



Application and Innovation of Basic Principles of Commercial Law in E-commerce

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Abstract: The emergence of e-commerce industry allows people to find the goods they need without leaving home, breaking people's cognition of traditional shopping methods. The Internet allows people to browse excellent products from all over the world at any time. While the e-commerce industry is developing day by day, some lawless elements are taking advantage of the loopholes in the legal system to seek immoral interests. Therefore, it is necessary to formulate certain legal norms and management measures to constrain the industry standards of the e-commerce industry. Nowadays, the industry standards of e-commerce industry depend on civil and commercial law to a great extent, but there are still some loopholes in the application of civil and commercial law in e-commerce industry. Therefore, it is of great significance to study the application of commercial law in e-commerce industry. Relevant departments also need to play a more active and effective role in the process of industry management in the e-commerce industry on the basis of innovation.

Keywords: E-commerce; Basic Principles of Commercial Law; Application; Innovate

1. Definition of basic principles of commercial law

The so-called basic principle refers to the yardstick for observing and dealing with problems, the accepted or recognized code of conduct, the fundamental and general truth, and the fundamental or universal rule of a certain behavior^[1]. The so-called basic principle of law refers to the criterion for people to observe and deal with legal problems, and it is the code of conduct that must be followed when legislation, justice and law-abiding are engaged in legal activities or legal acts. The basic principles of commercial law refer to the fundamental rules that embody the nature and characteristics of commercial law, summarize the basic system of commercial law and reflect the spirit of commercial law. As to the specific basic principles of commercial law, there are different viewpoints among commercial law scholars, such as "Two Principles", "Three Principles", "Four Principles", "Five Sources", "Seven Principles" and "Eight Principles"^[2]. However, no matter what theories and viewpoints are adopted, scholars basically agree that the basic principles of commercial law should include the legal principle of commercial subjects, the principle of facilitating transactions, the principle of protecting transaction security and the principle of honesty and credit. From its function and value, the basic principles of commercial law are not only the fundamental code of conduct for businessmen to engage in commercial activities, but also the fundamental guiding ideology for legislative organs to engage in commercial legislative activities and the basic rules for judicial organs to handle commercial disputes. At the same time, the basic principles of commercial law are also a kind of behavioral norms, which should be followed by businessmen in commercial activities. Therefore, the behavior patterns and content adopted by businessmen in commercial activities must meet the requirements of the basic principles of commercial law and must not violate the basic principles of commercial law. Based on the important role of the basic principles of commercial law in commercial legislation, law enforcement, judicature and commercial activities of businessmen, even in the network information

age, when commercial transaction behavior, transaction mode and transaction environment are constantly innovating and developing, the basic principles of commercial law still have important value and function, and they are constantly changing with the development of society.

2. Application of basic principles of commercial law in e-commerce

The rapid development and wide application of e-commerce not only changes the traditional commercial transaction mode, but also brings about profound changes in the commercial law system, which is an inevitable requirement for the commercial law system to reflect the commercial transaction rules, and is also one of the important ways to modernize the commercial law. In this process of change, the basic principles of commercial law also play their own important value. As some scholars have pointed out, in view of specific market transactions, “although the basic principles of commercial law do not provide specific behavior patterns and stipulate specific rights of market subjects, the commercial value and spirit embodied in the basic principles provide rational behavior patterns and standards for people's behavior in market transactions, and guide market subjects to engage in various trading behaviors according to the objective laws of market economy. Under the guidance of advanced concepts, we will stimulate market players to innovate products, innovative technologies, innovative trading methods, innovative trading organizations and behaviors, thus creating a new situation in all work^[3].” Specifically, the application of the basic principles of commercial law in e-commerce is mainly reflected in the following aspects.

2.1 Transaction convenience principle

The primary purpose of commercial transactions is to pursue profits, so transactions must be as simple and fast as possible. To the commercial subject, the simplicity and rapidity of the transaction means saving the transaction time, reducing the cost and improving the utilization rate of funds, thus it is more likely to realize the profit-making purpose of the commercial subject. Under the condition of market economy, transactions are frequent and the market is changing rapidly, especially in today's network age. In the practice of e-commerce, the speed of transaction or commodity circulation is of vital significance to commercial subjects. Specifically, first, it is necessary to encourage industry autonomy and party autonomy in the field of e-commerce. The laws and regulations governing e-commerce should be guided and arbitrary, and businesses should be encouraged to constantly explore mature norms of e-commerce operation and promote extensive and in-depth development of transactions. Second, it is necessary to further improve the stereotype of e-commerce transaction rules, including the stereotype of transaction methods and the stereotype of transaction objects. The former should further clarify the operating procedures for a large number of electronic format contracts such as "click contracts" and "e-mail contracts", and clarify the rights and obligations of both parties; The latter should encourage the online transaction of securitized goods and information products, simplify the transaction procedures and improve the transaction efficiency.

2.2 Transaction security principle

Commercial laws of various countries have established the protection of transaction security as the basic principle of commercial law, and achieved the purpose of protecting transaction security through a series of technical regulations. Under the environment of e-commerce, with the electronization of trading means, the virtualization of trading environment and the rapidity of trading cycle, various risk factors are increasing and trading risks always exist, so transaction security is particularly important. If there is no transaction security, the whole transaction order will fall into chaos. In order to ensure the smooth progress of e-commerce transactions and protect the enthusiasm of commercial subjects to engage in transactions, in the field of e-commerce, the principle of transaction security is mainly reflected in two aspects:

One is to emphasize publicity. The so-called publicity doctrine means that the commercial law requires the parties to a transaction to show the objective facts concerning the interests of interested parties to the public so that interested

parties can understand them. The purpose of this regulation is to protect the interests of the counterparty or the unspecified third party. If the commercial subject who bears the obligation of publicity fails to fulfill the obligation or the publicity is false, it should bear corresponding legal responsibilities. In e-commerce transactions, in order to ensure the security of transactions, the obligation of publicity is also one of the legal obligations of e-commerce subjects. If online enterprises engaged in e-commerce activities are required to display their true identity on the Internet, the usual practice is to mark their business registration certificate number or electronic business license number on the homepage; Another example is that the party providing the contract in electronic format should prompt the important clauses and conclusion process of the contract, etc.

The second is to highlight the externalism. The so-called externalism refers to the legal effect of commercial transaction based on the appearance of the transaction parties' behavior. In this regard, German and French scholars call it "the legal principle of right appearance", and in Anglo-American law it is called "estoppel". According to Externalism, after the transaction is completed, it shall not be revoked in principle for the purpose of protecting the security of the transaction^[4]. The principle of externalism is also applicable to e-commerce transactions, especially in the process of concluding electronic contracts, where both offers and acceptances are completed in a virtual network environment, and the legal effects and consequences of transactions are often confirmed according to the doctrine of externalism.

3. Innovation of basic principles of commercial law in e-commerce

3.1 The change of legal principle of commercial subject

The legal principle of commercial subject is one of the basic principles of commercial law, which means that in commercial legal relations, the qualifications of commercial subject must be obtained and maintained strictly according to law, and those who do not meet the conditions stipulated by law cannot enjoy commercial rights and undertake commercial obligations. When this principle is applied to the legal relationship of e-commerce, it means that the main body engaged in e-commerce business activities, whether it is a legal person enterprise or an unincorporated enterprise, needs to obtain the corresponding business license in accordance with the provisions of the commercial legal system before it can engage in online transactions according to law. At present, because the development of e-commerce is far from mature in China, the law emphasizes the legal principle of commercial subject in order to strengthen the supervision of trading subject and ensure the security of trading. But at the same time, we should also see that, based on the particularity of e-commerce trading mode and trading environment, the traditional management mode should not be blindly applied to the business activities of e-commerce, which will hinder and limit the further development of e-commerce as a new industry. From the perspective of other countries, the legal principle of commercial subject is not completely applicable to the field of e-commerce, and the qualification of e-commerce subject is different due to the different legal regulations of commercial subject in different countries. In some countries with developed e-commerce transactions, such as the United States, Australia, etc., the establishment of online enterprises adopts the principle of freedom, and there is no restriction on the subject qualification for natural persons to engage in business activities, that is, any natural person or enterprise is allowed to set up enterprises or engage in trading activities online, and the legal norms mainly focus on supervising the consequences of engaging in transactions.

Therefore, in the field of e-commerce, the legal principle of commercial subjects has not completely lost its function. On the one hand, we should further standardize the registration system of e-commerce subjects. In particular, for enterprises with newly established websites, compulsory registration should still be implemented. On the other hand, if a natural person engages in e-commerce trading activities through the online trading platform, the restrictions should be relaxed and the principle of free registration should be implemented, instead of blindly requiring him to obtain a business license. This compromise can not only ensure the transaction security and order of e-commerce, but also encourage and promote the extensive development of transactions and promote the rapid development of e-commerce.

3.2 Highlight the principle of honesty and credit

The principle of honesty and credit is an “imperial clause” in modern civil and commercial law, which requires that the parties to a transaction should respect the transaction practice, conduct the transaction according to the method of honesty and credit to maintain fairness, and prohibit all kinds of fraud and improper behavior in commercial transactions^[6]. With the rapid development of e-commerce and the increasing frequency of online transactions, the importance of the principle of good faith has become increasingly prominent due to the openness and virtuality of the Internet, and the problem of online good faith has become an important factor affecting the security of transactions and a bottleneck restricting the rapid development of e-commerce. On the one hand, it is due to the lack of intuitive understanding between e-commerce transaction subjects, and it is impossible to know each other's credit status through the network. On the other hand, the openness of the Internet also brings difficulties to judicial relief of disputes such as online fraud and non-performance of contracts. In addition, the involvement of third parties in e-commerce transactions, such as network platforms, e-banking, and electronic certification bodies, further increases the difficulty for the subjects to understand each other's credit^[7]. It is imperative to further clarify the importance of the principle of good faith in commercial legislation, law enforcement and judicature, and advocate and implement the mechanism of good faith in online transactions, so as to make the principle of good faith play a fundamental role in online transactions.

3.3 Emphasis on the principle of protecting consumers' rights and interests

The prosperity and development of e-commerce ultimately depends on the participation of consumers, and the protection of consumers' rights and interests will affect and restrict the sustainable development of e-commerce. In addition, the virtual trading environment, paperless trading means and indirect trading process of e-commerce further increase the possibility of damage to consumers' rights and interests. Therefore, all countries regard the protection of consumers' legitimate rights and interests as the primary issue in developing e-commerce. At the same time, due to the particularity of online transactions, in order to safeguard consumers' rights and interests in e-commerce transactions, in addition to the traditional consumer protection legislation, special protection should also be implemented for consumers according to the characteristics of online transactions.

4. Research on improvement measures of commercial law in e-commerce industry

4.1 Improve the legal content related to civil and commercial law

In the composition of China's current national economic system, the e-commerce industry has occupied a place and become an important component supporting China's economic operation. People's daily consumption has been inseparable from the network. Under the imperfect legal system, people's daily consumption rights can not be effectively protected, which will limit the development process of e-commerce industry and become a major obstacle to the development of national economy to a certain extent. In the process of rapid development of industry, the existing legal loopholes and a series of security problems have been exposed day by day, and the frequent occurrence of security incidents has made the social attention in this area constantly improve^[9]. In this case, the relevant departments must improve the relevant legal system as soon as possible, so that people no longer have the worries of shopping, create a good online trading environment, establish a benign market economy, and improve the safety in the transaction process. Under the trend of globalization, facing the development degree of e-commerce in various countries and the related laws, China should learn from it effectively, take its essence and discard its dross, and then establish a new legal system according to its own situation. At the same time, the relevant contents should also be in line with international standards, so as to make international online transactions faster and safer, make domestic e-commerce industry in line with the world and promote the development of globalization.

4.2 Improve the system of implementation

The emergence of e-commerce industry is a transformation of traditional industries, which reduces the daily cost of commodity trading behavior, but also brings greater economic risks. Therefore, we need to use civil and commercial law to standardize and improve the behaviors of all businesses, consumers and other subjects, so as to achieve the correct implementation of responsibilities when problems arise. In some cases, both sides bear certain economic risks, If the economic losses are caused by other external factors, then it is necessary to clearly define what responsibilities and problems both sides should bear after problems arise. At the same time, we also need to determine the true identity of the subject. Although the online transaction process is virtual, the actual traders, merchants and consumers are independent individuals or organizations, and we also need to improve the true identity information of each subject, so as to make the transaction safer.

5. Standardize moral constraints in the network society

Judging from the current network development, many online consumption modes have become “celebrities bring goods” mode. For example, “online celebrity”, which frequently appears in today’s network society, has certain social popularity, so many businesses will cooperate with it privately, and use the popularity of “online celebrity” to achieve the purpose of promoting their own products, so as to stimulate more consumers to trade goods. However, with the development of time, many businesses are looking for the “network spokesperson”, which gradually distorts the way of stimulating consumption. Facing “online celebrity”, regardless of their own character, as long as they have social popularity, they will ask him to speak for it. Just like Mr. Zhou, who once said “it is impossible to work in my life” some time ago, the speech gave him a very popular network popularity, After he was released from prison, more than 30 similar online celebrity companies had contacted him or his family members, and the sky-high signing price came one after another, just because he was popular on the Internet. In the face of a man with criminal record such as robbery and theft, is it really appropriate for him to broadcast live “online celebrity to bring goods”? From a certain point of view, this practice does not violate laws and regulations, but it is obvious that it has touched the embodiment of morality. In order to seek profits, unscrupulous merchants have even reached the level of “unscrupulous means”, such behavior cannot be restrained by civil and commercial law. Should we also improve our moral concepts when we touch the border between morality and law? Should enterprises also strengthen their sense of social responsibility?

6. Tag

With the development of the times, the development of e-commerce industry has also attracted the attention of people from all walks of life. Here, the state should constantly improve the relevant specific legal system of civil and commercial law, create a harmonious and stable network economy society, and pay attention to the management and coordination of social and cultural development trends.

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