. Although the regulatory departments are trying their best to improve the legal regulation, there is a certain lag in the law, and there are still some deficiencies in the current legal regulation.

2.1. False propaganda as stipulated in the Anti-Unfair Competition Law

False publicity by live streamers will seriously undermine the purpose of the Anti-Unfair Competition Law. For the false publicity by live streamers, the Anti-Unfair Competition Law usually regulates such activities according to Special Article 8 and General Article 2. First of all, the special provisions, anchors for the commodity itself false propaganda behavior, easy to identify this behavior belongs to the article 8 of the false propaganda. According to the Interpretation of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Civil Cases of Unfair Competition, in order to determine that the propaganda behavior constitutes false propaganda, the behavior must achieve the effect of "enough to cause public misunderstanding". This highlights the important position of "misleading" in false propaganda, no matter whether the commercial publicity is false or not, it must reach the level of "deceiving and misleading consumers". Second, there are general provisions. Article 2, as the backstop of the Anti-Unfair Competition Law, can cover all acts of unfair competition. With the development of the market, there are many new types of unfair competition acts, which cannot be classified into the seven specific types of unfair competition acts in the Law, and can only be regulated by Article 2 of the Law. In addition to false publicity on the goods themselves, anchors will also make false publicity on external factors such as the number of viewers in the live broadcast room and the anchor's own position. The Anti-Unfair Competition Law belongs to the behavioral regulation law. As long as the commercial propaganda broadcast by the live streamer deceives and misleads consumers, the behavior can be identified as false propaganda. Not requiring actual damage does not mean that false publicity will not cause actual damage. According to Article 17 of the Anti-Unfair Competition Law, when a host causes damage to others through false publicity, he or she needs to bear civil liability for compensation.

2.2. False advertising under the Advertising Law

According to the provisions of Article 2 of the Advertising Law, commercial advertising activities are merchants introducing their goods or services through certain media or forms. Live delivery means that merchants introduce or entrust others to introduce goods or services through the Internet media in the form of audio and video, which meets the requirements of commercial advertising stipulated in the Advertising Law. Therefore, live delivery belongs to commercial advertising activities and is subject to the regulation of the Advertising Law.

Article 28 of the Advertising Law provides for false advertising, enumerating the specific circumstances of four types of false advertising and a backstop clause. compared with false advertising under the Anti-Unfair Competition Law, false advertising covers a wider range of circumstances and is more detailed. The act of false publicity carried out by the live broadcasting company is in line with the provisions of the Advertising Law on false advertising, and therefore constitutes false advertising. According to Article 55 of the Advertising Law, if the act of broadcasting false publicity by live streamers constitutes false advertising, the advertiser shall bear legal responsibility, and the advertiser shall eliminate the adverse effects caused by false advertising, and be fined up to 10 times the advertising fee or less than 2 million yuan, and have its business license revoked. Due to the existence of false or misleading commodity or service information provided by the merchant, there is no problem for the advertiser, that is, the merchant, to bear the responsibility for the false advertisement carried out by the live broadcast of the merchant. However, when anchors recommend and sell goods or services in the live broadcast room, their autonomy is greater, and it will occur that the merchants do not provide false advertising content, and the anchors will carry out false advertising activities in order to obtain illegal benefits. 6In this case, the advertiser still bears the full responsibility, which is a little excessive punishment. The circumstances under which an advertiser or publisher bears responsibility only include those in which he or she knows or should have known that an advertisement is false or involves the life and health of consumers. Compared with traditional advertising operators and advertising publishers, live broadcast operators have a greater right to decide on advertising content, but they bear the same legal responsibility and have different rights and responsibilities.

2.3. The shortcomings of the legal regulation of punitive compensation for live streaming cargo fraud

In recent years, the development of network live streaming has attracted a wide range of groups to participate in it, and due to the low market access threshold, it has also caused the frequent chaos and disorder of today. Nowadays, all kinds of people have entered the network live delivery industry, there is a trend of "everyone can live with goods, everything can be live". According to the "network broadcast marketing management Measures", operators to enter the live broadcast market only need to register and fulfill the filing procedures according to law; The access conditions for anchors are simpler, as long as they are at least 16 years old. Due to unclear entry standards for product quality, a large number of fake and shoddy products and "three nots" seize the opportunity to enter the live streaming market. This emerging industry with low risk but high return, due to the lack of strict market entry standards, has led many people to "make quick money" in the way of "live broadcast with goods", which has had an adverse impact on the future development of the online live broadcast with goods industry. The qualification requirements of anchors are low, and the vast majority of streamers will use their traffic to attract merchants for cooperation and negotiation, so as to achieve the sale of goods, and then convert their unpredictable traffic into commercial value. In this case, the host broadcaster with its ability to accurately advertise has obtained huge benefits, but also won the favor of many fans. However, since many streamers are not real salespeople, they obviously lack expertise in selecting products and ensuring quality. At the same time, there are some streamers due to low cultural quality, which leads to live streamers "repeatedly rollover".

In this era of increasing digital development, each major platform with its unique algorithm technology and massive data resources, has mastered the huge power of traffic distribution. They should assume the role of guardians of market order and maintain a fair and just competitive environment. However, in reality, these platforms have lost their moral bottom line due to their greed for profit. In order to attract more users' attention and increase traffic, they have become lax in checking the qualifications of merchants, turned a blind eye to the false and exaggerated propaganda of anchors, and let bad information spread freely in the online world. In the event of disputes or complaints, the platforms often invoke the exemption clause in the "user agreement" as a shield, claiming that they only provide technical services, not regulators of the quality of goods or services. Such positioning blurs the line of responsibility, making the platform's role in dealing with punitive damages difficult to define. Consumers often feel helpless in the face of infringement, and it is difficult for them to find a suitable way to challenge the platform's disclaimer and get the compensation they deserve. 7This phenomenon not only damages the rights and interests of consumers, but also undermines the integrity foundation of the entire online market. Platforms need to realize that while they have an influence in technology that cannot be ignored, it does not mean that legal provisions and social responsibilities can be ignored. Instead, platforms should proactively participate in market regulation to ensure that every transaction complies with laws and regulations, while providing consumers with a safe and reliable shopping environment. Only in this way can the platform truly fulfill its duties as a "gatekeeper" and lead the industry to a healthier and more orderly direction.

Even under the protection of the law, the path to redress victims' rights is often full of obstacles. When damages are awarded to merchants or broadcasters who defraud consumers, their finances are often murky and their accounts muddled. Even worse, they move their assets elsewhere before a judgment is reached. This battle is especially hard for consumers, who are forced to travel long distances between courts and enforcement agencies, only to be delayed in receiving compensation because of the difficulty of enforcement and the interruption of property clues. These punitive damages seem to have turned into a blank check, without any real meaning, but the majesty of the judiciary and the rights and interests of consumers have suffered a double blow.

2.4. There are obvious weaknesses in regulatory coordination

As an emerging business model, live delivery has penetrated into various industries and fields. It not only changes consumers' shopping habits, but also brings huge market opportunities for merchants. However, behind its booming development, there are gaps and conflicts in regulation. When live streaming e-commerce has become an indispensable part of the e-commerce industry, several departments, including cyberspace, market supervision and business administration, are facing a common challenge: how to coordinate cooperation to ensure the legitimacy and security of the entire chain.

Cyberspace authorities are mainly responsible for regulating the dissemination of online information, which is crucial to ensuring the authenticity of live streaming content. But in practice, it is often difficult for them to effectively supervise product quality problems that arise during live broadcasting. Market regulators focus on the supervision of offline physical stores, while the supervision of online live streaming is powerless, and they are short on manpower allocation. Although the Commerce Department is committed to promoting the efficiency of commodity circulation, it is becoming increasingly difficult to investigate fraud in the face of an increasingly complex online trading environment. The lack of adequate communication and information sharing among departments has led to inconsistent and even contradictory law enforcement standards. This confusion gives fraudsters an opportunity to exploit loopholes in the system for illegal benefits. At the same time, due to the lack of a precise punitive compensation mechanism, the deterrent power of the law is greatly reduced for those individuals or groups who gain profits through fraudulent means.

3. Suggestions on the application of punitive compensation for live cargoes fraud

Live streaming of goods is booming, but an endless stream of problems will delay the development of live streaming economy. Based on the dilemma of the application of punitive compensation for live streaming cargoes fraud, it can be improved from three aspects: clear definition of the subject of responsibility and division of obligations, clear identification standards for live streaming cargoes fraud, and optimize the design of punitive compensation system.

3.1. Improve market access regulations

At present, the "Network broadcast Management Measures" only have age requirements for the qualification of the host with cargo, and they can open live broadcast for cargo sales at the age of 16. This qualification restriction is not true in name, and does not play the role of formulating the wants of the main body. The access requirements of anchors should be improved from the aspects of real-name authentication, personal credit review and professional training of anchors. First of all, anchors must complete real-name certification registration on the live broadcast platform before carrying goods, and submit their credit level certification through the national personal credit information system and criminal record review. Anchors who have been blacklisted for dishonesty or have prior convictions for economic crimes or property crimes are prohibited from entering the live streaming market. At the same time, after anchors successfully enter the market, live broadcasting platforms should continue to carry out real-time dynamic monitoring, strengthen the follow-up qualification review, to avoid inconsistency between the registration information of anchors and the actual situation. Secondly, the "blacklist" system of anchors with bad records should be established. Anchors who have been suspected of violating laws and crimes will be pulled into the "black room" of live broadcasting, and their application for live broadcasting permission will be denied, so as to avoid their cross-platform "resurrection" through the Internet. China's current live broadcast platform on the anchor entry supervision is still insufficient, and even some anchors are banned by the platform after the design mode to sell goods, this process, with the owner of the broadcast bear the identity of advertising operators. At this time, if the host of the carrier releases false advertisements about goods or services, causing actual damage to the consumer's purchase decision, it shall bear joint and several liability with the operator providing the goods or services. In the talent drainage mode, the talent anchor is equivalent to providing a drainage platform, and does not participate in the publicity and promotion of goods, the actual operator is still the business itself. Therefore, the master anchor has the identity of middleman or advertisement publisher. Different from the first two modes of live broadcasting, the Daren diversion mode has a certain randomness, so it is difficult to require Daren anchors to publicize and review the products sold. However, when there is an infringement on the rights and interests of consumers, Daren anchors should also bear the corresponding joint and several liabilities as their advertising publishers and operators.

3.2. Clarify the identity of the operator of the platform

In today's digital age, live streaming of goods has become an important way of e-commerce. In this process, livestreaming platforms usually play the role of providing livestreaming venues and technical support. In most cases, these platforms do not directly participate in the product promotion activities of the live broadcast room, but exist as online information providers. According to Article 45 of the Advertising Law, when the administrative bodies of public places, telecom service operators or Internet information service providers know or should be aware of illegal advertising activities in the venues or information dissemination and distribution systems provided by them, they have the responsibility to intervene and stop them. These measures may include issuing warnings, disconnecting links, or, if necessary, closing down the broadcast room. Such action is not only to protect the rights and interests of consumers, but also to safeguard the healthy development of e-commerce. In addition, live streaming platforms may sign specific agreements with merchants to help them direct traffic to live streaming rooms through the platforms. In this case, the role of the platform expands to that of an advertising publisher. This expanded role means that live streaming platforms not only have to comply with the relevant provisions of the E-commerce Law, but also those of the Advertising Law. Such dual regulation requires livestream platforms to bear more legal responsibilities in terms of advertising release, to ensure that the advertising content within the platforms is true and legal, to protect the interests of consumers and promote fair competition in the e-commerce market. In this way, the emerging field of live streaming of goods can develop steadily in a healthy and orderly environment.

3.3. Improve the calculation method of punitive damages

The amount of punitive damages is the focus of the punitive damages system. Therefore, in the new shopping mode of live streaming with goods, the application of punitive damages needs to adopt a more flexible and flexible approach. The "one-size-fits-all" inherent model can not adapt to the new social and economic development trend, but it is easier to stimulate the contradiction between consumers and live streaming e-commerce. Flexible determination of the amount of punitive damages, in order to maximize the incentive role of the system. In order to achieve an effective deterrent effect, the litigation costs of consumers can be included in the scope of punitive damages, and the amount of general punitive damages can be increased, such as the multiple of punitive damages can be stipulated as "three to ten times of the price of goods and litigation-related costs" or "three to ten times of the loss and litigation costs". 9The specific amount of compensation shall be determined by the judge in combination with the actual situation of the case and the parties, so as to avoid the inconsistency of the punishment caused by rigid provisions. When the judge is based on the discretion, the scope of compensation is also limited, and at the same time, it is also in line with the trading habit of China's folk "false one compensates ten", and stipulates a maximum of ten times punitive damages to prevent the excessive compensation amount caused by the abuse of the discretion of the judge. It can moderately protect the operator, while playing the punishment and incentive function of the punitive damages system, It is also in line with the status quo of China's live trading market. When determining punitive damages, we should not only give the judge the discretion, but also restrict the judge's power.

3.4. Strengthen the coordination of multiple regulatory bodies

In the current governance framework of the live delivery industry, government regulation is not the only solution. In fact, in order to achieve more efficient and targeted regulation, it has become particularly important to strengthen the participation of platform enterprises and industry co-governance. First of all, livestreaming platforms play an indispensable role in the livestreaming industry. They are not only the providers of goods and services, but also the maintainers of market order. Live streaming platforms need to take the initiative to adopt big data and other cutting-edge management technologies to enhance supervision of live streaming content. For example, when reports of illegal content are received, the authenticity should be quickly verified, and appropriate punishments should be imposed on broadcasters or anchors based on the seriousness of the violations. For anchors who repeatedly violate the rules or even seriously violate the law, the platform should take more severe measures, such as permanently shutting them down and publicizing them on the whole network, while putting them on the industry blacklist.Such measures will not only help maintain market order, but also help improve the overall image of the industry. Secondly, the role of industry associations cannot be ignored. In such a diverse and complex environment as the live delivery industry, relying on government regulation alone is obviously not enough. Industry associations,as a bridge between the government and enterprises, have the advantage of more flexible and efficient regulation.Compared with national administrative law enforcement departments, industry associations have a deeper understanding of market dynamics and consumer needs. As a result, trade associations can more quickly identify and solve problems within the industry. Industry self-regulation will not only help reduce the burden of administrative supervision, but also enhance the professionalism and precision of supervision. At the same time, major marketing platforms need to work with government agencies to jointly formulate and formulate relevant documents such as industry standards,specific rules,terms and self-regulation agreements applicable to the field of live streaming. Such cooperation not only helps to form a unified industry norm, but also can enhance the self-discipline within the industry, and ultimately effectively promote the healthy development of the industry, but also can protect the legitimate rights and interests of consumers.

Conclusion

Under the current digital wave, live streaming with goods has flourished and become the main force of the consumer market. This is a convenient feast to connect supply and demand, but because of the fraudulent practices of some illegal merchants,consumers' trust has been repeatedly frustrated. From the false publicity of product efficacy, to shoddy and shoddy goods, and then to the fake prosperity created by the brush and speculation, these fraudulent behaviors not only infringe on the vital rights and interests of consumers, but also disrupt the healthy ecology of the market. Punitive compensation system came into being under this background, it is like a hanging sword of justice. Different from the traditional civil compensation, which aims to make up for the loss, punitive compensation focuses on punishing the wrongdoers with the amount of compensation far exceeding the actual damage, making the fraudsters pay a heavy price for their evil deeds. It is not only a strong comfort to the victimized consumers, but also compensates for their material and mental trauma; It is also a powerful deterrent to potential fraud, to build a solid market integrity barrier with economic pressure, and promote the live delivery industry to return to the right track, regain consumer confidence, and achieve benign and sustainable development.

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