Beijing Internet Court

Beijing Internet Court
Top Ten Typical Cases in Five Categories

(September 2018 - September 2023)

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Digital Copyright

Ten Major Typical Cases

Case 1

Short Video Copyright Case: Whether a Short Video is Original Has Nothing to Do with Video Length

— Beijing XX Science and Technology Company v. XX Online Network Technology (Beijing) Company et al. Concerning Dispute over Infringement of the Right to Communicate Works Through Information Network

[Typical Significance]

A short video that can reflect the creator's individual expression and bring spiritual enjoyment to the audience is original and constitutes a work. This case boldly affirms new creation modes and creation behaviors in the Internet environment, passes on the value orientation of advocating and encouraging the creation and communication of works with positive energy, and is conducive to meeting diversified cultural needs of the public. It was selected into Top Ten Intellectual Property Cases in Chinese Courts and Top Ten Media Law Cases in China in 2018. The judicial advice sent along with the case won the first prize of the Beijing Court Excellent Judicial Advice and was included in the *Opinions on Strengthening Copyright Protection* issued by the

Beijing Municipal Bureau of Copyright. The judgment document took the first prize in the Online Mutual Evaluation and Selection Campaign of Excellent Judgment Documents of Beijing Courts and the Fourth National Intellectual Property Excellent Judgment Document Selection.

[Case Facts]

The plaintiff is the operator of short video platform A, and the defendant is the operator of short video platform B. To commemorate the 10th anniversary of the Wenchuan Earthquake, Black Face V, a verified user of video platform A, made and released a 13-second commemorative short video “I Want to Say to You” on video platform A with given materials in response to the call of Party media platforms. The short video involved was shared by other users of platform A, and there was the watermark of platform A and “ID: 145651081” on the playing page. Short video mobile app B disseminated the short video involved without showing the watermark. The plaintiff “notified” the defendant by email, but could not prove that the above email was sent successfully or received a reply. Afterwards, the plaintiff sent a paper notice to the defendant. The defendant deleted the short video involved. The plaintiff asserted that the

short video “I Want to Say to You” should be protected by the copyright law as a work and that the defendant who disseminated the short video and erased the watermark infringed its right of communication through information network, and requested the defendant stop the infringement, eliminate the impact, and pay RMB 1.05 million in compensation for its losses.

[Key Points of Adjudication]

The originality of short videos is not necessarily related to their length.

With given themes and materials, the creation of short videos is subject to certain limitations and is quite difficult. Although the short video involved was created based on existing materials and lasts only 13 seconds, its arrangement and selection of the materials and the effect presented to the audience are completely different from other users’ short videos, reflecting the individual expression of the creator. The short video involved brings the audience the comfort of rebirth and the power to move forward. Such spiritual enjoyment it brings to the audience also embodies the originality of the short video. Therefore, the short video involved constitutes a work created in a method analogous to

filmmaking.

Legal attribute of the application of short video watermarking

Short video watermarking is not a “technical measure” in the sense of copyright law. Rather, watermarks have the attribute of indicating a certain identity: a user’s ID watermark indicates the information of the creator, and is thus better identified as right management information; platform watermarks display the information of the disseminator, which has become an industry practice in the short video industry.

Application of “notification-deletion” rule

When a right holder discovers an infringement, he shall, in an honest and sincere manner, send a notice of rights protection in the most economical and direct way. The notice of rights protection sent by the plaintiff not according to the information published by the defendant shall not constitute a valid notice. The defendant, as a network service provider that provides information storage space, has no subjective faults in respect of short video mobile app B users’ provision of the short video “I Want to Say to You” and fulfilled the “notification-deletion” obligation after receiving a valid notice from the plaintiff later. Hence the defendant did not commit an infringement.

[Adjudication Result]

All the plaintiff's claims were dismissed. Neither party filed an appeal.

Case 2

Case of Film Illustration with Pictures: "Film Illustration with Pictures" Which Does Not Constitute Fair Use Constitutes Infringement

— XX Network Technology (Beijing) Company v. Shenzhen XX Technology Company Concerning Infringement of Right of Information Network Dissemination of Works

[Typical Significance]

This is the first case regarding the infringement committed through "film illustration with pictures" in China. The judgment of the case makes it clear that the act of making a collection of pictures with screenshots of others' film-like works, essentially displaying such content as main scenes and specific plots, goes beyond what's necessary for introduction and comment, actually has the effect of replacing the original works, and therefore does not constitute fair use. By defining the boundaries of the fair use of film and television works, the adjudication of the case cracks down on infringement by covert, technical means in disguise of innovation, protecting the source of innovation drive and facilitating the healthy development of the film and television

industry. The case was rated as an excellent document in the Online Mutual Evaluation and Selection Campaign of Excellent Judgment Documents of Beijing Courts and was selected among the top ten entertainment-related legal cases of the year, the top ten hot copyright cases of AIPPI China and excellent case studies in the national court system.

[Case Facts]

The plaintiff is the owner of the right of information network dissemination in the television drama *Eternal Love*. The defendant is an app and website operator. The website involved is an online software of "film illustration with pictures". Its homepage says, "Appreciate a good film in ten minutes". There is a picture collection of the first episode of *Eternal Love* on the website. The collection contains a total of 382 pictures, which are screenshots of the above drama. The content of the pictures covers the main scenes of the above-said episode. The texts at the bottom of the alleged infringing pictures were added by the creator of the picture collection. Viewers can choose an automatic display at the speed of five or eight seconds a picture or a manual display by clicking the next picture on the app involved.

The plaintiff asserted that the content of the picture collection basically covers the main scenes and entire plot of the drama involved, infringing its right of information network dissemination, and requested the defendant pay a total of RMB 500,000 yuan in compensation for its economic losses and reasonable expenses. The defendant argued that screenshots are used in the picture collection instead of videos, which is fair use and does not constitute infringement.

[Key Points of Adjudication]

Whether making a picture collection with the screenshots of a filmlike work is use of the work.

Concerning the provision of works to the public stipulated in the right of information network dissemination, the work here should not be understood as the whole work because the copyright law protects the expression of originality. As long as any part of a work with originality is used, it should fall under the control of the right of information network dissemination. In this case, the picture collection involved is made up of 382 screenshots from the drama involved, which are not creation elements that have entered the public domain, but content with original expression in the drama involved. Therefore, providing

the picture collection involved constitutes the act of providing the work.

Whether making a “film illustration with pictures” constitutes a fair use.

Fair quotation depends not only on the proportion of quotation, but also on the reasonable need for an introduction, comment, or explanation. In terms of the main function of the picture collection involved, it provides for the public the main plot and key scenes of the drama involved, rather than promotion and advertising information that keeps the suspense, which would have a substantial impact on the market value of the original work, damages the normal use of the work, and exceeds what’s necessary for proper quotation. Hence infringement is constituted.

[Adjudication Result]

The defendant was ordered to compensate the plaintiff RMB 30,000 for its economic losses.

Case 3

Red Packet Page Design Case: Software Page Design that Constitutes Original Expression Can Be Protected by Copyright Law

— XX Technology (Shenzhen) Company and Shenzhen XX Computer Company v. Beijing XX Network Technology Company over Copyright and Unfair Competition

[Typical Significance]

Software page design that constitutes original expression can be protected as a work of fine art. If the relevant page design constitutes “decoration of certain influence”, the anti-unfair competition law can be applied for evaluation. The judgment of this case takes a firm position against plagiarism and free riding that may mislead consumers, protects originality, and encourages innovation to meet the diversified needs of users, showing an open attitude to protect new objects in the Internet field.

[Case Facts]

Plaintiff I enjoys the copyright in app A and the “red packet chat

bubble and opening pages of app A" and has authorized Plaintiff II to operate the app and use the fine art works therein. The defendant is the copyright owner and operator of app B. The two plaintiffs held: the three kinds of red packet chat bubble and opening pages on app B are substantially similar to their existing fine art work, so the defendant's act infringed the plaintiffs' right of information network dissemination; the relevant red packet pages and overall page of app A constitute decoration of certain influence, while app B copied in an overall way, which can easily cause confusion or misrecognition by the relevant public. The plaintiffs requested the court to order that the defendant stop the act of copyright infringement and unfair competition, eliminate the impact, and compensate the plaintiffs a total of RMB 4.5 million for economic losses and reasonable expenses.

[Key Points of Adjudication]

Whether the red packet chat bubble and opening pages are original.

The matching and proportion of the colors and lines and the arrangement and combination of graphics and texts of app A's "red packet chat bubble and opening pages" reflect the selection, judgment and choice of the creator, and have certain aesthetic

appeal. Hence, it's original and constitutes a work of fine art. The pages of app B operated by the defendant are substantially similar to the above-mentioned art work, infringing the right of information network dissemination enjoyed by the plaintiffs.

Whether app pages can be protected by both the copyright law and anti-unfair competition law.

The copyright law protects the exclusive rights arising in the process of work creation and dissemination, while the anti-unfair competition law protects the competitive interests arising in the process of business operation. The interests protected by the two laws do not coincide, so they can be applied at the same time. The plaintiffs' relevant pages of the red packets on app A present the overall image of relevant service. Their texts, patterns, colors, and arrangement of these elements play the role of beautifying the service and should belong to decoration. The extensive use of the above pages can help identify the service source and constitutes "decoration of certain influence". Therefore, the plaintiffs can seek protection under both the anti-unfair competition law and copyright law. The defendant just copied and slightly modified the plaintiffs' relevant pages before using them for its own. Such improper use

of others' intellectual achievements to gain competitive advantage would not only confuse and mislead the relevant public but also harm the normal market competition order. Hence, the defendant's relevant act constitutes unfair competition.

[Adjudication Result]

The court ordered the defendant to cease infringement and compensate the plaintiffs RMB 500,000 for economic losses and RMB 94,896 for reasonable expenses. None of the parties appealed after the first-instance judgment was pronounced. The judgment has taken legal effect.

Case 4

Time-lapse Photography Case: "Appropriate Quotation" in the Copyright Fair Use Mechanism

— Zhou XX v. XX Network Technology Company Concerning Dispute Over Right to Information Network Dissemination

[Typical Significance]

When determining the work type of *Beijing Time Lapse*, the court adopted an identification method similar to the "public perception standard", that is, since the work involved seen and perceived by the public is continuous dynamic images with aesthetic appeal rather than static images, *Beijing Time Lapse* only constitutes an audio-visual work rather than a photographic work. In addition, the case has great value for studying the "appropriate quotation" in the copyright fair use mechanism, the influence of nonprofit nature on fair use, and the situation that the defendant has been convicted of infringement but is not ordered to make compensation, etc. It was listed among China's Top Ten Intellectual Property Adjudications Having the Greatest Research Value in 2021.

[Case Facts]

The plaintiff, Zhou X, a time-lapse photographer, created the work involved, *Beijing Time Lapse*, which comprises 5,392 single photographic works and 71 scenes. *Beijing Time Lapse* reflects Zhou's personalized selection of shooting factors such as shooting angle, distance, shutter, aperture and exposure. With thousands of pictures taken at a fixed interval, the filmlike work makes still images dynamic while retaining high image quality. By controlling the interval between shoots, various movements and changes in daily life speed up. Natural landscape and urban architecture complement each other, presenting beautiful scenery. The whole work is independently conceived by Zhou and created by editing a series of single still photographic works to be a filmlike work.

The plaintiff completed the filmlike work on July 11, 2014, and published it for the first time on an official video website (user name: LC_TimeLapse) on July 22, 2014. After the video link was generated, the plaintiff quoted the playing link of the video in an article published on a real-name verified social app (user name: 雷 de 池) on the same day. In September 2018, the plaintiff found on a website (domain name: http://tv.***.com)

operated by the defendant that the defendant used the content of his *Beijing Time Lapse* in the series *Dream in China* produced by the defendant. There are seven episodes in the series. In this case, the plaintiff only claimed that the defendant infringed on five of his photographic works in the fourth episode of *Dream in China* and five scenes of his filmlike work which last a total of 5 seconds. The defendant didn't delete the infringing video within five working days as demanded in the lawyer's letter received on March 12, 2019 and continued offering the accused infringing work on the website while knowing the infringement, showing obvious bad faith and causing mental and economic losses to the plaintiff. Thus, the punitive compensation mechanism should be applied to regulate the defendant.

[Key Points of Adjudication]

The dispute focuses on the type and ownership of the time-lapse photographic work.

In this case, Zhou made the work involved by first shooting pictures with landmark buildings in Beijing as the background and then editing them with computer software. While retaining high image quality, Zhou made the still pictures dynamic, forming continuous images of aesthetic appeal. The creator was

original in the selection of materials and the expression of theme. Therefore, the work is under the protection of the copyright law. The copyright law protects works based on the form of expression rather than the method of creation. In view of the way of expression of Zhou's work, the first-instance court determined the work involved falls under "works created by a process analogous to cinematography" as stipulated in Paragraph 6, Article 3 of the *Copyright Law*.

Manuscripts, original documents, legal publications, copyright registration certificates, certificates issued by certification agencies, contracts for obtaining rights, etc. related to copyright provided by the parties may serve as evidence. A natural person, legal person, or other organization who signs its name on a work or product shall be considered the author unless there is evidence to the contrary. In this case, evidence such as photos used as materials of the filmlike work involved, work registration certificate, login process of the video account, and login process of the social app account submitted by Zhou can prove that Zhou is the author of the filmlike work involved and enjoys copyright in the work given that the network company failed to submit evidence to the contrary.

Whether the use of the time-lapse photographic work in the TV program involved is an appropriate quotation and constitutes fair use.

When determining whether use of another's work is "an appropriate quotation from a published work of others in one's work for the purposes of introduction to, or comment on, a work, or demonstration of a point", we should consider if such use of work has affected the normal use of the work and if it unreasonably damages the legitimate interests of the copyright owner. In this case, the network company asserted that the use of the about 5 seconds' time-lapse work in the video involved is an appropriate quotation from a published work of others in order to present and introduce China's development and changes as well as the openness and inclusiveness of China. The network company believed the TV program involved is a non-profit documentary featuring foreigners that shows the development and changes of contemporary China and the openness and inclusiveness of the Chinese people, so the use of the time-lapse photographic work involved should be fair use.

However, according to the legal provisions on fair use, non-profit nature is not a fundamental element in the

determination of fair use. The fair use "for the purposes of introduction to, or comment on, a work, or demonstration of a point" stipulated in the *Copyright Law* can be both non-profit and commercial. Fair use means the way of use should be an appropriate quotation from a published work of others. This is the result of balancing the interests of the public and the interests of copyright owners when the *Copyright Law* designs the fair use mechanism. According to the ascertained facts, as far as the images of the TV program involved are concerned, the time-lapse photographic work occupies the whole screen as the main content during the playing; in terms of the playing time and form of the time-lapse work involved, each time-lapse photographic scene has a stop and reproduces the dynamic images of the time-lapse photographic work *Beijing Time Lapse*. In view of the above, the court held the use of Zhou's copyrighted time-lapse photographic work in the TV program involved does not meet the conditions of the copyright law's restrictions on copyright right and therefore does not constitute fair use.

Whether the defendant's broadcasting of the TV program involved on the website operated by it constitutes infringement

of the plaintiff's copyright and what kind of copyright of the plaintiff has been infringed.

The plaintiff claimed that the defendant infringed on its rights of authorship, alteration, integrity, reproduction, distribution, information network dissemination, filming, projection, adaptation and compilation in its filmlike work.

According to the facts ascertained in this case and the statements of the parties, the TV program involved was uploaded by the network company to its website for users to obtain the work at a time and place selected by them. The plaintiff stated that the time-lapse photographic work involved had not been authorized to others, and the defendant also stated to its knowledge, the television station had not been authorized for the time-lapse photographic work involved and could not provide the proof of authorization. Therefore, the court found that the network company infringed Zhou's right to communicate the filmlike work involved through information network by disseminating the filmlike work through information network through the dissemination of the TV program involved through information network.

In addition, the defendant, the network company, is not the

producer of the TV program involved and communicated the filmlike work involved through information network by uploading the TV program involved to the Internet. Instead of direct use of the filmlike work involved, the network company communicated it through information network by disseminating the TV program involved. From the perspective of exerting the right of authorship, the law safeguards the author's right to have his/her name indicated on his/her works to ensure the correspondence between authors and works. The obligation of indicating the author should lie on the party directly using the work. From the perspective that the law regulates acts, the network company in this case carried out the act of communication through information network rather than direct disassociation of the author from the work or alteration, integrity, reproduction, distribution, screening, filming, adaption or compilation of Zhou's copyrighted work; the TV program communicated by the network company was produced by others and had been broadcast by a TV station, and the plaintiff has no evidence proving that the defendant re-edited or rearranged the contents of the TV program involved, or trimmed, re-produced or distorted the contents of the TV program involved to highlight the use of the filmlike work involved. To sum up, the

plaintiff's claim that the defendant infringed on its rights of authorship, adaptation, alteration, integrity, reproduction, distribution, projection, filming and compilation of the copyrighted work lacks factual and legal basis and is not supported by the court. Another point of view is that the network company, who disseminated the TV program involved containing content of Zhou's work to the public through information network without his permission, infringed Zhou's copyright in the work involved. As to the specific rights claimed by Zhou, the relevant act of the network company infringed on Zhou's rights of authorship, reproduction and communication through information network in the work involved.

[Adjudication Result]

The defendant was ordered to cease the infringement and compensate the plaintiff RMB 500,000 for his economic losses. Neither party brought an appeal after the first-instance ruling was pronounced, and the first-instance ruling has taken effect.

Case 5

Letters Alive Case: Use of Work Beyond the Purpose and Necessity of Quotation Does Not Constitute Fair Use

— Chen XX and Chen X v. Beijing XX Cultural Development Company and Shanghai XX Film and Television Cultural Communication Company over Copyright Ownership and Infringement Dispute

[Typical Significance]

Cultural variety shows are often closely related to the use of literary and artistic works such as poems, calligraphy, and painting. So program producers should pay attention to appropriate use of existing works while polishing program content and pursuing program effects. This case has analyzed and identified common infringement acts and grounds of defense in relation to literary programs, analyzed the connotation and denotation of the alteration right, and studied the legal boundaries of infringing and fair use, and hence provided guidance for healthy and well-regulated growth of the industry.

[Case Facts]

Chen X, the father of a female writer, wrote and published a letter to his daughter titled “Past, Present, and Future” (hereinafter referred to as the “letter involved”). In the tenth episode of season II of Letters Alive (hereinafter referred to as the “program involved”) made and disseminated by the three defendants, an actor read part of the letter involved and Chinese subtitles were added. The name, some words and paragraph order of the letter involved were changed in the part read. Before and after the letter was read, the host and guests introduced and commented on the letter involved. As the heir of Chen X

, the three plaintiffs brought a lawsuit on the grounds that the three defendants infringed on the rights of alteration, reproduction, performance, and information network dissemination in the letter involved and demanded the three defendants to make an apology, eliminate the bad effects, and pay for mental damages, economic losses, and related reasonable expenses in compensation. The three defendants argued that their use of the letter involved constituted fair use and did not infringe the copyright of the letter involved.

[Key Points of Adjudication]

The three defendants altered, reproduced, performed, and disseminated the letter involved through information network.

In the use of the letter involved, the program involved deleted the long sentences and paragraphs of the letter involved and changed the order of the paragraphs, which changed the text or content of the letter involved and therefore constituted alteration of the letter involved. The program involved fixed and reproduced some content of the letter involved in the form of subtitles. Change in partial content without new expression constitutes reproduction of the letter involved. During the recording of the program involved, an actor, facing the audience, read some of the content of the letter involved. This is considered a performance of the letter involved. As the program involved includes the performance and subtitles of the letter involved, the dissemination of the program involved actually achieved the effect of providing the public with the letter involved, constituting dissemination of the letter involved through information network.

The act involved does not constitute fair use.

The program involved reproduces some substantive content of

the letter involved. Such use is not intended for introduction, comment, or explanation, and thus is not an appropriate quotation. The alteration of the letter involved by the program involved would not only influence the economic interests of the three plaintiffs, but also infringe on the right to alter the letter involved. Therefore, the act involved is not fair use and constitutes infringement.

[Adjudication Result]

For the infringement of the right to alter the letter involved, the three defendants were ordered to publish a statement to eliminate the bad effects and compensate the three plaintiffs RMB 50,000 for economic losses and RMB 12,636 for reasonable expenses.

None of the parties appealed after the first-instance judgment was made. The judgment has taken effect.

Case 6

Barrier-free Films Case: Providing Barrier-Free Films to Unspecified Public Does Not Constitute Fair Use under Copyright Law

—Beijing XX Company v. Shanghai XX Company Concerning Dispute over Infringement of the Right to Information Network Dissemination

[Typical Significance]

This case is the first typical case in China where a "barrier-free film" triggered a dispute over the right to information network dissemination. The judgment makes it clear that providing barrier-free film streaming service without distinguishing the audience hampers the normal commercial use of the original film, damages the legitimate rights and interests of the copyright owner, and constitutes infringement rather than fair use in the sense of the copyright law. The judgment of the case provides useful reference for regulating the development of barrier-free films and correctly applying relevant provisions on fair use in the copyright law.

[Case Facts]

The plaintiff enjoys the exclusive right to disseminate the film *I Am Not Madame Bovary* involved through information network. The plaintiff found that the defendant, without authorization, provided the streaming service of the barrier-free version of *I Am Not Madame Bovary* to the unspecified public through a barrier-free film app developed and operated by the defendant and believed the defendant's act violates the provisions of China's current copyright law on fair use and infringed on the plaintiff's exclusive right to disseminate the film involved through information network. Therefore, the plaintiff requested the court to rule that the defendant cease the infringement and pay a total of RMB 500,000 in compensation for its economic losses and reasonable expenses. The defendant argued that the act involved constitutes fair use in the sense of the copyright law and does not constitute infringement.

[Key Points of Adjudication]

Determination of whether the barrier-free film involved constitutes a new work and whether the producer has copyright in the barrier-free film

Compared with the film involved, the barrier-free version differs in the following aspects: dubbing, sign language interpretation

and subtitles were added to the images and sound effects of the film involved, and logo “Chinese Barrier-free Films” and characters “Producer: China Braille Press” with voice reading were added at the beginning and end of the film. The barrier-free version of the film involved is an appropriate modification and addition to the film involved, does not affect the basic content and expression of the film involved, and is neither a new work nor an adaptation in the sense of the copyright law. Accordingly, content such as “Producer: China Braille Press” added in the post production cannot be used to determine the copyright ownership of the barrier-free version of the film involved.

Determination of whether the defendant’s provision of the barrier-free version of the film involved on the app involved constitutes fair use

At the time of infringement notarization, the barrier-free version of the film involved can be watched by the unspecified public who have registered and logged in to the app. During the trial of the case, the app involved was updated, changing the registrant review mechanism. As of the second trial of the case, only people with disabilities can register and log in to watch the film involved. But this also indicates that even after the update of the

app involved, those who can perceive the barrier-free version of the film involved are not limited to dyslexics. Therefore, the alleged infringement of the defendant does not meet the constitutive requirement of "providing published works to the dyslexics in a barrier-free way that they can perceive".

Furthermore, the public can get the full content of the film involved by watching or listening, so the alleged infringement has substantially substituted the film involved and affected the normal use of the film involved. The app involved, open to the unspecified public, drained traffic from the authorized streaming platform and would inevitably damage the economic benefits obtained by the plaintiff from the authorized film involved and the legitimate interests of the copyright owner. Hence the defendant's act does not constitute fair use.

[Adjudication Result]

The defendant was ordered to cease the infringement and pay RMB 10,000 in compensation for economic losses.

Case 7

Panda Gun Gun Case: Derivative Works and Determination of Fair Use Limit

—Beijing XX Cultural Communication Co., Ltd. v. Hangzhou XX Education Technology Co., Ltd. over Infringement on the Right to Information Network Dissemination

[Typical Significance]

In the age of web 2.0, a large number of derivative works, such as adaptations of famous paintings, that incorporate the author's original wisdom, spread rapidly on the Internet by virtue of their humorous or straightaway expressions. Among these are many high-quality works that have high artistic appreciation value and can enrich the intellectual life of the public, just like the works involved in this case. This case aims to encourage the creation and dissemination of similar high-quality derivative works by protecting innovative creation methods of derivative masterpieces and advocates respecting and protecting intellectual property rights in the whole society. This case was selected into the *Annual Cases of Chinese Courts in 2022*.

[Case Facts]

The plaintiff, Beijing XX Cultural Communication Co., Ltd., is a domestic animation pre-production and IP operation company. “Panda Gun Gun” is an art image created by Zeng X, alias A Mang, a post-90s illustrator and animator. Since 2017, Zeng has created the illustration series of Panda Gun Gun by combining the image with life, films and famous paintings and published books such as When Gun Gun Meets Chinese and Foreign Famous Paintings, which are available for sale on JD and Dangdang. The art image has also been selected into the WeChat expression library, and its peripherals are very well received by people. On November 14, 2019, Zeng granted the exclusive use right to the plaintiff on an exclusive basis as well as the right to defend its rights and seek compensation independently in its own name.

The plaintiff claimed that the defendant, Hangzhou XX Education Technology Co., Ltd. without its permission, used 23 dynamic illustration works in which the plaintiff enjoys exclusive use right in the article *WOW! Panda Gun Gun Steps into World Famous Paintings* in its WeChat official account (Blue Pencil), infringing the plaintiff’s right of information

network dissemination, and requested the defendant to maintain a statement on the home page of its WeChat official account (Blue Pencil) for 48 consecutive hours to make an apology and eliminate the effects and to compensate the plaintiff RMB 66,000 for economic losses and RMB 3,000 for reasonable expenses.

[Key Points of Adjudication]

Whether the plaintiff has copyright.

In this case, the original pictures, the original author's creation statement, the original author's Weibo real name authentication page, and the information about the first publication of the works, authorization letter, etc. can serve as evidence to determine the copyright of the works in the absence of evidence to the contrary. Regarding the viewpoint mentioned in the defendant's defense that the adapted works only have negative copyright, the court held that though created based on famous Chinese and foreign paintings and drawings and referring to their overall composition and color scheme, the 23 Panda Gun Gun series pictures still reflect Zeng's unique judgment and choice in the composition, character replacement, and dynamic postures of the pandas, showing a certain degree of originality.

In addition, the copyright term of the famous paintings referenced by the works involved has expired. The paintings have entered the public domain. So, use of these paintings to create derivative works does not require anyone's consent. Therefore, the Panda Gun Gun series are adapted works, and Zeng, as the author of the works involved, enjoys copyright and is entitled to grant the right to information network dissemination to the plaintiff. The plaintiff has obtained the corresponding copyright through authorization and permission.

Item 12, Paragraph 1, Article 10 of the *Copyright Law of the People's Republic of China* stipulates that the right of information network dissemination, that is, the right to make a work available to the public by wire or by wireless means, so that people may have access to the work at a time and place of their own choosing. According to the first paragraph of Article 48, anyone who makes a work available to the public through information network without permission of the copyright owner shall, depending on the circumstances, bear civil liability such as ceasing the infringement or paying compensation for damage. In this case, the article involved made it possible for the public to have access to the works involved at a time and place of their own choosing and the infringement continued after the plaintiff

was authorized, infringing the plaintiff's right to communicate the works involved through information network. Hence corresponding infringement liability should be assumed.

Whether the defendant's use is fair.

Regarding the defense opinion that the defendant's use of Panda Gun Gun is fair and does not constitute infringement, the court held that as the article involved mentioned in the beginning that "Today I would like to recommend an illustrator @阿彪 along", we can tell the article was intended to introduce and recommend his works. However, a total of 23 works from Zeng's series When Gun Gun Meets Chinese and Foreign Famous Paintings were used in the article, and the whole article was almost composed of the 23 works with only a few words. This obviously exceeds the necessity limitation of fair use and violates Article 22 of the *Copyright Law of the People's Republic of China*. Therefore, the defendant's defense opinion was not adopted by the court.

Determination of compensation method and amount

As for the amount of compensation, the plaintiff failed to submit evidence to prove his economic losses and the defendant's illegal income and there is no market price of similar works for

reference. Hence the court determined the amount of damages as appropriate after giving full consideration to such factors as the creation cost, originality, the degree of subjective fault of the infringer, the type of infringing work, and the scope of dissemination. With regard to the lawyer's fee, although the plaintiff had a lawyer in court, he failed to submit the agreement of authorization or bills, so it's impossible to prove their agreement on the relevant amount or the actual expenditure. In addition, the plaintiff bears the burden of proof. So, the claim was not supported by the court. Regarding the notarization fee, the plaintiff failed to provide bills to prove its actual expenditure, and the plaintiff bears the burden of proof, so it was not supported by the court.

Regarding the apology, considering that the plaintiff does not enjoy the copyright of the works involved, and that the defendant had indicated the author and did not distort or tamper with the works involved in the use, the plaintiff's request for apology was not supported.

[Adjudication Result]

The court ruled that the defendant compensate the plaintiff, Beijing XX Cultural Communication Co., Ltd. RMB 18,400 for

economic losses.

Case 8

Dubbing Show Case: Business Model Impacts Fault Determination of Short Video Service Providers

—Beijing XX Cultural Company v. Hangzhou X Technology Company over Infringement on the Right to Information Network Dissemination

[Typical Significance]

As short video industry has become a highly concerned corner in the field of network-related copyright, the fault determination of network service providers should meet the development needs of the industry. When a short video service provider intentionally uses its business model to seek improper benefits, its ability to foresee infringement should be considered an important factor in determining its fault. This judgment approach aims to encourage short video service providers to adopt healthy and legitimate business models, thereby promoting the sustainable development of the industry.

[Case Facts]

The plaintiff is the copyright owner of the short animations *Ali's Dreamland · My Little Cloud*, *Ali · Mother* and *Ali · Carrier*

Swallow (hereinafter referred to as the "works involved"). Short as they are, the images are well made and the scores are beautiful. The defendant is the developer and operator of XX mobile app (hereinafter referred to as the "app involved").

The plaintiff collected evidence and found that there were at least 14 dubbing materials originating from the works involved, as well as more than 20,000 dubbing videos made based on these dubbing materials on the app involved. Users can send gifts which are redeemed with charge on the platform to the dubbing videos made based on dubbing materials. The plaintiff filed a lawsuit on the grounds that its right of information network dissemination was infringed, requesting the defendant to stop the infringement and pay RMB 162,000 in compensation for economic losses and reasonable expenses.

[Key Points of Adjudication]

The defendant is not just a service provider of information storage space.

For the part of alleged infringing videos with uploader information provided by the defendant, it can be determined that the defendant provided the service of information storage space; for the part without uploader information provided by the

defendant, as it's impossible to confirm whether they were uploaded by real network users, the defendant bears the adverse consequences of poor proof and is presumed to be the provider of relevant infringing videos.

Even if the alleged infringing videos were uploaded by network users, the defendant still committed contributory infringement.

First of all, in this case, network users uploaded the alleged infringing videos for the public rather than any individual, which does not meet the constituent element of fair use and constitutes direct infringement. Secondly, the app involved is a mobile app that provides dubbing services for the public. To be more interesting and interactive, users often choose clips of well-known films and television dramas as dubbing materials. Such works are usually not uploaded to cyberspace for free by the right holders, and it's difficult for ordinary network users to obtain authorization. In such case, the defendant's business model objectively runs the risk of inducing the uploading of infringing videos. The defendant could also foresee that there may be infringing videos in the app involved. Plus, the works involved have certain invisibility and most of the titles of the accused infringing materials contain the role name of "Ali", so

the defendant would discover the obvious infringement of the accused infringing videos as long as it had fulfilled ordinary duty of care. Furthermore, as the defendant directly profited from the alleged infringing videos, it was a business activity no matter how much it profited, so it should exercise a higher duty of care for the uploaded content. To sum up, the defendant has a "should-have-known" fault in the alleged infringement and should bear the tort liability.

[Adjudication Result]

The defendant was ordered to compensate the plaintiff RMB 15,000 for economic losses and RMB 250 for reasonable expenses.

Neither party brought an appeal after the first instance, and the first-instance ruling has taken effect.

Case 9

Case of Identifying Dramas by Sound: Unauthorized Provision of Works on App "Identify Dramas by Sound" Constitutes Infringement

— Xi'an XX Company v. Shanghai XX Company Concerning Dispute over Infringement on the Right to Information Network Dissemination

[Typical Significance]

The case makes it clear that the practice of uploading the clips of others' works to its server and providing the clips of the work involved for online playing by users through its "identify dramas by sound" function without the right holder's authorization constitutes infringement on the right of information network dissemination and is not fair use. The judgment of the case determined the standard of "providing works" in the information network irrespective of the external "innovative" form, and found the improper use of works by innovative technical means infringing, according to the judgment idea of "encouraging technology for good, maintaining technology neutrality, and preventing technology for bad", which will help regulate network communication and

promote the orderly development of cultural industries.

[Case Facts]

The plaintiff enjoys the exclusive right to disseminate the television drama “Soldiers and Their Commander”. The defendant is the operator of an app that provides the function of “identify dramas by sound”. By editing the work involved into one-minute clips and uploading them to the server, the app can identify the sound and compare it with the work clips on the server to realize automatic capture and playing when network users play the sound of the work involved. Users can also publish the work clips identified in relevant sections of the defendant’s app. The plaintiff believed that the defendant infringed on its right of information network dissemination and requested that the defendant be ordered to stop the infringement and compensate for the losses.

[Key Points of Adjudication]

“Providing works” for the purpose of the right of information network dissemination means making works available on the information network by uploading them to the network server, setting shared files or using file sharing software, etc. so that the public can download, browse or obtain them by any other means

at the time and place selected by them.

The defendant edited and uploaded the work involved to its server, and then provided users with clips of the work involved for online playing through the embedded “identify dramas by sound” function and comparing the sound provided by network users. Although the defendant’s above-mentioned act is only aimed at each identification act of network users, it infringed the defendant’s right of information network dissemination by making the work involved available on the network server for the public to obtain the work through the defendant’s app at the time and place selected by them.

Plus, network users, after obtaining the clips of the work involved through the “identify dramas by sound” function, can publish them in the sections set by the defendant’s app. The public can also obtain the published video clips of the work involved at the time and place selected by them. As the defendant failed to prove the specific publisher information of the clips of the work involved, it should be determined that the defendant is the direct provider of the clips of the work involved on its app and thus infringed the plaintiff’s right of information network dissemination.

[Adjudication Result]

The defendant was ordered to compensate the plaintiff for economic losses.

Case 10

Case of FIFA World Cup Act Preservation: Providing Live Streaming Service Without Permission of the Right Holder Should Be Considered Infringement

—XX Network Company v. Beijing XX Technology Company Concerning Dispute over Infringement on the Right to Information Network Dissemination

[Typical Significance]

This is a typical case where the people's court, with an accurate understanding of the legislative spirit, made a timely order for act preservation. For live television broadcasting, the value of the FIFA World Cup lies in suspense and timeliness, and the value of the final is far greater than that of the knockout and group stage matches. If the right holder can only obtain legal remedies after the infringing live streaming of the final occurs, the losses may be difficult to measure and cannot be fully compensated for. In this case, the preservation application was received on the eve of the World Cup final. Given the circumstances, the ruling was made and served on site on the same day, preventing the infringement which had been highly likely to cause significant damage and protecting the legitimate

interests of the right holder to the maximum extent.

[Case Facts]

On the eve of the World Cup final, a network company filed an act preservation application, claiming that it is the copyright owner of the World Cup Qatar within China and has the exclusive right to stream the program involved through information networks in the form of live, delayed and on-demand streaming as well as the right to permit or prohibit others from exercising or partially exercising the above rights. Since the opening of the World Cup Qatar, the network company had continuously discovered that XX mobile app operated by Beijing XX Technology Company provided the service of live streaming the World Cup Qatar in the event zone and that users can watch the live World Cup matches by clicking “live streaming”. The court made a ruling in accordance with the law and served the ruling on site on the day of receiving the preservation application in this case. The respondent actively fulfilled the obligations determined by the ruling and stopped the live streaming of the World Cup matches on its mobile app.

[Key Points of Adjudication]

The court held that in the act preservation case arising from the

dispute over infringement of event program copyright, the following factors can be given overall consideration to determine whether “the damage is irreparable”:

Whether the sports event program involved received high attention and has a high market value.

Football is the world’s most popular sport, and the World Cup is a football event of the highest honor in the world that attracts a phenomenal level of attention. As the last world cup of the era of Messi and Ronaldo rivalry, the World Cup Qatar meant a lot to fans. With the Qatar World Cup moving forward, especially after entering the knockout stage, its commercial value became higher and higher.

Whether the accused act occurred during the event involved.

The World Cup Qatar 2022 kicked off on November 21 and ended on December 18, with a quite short duration. The network company applied for act preservation on December 16, just before the start of the two most commercially valuable finals of the World Cup.

Whether the accused act is a live streaming of the event.

As a sports event, the unpredictable changes on the field and the

unexpectable results of the matches are the core factors that attract fans. Therefore, live streaming of the event is not comparable to delayed, on-demand or other streaming in terms of platform traffic. According to the infringement evidence submitted by the network company, when one opens the mobile app, the middle of the home page shows: [World Cup] Today at 23:59 Netherlands vs Ecuador; [World Cup] Tomorrow 03: 00 England vs USA. Click on “Events” in the navigation box below, and “Football” appears at the top of the page. Click “World Cup Friday 017 Today 18:00 Wales 0:0 Iran” to enter the details page of the match. There is a play box at the top of the page, which displays the match information. There are “animation live streaming” and “video live streaming” in the play box for choice. Click “video live streaming” to load the match. There is a “live streaming” under the play box, showing the match progress and the information of match milestones. The comparison shows the content of the above timestamp preservation is consistent with the content of the World Cup program on that day. The court held that the evidence submitted by the plaintiff preliminarily proved that the defendant, without permission of the right owner, provided the live streaming of the FIFA World Cup Qatar 2022 matches to the public through a mobile app operated by it during

the event.

Rights enjoyed by the applicant and scope of rights

According to the media rights confirmation letter issued by FIFA and the authorization letter and situation explanation issued by China Media Group, the network company has the right to stream the event (live, delayed or on-demand streaming) as a free or paid service and has the right to protect its rights, with stable effect of the right of seeking protection.

[Adjudication Result]

The respondent, Beijing XX Technology Company, was ordered to immediately stop live streaming the FIFA World Cup Qatar 2022 matches on the mobile app.

Beijing Internet Court

Digital Consumption

Top Ten Typical Cases

Case 1

Case of Formatting Clauses Concerning Cross-Border E-Commerce Platform: The Agreement That Excludes the Jurisdiction of the Court in the Country Where the Consumer Is Located by Formatting Clauses Is Invalid

——Gao X v. XX Company on Information Network Sales Contract Dispute

[Typical Significance]

This case is the first to determine the invalidity of the jurisdiction clause of cross-border e-commerce agreements. The relevant provisions of the *Civil Cod*e have been applied, establishing the standard for determining the formatting clauses of consumer extraterritorial agreement jurisdiction, and providing useful reference for the correct judgment of such cases. This case has implemented the principle of consumer tilt protection, and effectively safeguarded the legitimate interests of consumers in cross-border e-commerce disputes by actively exercising China's jurisdiction. After the judgment of this case was made, the cross-border e-commerce provider involved took the initiative to modify the formatting clauses and accept the jurisdiction of Chinese courts in similar cases, achieving good social effects. This case was listed in China's Top Ten Typical

Judicial Cases of Consumers' Rights Protection in 2022 and as an outstanding case studied by the national court system, and was evaluated as "a case with demonstration effect in the field of the international Internet".

[Case Facts]

The plaintiff Gao X claimed that on November 29, 2019, he placed an order for two items through the "Overseas purchase" section of a Chinese website. After receiving the goods, Gao believed that the goods were not the imported goods claimed by the website, which constituted fraud. Therefore, he sued the website operator, XX Company, to the court, asking for "Repay Purchase Price and Pay Treble Damages" of RMB 2,535.36 in total. The defendant submitted an application for objection to jurisdiction, stating that both parties agreed to submit the corresponding dispute to the jurisdiction of a city court located in Europe and waived other jurisdiction. Therefore, the Chinese court did not have jurisdiction over this case. After trial, the court ascertained that Gao is a Chinese citizen with a habitual residence in China, and the defendant company is an enterprise established and registered in accordance with Chinese laws, with its actual place of business in China. According to the ICP

filing information, the domain name of the website involved is a top-level domain name in China. The website's homepage is marked with the words "Overseas purchase" in the upper left corner, and "Pure overseas goods", "Direct mail with steep discount", and "Localized service" in the upper right corner. The content of this website, except for a few product brands, models and other content involving foreign languages, is in Chinese.

[Key Points of Adjudication]

The court's effective judgment holds that the dispute has occurred during the process of "Overseas purchase", and according to its "Use conditions of overseas purchase", the use conditions should be applied first. However, the use conditions expressly state that the user acknowledges ordering goods from an overseas entity and an overseas website, and accordingly chooses a city court located in Europe as the jurisdiction court corresponding to the overseas entity and website. According to the literal meaning, the user has entered into a jurisdictional agreement with an overseas entity, rather than a jurisdictional agreement between the plaintiff and the defendant. In addition, the "Use conditions" at the bottom of the general page of the defendant's website stipulates that "disputes shall be resolved through litigation by a court with jurisdiction in Beijing".

Therefore, the defendant's claim that there was an exclusive jurisdiction agreement between the defendant and the plaintiff of Luxembourg city courts is not valid.

Even if the defendant, as it stated, is essentially one of the subjects of the "Use conditions of overseas purchase", it is still necessary to further consider the validity of the jurisdiction agreement involved. The jurisdiction agreement involved in the case is drafted in advance by the party providing the formatting clauses for reuse and not negotiated with the other party when concluding the contract, and belongs to formatting clauses. The agreement jurisdiction system reflects respect for the autonomy of the parties' will, and its practical basis is the equal status of both parties. The transaction involved in the case is a "B2C" online retail transaction. Although it is a contract between equal parties, one party to the contract is an operator with a relatively advantageous position, while the other party is a consumer in a disadvantageous position. The information held by both parties is asymmetric, and the actual negotiation ability is also unequal. When determining the validity of such contracts, it is necessary to examine whether they follow the principle of fairness to determine the rights and obligations of the parties, implement

the principle of protecting the weak and curb the abuse of the principle of freedom of contract by the dominant party, so as to promote the realization of substantive fairness and justice.

In this case, the clause involved unreasonably limits the consumer's main rights to seek remedies, and the exclusion of the clause involved does not unreasonably increase the cost of the operator. The commercial activities of the defendant website are clearly directed to Chinese consumers, and it mainly profits from transactions with Chinese consumers. The defendant should have considerable foresight and reasonable consideration of operating cost allocation for transactions with Chinese consumers and response to disputes that may arise therefrom. If that jurisdiction clause is deemed valid, it means that Chinese consumers can only go to foreign courts to seek judicial remedies when there is a dispute over shopping on websites operated in China. This disproportionately increases the cost of consumer rights protection and unreasonably restricts consumers' right to seek remedies. In summary, the website involved in this case mainly engages in business activities targeting Chinese consumers, but exclusively stipulates that the jurisdiction courts are Luxembourg city courts. When establishing the rights and obligations of both parties to the transaction, it violates the

principle of fairness and unreasonably restricts the main rights of consumers. The Plaintiff in this case also clearly stated that he does not agree to accept the agreement, so the jurisdiction clause in this case should be invalid.

[Adjudication Result]

The defendant's objection to jurisdiction in this case is dismissed.

Case 2

Live Streaming Sales Case: Private Transactions in Live Streaming Sales Should be Recognized as Business Operations Carried Out by the Host

—— Wang XX v. Xu XX and Beijng XX Technology Company Over Online Shopping Contract Dispute

[Typical Significance]

This case is referred to by the media as the "first case related to live streaming sales". The host's private live streaming sales should be recognized as business operations and the host should bear the responsibility of the operator accordingly. The judgment in this case directly faces the new problems brought by the new business format of live streaming sales, deeply analyzes the essence of various business models in live streaming sales, clarifies the boundaries of the responsibilities and obligations of hosts and platforms, and reflects the basic concept of Internet courts using judgments to establish rules, applying rules to promote governance and exerting governance to improve development.

[Case Facts]

On May 28, 2019, the defendant claimed during a live streaming on a platform that he had an idle second-hand mobile phone for

sale and any interested person could add his WeChat ID for contact. The plaintiff contacted the defendant through WeChat on the same day. The defendant claimed that the mobile phone involved was functional and had no invoice. The defendant also took a photo of the "About" page of the mobile phone involved and sent it to the plaintiff's request. The agreed price is RMB 4,000. The mobile phone was delivered by express after the payment was made via WeChat transfer. After signing for it, the plaintiff believed that the phone involved was a counterfeit product with a low benchmark score and its system was not iOS. The plaintiff requested a refund and return, but the defendant later blocked the plaintiff. The plaintiff appealed to the court for an order to terminate the contract and require the defendant to bear the responsibility for refund, compensation of three times the purchase price and reasonable expenses. The defendant claimed that he was not an operator and had no fraudulent intention.

[Key Points of Adjudication]

The party, who continuously engages in the business operations of selling goods through the Internet and other information networks for the purpose of profit, shall be deemed as an

operator engaging in business operations. Any change in trading product or trading method in a single transaction shall not affect the nature of the operation. That single transaction shall still be deemed as the business operation of the operator.

The host continuously engages in business operations of selling goods, promotes and introduces specific goods through live streaming platforms, and guides consumers to privately contact and purchase specific goods. If a consumer claims that the relevant operation is fraudulent due to quality issues and demands the host to bear the responsibility for the compensation of three times the purchase price, the people's court shall support the relevant claim after investigation and verification.

Live streaming platforms only release goods information and do not have service functions for matchmaking trading such as order management. When the host and the purchaser deal directly in private, the live streaming platform shall not be deemed as an e-commerce platform operator, but as a general network service provider.

[Adjudication Result]

The court ruled that the contract entered into by the plaintiff and the defendant should be terminated, and the defendant should refund the purchase price and pay for three times the purchase

price as well as reasonable expenses in compensation. Upon the first instance judgment, the parties did not lodge an appeal and the first instance judgment has come into force.

Case 3

Case of Free Offers at Designated Time: Failure of the Operator on the E-Commerce Platform to Fulfill the Contractual Obligations in Accordance with the Rules of Free Offers at Designated Time Constitutes a Breach of Contract

—— Zhang X v. Zhou X and a Third Party (Zhejiang XX Company) over Online Shopping Contract Dispute

[Typical Significance]

When operators on e-commerce platforms hold "free offers at designated time" activities and formulate corresponding rules, consumers often encounter rights protection difficulties when they believe they meet these rules but do not enjoy the corresponding discounts. This case clarifies the legal nature of these rules, stating that the rules publicly displayed by operators on the platform in online stores are an integral part of the shopping contract after its establishment and are a conditional agreement to fulfill contractual obligations, which have binding force on both parties. This case clarifies the legal responsibility that the operators on platforms should bear if the operators fail to comply with the rules, and determines that the operators on platforms should bear the responsibility for breach of contract and return the payment. This case has reference significance for

the rule-making and dispute resolution of various promotional activities organized by operators on platforms such as limited-time discounts and electronic coupons, similar to “free offers at designated time” activities.

[Case Facts]

In 2017, the defendant held Double Twelve promotion activities in the online store operated by the defendant, and the rule of the activity was the first customers to pay respectively after 00:00, 10:00 and 22:00 on the day would be free of charge. The plaintiff consulted the defendant about the rule before participating in the activity, and the defendant’s customer service staff replied that “Based on payment time”. On December 12, 2017 at 22:00, the plaintiff Zhang X purchased a pair of brand women’s shoes worth RMB 898 from the defendant’s involved online store, and the actual payment was RMB 898. On December 19, the defendant announced the list of customers who could get it for free, and the plaintiff was not in the list. The screenshot provided by the defendant showed that the customer who could get it for free placed the order at 22:00:00 (the defendant believed that according to the background records, multiple people placed orders on the hour,

but the customers who could get it for free were in the first place), and the payment was made at 22:00:03. However, the screenshot of the plaintiff's order showed that the plaintiff took the order at 22:00:00, and the payment was made at 22:00:01. The plaintiff believed that the defendant engaged in fraudulent behavior during the activity and therefore appealed to the court, requesting the defendant to refund the purchase price of RMB 898 pay the compensation of three times the purchase price.

[Key Points of Adjudication]

The court believes that the plaintiff uses his account to purchase the products involved from the store operated by the defendant, pays for the goods and receives the goods, forming an online shopping contract relationship between the two parties. As to the legal nature of the "free offers at designated time" rules formulated by the defendant, the court believes that the plaintiff's action to occupy a position is based on the completion of the payment, at which time the shopping contract has been established and taken effect. If the plaintiff occupies the first position according to the rule, the defendant must fulfill the obligation of refund. The "free offers at designated time" rules formulated by the defendant should be regarded as an integral part of the shopping contract between both parties and have

binding force on both parties. The agreement of the “free offers at designated time” belongs to the clause of conditional performance of contractual obligations. Regarding these rules, the court believes that based on the screenshot of the activity rules in the online store that the plaintiff got before participating in, there is no indication specifying it is based on the order time or payment time. After consulting the defendant’s customer service, the plaintiff learns that it is “based on payment time”. The court determines that the rule involved should be whoever places the order on the hour and pays first can be the one to get it for free. Regarding the legal liability of the defendant, the court believes that in the case of the plaintiff’s payment time being earlier, the defendant’s failure to determine the plaintiff as the one to get it for free in accordance with the rules constitutes a breach of contract. However, based on the existing evidence submitted by the plaintiff, it is insufficient to prove that the defendant’s behavior is fraudulent, so the claim of the compensation of three times the purchase price is not supported.

[Adjudication Result]

The defendant has refunded the plaintiff the purchase price of RMB 898.

Case 4

Case of Consumers' Negative Comments to the Operator: Consumers' "Negative Comments" to the Operator Generally Does Not Constitute Any Infringement to the Operator's Reputation Right

—— XX Sports Company v. Shanghai XX Information Consulting Company over Reputation Right Infringement Dispute

[Typical Significance]

This case is a vivid practice of effectively safeguarding consumers' right to criticism and suggestion. Clearly, it is consumers' legitimate rights to make an objective evaluation on the network platform towards the operator's commodities or services. It infringes the operator's reputation right only when their evaluation slanders and damages the reputation of the operator. Consumers should reasonably and legally use their consumption supervision rights to force operators to continuously improve their services and enhance their quality.

[Case Facts]

The plaintiff, a sports company, operates an indoor sports venue and has registered online on the review platform operated by the defendant, an information consulting company in Shanghai.

Shortly after the new store opened, the plaintiff found several negative comments on the defendant's review platform. The plaintiff believed that the negative comments were inconsistent with the actual situation and infringed its reputation right. The plaintiff requested the defendant to delete the negative comments and disclose the personal information of users who wrote the "negative comments". The defendant refused on the grounds that it had no right to do so, and the plaintiff then appealed to the court.

[Key Points of Adjudication]

Whether the four reviews involved in the defendant's platform infringe the plaintiff's reputation right and whether the defendant infringes the plaintiff's reputation right.

The court holds that speech includes statements of fact and expressions of opinion. The statement of fact refers to a specific process or state of the present or past, with the nature of being able to verify its authenticity. It specifically refers to the concept of "what" relative to the fact and can be broadly referred to as an opinion. The expression of opinion refers to the actor expressing own opinions or positions, whether it is a pure value judgment or a simple expression of opinion, and whether it is

true or false. It specifically refers to “how to see it”. To determine whether speech infringes the reputation right, for the statements of fact, the actors need to provide evidence to prove that their statements are true, or after reasonable investigation, there are substantial reasons to believe that the statements are true. For the expressions of opinion, whether the opinions are correct or not is not within the scope of legal evaluation, but there should be no insults to others. In this case, the four reviews on the defendant’s platform are reviews on the services provided by the plaintiff. According to the content of the reviews, they are subjective evaluations made by users on the services provided by the plaintiff. Article 15 and Article 17 of the Law of the People’s Republic of China on the Protection of Consumer Rights and Interests, as well as Article 39 of the E-Commerce Law, stipulate that consumers shall have the right to supervise the protection of consumers’ rights and interests in work related to commodities and services. A business operator shall listen to and take account of suggestions regarding commodities and services provided by consumers and shall be subject to supervision by them. An operator of an e-commerce platform shall create and improve its credit rating system, formulate public credit rating rules, and provide avenues to consumers to

make comments on commodities sold or services provided on its platform. The operator of an e-commerce platform shall not delete any comment made by consumers on any commodity sold or service provided on its platform. According to laws above, it is consumers' legitimate rights to make an objective evaluation on the network platform towards the operator's commodities or services. Only when their evaluation slanders and damages the reputation of the operator can we determine it infringes the operator's reputation right. The e-commerce platform shall not delete any comment made by consumers that complies with mandatory provisions of the law, social public order and good customs, and is not in violation of credit evaluation rules of the e-commerce platform. In this case, it can be seen from the evidence on record that the user comments on the defendant's platform are based on the defendant's service itself and other factors. Such comments indicate users' subjective feelings and personal experiences, and aim at the specialization level of the plaintiff's coaches, without directly pointing to the plaintiff. Although some comments have extreme remarks like "liar", the overall comments are not to the extent of insult and slander. As an operator, the plaintiff shall give necessary tolerance to

comments made by consumers on commodities, instead of demanding absolutely accurate comments without subjective emotion and asking each buyer to make good comments. In addition, the court notes that in these four comments the plaintiff claims, the plaintiff also gives an explanation, and the defendant has already processed extreme remarks in relevant comments. In this case, the plaintiff also fails to present evidence proving user comments bring damage, and shall bear the adverse consequence of inability to provide evidence. Accordingly, the plaintiff claims that user comments on the defendant's platform and the defendant infringe its reputation right, which lacks factual and legal basis. It also files a claim to delete such comments and make compensations, including RMB 20,000 for economic losses, RMB 1,230 for notarial fees, and RMB 5,000 for legal expenses. The court will not support this claim. Similarly, the claim filed by the plaintiff to ask the defendant to offer an apology also lacks factual and legal basis. The court will not support this claim.

Whether the defendant should disclose to the plaintiff the information on users who make four comments.

Article 3 in *the Regulations of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trail of*

Civil Dispute Cases Involving Infringement of Personal Rights by the Information Network (Amendment in 2020), "If the plaintiff prosecutes the network service provider, and the network service provider defends on the grounds that the information on the alleged infringement is released by the user, according to the plaintiff's request and the case, the people's court may order the network service provider to provide the information that can determine network users suspected of infringement, like name, contact information and network address". Since the related comments complained by the plaintiff in this case do not constitute the infringement of its reputation right, the court will not support the plaintiff's claim for disclosing the information of concerned users.

Whether the defendant should restore two comments in the "All" column of the plaintiff's store to the "Select" column

According to Article 39 of the *E-commerce Law of the People's Republic of China*, "An operator of an e-commerce platform shall create and improve its credit rating system, formulate public credit rating rules, and provide avenues to consumers to make comments on commodities sold or services provided on its platform. The operator of an e-commerce platform shall not

delete any comment made by consumers on any commodity sold or service provided on its platform." This shows that consumers are vested with the evaluation right to solve the problem of asymmetric information. It is the duty of the operator of an e-commerce platform vested by laws to provide reference for consumers in shopping decision-making, the establishment of evaluation mechanism, and evaluation content display. The establishment of evaluation mechanism is not within the scope of the civil relation caused between equal subjects due to the contract. In this case, the plaintiff claims that the defendant moves the comments from the "Select" column on the platform to "All" column, infringing its rights and interests. The court holds that this is a way for the platform to display its evaluation rules, and does not infringe the plaintiff's rights and interests. Therefore, the court will not support the plaintiff's claim.

[Result]

The plaintiff's claim is dismissed by the court judgment.

Case 5

Case of Take-Away Package Price Higher Than Single-Order Price: That Preferential Package Price Is Higher Than Single-Order Price Constitutes Fraud

—— Zhou X v. XX Company on Network Service Contract Dispute

[Typical Significance]

This case finds that during the transaction, commodities and services shall be advertised in the principle of honesty and credibility, and consumers shall also be notified truthfully and clearly of promotional means like discounts and gifts, instead of exaggerating the preferential strength and misleading consumers by means of spurious calculations, which constitutes false advertising. The verdict of this case delivers a judicial attitude of protecting the legitimate rights and interests of online consumers and saying "no" to fraudulent acts of concealment.

[Case Facts]

The plaintiff purchased a package in the store owned by the defendant through the take-away platform. The webpage showed "Original price is RMB 108 while current price is RMB 65". This package also included a limited edition coke as a gift,

of which, however, the price was not marked. After the plaintiff purchased the package, the price of all items in the package was RMB 85 in total, and only cost RMB 57 after discounts. The plaintiff held that for the same combined commodity, the package price was higher than the single-order price, so the defendant's act is fraud. The court is requested to order the defendant to compensate RMB 1.

[Key Points of Adjudication]

The court holds that since the plaintiff purchases the package involved from the store run by the defendant on the food ordering platform, the parties establish a contractual relationship. The plaintiff claims that the defendant and the third person are fraudulent in selling the package involved. The court holds that the so-called fraud is that false information is notified to the other party or truth is concealed deliberately, causing the other party to act based on declaration of intention. Fraud is determined by the following factors: deliberation, notification of false information, or truth concealment, causing the other party's wrong cognition and making declaration of intention based on such wrong cognition. According to the evidence provided by the plaintiff, the price of package involved is marked as RMB 108. However, even without any discounts, the total price of all

products in the package purchased separately is only RMB 85, which is far less than the marked package price. In this case, the defendant doesn't provide any evidence proving the price of this limited edition coke is RMB 23. Even without considering this, in the usual sense, now that it is marked as a gift, the gift price should not be calculated into the total price of the commodity, misleading consumers to think they enjoy both discount and gift. Therefore, the price of the involved package advertised by the defendant is false advertising, misleading the plaintiff. Compensation should be made.

The third person, as the network transaction platform, publicizes the defendant's business license, food business license, and address, and fulfills its examination duty. In this case, the plaintiff doesn't provide any evidence proving that the third person should know or is aware of the defendant's false advertising. Therefore, the court will not support the plaintiff's claim, asking the third person to bear joint liability. Moreover, regardless of any claims of the plaintiff in this case lodged in other cases, in this case, the plaintiff only claims only RMB 1, without any malicious action. For this opinion proposed by the third person, the court will not support.

[Result]

The verdict of the court supports the plaintiff's claim. After the first instance judgment, the parties do not appeal and the judgment has come into force.

Case 6

Case of Taking Advantage of a Loophole: Insincere Conclusion of Contracts by Taking Advantage of the Website Information Aggregation Error Shall Not Be Protected by the Law on the Protection of Rights and Interests of Consumers

—— Chen XX v. Beijing XX Information Technology Company over Network Service Contract Dispute

[Typical Significance]

This case positively responds to malicious "taking advantage of a loophole". The plaintiff maliciously claims for profit by taking advantage of error information on the website, which should not be protected by the law on the protection of rights and interests of consumers. Such hostility complaint and prosecution severely interfere with the normal operation of the enterprise, which complies with neither the principle of honesty and credibility nor the core socialist values, and also waste precious judicial resources. It should be contained resolutely.

[Case Facts]

On March 20, 2019, the information on products of XX Hong Kong Hotel provided by the operator on the platform was wrongly aggregated on the website operated by Beijing XX

Information Technology Company. The information on “Luxury Room” of this product was displayed on the reservation homepage of “Luxury Executive Suite with Mountain View”. However, the order filling page and the order detail page showed “Luxury Room” information, that is to say, after the user clicked “Luxury Executive Suite with Mountain View” displayed on the homepage and entered the order filling page of the product provided by the operator on the platform, the displayed information and the reservation were “Luxury Room”, and payment made was also the price of “Luxury Room”. On that day, the plaintiff submitted 3 orders, booking for 3 nights on March 31, April 2, and April 4, 2019 respectively, and paid RMB 9,757 in total. After around one hour upon placing the order, the plaintiff called the customer service of the website, complaining the reserved room type is not the one provided, and claiming that the information technology company induced consumers by fraud and induced graphic text, which violated the law on the protection of rights and interests of consumers. The plaintiff requested the information technology company to return the hotel deposit and pay triple punitive damages.

[Key Points of Adjudication]

Beijing XX Information Technology Company is not deliberate,

which is one of factors determining fraud, so it commits no fraud.

In this case, it can be seen from the evidence submitted by the parties that the information aggregation error of hotel product involved is sure-enough, and such error indeed attracts consumers at a lower price. However, this error could be caused purposely, or caused by technical fault or maloperation. If it is to be determined that the information technology company commits fraud deliberately, other reasons should be eliminated reasonably. From a realistic perspective, at the reservation homepage of “Luxury Executive Suite with Mountain View” on the website, the product price of the company is quite different from the price of other suppliers. Also, after one clicks it and enters the page, all operations are at the reservation page of “Luxury Room”. The information aggregation error is obvious. In the network environment, the operator’s such error causes larger harm than benefit, or even harm without benefit. The more orders such error attracts, the more complaints and claims the operator will face, and the more losses the operator will bear. Therefore, the information aggregation error of the product involved is more likely caused by technical fault or

maloperation, not by human intention. This is not determined as fraud.

Chen XX does not misunderstand due to the error information display and make declaration of intention based on wrong judgment.

According to ascertained facts, Chen has filed claims against the defendant many times, and obtained high compensation. In this case, Chen's acts are not reasonable. First of all, Chen submitted 3 orders, booking for 3 nights on March 31, April 2, and April 4, 2019 respectively, with an interval of one day. The court inquired the reason for reservation with an interval. Chen explained the other two nights were booked at the official website of the hotel. The court ordered Chen to submit the order details, but Chen failed to provide such information until now. Secondly, after complaining the reservation inconsistent with the real situation, during the coordination process by the information technology company, Chen canceled the reservation and held the website accountable for fraud. Moreover, after the information technology company provided a solution (making up the price difference and upgrading the room), Chen contacted the hotel to verify the bed type of "Luxury Executive Suite with Mountain View". Subsequently, Chen claimed the website

cheated consumers on the grounds that the bed type information displayed on the website and notified by the customer service was false.

In fact, Chen didn't make requests towards the bed type in the order, so no agreement on the bed type was made in the contract. When confirming the order information to the customer service, Chen didn't raise an objection towards the bed type. That is to say, Chen's final order had nothing to do with the bed type provided for "Luxury Executive Suite with Mountain View" of the hotel involved. It can be inferred from Chen's performance that Chen actually had no demand for accommodation while placing the order, the declaration of intention was mendacious, and Chen intended to claim for profit by taking advantage of error information on the website.

[Result]

All claims of the plaintiff were dismissed by the court judgment.

Case 7

Case of Paying at the Store While Withholding Expenses: Exceptions of Certain Content in Which Consumers Have Personal Stake in Network Consumption Formatting Clauses Should Be Prominently Indicated

—— Wu X v. Beijing XX Company over Network Service Contract Dispute

[Typical Significance]

The hotel reservation service company serve users by the convenience and efficiency of formatting clauses, and also makes unfair transactions with users by taking advantage of fixed contents in formatting clauses provided by one party. The enterprise providing formatting clauses shall establish formatting clauses legally and reasonably based on the principles of fairness and integrity and with protecting consumers' interests as starting point, like clauses with a material relation with consumers, such as method of performance. The verdict of this case further clarifies the responsibility of the network service provider as a party providing formatting clauses, namely guiding the network transaction mode to be more consistent with the spirit of contract freedom and contract justice, avoiding risks while

facilitating transactions by formatting clauses, and giving long-term play to such clauses.

[Case Facts]

Wu X reserved an overseas guest room on a tourism APP run by a company. The payment mode was “payment at the store”, but after placing the order, the payment has been deducted from the bank card, then the plaintiff didn’t check in. The plaintiff held that the payment should be made at the hotel. Since this company violated the agreement, Wu requested to cancel the order. This company held that in terms of “payment at the store”, it has already added remarks in service clauses, i.e. “some hotels may collect reservation fees from your band card in advance”. Therefore, this didn’t constitute a violation and the hotel refused to return the refund. Wu sued the company to the court and requested for an order to refund the withheld house payment.

[Key Points of Adjudication]

Is the company the contract subject of hotel reservation service involved?

Is the company the contract subject of hotel reservation service involved? The screenshot of the order submitted by Wu is clearly marked with XXX. com in the upper left corner, and the

evidence submitted by the company also shows that “online reservation services are provided through the website provided by XXX”, so it can be concluded that the hotel reservation service involved is provided by XXX. com website. The company argues that the website is different from the App, but it has not submitted evidence to prove that the operation on the App is conducted through other websites and has nothing to do with XXX. com, so its claim is not accepted. The company argued that it was not the operator of App, and the court held that even if it was not the operator of App, it could not be concluded that it was not the other party to the contract. The unilateral statement of the company in the terms of service that “the website of XXX. com belongs only to the Singapore office where it is registered, not to the offices of any global customer service agencies” does not conform to its website registration information in China and will not be accepted. The filed evidence is sufficient to prove that the contract involved was completed through XXX. com website, and the company, as the online filing subject of the website in China, should be identified as the provider of the hotel reservation service involved, that is, the other party of the service contract.

Should the company bear the liability for compensation claimed

by Wu?

Should the company bear the liability for compensation claimed by Wu? The screenshot of the price details submitted by Wu clearly shows “Pay CHF 1053 at the store”. According to the general understanding, in this order, 1,053 Swiss francs should be paid to the hotel after Wu arrived at the store, but the actual situation is that after Wu placed the order, he was deducted 1,106.70 US dollars. The “terms of service” involved in this case are drafted in advance for reuse and not negotiated with the other party when concluding the contract, and belong to formatting clauses. The company, as a provider of foreign-related hotel reservation services, has the obligation to inform Wu of the contents that bear significant interests with users, such as payment time, currency and whether the reservation can be cancelled. The following content is added to the clause of “Pay at the Store” with very clear meaning: “In this case, some hotel accommodation service may request pre-authorization of your bank card to collect a deposit or charge a full reservation fee in advance”. For this statement, the court believes that it should be regarded as an exception to “Pay at the Store”, that is, it is usually paid on the spot when the user

checks in the hotel, and there may be other exceptions of prepayment and withholding. For such possible exceptions, the company, as a provider of formatting clauses, has the obligation to remind and explain the clauses to users. However, they are in fact only stipulated in the complicated and varied service terms, which is not enough to serve reminding purpose. Therefore, the company failed to fulfill its reasonable reminding obligation in the reservation service involved in this case. So it does not constitute what we usually understand as “Pay at the Store”, which misled Wu to believe that he could make a reservation with the hotel first and complete payment after he arrived at the hotel. In addition, the company should be liable for the loss of RMB 7,000 of reservation payment caused by the failure to cancel the order. Wu’ s claim for another compensation of RMB 7,000 has no factual and legal basis, which is not supported by the court.

[Adjudication Result]

The court supports Wu’s claim to refund the hotel reservation payment.

Case 8

Case of Calculation of Expiration Time of Premium Account Members: The Act of Ending the Membership Service Early without Covering All the Natural Days Constitutes a Breach of Contract

——Shi X v. XX Technology Company over Network Service Contract Dispute

[Typical Significance]

The verdict in this case urges the platform to clarify the rights and content of member users, prompting the platform to further provide more user-friendly services, and safeguarding consumers' right to know.

[Case Facts]

At 20:46:48 on June 9, 2021, the plaintiff Shi X activated a one month VIP membership service on a video platform operated by a technology company. At 23:28 on July 9, 2021, when Shi intended to use the membership rights, he was informed that his membership rights had expired and could not be used. Shi believes that there is a network service contract relationship between himself and the defendant, a technology company. According to the *VIP Member Service Agreement* and the

member term instructions on the defendant's official website, there is ground to believe that the expiration date of the member's rights is 24:00 on July 9, 2021. The technology company unilaterally terminated the contract in advance, which constituted a breach of contract. Therefore, Shi sued the defendant, a technology company, to the court.

[Key Points of Adjudication]

Are the corresponding terms of the service agreement for members involved in this case valid?

The *VIP Member Service Agreement* involved in this case is a clause drafted by the defendant in advance and used repeatedly for many VIP members. VIP members can only accept or refuse the agreement and cannot negotiate with the defendant, so the agreement is a formatting clause. The contents of the clauses involved are valid, and the defendant shall provide services to the plaintiff in accordance with the agreed membership service term.

Does the act of the defendant constitute a breach of contract?

The *VIP Member Service Agreement* involved stipulates that "the term of your VIP member service shall be subject to the service term corresponding to your own choice and payment of

the corresponding membership fee, starting from the time you become a VIP member ...The service term of VIP member shall be terminated from the date when the current service term expires." The instructions on defendant's official website about the validity term of membership is as follows: "The validity term of a member who subscribes for one-month service starts from the date on which the member subscribes the membership service and ends on the same date next month (for example, if the membership service is subscribed on July 28, the validity term will start from July 28 and end on August 28)." The focus of the dispute between the two parties is whether the membership service should end at 20: 46: 48 on July 9, 2021 or at 24: 00 on that day.

The court holds that membership rights should fully cover the period up to that natural day. First of all, the unit of calculation for the expiration of the service term in the corresponding clauses of the membership service agreement involved is in "days". According to the general understanding, a "day" should cover all the time of that natural day. Secondly, the membership service agreement involved is a formatting clause, so when there are two interpretations, it should be understood in favor of the

provider of non-formatting clause. In addition, the defendant's instructions on the validity term of membership in the "Help Center" on its website, although not included in the membership service agreement involved, has the effect of explaining the corresponding formatting clause. As the reminder of "expiration time" can only be viewed after the user recharges and becomes a member, it cannot be regarded as the content of which the user has been clearly informed before the contract is established. To sum up, the defendant's early termination of provision of membership services to the plaintiff constitutes a breach of contract and the defendant should bear the corresponding liability thereof.

[Adjudication Result]

The court ordered the defendant, a technology company, to provide VIP membership rights to the account of the plaintiff, Shi, for one day, and rejected the rest of the claims by the plaintiff. At present, this verdict has come into effect.

Case 9

Case of Qualification Audit on a Take-Away Platform: The Take-Away Platform Should Bear Joint Liability for Failing to Audit the Qualification of Catering Service Provider

——Wang X v. XX Catering Management Company and XX Information Technology Company over Product Liability Dispute

[Typical Significance]

Against the background of digital economy, the Internet platform should fulfill its main responsibilities according to law, especially the take-away catering platform involving the health of consumers, and should strengthen the audit of the identity and business license of catering service providers on the platform. It is clarified in the verdict of this case that if the operator of a take-away catering platform fails to fulfill its qualification audit obligation according to law, resulting in damage to the legitimate rights and interests of consumers, it shall bear joint and several liability for compensation to prevent the health and physical safety of the public from being infringed.

[Case Facts]

The defendant, an information technology company, operates a take-away catering platform, providing take-away ordering service. It solemnly promises to consumers that the platform has carried out strict on-the-spot examination on the food business license of catering service providers, and that it ensures that the license information such as the operator's name, business place, main business format, business items, and expiration date stated in the food business license of catering service providers are legal, true, accurate and valid. The plaintiff Wang X bought some spicy hotchpotch from a store on the platform, and later found that the food store on the platform was operating without food business license. Wang appealed to the court, demanding that the information technology company and the spicy hotchpotch store bear joint and several liability for compensation.

[Key Points of Adjudication]

Operators of e-commerce platforms shall require operators who apply to enter the platform to sell goods or provide services to submit their identity, address, contact information, administrative license and other authenticated information for verification and registration. If the e-commerce platform fails to fulfill its qualification audit obligations and causes damage to

the legitimate rights and interests of consumers, it shall bear corresponding legal responsibilities.

[Adjudication Result]

The court ordered the information technology company and the food operator to bear joint and several liability for compensation.

Case 10

Case of Dispute over Liability of Second-Hand Commodity Operators: Sellers Bear the Responsibility as an Operator When Continuously Selling Second-Hand Commodities for Profit

——Wang X v. Chen X over Online Shopping Contract Dispute

[Typical Significance]

The second-hand goods trading model is a typical model in the digital economy. The emergence of second-hand goods trading platforms is conducive to the revitalization and reuse of second-hand goods. However, in practice, some people engage in business activities on second-hand trading platforms under the guise of second-hand trading, and refuse to bear the responsibility as an operator over dispute regarding the goods it sells on the grounds of transaction of second-hand items for personal use. The verdict in this case takes into account the nature, source, quantity, price, frequency, and income of the goods sold by the seller, and holds that the seller who continuously sells second-hand goods for profit should bear the responsibility as an operator, which is conducive to better safeguarding the legitimate rights and interests of consumers

and has reference significance for the handling of similar cases.

[Case Facts]

In September 2019, the plaintiff Wang X placed an order for a certain brand of laptop from Chen X, the defendant, on a second-hand trading platform for study purposes. Upon receipt, it was found that the appearance of the laptop was severely worn and could not be charged and used properly. Upon inspection by the official after-sales division of the brand, it was found that the internal battery of the computer was swollen, the computer was subject to unauthorized tampering and contained non-original components, which were clearly inconsistent with what Chen claimed as 95% new. Wang contacted Chen for a return and refund, which was rejected. Wang believed that Chen's act constituted fraud and appealed to the court to request a refund from Chen and compensation at three times the price. Chen argued that his handling of self-used second-hand items on second-hand platforms does not fall under the category of operators under the consumer rights protection law.

[Key Points of Adjudication]

Did the defendant Chen X engage in business activities under the identity of an operator?

Article 3 of the *Consumer Rights Protection Law* stipulates that business operators who provide consumers with goods or services they produce or sell shall comply with this Law. If there are no related provisions in this Law, it shall comply with other relevant laws and regulations. The concept of operator is not clearly defined in this Law. However, according to Article 9, Paragraph 1 of the *E-commerce Law of the People's Republic of China* (hereinafter referred to as the *E-commerce Law*), the term "e-commerce operator" referred therein refers to natural persons, legal persons, and unincorporated organizations engaged in business activities such as selling goods or providing services through information networks such as the Internet. By comparing the above provisions, both laws stipulate that entities must have the element of selling goods or providing services to be defined as operators. Besides, the *E-commerce Law* specifically limits the channel for selling goods or providing services within the range of information networks. This indicates that the *E-commerce Law* has refined regulations based on the particularity of information networks, relying on the provisions of *Consumer Rights Protection Law*. If the defendant Chen is identified as an e-commerce operator due to selling goods on the information network, he should also be identified

as an operator regulated by the *Consumer Rights Protection Law* and bear corresponding legal responsibilities.

Before the establishment of this online shopping contract, the defendant Chen had previously posted multiple sales information related to different models of Apple computers through his second-hand platform account, which clearly exceeded the scope of trading second-hand items for personal use. Chen had a clear subjective intention to continuously sell goods to the public for profit, with attributes similar to the usual e-commerce platform operators. Therefore, the court holds that the defendant Chen has the identity of an e-commerce operator, and his business activities of selling the computers involved in this case through the internet shall be recognized as a business behavior.

Does the defendant's act of selling computers constitute an act of fraud?

Where one of the parties notifies the other party the fake information or conceals the truth intentionally, causing the other party to make wrong decisions, it shall be deemed a fraud. Therefore, an act of fraud shall meet the following requirements: 1. The perpetrator intentionally provides false information or

conceals facts; 2. This leads the other party to form a misconception; 3. The other party marks an incorrect expression of intention as a result. In this case, the defendant traded a second-hand computer within a certain second-hand App. When both parties communicated through the second-hand App, the plaintiff reaffirmed that the appearance of the computer in question was intact, undamaged, was subject to 80 charging cycles, and was bought from the official website. This led the customer to make the purchase decision. It is clear that the plaintiff and the defendant based the transaction on the prerequisite that the computer in question was a genuine product. According to the obvious scratches on the appearance of the involved computer and the documents provided by Apple's official store, it was confirmed that the internal solid-state drive of the involved computer was not an original component, there were official signs of tampering and modification on the device, and the battery inside the device was swollen. This proves that the computer in question is not the second-hand genuine Apple product that the plaintiff Wang intended to purchase. Meanwhile, the defendant Chen stated that his computer in question had only been charged and discharged about 80 times, and claimed that all functions of the computer in question were normal in

operation. Based on common sense, the defendant should have adequate awareness of the appearance and actual usage of the computer in question. Generally, charging and discharging about 80 times would not have caused the battery to swell, nor would it cause the replacement with non-original hard drive components. If the defendant Chen has indeed used the computer involved in this case, he should have some awareness of the above situation; while the defendant Chen clearly informed the plaintiff Wang during the transaction process that the appearance of the computer in question is normal and there are no problems with its functionality. Therefore, we have grounds to believe that the defendant Chen concealed the facts and informed the plaintiff Wang of the false situation, causing the plaintiff to form a misunderstanding that what he purchased was a genuine product, thus paying the corresponding price. The above-mentioned behavior of the defendant Chen constitutes an act of fraud.

[Adjudication Result]

The court ruled that Chen shall refund and pay three times the price of the goods in compensation.

Beijing Internet Court

Platform Governance

Top Ten Typical Cases

Case 1

Advance Screenings on Demand Case: Unilateral Change of Standard Terms by Platforms Shall Not Damage Existing Rights of Users

—— Wu X v. Beijing XX Technology Company over Network Service Contract Dispute

[Typical Significance]

This case, by examining the validity of standard terms of the network service platform, has the exemplary effect for the regulation of the service platform industry and plays an irreplaceable role in safeguarding the healthy development of the Internet platform industry. During the trial of this case, from the standpoint of coordinating and balancing the future development of the Internet industry and the protection of users' rights and interests and on the basis of respecting the business model innovation of network service platform operators, the court recognized the validity of a unilateral change right clause that the defendant in this case set for itself through standard terms, but stressed at the same time that the exercise of the unilateral change right must be restricted by the principle of

fairness and must not damage the legitimate rights and interests of users; otherwise the specific terms that are modified shall be invalid. Through this case, the public will realize that the legitimate rights and interests of users, no matter how small, will be under the care and protection of laws; while operators of network service platforms should realize that they must follow the principle of fairness, respect the feelings of users and abide by laws and regulations in the process of exploring new business models. This case was included in the Work Report made by the Supreme People's Court at the Fourth Session of the 13th National People's Congress and selected as one of the Ten Major Commercial Cases of Courts in China in 2020. The judgment of the case was selected as one of the "One Hundred Outstanding Adjudication Documents" in the Third Session of the Selection Campaign among courts in China, and won the first prize in the "Online Mutual Evaluation and Selection Campaign of Excellent Judgment Documents of Beijing Courts". The judicial suggestions sent based on the case won the second prize among the judicial suggestions of Beijing courts.

[Case Facts]

The plaintiff was a gold VIP member of the defendant's

platform. In the VIP Membership Service Contract, Clause 3.5 stipulated that "advance screenings on demand of TV series: according to its own actual operation needs, the defendant will provide the service model of early access to TV series episodes for some video content regularly updated on the defendant's platform, so that members can watch more episodes of such video content ahead of schedule after extra payment. The specific on-demand rules shall be subject to the actual explanation or provision by the defendant's platform"; the second paragraph of the Introduction part stipulated that "both parties agree that the foregoing exemption and limitation of liability clauses do not belong to the clauses stated in Article 40 of the Contract Law as 'exempting one party from liability, aggravating the liability of the other party or excluding the other party from its main rights', namely, both you and Beijing XX Technology Company recognize the legality and validity of the foregoing clauses, and you will not claim the clauses in the agreement as illegal or invalid on the ground that Beijing XX Technology Company has failed to fulfill its obligation of giving reasonable reminders"; Clause 3.1 stipulated that "the defendant has the right to change all or part of the membership rights and the applicable device terminals of users based on its own

operation strategy"; Clause 10.2 stipulated that "both parties agree that for the resolution of disputes, the latest VIP Membership Service Agreement agreed by you shall prevail."; and Clause 3.3 stipulated that "you understand and acknowledge that for certain Contents, due to copyright owners or otherwise, there will still be advertisements in the video's preamble, which shall not be seen as the defendant's infringement or breach of contract". The plaintiff held that the defendant introduced the "paid advance screenings on demand" model during the broadcasting of the TV series Joy of Life, requiring him to pay extra to watch the latest episodes and thus damaging the benefits of VIP membership that he should enjoy. In addition, the "VIP Membership Service Agreement", having been unilaterally amended by the defendant and containing several illegal clauses, should be invalid.

[Key Points of Adjudication]

The "advance screenings on demand" model itself has nothing wrong, but shall not damage the existing benefits of VIP membership

The court held that relying on the Internet technologies, the differentiated needs of the people for work and life were

gradually met, and personalized expressions were able to be realized. The industrial models of serving people's needs should be tolerated. Since the "membership" service model launched by video platforms based on the consumers' willingness to consume had been accepted by the public, there was nothing wrong with digging deep into the needs of users, creating differentiated and adaptive personalized services and exploring new video scheduling and broadcasting methods on that basis. What needs concern was that the healthy development and operation of business models should be based on following business terms, respecting users' feelings and not violating relevant laws and regulations.

Part of the standard terms, having excluded the main rights of users and failed to fulfill the obligation of giving reasonable reminders, shall be invalid

The court held that the defendant's "VIP Membership Service Agreement" was standard terms. In particular, the clause that "both parties agree that the foregoing exemption and limitation of liability clauses do not belong to the clauses stated in Article 40 of the Contract Law as 'exempting one party from liability, aggravating the liability of the other party or excluding the other

party from its main rights', namely, both you and Beijing XX Technology Company recognize the legality and validity of the foregoing clauses, and you will not claim the clauses in the agreement as illegal or invalid on the ground that Beijing XX Technology Company has failed to fulfill its obligation of giving reasonable reminders" violated the compulsory provisions in Article 40 of the Contract Law on the validity of standard terms. Meanwhile, by requiring users to undertake the waiver of their right to claim the standard terms as illegal or invalid on the ground that "the defendant has failed to fulfill its obligation of giving reasonable reminders" through a standard term, the defendant was using the standard term to assume that it had fulfilled its statutory obligation. To sum up, the above standard term shall be invalid.

"Member-specific recommendation" does not constitute a breach of contract

The court held that the "VIP Membership Service Agreement" clearly stipulated the specific content of "advertising privilege" and "member-specific recommendation" and stated that there would still be other forms of advertisements in the preamble of videos; and in the introduction page of benefits of VIP

membership, the defendant clearly explained the specific content of “advertising privilege” through description by text and examples in the form of pictures. The advertisements or member-specific recommendations broadcast by the defendant’s platform in films and TV series were consistent with the above stipulations. Thus, the defendant did not breach the contract.

The “paid advance screenings on demand” reduced part of the benefits of “gold VIP membership” that Wu X should enjoy, and thus the unilateral change shall have no effect on Wu

The court held that “you can enjoy watching ahead of schedule, without the need to wait for updates at a snail-like speed. When others are still waiting for updates, you have already watched the finale” should be understood as “all VIP members can enjoy the benefits of watching all updated hit TV series and high-quality self-made dramas of the platform ahead of users who are not VIP members”.

In this case, it was the defendant’s commitment to provide preferential rights to gold VIP members including Wu X. In other words, Wu should be given the preferential right to watch the series ahead of users who were not gold VIP members. Films requiring extra payment or coupons to watch, which were

already existing when Wu bought the gold VIP membership, stipulated in the agreement and clearly marked in related films, were in a parallel relationship with hit TV series and the defendant's high-quality self-made dramas, while the "paid advance screenings on demand" service was reducing a part of the benefits of VIP membership of "watching hit TV series first".

By launching the "paid advance screenings on demand" service during the broadcasting of the TV series Joy of Life involved in the case based on the unilateral change clause, the defendant's platform damaged the benefits of gold VIP membership of watching the TV series ahead of schedule. As a result, the watching experience enjoyed by gold VIP members were far lower than expected, making their watching of TV series and films far less entertaining and satisfactory.

Therefore, the defendant can unilaterally change the contract terms based on the characteristics of its network services, but such change should be based on the premise of not damaging the rights and interests of users. The defendant's unilateral addition of the "paid advance screenings on demand" clause damaged Wu's main rights and interests, and shall thus not have

the effect of changing the contract on Wu.

[Adjudication Result]

In the judgment, it was ascertained that the content in the second paragraph of the introduction part of the Service Agreement shall be invalid, the content in Clause 3.5 thereof shall have no effect on the plaintiff, and the defendant shall provide the plaintiff with the original benefits of "gold VIP membership" for 15 consecutive days so that the plaintiff could enjoy the right to watch hit TV series and the defendant's high-quality self-made dramas that had been updated on the defendant's platform, and compensate the plaintiff for the loss of notarization fee of RMB 1,500. The defendant refused to accept the judgment of first instance and filed an appeal. The court of second instance dismissed the appeal and upheld the original judgment.

Case 2

Soft Pornographic Comic Case: Contracts Concluded to Provide Soft Pornographic Content to Minors Shall Be Invalid

—— Wang X v. XX Network Technology Company over Network Service Contract Dispute

[Typical Significance]

It is the common value and goal of the public to strengthen the protection of minors and support their healthy growth. In this case, with the online comics, a common life scene for minors, as the trigger, it is concluded that when the content of online cultural products is unhealthy, network service contracts shall be invalid for the violation of public order and good morals. In the judgment of this case, it is emphasized that network service providers should uphold the core value of integrity and improve the service content in accordance with the laws. Meanwhile, the judgment plays the leading role of justice to guide network service providers, minors and their parents, and all sectors of society to jointly follow the values of civility, kindness and rule of law, act on “caring for the young” in daily life and participate in the ecological governance of network information content, so

as to create a healthy, clean and sound cyberspace for the healthy growth of minors.

[Case Facts]

Wang X, a junior middle school student, paid for comics reading on the comics reading platform operated by the defendant without his parents' knowledge. In a year and a half, Wang read more than 100 comic books, for which he recharged and paid more than RMB 1,400. After Wang's parents found out the situation, they communicated with the defendant, clearly expressing that they would not ratify the payment and requiring for a refund. The defendant did not agree to a full refund. The guardians of the plaintiff held that as Wang had limited capacity for performing civil juristic acts, his act of recharging did not match his age and intelligence; and the defendant was clearly at fault, since the comics provided thereby contain nudity, sexual teasing and other content, which were not suitable for minors to read, and the defendant failed to provide identity authentication for minors as well as corresponding functions such as time management, authority management and consumption management. Therefore, the network service contract shall be invalid, and the defendant shall refund the recharged amount of the plaintiff in full.

[Key Points of Adjudication]

First, the criteria for determining whether a minor's online consumption act matches his/her age, intelligence and mental health status shall be identified after comprehensively considering such factors as the nature of the juristic act involved, the age of the minor, the correlation between the consumption act and his/her life, the amount, frequency and other modes and characteristics of consumption as well as the economic status of the minor's family and the economic level of the region where the minor lives.

Second, the protection of minors, reflecting the social care for the young, is an important embodiment of the traditional virtues of the Chinese nation and the good morals of the society. Therefore, when judging the validity of the acts of minors, who are a special group, emphasis shall be laid on examining whether the content involved violates public order and good morals. And the judgment of whether the content involved violates public order and good morals shall fully follow the principle of acting in the best interests of minors based on the fact that the subject performing the contract as was identified in this case was a minor.

[Adjudication Result]

It was ascertained that the network service contract between Wang X and XX Network Technology Company shall be invalid, and XX Network Technology Company shall refund the recharged amount to Wang X in full.

Case 3

In-game Item Property Right Case: In-game Items with the Attribute of Property Interests Are Network Virtual Property

—— Cheng X v. XX Technology Company over Property Right Infringement Dispute

[Typical Significance]

The era of big data has bred all kinds of online economic activities, as a result of which there are now various complicated types of network virtual property. In this case, by analogy and recognizing the whole through observation of the part on the basis of defining the legal nature and ownership of virtual property in the field of online games and illustrating the protection boundary thereof, the overall protection scope of network virtual property, identification of infringement thereof, corresponding damage compensation therefor and other related details are further clarified, thereby allowing better play to the social functions of laws, guiding the behaviors of the public and safeguarding the sound development of the digital economy. This case was selected as one of the “Ten Major Judicial Cases of Network Governance of China in 2022”.

[Case Facts]

Cheng X was a player of a mobile game, and he recharged a total of about RMB 200,000 to the mobile game while playing it. On October 31, 2019, the mobile game operator issued an announcement to terminate the operation of the game and stated that as compensation, it would transfer 5% of the total historical recharge of game players to other games. Later, Cheng filed a lawsuit before the court against the mobile game operator involved, claiming that by terminating the operation of the game, the defendant infringed his legitimate rights and interests, and demanding the refund of the unused in-game currency of over RMB 30,000 and the compensation of over RMB 1 million and associated interest for the game service that failed due to the termination of operation. The defendant argued that it was not at fault to terminate the operation of the online game service and should not bear tort liability. There was no agreement between Cheng and the defendant on the operation period of the game involved, the circumstances of termination and the assumption of liability after termination of operation.

[Key Points of Adjudication]

First, online in-game items, having the attribute of property interests, can be protected as network virtual property in

accordance with the laws. An actor, if infringing other people's network virtual property through fault and causing damage, shall bear tort liability.

Second, the amount of damages to cover the losses of the plaintiff shall be determined based on how online in-game items were obtained. If the in-game items directly purchased with the legal currency were not converted into other in-game items, then the plaintiff did not receive the corresponding service, and the defendant shall compensate for the amount in RMB corresponding to such remaining in-game items; on the contrary, the in-game items having been converted or those obtained while playing the game cannot be directly converted into money even if the operation of the game continues. Since the plaintiff had, while playing the online game involved, received the game service provided by the defendant for a certain period of time and enjoyed the fun of the game, the compensation amount for the loss of the in-game items shall be determined as appropriate based on the total amount recharged by the plaintiff and the period during which the plaintiff played the game.

[Adjudication Result]

The defendant shall compensate the plaintiff for the loss of RMB 36,257 and associated interest, and other claims of the

plaintiff were dismissed.

Case 4

0.1-RMB Short Message Unsubscription Case: When the Allocation of Expenses for Performance Is Not Clearly Stipulated, Costs for Users to Unsubscribe from Commercial Promotional Short Messages Should Be Borne by the Platform Company

—— Wang X v. Beijing XX E-commerce Company over Network Service Contract Dispute

[Typical Significance]

Due to the diversity and richness of Internet products and the universality and discrepancies of users, different users may have different expectations for the experience of Internet platform services. In order to meet the needs of different users and improve transaction efficiency, Internet platforms incorporate into the authorization agreement of integrated platforms such personalized and differentiated services as information push on the premise of giving clear notification and reasonable reminder in advance, and then provide effective ways of refusal (cancellation of authorization) according to the needs of different users, which is more in line with the characteristics of such Internet platforms and is conducive to the development of

the Internet industry. Through this case, it is clarified that e-commerce platforms can provide personalized short message push service for users as per contract terms, but should provide effective ways of refusal or cancellation of subscription at the same time, and the costs of short messages for cancellation of subscription should be borne by e-commerce platforms. The case helps to further elaborate the circumstances and rules to which "where the allocation of expenses for performance is not clearly stipulated" of Article 511 of the Civil Code shall apply, which is of exemplary significance. The case was selected as one of the Annual Cases of Courts in China in 2021, one of the Study of China's Outstanding Court Cases in 2021, one of the "Ten Major Typical Judicial Cases of Consumer Rights Protection of China" of the China Consumers Association in 2019-2020, and one of the Typical Civil Cases Involving People's Livelihood of Beijing courts in 2022.

[Case Facts]

On May 30, 2019, the plaintiff Wang X used his mobile phone to download a company's mobile phone application for shopping and created an account. The registered mobile phone number was 150****9657, and the user ID was 84****83. Wang needed to agree to the User Agreement and Privacy Policy

when creating the account and logging in to the mobile phone application of the defendant Beijing XX E-commerce Company. Clause 5.2 of the User Agreement between the two parties stipulated that “in order to facilitate users to understand in time the order information, delivery service information and other information closely related to transaction and delivery, and to improve users’ experience in using the services of Beijing XX E-commerce Company, the user understands that Beijing XX E-commerce Company will provide you with relevant information of Beijing XX E-commerce Company by means of push by this application, email, short messages, phone calls, etc., on the premise of respecting the user privacy protection terms. If not willing to receive the above information, the user has the right to unsubscribe or set the refusal to receive messages. Clause 2 of the Privacy Policy disputed by Wang stated that: “If you don’t wish to continue to receive messages pushed by us, you may require us to stop pushing, or require us to stop sending promotional short messages as per the guidelines on cancellation of subscription of short messages, or make settings in the mobile device to stop receiving messages pushed by us, provided that we may send a message in accordance with the laws or the service agreement of a single service.” The defendant marked in

bold or underlined Clause 5.2 of the User Agreement and the disputed content in Clause 2 of the Privacy Policy as a reminder for users.

At 10:03 on November 1, 2019, the defendant Beijing XX E-commerce Company sent a short message to Wang's mobile phone number "150****9657", which read: "[Beijing XX E-commerce Company] The red packet to get an RMB 20 discount for your pay at or over RMB 69 that you applied for has been issued! Buy in advance for the Double Eleven: Enjoy <an RMB 50 discount for your pay at or over 99 RMB> for all hotpot products, and buy sliced fatty beef for RMB 9.9 only. dwz.cn/ly99v1nx. To unsubscribe, send 'N' to us". At 10:13 on November 11, 2019, Beijing XX E-commerce Company sent another short message to Wang, which read: "[Beijing XX E-commerce Company] The goods for your Double Eleven shopping are ready! Buy 250g of cherries for RMB 29.9, and enjoy an RMB 200 discount for your pay at or over RMB 299 for the products of Three Squirrels! Red packets requiring no threshold for consumption are available too! dwz.cn/6fXeyLEO. To unsubscribe, send 'N' to us". Then at 10:01 on November 15, 2019, Beijing XX E-commerce Company sent yet another short message to Wang, which read: "[Beijing XX E-commerce

Company] Your application has succeeded: as the Fresh Food Festival starts, a red packet of RMB 100 in value has been credited to your account! Buy cherries for RMB 29.9, and choose any 5 bags of snacks for RMB 49. dwz.cn/MYuphBXo. To unsubscribe, send 'N' to us."

At 16:31 on November 10, 2019, at 20:54 on November 15, 2019, and at 20:54 on November 15, 2019, the plaintiff Wang replied "N" to the three numbers of Beijing XX E-Commerce Company that sent short messages to him, respectively "10690738504514", "10691852965574" and "1069285314192104", in which the cost of RMB 0.1 arose for the short message replied to the number "10691852965574".

[Key Points of Adjudication]

Breach of contract refers to the act of parties that violates their contractual obligations. Specifically, it is the act of one party to a contract that "fails to perform its contractual obligations" or "fails to comply with the contract when performing its contractual obligations" as stipulated in this article.

In this case, neither the User Agreement nor the Privacy Policy stipulated the allocation of expenses arising from canceling the subscription of commercial promotional short messages, and

thus the provision that "where the allocation of expenses for performance is not clearly stipulated, the expenses shall be borne by the party performing the obligation" shall apply. As can be seen from "2. To provide you with the display of information on goods or services" in "I. How Do We Collect and Use Your Personal Information" of the Privacy Policy, it was a contractual obligation of the defendant to provide users with the service of stopping the push of promotional messages on an optional basis, and thus Beijing XX E-commerce Company was the party performing the contractual obligation. By sending short messages to cancel subscription as per the guidelines for cancellation of subscription, Wang was exercising his right to refuse to receive short messages, but not performing an obligation. Therefore, the cost of RMB 0.1 for the short message incurred by Wang shall be borne by Beijing XX E-commerce Company.

To sum up, the stipulations in Clause 5.2 of the User Agreement and Clause 2 of the Privacy Policy are valid. Beijing XX E-commerce Company has the right to push commercial advertisement information as per the agreement, and the ways of canceling the subscription thereof stated in the agreement are effective. Beijing XX E-commerce Company did not breach the

contract in the process of pushing commercial advertisement short messages to Wang and in the process of unsubscribing. Wang's act of sending short messages to unsubscribe from commercial short messages was an act of exercising the right to refuse to receive short messages, but not an act of performing an obligation. Therefore, the cost of unsubscribing from commercial short messages should be borne by the party performing the contractual obligation, namely, Beijing XX E-commerce Company.

[Adjudication Result]

In the judgment, it was ascertained that the cost of unsubscribing from commercial short messages was "the expense for performance arising from the platform's performance of its obligation to provide users with short message notification service that can be unsubscribed from", and the platform company was the party performing the obligation. When the allocation of expenses for performance was not clearly stipulated, the cost for the user to unsubscribe from commercial promotional short messages should be borne by the platform company.

Neither party appealed after the judgment of first instance was made, and the judgment has come into force.

Case 5

Encyclopedia Entry Case: The Failure of Online Encyclopedia Service Providers to Properly Review Entry Editing Constitutes Infringement

—— Zhao X v. Beijing XX Technology Company over Right to Reputation Infringement Dispute

[Typical Significance]

Online encyclopedia products have gradually become the information channel that the whole society attaches importance to and relies on, and have the attribute of social public interest. For the creation and editing of encyclopedia entries, especially entries of famous figures, online encyclopedia service providers should not only strengthen review to avoid deliberate discrediting and defaming of the figures in the entries which infringes their personality rights, but also pursue the completeness and accuracy of the content as far as possible to avoid wrong understanding of the figures by the public.

[Case Facts]

The defendant is the provider of an online encyclopedia service. A user edited the encyclopedia entry of Zhao X, the plaintiff's father, twice, deleting the opera script "Red Coral" from Zhao's

masterpieces and adding the words “Zhao X was a big literary thief”. Believing that the defendant’s act infringed his father’s reputation, the plaintiff filed a lawsuit, requesting the court to order the defendant to compensate the plaintiff for the mental distress of RMB 6, disclose the true identity of the user, amend or cancel the exemption clause in the user agreement, make an apology, eliminate the adverse effects and restore the original entry.

[Key Points of Adjudication]

Does the plaintiff have the right to file a lawsuit?

The laws and judicial interpretations in China clearly give the close relatives of a deceased the right to file a lawsuit over the infringement of the right to reputation. Meanwhile, negative social appraisal of a deceased not only infringes the reputation of the deceased, but also affects the overall interests and personal interests of the close relatives thereof. Therefore, any close relative of the deceased has the right to request the court to protect the personality rights of the deceased, and to hold others accountable for infringing his/her own personality rights based on his/her status as the close relative of the deceased at the same time.

Was the reputation of the plaintiff's father damaged?

An encyclopedia platform is an open platform to provide information for Internet users based on the content of entries created and edited by platform users. Internet users can learn about the life and masterpieces of Zhao X, the plaintiff's father, and form an objective appraisal of Zhao X through this entry. There is existing evidence to confirm that Zhao X was one of the authors of the Red Coral.

A user deleted the Red Coral from the content of the entry involved. Although not directly giving remarks denying Zhao, the user's act of covering up facts would affect Internet users' true and comprehensive understanding of Zhao's life and masterpieces and objective appraisal of Zhao, leading to lower social opinion on Zhao. The derogatory and insulting remarks added by the user to the "Introduction" part of the entry involved were learnt by Internet users and were retained for 5 years, seriously damaging Zhao's reputation.

Did the encyclopedia platform company commit infringement, and what kind of civil liability should it bear?

(1) The encyclopedia platform company committed infringement

Whether the defendant committed infringement should be analyzed from the perspective of information disclosure and review obligations of network service providers. In this case, the defendant has disclosed the registration information of the user to the court. At that time, China did not require Internet information service providers to carry out real-name authentication upon registration of network users. Therefore, the defendant was not at fault for failing to provide real-name information.

(2) The encyclopedia platform company shall bear civil tort liability

The civil liability to be borne by the encyclopedia platform company should be determined by examining whether the defendant knew or should know about the infringing act.

From the perspective of the defendant's information management ability, the nature and way of providing services and the possibility of causing infringement, the defendant provides users with information storage, access and modification services, has the information management ability, and has infringement risks when providing services. Accordingly, the defendant should have the awareness of preventing infringement risks and should take necessary and

reasonable measures to regulate the risks according to its ability. From the perspective of the technical possibility for the defendant to take measures to prevent infringement and of whether it took corresponding reasonable measures: during the lawsuit of this case, the defendant did not provide the court with the user agreement applicable when the entry involved in the case was edited. However, it should have the awareness and the ability to well keep its previous editions of the user agreement, and should also bear the adverse consequences of failing to provide evidence. Even a comparison with the notarized XX Encyclopedia Agreement dated July 2015 cannot show that the defendant had taken reasonable measures to prevent infringement: first, the defendant argued that the entry involved in the case did not need review and approval when it was edited by the user involved but could not provide the editing rules prevailing at that time, so it should bear the adverse consequences of failing to prove evidence. Second, according to the analysis of risks existing in entry editing as well as the awareness of prevention and management ability that the defendant should have, the defendant should review whether the edited content of the entry infringed personality rights such as the right to reputation. But the defendant did not take effective

measures to prevent and control improper editing acts. Failing to perform its management obligations as the network service provider, the defendant shall bear civil tort liability to the plaintiff.

[Adjudication Result]

The defendant shall make an apology to the plaintiff and compensate the latter for mental distress of RMB 6.

Case 6

Case of Minor Opening Online Store: Minors Shall Have Corresponding Capacity for Performing Civil Juristic Acts to Open Stores and Sell Goods on Platforms

—— Xu XX et al. v. Su X and XX Technology Company over Information Network Sales Contract Dispute

[Typical Significance]

It is increasingly common for minors, the "digital natives", to participate in Internet transactions as consumers, and the relevant laws and regulations have been relatively well established. However, the acts of minors opening stores and selling goods on platforms cannot be ignored. This case has fully embodied the extension of the court's trial function in the process of handling juvenile Internet-related cases. The court not only actively promoted settlement to safeguard the legitimate rights and interests of minors, but also sent judicial suggestions to the e-commerce platform operator on its lack of mechanism and management loopholes in the protection of minors discovered during the trial process, in order to resolve disputes from the source and strengthen the assumption of main

responsibilities by the platform, thereby guiding the healthy, stable and sustainable development of the Internet industry and promoting the healthy development of the digital economy.

[Case Facts]

The defendant Su X, as a minor, opened a store on the e-commerce platform operated by XX Technology Company. Su sold customized photo albums of stars to dozens of people including the plaintiffs, and made virtual delivery of goods on the platform. A few months later, the defendant delivered the physical goods. After receiving the goods, the plaintiffs found a serious mismatch between the goods and the description and the sample. The plaintiffs held that the defendant, selling products inconsistent with the publicity, should bear liability in accordance with the laws, and that the e-commerce platform, as the operator of the platform, should examine and supervise the qualifications of sellers but failed to fulfill its duty. Dozens of plaintiffs filed a lawsuit, requesting the court to order the defendant Su X to refund the purchase price and XX Technology Company to bear joint and several liability for compensation.

[Adjudication Result]

The court found through trial that the defendant in this case was a minor, and his act of opening a store on the e-commerce platform to sell goods did not match his identity, age and economic situation. During the trial of this case, the parties reached a settlement under the auspices of the court, with the defendant Su agreeing to refund the plaintiff's purchase prices. After the case was concluded, the court sent judicial suggestions to the defendant XX Technology Company operating the e-commerce platform on the problems discovered during the trial, especially pointing out its problems in reviewing, and providing reminders on, the opening of online stores by minors. The company replied that it would strengthen the review and supervision of minors as platform merchants who have reached the age of 16, improve the daily supervision work, and further improve the functions of giving reminders on and confirming goods delivery.

Case 7

Health Consultation Service Platform Case: Impersonating a Doctor to Provide Online Health Consultation Constitutes Infringement

——Li XX v. Beijing XX Technology Company and Hangzhou XX Technology Company over Infringement of Right to Reputation and Right to Name

[Typical Significance]

Through this case, the ways and methods of adjudication on the protection of personality rights of doctors in Internet health consultation services are clarified, which plays a positive role in strengthening the self-discipline and management, and improving the quality and level, of Internet health consultation services, and can serve as a reference for the trial of such cases in the future.

[Case Facts]

The plaintiff claimed that he found that there were lots of health-related answers provided in his name on a health consultation service platform, including some contents that were obviously beyond the scope of reply in normal medical consultation which the plaintiff would never give from the

perspective of both medical ethics and professionalism. In addition, there were also answers hinting at obscenity and pornography provided in the name of the plaintiff or others on the platform. The plaintiff held that the platform's using his name to answer questions on the platform would impair the public's opinion on him and affect the trust of patients in doctors, which seriously infringed the plaintiff's right to reputation and right to name.

[Key Points of Adjudication]

The court tried the case and held that the platform involved impersonated the plaintiff by using his name, photo and professional title in his hospital to publish answers to health consultation questions on the website without the plaintiff's authorization or consent, which would easily lead the unspecified public to wrongly think that the plaintiff was the one providing consultation service; and that the obvious existence of contents beyond the scope of the plaintiff's expertise in diagnosis and treatment in the health consultation service and the existence of answers hinting at obscenity and pornography could easily made the public question the plaintiff's expertise and professional ethics, resulting in negative effect on the plaintiff's morality and reputation. Therefore, the platform

involved committed infringement of the right to reputation and right to name.

[Adjudication Result]

The court ruled that the defendant shall make an apology and compensate the plaintiff for mental distress.

Case 8

Ride-hailing Platform Case: Ride-hailing Platforms Failing to Conduct Management as per Rules Shall Be Liable for Breach of Contract

—— Yang XX v. XX Technology Company over Network Service Contract Dispute

[Typical Significance]

Ride-hailing platforms can identify violating acts of drivers and take reasonable restrictions as per platform rules, and their efficient handling of passenger complaints for the purpose of ensuring safety is worthy of recognition. However, when drivers appeal, the platforms should conduct investigation. If the appealed content is true, the restrictions should be lifted in time to effectively safeguard the legitimate rights and interests of the drivers. The judgment of this case has made it clear that in managing their platforms, ride-hailing platform operators shall pay attention to balancing the interests of the unspecific passengers and the interests of the driver groups, so as to promote the healthy and sustainable development of the ride-hailing business model.

[Case Facts]

The plaintiff was a registered driver on a ride-hailing app of the defendant. On November 5, 2018, the plaintiff picked up a drunk passenger through the app. As the passenger was still not sober when they arrived at the destination, the plaintiff called the police, and the passenger left on his own after the police arrived. In this process, the plaintiff did not act improperly. Later, the passenger made a complaint to the platform. Given the situation complained by the passenger, the defendant identified the incident as a safety incident based on its experience. On the evening of November 6, the plaintiff was restricted from using the "late-night service card" function and could not take orders at night. After that, the plaintiff made several appeals and submitted the record of calling the police and screenshots of the order, which did not get handled by the defendant. On November 8, the defendant resumed the qualification of the plaintiff to use the "late-night service card" function, but at the same time set a one-month observation period for his account without informing the plaintiff, due to which the plaintiff still could not take orders at night. During this period, the defendant did not further verify the situation appealed by the plaintiff. On December 13, the "late-night service card" function was resumed for the plaintiff. The plaintiff believed that the

defendant should compensate him for the loss of turnover of RMB 16,000 because it failed to check the malicious complaint of the passenger in time and limited his use of the "late-night service card" function. The defendant argued that it was exercising its right of autonomous governance of the platform to ensure the safety of passengers by suspending the plaintiff's use of the "late-night service card" function and setting the observation period, and that the plaintiff's income did not decrease due to the defendant's management act.

[Key Points of Adjudication]

Legal relations between the two parties and the attribute of the Platform User Rules

An e-commerce platform is a platform for enterprises or individuals to negotiate online transactions. XX Technology Company provides drivers and passengers with online business operation premises, transaction matching, information release and other services through the ride-hailing platform to enable them to carry out transaction activities, which makes the company an e-commerce platform operator. Yang XX registered himself as a car owner on the ride-hailing platform, thereby becoming a merchant on the platform and forming a contractual relationship with XX Technology Company under the network

service contract. As it was impossible to carry out the traditional "face-to-face" contract conclusion given the huge group of users of XX Technology Company, the platform operator required the user to agree to the standard terms formulated thereby to save the time cost and transaction cost of both the platform and the user. The terms in the agreement, if not violating any legal provisions on the validity of contracts, shall be deemed as valid and legally binding on both parties. Since both parties had no objection to the Platform User Rules involved in the case, they should enjoy contractual rights and perform contractual obligations in accordance with the stipulations in the Rules.

Does XX Technology Company have the right to take restrictions against Yang, and do the measures conform to the Platform User Rules?

As the operator and manager of the e-commerce platform, XX Technology Company should guard against possible dangers of network-related acts and have certain obligations to safeguard the personal and property safety of passengers. According to the Platform User Rules, if a user violates the rules, XX Technology Company has the right to hold the user accountable for violation through the measures stated in the rules. Accordingly, XX Technology Company has the right to unilaterally identify

violating acts of users based on the above safeguarding obligation, and hold users accountable for violation through the measures stated in the rules. Therefore, after receipt of the complaint from the passenger, considering that drunkenness was a high-risk scene, XX Technology Company initially determined that the driver had violated the platform rules and management requirements and thus restricted the driver's use of the "late-night service card" function, which meets the requirement of safeguarding the interests of unspecified passengers in society. However, when Yang made several appeals by providing the record of calling the police and the order information involved, XX Technology Company failed to comply with the stipulations on re-checking facts as were stated in the platform rules and took restrictions against Yang for one month when Yang was actually not at fault. As can be seen from the police video, the plaintiff in this case did not have any misconduct. Therefore, the measure taken by XX Technology Company lacked reasonable and sufficient basis, and the failure thereof to comply with the Platform User Rules constituted a breach of contract.

As the operator of the e-commerce platform, XX Technology Company is the bond connecting all parties. To ensure the personal and property safety of passengers without damaging

the legitimate rights of drivers at the same time, it should reasonably balance the rights and interests of drivers, passengers and the platform, which would be the solution to enable long-term operation and development. It is worthy of recognition that XX Technology Company takes the principles of safety and efficiency as the basis for the platform operation, but in implementing the platform rules, it should also consider the specific circumstances of each case to make judgment based on facts, and should not arbitrarily restrict the normal operation of drivers on the grounds of the platform rules.

Should XX Technology Company bear civil liability to compensate for the loss?

As XX Technology Company's failure to abide by the Platform User Rules constituted a breach of contract, it shall bear the liability for breach of contract to compensate for the loss. Regarding the loss claimed by Yang, the court decided as appropriate that XX Technology Company shall compensate Yang for the loss of RMB 4,000 based on the difference of his daily income before and after the restriction of the "late-night service card" function and considering the oil costs and other expenses at the same time.

[Adjudication Result]

The court ruled that the defendant shall compensate the plaintiff for the loss of RMB 4,000.

Case 9

Member Mutual Aid Platform Case: Upon the Updates of Rules, Mutual Aid Platforms Shall Equally Protect the Legitimate Rights and Interests of Members Who Joined the Platform Before the Updates

——— Yan X v. XX Company over Network Service Contract Dispute

[Typical Significance]

The digital economy has led to the emergence of online mutual aid platforms. In order to allow the online mutual aid business to truly help supplement the development of China's multi-level medical security system and effectively safeguard the legitimate rights and interests of the members who lack the professional knowledge of risk coverage and the operation experience in group organizations, mutual aid platforms as the rule maker shall, while updating their rules, avoid exempting or mitigating their own responsibilities, aggravating the responsibilities of platform users or limiting their main rights through relevant modifications, and shall pay attention to the equal protection of the legitimate rights and interests of members who joined the

platform before the rules are modified. The adjudication of this case helps provide guidelines on determining whether the formulation, update and modification of rules by platforms are reasonable and well founded and promote platforms to fully consider the impact of clause changes on users and formulate solutions in advance, thereby effectively safeguarding the vital interests of platform users.

[Case Facts]

The plaintiff Yan X filed a lawsuit, claiming that in 2016 she joined the "Critical Illness Mutual-aid Plan" launched by the defendant's mutual aid platform for a financial aid of up to RMB 300,000. After joining the plan, the mutual aid platform kept deducting money from Yan's account, totaling over RMB 400. In 2019, Yan was diagnosed with cancer. After receiving surgical treatment in hospital, she was refused payment when applying for aid from the platform. The platform claimed that as the rules had been revised, Yan did not meet the conditions for aid because she had already suffered from hypertension when she joined the Plan. Therefore, Yan filed a lawsuit to the court.

[Key Points of Adjudication]

What criteria should be used to determine whether Yan met the

conditions for joining the Plan?

When Yan joined the mutual aid platform in October 2016, the rules that applied were the platform's Articles of Association (2016 Edition), which did not explicitly stipulate that one suffering from hypertension was not healthy. However, the mutual aid platform refused Yan's request based on the stipulations of the Articles of Association (2018 Edition), which, after the more detailed modifications to the circumstances not meeting conditions for joining, would inevitably affect the rights and interests of members who joined before, yet the mutual aid platform did not provide old users with channels for reconfirmation and treatment solutions. Under such circumstance, meeting the conditions for joining the platform or not should be evaluated against the Articles of Association applicable when members joined the platform, but not against the revised conditions. Otherwise, the following situation may occur, i.e., a member who met the conditions at the time of joining and had fulfilled the obligation of amount sharing and mutual aid as per the Articles of Association would get unaided when he/she no longer met the conditions for joining because of the modifications to the Articles of Association, thereby suffering the loss of his/her shared amount and possibly losing

other opportunities for mutual aid.

Did Yan meet the conditions for joining the plan?

According to the Articles of Association (2016 Edition), “When joining the plan, you should be in good health, without any physical dysfunction or mental disorder, or any loss or transplantation of functional organs and limbs, or any critical diseases and specific diseases listed in the Plan; without any surgery or hospitalization due to illness or any continuous or repeated medication due to one same disease within one year before joining; and without any symptoms or signs of prolonged recurrent or progressive attacks within six months before joining”. This clause did not expressly stipulate that hypertension was a circumstance that should be excluded. Meanwhile, the diseases listed in this clause were obviously more serious than hypertension suffered by Yan. Thus, it was in line with the usual cognition that Yan thought her physical condition met the conditions for joining. Therefore, since the Articles of Association (2016 Edition) did not expressly exclude the disease suffered by Yan and her illness was obviously lighter than the diseases listed therein, due to which Yan could not realize that her illness was a circumstance not meeting the conditions for joining, it should be considered that Yan met the

conditions for joining.

The court held that whether Yan met the conditions for applying for aid shall be determined based on the rules of the Articles of Association applicable when Yan joined the platform rather than the modified rules. This practice of raising the threshold of receiving aid by amending the platform rules affected the legitimate rights and interests of platform members joining before the rules are modified. Finally, it was determined that Yan met the conditions for applying for the financial aid.

[Adjudication Result]

The court ruled that the mutual aid platform shall initiate a mutual aid plan for the plaintiff Yan X and pay the collected mutual aid fund of RMB 300,000 to Yan.

Case 10

Hotel Booking Case: Platform Operators Failing to Clearly Indicate Merchants on Platforms Shall Bear the Corresponding Liabilities

—— Yang X v. Beijing XX Information Technology Company over Network Service Contract Dispute

[Typical Significance]

The judgment of this case has made it clear that the operators of e-commerce platforms should distinguish the self-operated business from the business operated by merchants on the platforms in a notable way and may not mislead consumers; and that e-commerce platforms not clearly indicating the operator of the hotel booking business involved should assume the legal responsibility of the business operator.

[Case Facts]

The plaintiff booked 2 rooms for 4 nights in a hotel in Sanya through the mobile phone client operated by the defendant, for a total lodging cost of RMB 464. The plaintiff immediately paid the lodging cost, and then the defendant's platform sent a confirmation message to the plaintiff. At the same time, the mobile phone client of the defendant's platform also prompted

that the booking was successful. On the same day, the customer service worker of the defendant's platform informed the plaintiff by phone that the merchant called to say that as all rooms had been booked, it could not arrange the check-in and hoped to negotiate with the plaintiff to cancel the order. Later, the two parties reached an agreement: the plaintiff could stay in another hotel in Sanya based on the original time of check-in and check-out, and the defendant would compensate the plaintiff for the actual price difference which shall not be higher than RMB 764 against the invoice and bill issued by the new hotel, so the plaintiff agreed to cancel the order. The plaintiff claimed that booking the same hotel according to the plan of the original order would cost a total of RMB 3,024 for the lodging cost, and thus the price difference of RMB 2,560 from the original order should be paid by the defendant in compensation. Therefore, the plaintiff filed a lawsuit, requesting the Beijing Internet Court to order the defendant to compensate the plaintiff for RMB 2,560.

[Key Points of Adjudication]

Did Beijing XX Information Technology Company commit a breach of contract?

Operators of e-commerce platforms should distinguish the self-operated business from the business operated by merchants

on the platforms in a notable way and may not mislead consumers. In this case, Beijing XX Information Technology Company did not produce evidence to prove that it fulfilled its obligation of distinguishing different types of business in a notable way in the booking process; only after the booking was successful it was mentioned in the confirmation message sent by the website operated thereby that "the service will be provided by XXX", but the message did not indicate the real name of the merchant on the platform, which was not enough for Yang to understand its exact meaning and to determine whether the business was operated by the platform itself or by a third party. Therefore, Beijing XX Information Technology Company should assume the legal responsibility of the service provider. Its failure to fulfill its obligation as the service provider constituted a breach of contract.

Was the cancellation of the order caused by the merchant on the platform?

In the booking process, Beijing XX Information Technology Company was not sure whether Yang's order was confirmed by the hotel and did not produce evidence to prove that the order was actually confirmed by the hotel, but it still sent Yang a message saying the booking was successful. During the

cancellation of the order, there had been no indication of intention expressed by the hotel since the beginning, and there was no evidence to prove that the request to cancel the order was made by the hotel, which undoubtedly put Yang in a huge consumption risk. The court thus did not admit the defense opinion of Beijing XX Information Technology Company that the cancellation of the order was caused by the merchant.

Regarding the determination of the compensation amount

From the statement of the parties and the recording of the phone call provided by the defendant, it can be confirmed that the defendant had provided Yang with a compensation plan before canceling the order, and Yang explicitly accepted the compensation plan and agreed to cancel the order. Therefore, the two parties had reached an agreement on the compensation for breach of contract, which should be observed. In other words, after Yang provided the bill and invoice to the defendant, the defendant would compensate Yang for the actual price difference, which should not be higher than RMB 764. Yang objected to the authenticity of the recording of the phone call, and thus not recognizing that the two parties had reached the compensation agreement. But as no corresponding evidence was provided, such objective was not admitted by the court.

Therefore, the court did not support the part of Yang's claim for compensation amount that

exceeded the amount agreed in the above agreement.

[Adjudication Result]

The court ruled that the defendant shall compensate Yang X for the actual price difference, which shall not be higher than RMB 764.

Beijing Internet Court
Data Algorithm
Top Ten Typical Cases

Case 1

Secret Traffic Inflating Case: Contracts Concluded for Secret Traffic Inflating Transactions Shall Be Invalid

—— Chang X v. Xu X and Third Person Ma X over Network Service Contract Dispute

[Typical Significance]

This is the first case of "secret traffic inflating" transaction in China. The judgment of this case has made it clear that contracts concluded for the purpose of "secret traffic inflating" transactions, having violated public order and good morals and damaged the public interest of the society, shall be invalid. Neither party shall make profits based on the "secret traffic inflating" contract. Both parties lost the case but accepted the judgment, creating a good social effect. Chang'anjian, the WeChat official account of the Political and Legal Affairs Commission of the CPC Central Committee, commented on the judgment, saying that "every word in the judgment has manifested the court's courage in shouldering social responsibilities". The case was written into the work report of the Supreme People's Court (SPC) in that year and selected as

one of the Ten Major Civil Administrative Cases of the (SPC), one of the cases of upholding socialist core values of the SPC, one of the cases of the application of new rules of the Civil Code of the SPC, and an outstanding case studied by the national court system.

[Case Facts]

On September 15, 2017, the plaintiff and the defendant reached an agreement on secret traffic inflating: code: http://mac.iguzi.cn/az_gz6.js; settlement method: weekly settlement; unit price: RMB 0.9/1000 UV; settlement based on backend statistical data on CNZZ, the third party appointed by the defendant. During the performance of the contract, the two parties made three settlements, with the service fee of a total of RMB 16,130 paid. A total traffic volume of 27,948,476 UV was delivered in the last round of traffic delivery according to the statistics, for which the settlement amount should be RMB 30,743 as per the contract. The plaintiff urged the defendant to settle the payment, but the defendant thought that the traffic was false and only agreed to pay RMB 16,293. The plaintiff requested the court to order the defendant to pay the service fee of RMB 30,743 and associated interest. The defendant argued that the contract should be invalid because the “secret traffic

inflating" service provided by the plaintiff violated prohibitive provisions of the law, and thus the plaintiff had no right to demand the payment of the consideration.

[Key Points of Adjudication]

Is the "secret traffic inflating" contract valid?

The act of "secret traffic inflating" is an act of fraudulent clicking. Aimed at seeking improper gains and showing disregard for the fair competition environment in the market and the interests of network users, this act has crossed the bottom line of business ethics and violated the public order and good morals. The act not only impairs the value of honest work of competitors in the same trade, undermines the fair market competition order, and infringes the interests of unspecific market competitors, but also would deceive and mislead network users to choose network products not meeting their expectations. In the long run, it would lead to the adverse consequence of "bad money driving out good" in the network market, eventually doing great damage to the interests of the network users. Thus, it is also an act of infringing on the interests of unspecific network users. Therefore, the "secret traffic inflating" contract concluded between the two parties violated public order and good morals and damaged the public

interest of the society, and shall thus be invalid.

Legal consequence of invalidation of the “secret traffic inflating” contract

The consequence of the invalidation of the contract is that the contract should be invalid from the beginning, and neither party should obtain the expected contractual benefits based on the act of meeting of minds. When the false traffic has already been generated, ordering mutual return of property would be tantamount to condoning the parties to benefit from illegal acts, which violates the basic legal principle that no one can benefit from illegal acts. Therefore, the court made a separate decision to confiscate the gains made by the plaintiff and the defendant during the performance of the contract.

[Adjudication Result]

In the judgment, the claims of the plaintiff were dismissed.

Case 2

Mobile Reading App Case: Sharing User Data Between Related Products Shall Have Effective Consent

—— Huang X v. XX Technology (Shenzhen) Company over Personal Information and Privacy Infringement Dispute

[Significance]

This is the first typical case in China over the infringement of user's rights and interests to personal information by a mobile reading app. The adjudication of this case took place when the Civil Code had been promulgated but not yet implemented and the Personal Information Protection Law was being formulated. The laws prevailing at that time explicitly prescribed that the collection and use of personal information should follow the principles of legality, justifiability and necessity and have the consent of users. However, clearer and more specific provisions were lacking on how to apply the principles of legality, justifiability and necessity in practice and on how to define "effective consent of users has been obtained". The adjudication of this case, having offered an explicit reply to these questions,

could provide practical experience for the adjudication of similar cases in the future. The adjudication is also in line with the legal spirit and relevant provisions of the Personal Information Protection Law promulgated later, which has provided a useful reference and valuable practical material for the accurate application of personal information protection provisions in the Civil Code and related laws in judicial practice. The case was included in the work report made by the Supreme People's Court at the Fourth Session of the 13th National People's Congress and selected as one of the Ten Major Typical Judicial Cases over Consumer Rights Protection in 2019-2020 based on evaluation by consumers in China.

[Case Facts]

When logging in to a reading app with a social media account, the plaintiff Huang X found that a large number of the plaintiff's social media friends appeared in the pages of "Following" and "Followed" in the reading app even though the plaintiff did not conduct any "following" operations. In addition, whether or not the following relationship was added to the reading app, the plaintiff and the social media friends thereof who also use the reading app could check each other's bookshelves, books they were reading, reading thoughts and so on. The plaintiff believed

that the above acts of the operators of the reading app and the social media app infringed the plaintiff's rights and interests to personal information and right to privacy, and that Shenzhen XX Computer Company, as the developer and operator of the reading app and the social media app, should bear the corresponding tort liability. The plaintiff thus requested the court to order Shenzhen XX Computer Company to stop its infringing act, remove the following relationships in the reading app, delete the friends data, stop displaying reading records etc., and to require XX Technology (Shenzhen) Company, XX Technology (Beijing) Company (the three defendants collectively referred to as XX Company) to make an apology to the plaintiff.

XX Company held that the reading app did not automatically add friends for the plaintiff, and that obtaining the friend relationship data of the plaintiff in the social media app and displaying reading information to the social media friends of the plaintiff who also use the reading APP, as having been stipulated in the user agreement, had been authorized and consented by the plaintiff.

[Key Points of Adjudication]

Personal information shall be determined by comprehensively

considering the paths of identification and correlation

The core feature of personal information is “identifiability”, which includes both the identification of individual identity and the identification of personal features. In determining whether a piece of information belongs to personal information, two paths shall be considered. The first is identification, i.e., the path from information to individual that allows the identification of a specific natural person based on the particularity of the information itself; meanwhile, the information used to identify an individual can be a single piece of information or a combination of information. Identifiability needs to be determined from the perspective of information characteristics and information processors in combination with specific scenarios. The second is correlation, i.e., the path from individual to information: if a specific natural person is identified, the information generated in the activities of that specific natural person is personal information. Any information that falls in one of the above two circumstances shall be determined as personal information. As the OPEN_ID is the identification code that Shenzhen XX Computer Company assigns to users, the gender, age and OPEN_ID information obtained by the reading app constitutes identifying information;

on the basis of these information that can be used to identify natural persons, related information including friends list, reading information and others also constitutes personal information.

Personal information and privacy shall be reasonably distinguished

Personal information has some overlaps with the private information—the object of the right to privacy, but is different from the latter. Both the right to privacy and the rights and interests to personal information reflect the protection of human dignity and value of personal freedom, but the right to privacy is an absolute right with a passive and defensive nature and is more strictly protected, while rights and interests to personal information include both mental interests and property interests and lay more emphasis on the autonomous use by the subject of the information. For personal information expected to be both defensive and actively used, whether it constitutes privacy shall be comprehensively determined by considering the type of information, whether the content is private, how the information is processed, and reasonable personal expectations. On Internet reading platforms with certain attributes of social media, reading information should not be generally included in the category of

private information. In this case, the specific reading information claimed by the plaintiff has not yet met the criteria of privacy, and the claims of the plaintiff can still be realized to protect the plaintiff's legitimate rights and interests, by determining that the personal information of the plaintiff is infringed, so Shenzhen XX Computer Company did not commit an infringement of the plaintiff's right to privacy.

Network operators shall inform users and have the consent thereof at the same time to provide their personal information to related products

The Network Security Law made it clear that the collection and use of personal information by network operators shall conform to the principles of legality, justifiability and necessity and have the consent of the subject of the collected information. Being informed and giving consent not only mean that the subject of the information is informed of the types of information collected but also mean that it is informed of and consents to the purpose, method and scope of collection and use, which shall be full, voluntary and explicit. Through this case, the court has further put forward the "transparency" standard of informed consent in information processing, i.e., the extent to which the information subject is aware of, and independently decides to consent to, the

processing method and purpose under reasonable expectation: the informed consent should be full, voluntary and explicit, which is also consistent with the principle of personal information processing prescribed in the Personal Information Protection Law promulgated later that “processors of personal information shall inform individuals of authentic, accurate and complete information in a notable way and in a clear and understandable language”.

The court held that although both the social media app and the reading app were operated by Shenzhen XX Computer Company, the same information processor shall, when sharing personal information in related products, have the voluntary and explicit consent of the subject of the personal information to this processing method, on the premise of the subject being fully informed. Meanwhile, as the reading information may include information that the user didn’t want to disclose to others, and the way Shenzhen XX Computer Company processed the reading information had a great impact on the user’s personality rights and interests, it cannot be concluded that Shenzhen XX Computer Company fully fulfilled its obligation of informing the user and obtaining the consent thereof only on the ground that the user had generally agreed to the user agreement.

[Adjudication Result]

The defendant, Shenzhen XX Computer Company, shall stop the collection and use of the plaintiff Huang X's social media friends list information by the reading app, delete the social media friends list information retained in the reading app, cancel Huang's following of the social media friends thereof in the reading app, cancel Huang's social media friends' following of Huang in the reading app, and stop the act of displaying the information generated from Huang's use of the reading app to Huang's social media friends who also use the reading app; XX Technology (Shenzhen) Company shall make an apology to the plaintiff Huang X in writing; the three defendants shall jointly compensate the plaintiff for the notarization fee of RMB 6,660; and the other claims of the plaintiff Huang X were dismissed.

Case 3

Online Game Account Use and Data Transfer Case: The Initial Registrant Shall Enjoy the Right to Use the Online Game Account and the Rights and Interests to the Transfer of Game Data in the Account

—— Hu X v. XX (Beijing) Technology Company and Beijing XX Technology Company and Third Person Wang X over Network Service Contract Dispute

[Typical Significance]

As an important way of leisure and entertainment for modern people, video games have become an indispensable part of many people's lives. To play games, players would obtain a game account, the electronic credential for logging in to the game, by reaching an agreement with the game company/operator. In today's digital society, network virtual property such as game accounts has formed a new form of personal property. In this brand-new field, the great changes arising from new technologies have also brought many new legal problems to our society, posing new challenges to this blank field of justice. The judgment of this case has helped clarified the issue on ownership of network virtual property such as game accounts.

According to Article 127 of the Civil Code of the People's Republic of China, where there are laws particularly providing for the protection of data and network virtual property, such provisions shall prevail. This is the first time that the concept of network virtual property is written into the basic civil law, which also declares the protection of data and network virtual property by law, providing a legal basis for the provisions of relevant laws in the future. At the same time, however, it should be noted that the Civil Code does not prescribe for the specific details of protection, and the improvement of relevant laws are still necessary to enable future protection.

[Case Facts]

The game involved was an online game originally operated by XX Company. Both the plaintiff Hu X and the third person Wang X were players of the game. Hu registered the C account involved in the case on the website operated by XX Company, and bound the mobile phone number and email address registered under his real name with the C account. Later, Hu did not log in to the game involved for some time due to his own reasons. In December 2019, Wang X purchased the C account involved through a third-party website, and changed the identity number bound to this account to his own identity number, but

did not change the mobile phone number and email address bound thereto.

In July 2020, the defendants XX (Beijing) Technology Company and Beijing XX Technology Company obtained authorization from XX Company and officially started to operate the game. After the change of the operators of the game involved, the two defendants announced on the login page the Rules for Inheritance of Player Account Data from Server A to Server B. According to the Rules, if a user wanted to continue to use the game involved and related services on Server B and keep all the game progress and achievements of the existing account on Server A, they need to inherit the existing account data from Server A to an account on Server B.

After the change of the operators of the game involved, Hu tried to inherit the data of the C account on Server A to the D account on Server B through the data inheritance channel opened by the two defendants and, after the operation failed, filed an “appeal on account dispute during data transfer”. After the platform decided that the appeal was successful, Hu inherited the data of the C account involved to his D account. Later, Wang X also submitted an appeal on account dispute during data transfer to the platform, demanding the data of the C account involved be

retrieved. The platform also decided that the third person Wang X's appeal was successful, and accordingly banned the D account of the plaintiff Hu X.

Therefore, Hu filed a lawsuit to the court, claiming that he didn't know the player Wang X or the fact his account had been sold and requiring XX (Beijing) Technology Company and Beijing XX Technology Company to lift the ban on the D account for Hu's use and bear the litigation costs of this case.

[Key Points of Adjudication]

The right to use the C account involved still belonged to Hu X

In this case, network users and the platform signed a network service agreement and formed a contractual relation thereunder. By signing the agreement, users were authorized to use the services and should abide by the relevant rules in the process of use. As game players involved in the case, both Hu and Wang should abide by the User Agreement of XX Online Game announced by XX Company when registering and logging in to their game accounts. The clauses of that agreement explicitly pointed out there shall be one sole right holder to each account and the sales of accounts would not be supported.

In this case, the mobile phone number and personal email

address bound to the C account involved were registered under Hu's real name and long used thereby, and Hu's recharge record began as early as 2016. According to the registration agreement of the game involved, Hu should be the initial registrant of the C account involved and enjoy the right to use the C account involved. Although Wang X bought the C account involved on a third-party website and obtained the authenticated ID, password and other information of the account, neither Hu nor the website was the seller, and the agreement explicitly stipulated that the sales of the right to use an account shall be prohibited. Therefore, the subject of the right to use the C account involved did not change. As a result, the right to use the C account involved still belonged to Hu X.

Hu X had the right to inherit the data from C account to D account

From July 2020, the two defendants obtained the authorization and the account data and information on the original Server A from XX Company, and provided players with the data inheritance service of inheriting the account data on Server A to Server B. In accordance with the data inheritance rules announced by the two defendants on the platform, Hu applied for and registered the D account. Having the right to use both

the C account and the D account involved in the case, Hu had the right to inherit the data of the C account involved to the D account as per the data inheritance process.

The two defendants' act of suspending Hu X's D account constituted a breach of contract

According to Article 119 of the Civil Code of the People's Republic of China, a contract formed in accordance with law is legally binding on the parties to the contract. The game service agreement announced by XX Company and by the two defendants explicitly stipulated that a game account shall not be gifted, transferred or sold. In this case, although the third person Wang X bought the account, neither the plaintiff Hu nor the two defendants in this case were the seller, so they should not bear corresponding responsibilities for this.

In accordance with the agreement with the two defendants, the plaintiff Hu X, having the right to use both the C account and the D account involved in the case, inherited the game progress and achievements of the C account involved to the D account as per the data inheritance process. The data inheritance appeal materials submitted by Wang X included screenshots of the order for the trading of the C account involved, while the two defendants, as the actual manager of the player account data

server of the original Server A and the actual operator of the game involved, still determined that the right to use the C account involved belonged to Wang and suspended Hu's D account when they knew Wang obtained the C account involved through a transaction. This act of the two defendants thus constituted a breach of contract against Hu.

[Adjudication Result]

In view of the fact that the plaintiff Hu X had inherited the game progress, achievements and other data of the C account involved in the case to his D account, the Beijing Internet Court ruled on August 31, 2022 that the two defendants shall lift the ban on the D account involved in the case within seven days and allow Hu X to use it. Currently, the judgment of this case has come into force.

Case 4

AI-Generated Content Case: Content Intelligently Generated by Computer Software Shall Not Constitute a Work

—— Beijing XX Law Firm v. Beijing XX Technology Company over Copyright Ownership and Infringement Dispute

[Typical Significance]

Through this case, a judicial response has been made for the first time to the copyright protection of the content automatically generated by artificial intelligence software, affirming and protecting the intellectual and economic input of such content within the rights protection system of prevailing laws under the premise of not breaking through the basic norms on persons of the civil law, which not only affirms the value of computer intelligence software, but also cautiously keeps the boundary between copyright creation and subjects of rights. It is a beneficial attempt for the judiciary to actively deal with new technologies and new problems. This case has not only reflected the full understanding and accurate application of the existing legal system, but also reflected the clear attitude of Internet

justice facing the future and embracing scientific and technological innovation.

[Case Facts]

On September 9, 2018, the plaintiff published the article Analysis Report on Judicial Big Data in the Film and Television Entertainment Industry—Film Part: Beijing Chapter (hereinafter referred to as the article involved) for the first time on its WeChat official account. The article consisted of two parts: written work and graphic work. On September 10, 2018, the accused infringing article was published on a platform operated by the defendant, which had basically the same content as the article involved except that contents like the signature, introduction, and retrieval overview parts of the latter were deleted. The plaintiff claimed that the defendant infringed on its right of communication through information network and right to authorship, and thus filed a lawsuit requesting the court to order the defendant to bear the tort liability. The defendant believed that the article involved was a report intelligently generated using a legal statistical data analysis software but not created by the plaintiff through its own intellectual labor, thus not falling in the protection scope of the Copyright Law.

[Key Points of Adjudication]

Regarding whether the content intelligently generated by computer software constitutes a work and the authorship thereto

Works should be created by natural persons. In the process of generating relevant content, the acts of software developers (owners) and users were not acts of creation, and the relevant content did not convey their original expression. Therefore, neither of them should be the authors of the content intelligently generated by the computer software, and the content does not constitute a work. Although Software developers (owners) and users cannot indicate their names on the content as authors, from the perspective of protecting the public's right to be informed, maintaining the good faith of the society and facilitating cultural communication, the logo of the corresponding computer software should be added to indicate that the relevant content was intelligently generated by software.

Regarding the allocation of interests in the content intelligently generated by computer software

Though the content intelligently generated by computer software does not constitute a work, it does not mean that it can be freely used by the public after entering the public domain. Software users, having made payments and conducted retrievals, should be given corresponding rights and interests in order to

stimulate their use and communication acts and promote cultural communication and scientific development. Users of the software may also use reasonable means to indicate their interests in the intelligently generated content of the computer software involved.

[Adjudication Result]

The defendant shall publish a statement to eliminate the impact caused to the plaintiff and compensate the plaintiff for the economic loss of RMB 1,000 and the reasonable expenses of RMB 560.

The plaintiff filed an appeal after the judgment of the first instance was made. The court of second instance dismissed the appeal and upheld the original judgment.

Case 5

AI Companion Case: Network Platforms' Use of Algorithms to Organize Users to Create Virtual Characters Constitutes Infringement

—— He X v. Shanghai XX Technology Company over Personality Right Infringement Dispute

[Typical Significance]

This case was selected as one of the "Typical Civil Cases over Judicial Protection of Personality Rights after the Promulgation of the Civil Code" by the Supreme People's Court and written into the work report thereof. It is the first case of a new type in China in which an algorithmic design was used to organize the infringement of personality rights. It has been made clear through this case that the personality elements such as name, likeness and personality characteristics contained in the "virtual character" of a natural person are the objects of the personality rights of the natural person, and the creation and use of the virtual character of a natural person without permission constitutes an infringement of the personality rights of the natural person. Meanwhile, it is emphasized through the case that the principle of "technology neutrality" shall not apply to

network technology service providers embedding their subjective values and purposes in the algorithm design and rule setting, and thus they should be deemed as the actor of infringement who have provided the infringing content. According to the Supreme People's Court, this case helps clarify that the personality rights of a natural person apply to the virtual character thereof as well, and allows a beneficial exploration on the evaluation standard of algorithm application, which is of great significance in strengthening the protection of personality rights in the era of artificial intelligence.

[Case Facts]

The defendant, Shanghai XX Technology Company, is the developer and operator of a mobile phone accounting software. In this software, a user can create his/her own "AI companion" to set the name and profile photo of the companion and the relationship therewith (such as boyfriend and girlfriend, brother and sister, mother and son, etc.) and have communication and interaction with the virtual character with the help of chat corpus. The plaintiff He X is a public figure. In this software, a large number of users set him as the companion and set a relationship therewith. XX Company classified the companion "He X" by identity through clustering algorithm and introduced this virtual

character to other users through collaborative recommendation algorithm. When users set “He X” as the companion, they uploaded a large number of likeness pictures of the plaintiff to set the profile photo of the character. In order to make the virtual character more anthropomorphic, the defendant also provided a “training” algorithm mechanism, i.e., users could upload all kinds of interactive corpus such as words, likeness pictures and GIFs that were consistent with the persona of the virtual character; after some users participated in the review, the defendant could use artificial intelligence for screening and classification to form a character-specific corpus. Users and the software made a special corpus for “He X”, which was used in the dialog between He X and users according to the category of the topic and the persona of the character, so as to create an experience for users to believe that they were really interacting with the plaintiff He X.

The plaintiff He X, believing that the act of Shanghai XX Technology Company infringed on his right to name, right to likeness and general personality rights, filed a lawsuit requesting the court to order the defendant to make a public apology and compensate the plaintiff for economic loss and mental damage. The defendant XX Company argued that it should not bear the

tort liability because the acts of role setting, likeness picture uploading, corpus “training”, etc. disputed by the plaintiff He X were all made by users, and the defendant was only the network technology service provider which had explicitly required in the user agreement that users shall not commit any acts that infringe on the rights and interests of others and deleted the “AI companion” containing He X’s name and likeness after He sent a notice.

[Key Points of Adjudication]

The principle of “technology neutrality” shall not apply to network technology service providers embedding their subjective values and purposes in the algorithm design and rule setting

With the in-depth application of technologies, network service providers have begun to get deeply involved in the creation and provision of content. If a network service provider, which on the surface provides technical services only, embeds its subjective values and subjective purposes in the rule design and algorithm application of products to directly determine the realization of the core functions of product services, then the technical services provided thereby are not simple “channel” services, and the network service provider is no longer a neutral technical

service provider, but should bear tort liability as a network content service provider.

In addition, compared with ordinary users, software developers are more likely to obtain permission from others to use their personality interests commercially. Therefore, evaluating the acts of software developers from the perspective of technical services only is not conducive to the protection of personality rights and interests and the governance of cyberspace.

Personality rights of a natural person shall apply to the virtual character thereof as well, for the protection rules of which the protection rules on general personality rights and on specific personality rights can be cited simultaneously

The personality elements such as name, likeness and personality characteristics contained in the “virtual character” of a natural person are the objects of the personality rights of the natural person, and thus the creation and use of the virtual character of a natural person without permission constitutes an infringement of the personality rights of the natural person.

The personality rights of a natural person include specific personality rights and general personality rights. Specific personality rights such as the right to likeness and right to name

have specific and definite objects and contents. General personality rights, different from specific personality rights, are framework rights, the objects of which are other personality rights and interests enjoyed by natural persons based on personal freedom and personal dignity, other than the specific personality rights. Due to the continuous innovation of Internet industry models and the development of new technologies like virtual reality, more and more personality elements of natural persons have been virtualized. Therefore, only by combining the protection of specific personality rights with the protection of general personality rights can personality rights of individuals be comprehensively protected. In practical application, general personality rights serve mainly as a supplement to the protection of specific personality rights. When the infringed personality rights and interests cannot be fully covered by specific personality rights, the right holder can claim the simultaneous application of the protection rules on general personality rights as the remedy.

[Adjudication Result]

The defendant shall make an apology to the plaintiff and compensate the plaintiff for economic loss, reasonable expenses and mental distress of RMB 203,000.

After the judgment of first instance was made, the defendant filed an appeal but later withdrew it. The judgment of the first instance has come into force.

Case 6

User Profile Case: Collecting User Profile Information During User Login Process Without Providing Skipping Options Constitutes Infringement of Users' Personal Information Rights and Interests

—— Luo X v. Shenzhen XX Technology Company over Personal Information Infringement Dispute

[Significance]

This case is the first infringement case over app's compulsory collection of user profile information in China that was adjudicated by applying the Civil Code, which has gained wide social influence and attention. This case has helped clarify the important rules on two basic issues in the collection and processing of user profile information. First, is it necessary to obtain the users' consent? Second, how to identify "effective consent". The court's judgment, having established explicit standards for applying legal rules to the industrial application of user profiles, can provide clear guidance for acts of processing personal information including user profiles, which is conducive to the standardized, orderly and healthy development of the digital economy industry. The case was included in the work

report made by the Supreme People's Court at the Second Session of the 14th National People's Congress and nominated for the Ten Major Typical Cases over Consumer Rights Protection in 2022.

[Case Facts]

The plaintiff Luo X claimed that the defendant, without providing its privacy policy, required users to fill in contents like name, occupation, learning purpose and English level in order to complete the login, which was a compulsory collection of user profile information. The plaintiff filed a lawsuit, requesting the court to order the defendant to provide a copy of the plaintiff's personal information to the plaintiff, stop the infringement, delete the plaintiff's personal information, make an apology and compensate for the loss. The defendant argued that according to the nature of the defendant's services it was necessary to recommend suitable service content for users based on the needs of different users, thus collecting relevant labels was necessary for providing the services and did not violate the principle of the necessity of personal information collection. Moreover, the information was filled in by the plaintiff on his own initiative, who agreed to the defendant's collection act through the act voluntarily conducted thereby. According to the

effective judgment, it was found out through trial that according to the evidence obtained by the plaintiff, when the plaintiff tried to log in to the website involved, he opened the account login page, entered the user name and password and clicked “Login”; an interface with a number of questions to be answered appeared, and the user had to fill in contents like “occupation”, “learning purpose”, “English level”, etc. and then fill in the basic personal information interface, the Chinese name and English name and other compulsory information to complete the login process and enter the homepage interface. In that process, there were no options for “skip” and “reject” and no reminder on agreeing to the collection of personal information.

[Key Points of Adjudication]

Was the defendant’s act of collection necessary for the conclusion and performance of the contract?

In determining whether the collection act involved was necessary for concluding and performing the contract, the court considered the relevant industrial specifications and product function settings:

First, from the perspective of relevant industry specifications and standards, according to the Regulations on the Scope of

Necessary Personal Information for Common Types of Mobile Internet Applications, the basic functional services of learning and education apps are “online tutoring, online classes etc.”, and the necessary personal information includes the mobile phone number of registered users. It can be seen from this stipulation that the defendant, as a learning and education software, should not include personal information beyond the phone number into the necessary scope of collection. Both the Personal Information Protection Law and the Personal Information Security Specification have explicitly stipulated that information push through personalized decision-making shall not be used as the necessary or only model of information push, and it is necessary to provide options that are not specific to personal characteristics or provide convenient ways of rejection at the same time. Accordingly, the defendant may not claim the collection of user profile information as the premise of providing services on the ground that it only provides one business model, i.e., the information push based on personalized decision-making.

Second, judging from the functional settings of the software or website involved, the scope necessary to perform the contract should be limited to the basic service functions provided by the

software or network operators, or the additional functions that users independently choose to add on the premise that options are available. In this case, the defendant argued that the collection was aimed to push personalized courses suitable for different users in a targeted way based on the needs of different users, which belongs to an information push mode provided as an optimized setting to improve user experience. However, the basic service function of the defendant's software or website was providing online course video streams and related information such as pictures, texts and videos, while the purpose of collecting user profile information was not to support its basic service function. Moreover, there was no evidence that the plaintiff in this case independently chose to use this function of optimized setting, so the defendant did not have sufficient basis to implement the act of collection on the ground it was necessary for realizing the function of its software or website.

Did the defendant obtain the "informed consent"?

According to the ascertained facts, the defendant configured the account and password for the plaintiff without the plaintiff's permission, due to which the plaintiff, when trying to log in to the defendant's website and software, used a page different from the general user registration page and directly entered the login

page without going through the step of checking the informed consent concerning personal information. Therefore, when collecting user profile information during the plaintiff's login process, the defendant did not have the prior consent of the plaintiff.

On this basis, the plaintiff claimed that even if the consent interface was checked, the defendant's compulsory collection of unnecessary information in the login process still constituted infringement. In this case, the software involved in the case required the user to submit information like occupation type, grade in school, English level, etc. in the user's first login interface, without setting a login mode such as "Skip" or "Reject" to enable login when the user disagrees to the submission of relevant information, making submitting relevant information the only way to successfully log in and enter the homepage of function use. Such consent or such provision of personal information was made under duress or disguised coercion, without the free or voluntary consent of the subject of the information, and shall not be identified as an effective consent. Therefore, setting the personal information collection interface on the first login page without providing options for skipping or rejection was compulsory collection of the plaintiff's personal

information and did not produce the effect of obtaining effective authorization and consent.

To sum up, the defendant's compulsory collection of the plaintiff's user profile information like occupation, grade in school, English level and learning purpose in the two products involved without prior effective consent of the plaintiff constituted infringement.

[Adjudication Result]

The defendant shall provide a copy of the plaintiff's personal information to the plaintiff, stop the infringement, delete the plaintiff's personal information, make an apology and compensate the plaintiff for the loss of RMB 2,900.

Case 7

One-RMB Delivery Fee Case: Delivery Platforms Failing to Fulfill the Obligation of Giving Reminders upon Delivery Fee Difference Due to Algorithm-based Calculation Shall Bear the Liability for Wrongs in Conclusion of Contract

——Chen X v. Beijing XX Technology Company over Network Service Contract Dispute

[Typical Significance]

Fully protecting the legitimate rights and interests of consumers is an inherent requirement for the high-quality development of the platform economy. In this case, after ascertaining the basic logic of XX Delivery Platform in calculating the delivery fee, the court concluded that the estimated delivery fee displayed by the app may mislead consumers and pointed out the problems of the platform in informing parties to the contract, giving reminders on and explanations for updates of terms, etc. Through the judicial judgment of the case, the operator was urged to improve the ordering platform to fully protect the rights and interests of consumers. Although this was just a single case, the problem reflected by the case has become universal

considering the huge user group of the delivery platform and the wide application of the estimated information display technology. The adjudication of this case can effectively promote platforms with similar problems to identify risks and reduce disputes and serve as a minore ad maius argument.

[Case Facts]

The defendant is the operator of a delivery platform. On October 29, 2019, the plaintiff ordered food through the defendant's platform. In the process of placing an order, after the plaintiff selected the dishes, "Additional delivery fee: ¥7 ¥6" was displayed at the bottom of the page; the plaintiff clicked "Go to settle", and "Delivery fee: ¥8 ¥7, with reduction of RMB 1" was displayed on the "order confirmation" page; then after the plaintiff clicked "Submit order" and paid the price, "Delivery fee: ¥8 ¥7" was displayed on the "order completed" page. The plaintiff held that the delivery fee should be settled at RMB 6, and the defendant committed fraud in price; and that if the defendant didn't commit fraud in price, it shall bear the liability for wrongs in conclusion of contract. The plaintiff requested the court to order the defendant to acknowledge the fact of fraud, make an apology to the plaintiff and compensate the plaintiff for the loss of RMB 500. The defendant acknowledged the

possibility of inconsistence in the amounts of delivery fee in the above-mentioned pages, but held that it was caused by the use of different positioning technologies. The defendant argued that after a user enters the platform, the platform, with the user's authorization, would obtain the coordinates in longitude and latitude of the user's current location through base station or wifi, that is, the homepage positioning. After the user selects the goods, the platform would estimate the delivery fee according to the positioning of the user and the merchant's location; then after the user clicks "Go to settle", the user would choose a saved address or a new address as the delivery address; then the platform calls the map software to obtain the location of the delivery address according to the address input by the user, and calculates the actual delivery fee. Comparison of the coordinates in the back-end log of the order involved has shown that in this case the delivery distance calculated based on homepage positioning was greater than the delivery distance calculated based on the delivery address positioning. Therefore, the defendant held that it did not commit fraud or a wrong in conclusion of contract.

In order to verify the evidence provided and information stated by the defendant, the judge went to the premise of the defendant

to examine the back-end log record of the order involved, which was consistent with the contents shown in the evidence. Meanwhile, 10 delivery orders were randomly called from the back-end data of the platform as per the time and place designated by the judge. According to statistics, there were 6 orders in which the longitude and latitude provided by homepage positioning were consistent with the longitude and latitude provided by delivery address positioning and 4 orders in which the two were inconsistent with each other. In 3 orders thereof, the delivery distance calculated based on homepage positioning was less than that calculated based on the delivery address positioning; while in the other order thereof, the former was greater than the latter.

[Key Points of Adjudication]

This case involved a dispute arising from the difference in the distribution fee displayed on the previous and subsequent pages during the conclusion of the delivery service contract. Due to the lack of transparency in the algorithm of the distribution fee and the non-negotiability of amount thereof, consumers have the right to raise questions. However, whether the claims of the user were tenable should be determined in accordance with the law after the court finds out the facts.

Regarding whether the platform committed fraud

Fraudulent acts are identified when the following constitutive requirements are met: the actor has fraudulent intent and has implemented the fraudulent act, and the other party has made a wrong expression of intention because of that. According to the facts ascertained in the case, the defendant used the homepage positioning technology to estimate the delivery fee on the "commodities selection" page. The estimated delivery fee was displayed for consumers' reference, which was not an act of expressing its intension. Therefore, the defendant lacked the fraudulent intention, and did not implement fraudulent act that induced the other party to fall into the wrong expression of intention. The consumer's claim that the platform committed fraud was not tenable.

Regarding the determination of the platform's liability for wrongs in conclusion of contract

Article 500 of the Civil Code of the People's Republic of China has listed two typical circumstances of wrongs in the conclusion of contract: engaging in consultation with malicious intention under the guise of concluding a contract, and intentionally concealing material facts or providing false information concerning the conclusion of the contract; and one catch-all

clause. This is consistent with the provisions of the Contract Law on wrongs in conclusion of contract. Since the legal facts involved in the dispute in this case occurred before the implementation of the Civil Code, the provisions of the Contract Law must still be applied. According to the facts investigated in this case, the two typical circumstances listed in the law cannot be applied in this case. Therefore, in determining whether the defendant's act constituted any other acts contrary to the principle of good faith, the court comprehensively considered the constitutive requirements of the liability for wrongs in conclusion of contract. It is generally believed that the liability for wrongs in conclusion of contract must meet the following conditions to be tenable: (1) the contracting party breached the pre-contractual obligations in the process of concluding a contract; (2) the other contracting party suffered damage; (3) there was a causal relationship between the breach of pre-contractual obligations and the damage; and (4) the breaching party was at fault. In this case, the court, based on the fact that the difference in the delivery fee displayed in previous and subsequent pages caused misunderstanding to the consumer and after analyzing the characteristics of the platform, the calculation method of the distribution fee, the verifiability of the

deviation of delivery fee and the cost factors, put forward the view that it is necessary and possible for the platform to give reminders on the estimated delivery fee, and such reminders will not increase the transaction cost of the platform significantly. Based on the above analysis, the court held that based on the principle of good faith, the defendant shall be obliged to give reminder on the fact that the estimated delivery fee is not the content of the offer. In this case, the defendant failed to fulfill the obligation of giving reminders and was thus at fault in the process of concluding the contract.

As far as the consumer is concerned, it is difficult for him to recognize that the delivery fee of RMB 6 was only the estimated amount. The consumer chose to believe that the lower amount would be the final delivery fee, which was in line with the reasonable expectations of ordinary consumers. The reliance interest arising therefrom should be protected. The extra price paid by the consumer for concluding the contract and the reasonable expenses incurred for safeguarding rights were the actual loss incurred by the customer, for which the defendant shall compensate the consumer.

[Adjudication Result]

The court ruled that the defendant shall compensate the plaintiff

for the loss of RMB 1. After the judgment was made, both parties refused to accept it and respectively filed an appeal. The court of second instance dismissed the appeal and upheld the original judgment.

Case 8

Case of "Pig-butchering Scam" Misjudgment by Dating Platform's Algorithm: Algorithm-based Risk Control System Performing the Reasonable Duty of Care and Taking Precautions Does Not Constitute Infringement

—— Li X v. XX Company over Right to Reputation Infringement Dispute

[Typical Significance]

This case is the first case decided by the court that involved the dispute over infringement of personal rights and interests caused by an algorithm-based risk control system. In this case, a forward-looking exploration was made on the rules for identifying infringement by algorithm. During the adjudication, the court established the comprehensive evaluation factors for identifying infringement by algorithm based on considerations stated in the provisions on the dynamic system theory prescribed in Article 998 of the Civil Code, according to the application of algorithm-based risk control in specific scenarios. The judgment of this case, having established a reasonable standard of duty of care and specific identification factors for the platform and

dynamically balancing public interest and individual rights, is a model of the application of the dynamic system theory in the field of platform governance. This case was selected as one of the Ten Major Media Law Cases in China in 2022.

[Case Facts]

The plaintiff Li X, an employee of a financial company, registered an account on the dating platform operated by the defendant and submitted a real photo as the profile photo and the mobile phone number registered under the real name thereof. During Li's normal use of the platform, the defendant blocked his account and reminded other netizens that "the account may have unusual activities" and "please don't have money transfer with the account". This situation led many friends of the plaintiff to mistake the plaintiff for a liar, which caused damage to the reputation of the plaintiff. The plaintiff filed a lawsuit to the court, holding that the platform operated by the defendant implemented algorithmic technology which caused misjudgment and infringed on his right to reputation, and requesting the court to order the defendant to publicly apologize to the plaintiff on its platform to clarify the fact and compensate the plaintiff for the loss of RMB 20,000.

The defendant argued that as the operator of the platform

involved in the case, it was fulfilling the main responsibility of the platform by regulating users' acts on the platform in accordance with the laws and regulations; when the plaintiff, as a registered user of the platform, chatted with other users of the platform, high-frequency words involved in "pig-butchering" scam cases, such as "finance", "fund" and "add me/you on WeChat" were repeatedly detected in a short period of time, which automatically triggered the audit rules of the risk control system of the defendant's platform, but the defendant unblocked the account following manual verification after the plaintiff called customer service to reflect the situation; the defendant was only fulfilling the main regulatory responsibility for the public interest in accordance with the laws and thus did not have any infringing act as it was the system that automatically identified the plaintiff's account as a risky account.

[Key Points of Adjudication]

According to Article 998 of the Civil Code of the People's Republic of China, in determining the civil liability that an actor is to bear for infringing upon others' mental personality rights, consideration shall be given to the occupations of the actor and the injured person, the scope of impact of the act, the degree of fault, as well as such factors as the purposes, methods, and

consequences of the act. In determining the subjective fault and infringement of algorithm application act involved in the case, the court considered the following factors based on the characteristics of algorithmic technology and the development status of the relevant industry: the purpose and subjective intention of the act, whether the act was justified, the means and nature of the act, the degree of the risk of infringing on personal rights and interests, the degree of prudence in the course of the act, whether reasonable measures were taken to prevent infringement; the characteristics of the actor's identity, the level of technical ability and the attached duty of care to make an evaluation as follows:

First, regarding the purpose and subjective intention of the act and whether the act was justified: seen from the vocabulary and acts targeted by the "preventive risk control system" involved in the case, it was indeed the purpose of the system to prevent online fraud crimes like "pig-butchering scam". By strengthening the monitoring and prevention functions towards high-risk accounts through technical means, the network service provider was performing the obligation of regulation stipulated by law. Meanwhile, the prevention of online fraud crimes was also to protect the public interest of unspecified network users.

Therefore, the subjective intention of setting up the risk control system involved in the case was to fulfill the regulatory obligation required by law and protect public interest, which was justified.

Second, regarding the means and nature of the act, the degree of the risk of infringing on personal rights and interests and the degree of prudence in the course of the act: although the setting of the algorithm application involved was for a justified purpose, algorithm setting should be reasonable and proportional under the current technical conditions, without the use of any illegal means such as algorithmic discrimination and algorithm abuse that infringe on the legitimate rights and interests of others. According to the ascertained facts and the logic process of the algorithm disclosed by the defendant, the setting of the algorithm involved was an automatic response mechanism based on specific vocabulary and user acts, containing no improper discrimination against a certain type of users, and there was no evidence to prove that the act involved was a manual or automatic targeted act against the plaintiff, so the algorithm involved has certain technical neutrality.

Third, regarding the characteristics of the actor's identity, the level of technical ability and the attached duty of care, as well as

whether reasonable measures were taken to prevent infringement: in view of the fact that the platform operated by the defendant is an online dating app for strangers, it is reasonable for the defendant to strengthen the screening of online fraud crimes such as the “pig-butchering scam” under the current social background. As the algorithmic technology is still in the development stage and the relevant industry norms are not yet mature, we should encourage the innovation and positive development of algorithmic technology and reasonably determine the duty of care. In this case, the defendant did verify the misjudgment, unblock the account, and remove the risk warning within the stated time limit through the manual audit promised thereby. Accordingly, the defendant did fulfill the duty of care that matched the risk detected by the algorithm involved and take reasonable measures to prevent infringement.

To sum up, the defendant set up an algorithm application of “preventive risk control system” to conduct neutral and undifferentiated risk screening of users’ acts based on the regulatory requirements of the law and the purpose of protecting the public interest. Despite the misjudgment by the system due to technical limitations, the defendant fulfilled its duty of care that matched the risk detected by the algorithm involved and

took reasonable measures to prevent infringement, thus having no subjective fault and not committing infringement. The plaintiff's claims for compensation of economic loss and reasonable expenses and apology based on the defendant's infringement, lacking factual and legal basis, would not be supported by the court.

[Adjudication Result]

The claims of the plaintiff were dismissed. Neither party appealed after the judgment of first instance was made, and the judgment has come into force.

Case 9

Case of Banning Game Account for Cheating: It Is Reasonable for Game Operators to Ban Accounts Using "Script Cheating" Through Algorithm

—— Ma X v. XX Company over Network Service Contract Dispute

[Significance]

Cheating acts in the game field, while bringing users a different game experience and more game rewards compared with general players, destroy the overall game rules and game ecology. In this case, the court made a negative appraisal of the use of "script" in online games from the perspective of law and affirmed the online service provider's act of prohibiting the online user from participating in online activities in violation of the principle of good faith and banning the account in accordance with the agreement, which has safeguarded the rights and interests of the majority of game consumers not involved in the case and a fair online game environment and ensured the healthy development of the game industry.

[Case Facts]

The plaintiff Ma X was a game player and the defendants were

the game operator. The defendants, concluding based on the back-end data that the plaintiff repeatedly played the game without interruption for several days, which obviously does not conform to the normal time curve of physiological rhythms of human beings, and the tracks and items used in the game were analyzed as conforming to the automatic operation characteristics of "script cheating" software, permanently banned the account of the plaintiff and refused to refund the balance in the account on the ground that the plaintiff used illegal "script cheating". The plaintiff, claiming that in doing this the defendant violated the contract, requested the court to order the defendant to compensate the plaintiff for the equivalent amount of the game account of RMB 10,000.

[Key Points of Adjudication]

Were the involved Game Service and Licensing Agreement and the supplementary agreements thereto legal and valid?

Since the two defendants jointly provided online game services for the plaintiff Ma X, the plaintiff and the two defendants have formed a contractual relation under the network service contract on the game involved. The plaintiff, having used the game account involved for a long time and entered the game many times, should know the contents of the agreement. The clauses

involved explicitly stipulated that “using scripts to play games will lead to the banning of accounts and no refund”, and the clear expression left no room for misunderstanding. Thus, it was reasonable and necessary for the defendants to take measures to ban the account, because imposing necessary restrictions on acts that violate the principle of good faith and undermine fair trade is a necessity for maintaining a good order in the entire field of online games. To sum up, the relevant agreements involved in the case were legal and valid, and the two defendants have fulfilled their obligation of giving full reminders on the “account banning” clause, so the “account banning” measure was reasonable and necessary.

Did the plaintiff use scripts in violation of the rules?

The evidence provided by the two defendants can prove that the plaintiff’s game playing act cannot be completed through normal operation by ordinary human beings, as the time curve was in serious contradiction to the “physiological law” of human beings, and the tracks in the game displayed synchronously in abnormal time periods were more similar to those completed by some automatic script.

Was the defendants’ punishment to the plaintiff reasonable?

In this case, the plaintiff, having signed the user agreement with the two defendants, should have followed the principles in accordance with the contract and stopped game operations in violation of the rules like using scripts to maintain a fair and just online game environment together with other players and the service provider. However, the plaintiff adopted a dishonest game mode in playing the game and ignored the banning announcement issued by the defendants, which harmed the interests of other players and the game operators. Banning the account of the user violating rules without refunding the account balance showed that the game operator has certain management duty and showed some disciplinary implications, which is conducive to deterring violating acts in game playing, creating a fair and honest online game environment, improving players' game experience and promoting the healthy development of the game industry. Therefore, the court did not object to the two defendants' act of banning the plaintiff's account.

[Adjudication Result]

In the judgment, the claims of the plaintiff were all dismissed.

Currently, the judgment of this case has come into force.

Case 10

Case of Short Video Platform Banning a Pedophile's Account: Platforms Shall Have the Right to Take Management Measures Like Account Banning or Termination of Service Based on Algorithm Against Acts of Infringing on the Rights and Interests of Minors

—— Zheng XX v. Beijing XX Technology Company over Network Service Contract Dispute

[Typical Significance]

In this case, the court, on the basis of fully examining and strictly scrutinizing the legitimacy of the platform's exercise of "private power", finally made a decision to support the defendant's platform in taking corresponding punishment measures, which not only advocated the code of conduct for maintaining the clear network environment for minors, but also defined the ought-to-be boundary of the platform's exercise of "private power", setting a yardstick worthy of reference for similar cases in the future.

[Case Facts]

When the plaintiff Zheng XX used a short video platform to

watch videos, his account involved was permanently banned by the platform on the grounds of "suspected violation of community pact, involving excessive attention to or browsing of minors-related content", and the mobile phone used by Zheng could no longer be used to register an account on, log in to, and use the platform. Zheng expressed that it was extremely unreasonable for the platform operator Beijing XX Technology Company to ban the account involved and the login privilege of the corresponding mobile phone because he just liked to watch dance videos and did not over-browse related content involving minors, it was normal to use the account involved to browse and like related videos, and all videos were recommended by the system. Zheng filed an appeal and made phone calls requiring the platform to resume his account, but failed. Zheng believed that the platform's banning of the account and the corresponding mobile phone without due cause constituted a breach of contract and thus filed a lawsuit to the court against Beijing XX Technology Company.

The defendant Beijing XX Technology Company argued that Zheng's account involved in the case followed and liked a large number of videos with underage girls as the main content and posted pornographic comments; he also uploaded videos of

underage girls in violation of the rules, which took advantage of minors. In response to the requirements of national laws and policies, the platform established a strict system for the protection and review of minors. Since the act of the account involved seriously violated the relevant policies and regulations of the state on the protection of minors, it was reasonable, legal and necessary for the platform to ban the account involved. Meanwhile, the defendant provided a smooth appeal channel. Although the account involved in the case had been punished many times, and the user had been repeatedly required to learn the community rules since March 2021, the account involved still committed violations, and thus it was reasonable for the defendant to permanently ban the account and the mobile phone.

[Key Points of Adjudication]

The account involved committed breach of contract

The service agreement, self-discipline pact and security center of the defendant's platform all explicitly stipulated that "it is prohibited to make any act or have any content that harms the physical and mental health and legitimate rights and interests of minors, including pornographic and vulgar content involving minors and content taking advantage of minors; it is prohibited to make any act of disseminating bad values and to spread soft

pornography, vulgarity or sexually suggestive, sexually teasing and other sexual explicit content or display vulgarity, kitsch, low taste, vulgar culture, etc.". "Paying excessive attention to and over-browsing minors-related content" includes "being active in the comments section of minors-related videos, frequently publishing vulgar pornographic remarks, expressing love for children in teasing words", etc. In this case, when the plaintiff registered as a member, he signed a service agreement with the defendant. And relevant agreements on other functions of the platform, as the supplementary content of that agreement, had the same legal effect as the service agreement. The relevant clauses in the above-mentioned agreements and specifications did not violate the prohibitive provisions of national laws or contain any content significantly exempting the provider of the standard terms from liability, aggravating the liability of the other party or excluding the other party from its main rights, and shall thus be legal and valid.

In this case, the plaintiff Zheng XX posted a large number of comments containing verbal teasing, kitsch and some pornographic emojis in the comments section of several videos involving minors. After the defendant found through algorithmic identification that the account involved of the plaintiff was a

risky user under the algorithmic risk assessment system "Children Care Program" and conducted a manual review through the "Children Care Program" queue, it was determined that the plaintiff's account involved had acts of paying excessive attention to or over-browsing the related contents of minors, which violated the community self-discipline pact. The court held that there was nothing wrong with the result determined by the defendant, which was supported by factual basis.

It was legal and in compliance with the contract for the defendant to ban the account involved

The service agreement signed between the plaintiff and the defendant stipulated that "in case of your violation of this agreement or other terms of service, the company has the right to make independent judgments and take measures as appropriate ... from restricting part or all of the functions of the account to terminating the service and permanently closing the account". According to this agreement, the defendant can impose different punishments on user accounts involving different types of risks through algorithms, system identification and other methods.

In this case, the account involved was punished three times by the platform for violating community rules for "paying

excessive attention to or over-browsing minors-related content", and the platform repeatedly criticized it and required its corrections. However, after ban on the account involved was lifted, the plaintiff continued to post a large number of comments containing kitsch and vulgar culture under videos involving minors, which constituted serious breach of contract. Thus, the defendant's measures to terminate services and permanently close the account involved did not exceed the necessary limit. Meanwhile, the defendant took the above measures to prevent the plaintiff from continuing to commit violating acts by using another account, better protect the legitimate rights and interests of minors and their physical and mental health, and purify the cyberspace environment. To sum up, it was legal and in compliance with the contract to ban the account involved.

[Adjudication Result]

In the judgment, the claims of the plaintiff Zheng XX were all dismissed. Neither party appealed after the judgment of first instance was made, and the judgment of the case has come into force.

Beijing Internet Court

Protection of Network-related Rights and Interests

Top Ten Typical Cases

Case 1

Email Data Ownership Case: Users Have Rights and Interests to Email Accounts and Mail Data

—— Wang X v. XX Technology Company and XX Information Service Company over Network Service Contract Dispute

[Typical Significance]

As the records of information that exist outside the human body and having various forms of physical storage and dissemination media, data is objective and can become the object of civil-law rights. Users enjoy the right to the data set expressed in the form of email in their mailboxes. Based on the use of free mailboxes in general, it is reasonable and necessary to restrict the rights of service users to a certain extent under certain conditions. However, as the content of the "mailbox emptying" clause concerns the major interests and concerns of free mailbox users, the party providing the standard clause shall take reasonable measures to remind users. In this case, by providing the mailbox service, the two defendants were carrying out business operations as market entities, and shall thus not be exempted from corresponding legal responsibilities on the ground that the

service was provided free of charge. This case is the first case involving the identification of the ownership of email data and the confirmation of the validity of the “mailbox emptying” clause.

[Case Facts]

On April 6, 2006, the plaintiff Wang X made an application and registered a “free mailbox” provided by the two defendants on the Internet. In April 2020, the plaintiff found that all emails in the mailbox were deleted because of long-term non-login. The plaintiff believed that the two defendants failed to fulfill the obligation of giving reminders and explanations on the “mailbox emptying” clause or inform the plaintiff before emptying the mailbox. Therefore, the plaintiff filed a lawsuit, requesting the court to identify the ownership of the email account and the emails and confirm the clause in the free email service agreement of the website that “the user of the free mailbox agrees that if the email account registered thereby is not used in any form (WEB/POP3) for any 90 consecutive days, the website shall have the right to delete the content in the mailbox, stop providing free email service to the user, and delete the email account” (hereinafter referred to as the “email emptying” clause) as an invalid standard clause.

[Key Points of Adjudication]

Users enjoy rights to email accounts and the mail data

A mailbox is an online virtual mailbox system for storing emails, created and existing in the virtual network space, and depending on hardware measures such as servers built by service providers. And an email account is the only email address assigned to a user by a platform service provider after the user applies for registration. In this case, by requesting the court to determine that he has the ownership of the email account involved, the plaintiff was actually requesting the court to confirm that the plaintiff was using the service provided by the platform as the "user" of the account thereof. Since a legal and valid contractual relationship had been formed between the user and the platform through the user service agreement, the plaintiff, as a user, shall enjoy the right to use the email account involved based on the service agreement with the defendant. Therefore, the court did not support this claim of the plaintiff.

Regarding the plaintiff's claim for confirming that the ownership of the emails in the mailbox involved shall belong to the plaintiff: as the emails in the mailbox involved were already deleted, content of previous emails cannot be recovered. However, according to daily life experience, the content that can

be contained in the emails, including texts, pictures, videos, audios, documents, sending and receiving time, address book, etc. are very likely to constitute information "that can be used to identify the identity of persons". They are biological information and social traces of the persons of the civil law recorded in an electronic form, and a data set with strong personal characteristics that can be used to directly identify a specific individual after a little sorting, which may even have the attribute of personality rights under specific circumstances. Therefore, email users should enjoy corresponding civil-law rights or interests on the emails. However, as mentioned above, these rights or interests are not exactly the "ownership" claimed by the plaintiff. In this case, all the emails involved had been deleted, which cannot be recovered as acknowledged by all parties, and the plaintiff did not produce evidence to prove the specific situation of the deleted emails. When the object of the right claimed by the plaintiff had objectively disappeared and the specific content cannot be confirmed, it was not appropriate to identify the nature of the plaintiff's rights or interests to the emails, especially the "ownership" thereof. Therefore, the court dismissed this claim of the plaintiff.

The "mailbox emptying" clause shall be invalid when no

reminder or explanation is given

The service terms involved in the case were standard terms. Regarding whether free mailbox service providers have the right to stipulate the content of “mailbox emptying” through a standard clause, the court held that: users of free mailboxes, as the service users, can register their account to use mailbox products without paying direct consideration, while mailbox service providers have to undertake the server resources and operation and maintenance costs because mailboxes rely on mailbox systems built by the service providers and occupy a lot of server space, so it is essential to balance the rights and obligations between service providers and service users. Therefore, it is reasonable and necessary to restrict the rights of service users to a certain extent under certain conditions, which does not involve exempting one party from its liabilities, aggravating the liability of the other party or excluding the other party from main rights thereof or involve any other circumstances leading to contract invalidation. In addition, based on the use of free mailboxes in general, the free mailbox service agreements provided by other free mailbox service providers all have similar clauses on mailbox emptying. Therefore, free mailbox service providers have the right to

stipulate the content of “mailbox emptying” through a standard clause. However, whether such a clause has effect on a specific user should still be determined as per legal provisions.

In this case, as the content of the “mailbox emptying” clause concerns the major interests and concerns of the free mailbox user, the party providing this standard clause shall take reasonable measures to remind the user. The mailbox service involved in the case was indeed free, and the plaintiff could enjoy it directly without paying the consideration. However, judging from the development history of the network service industry in China, this kind of free-use systems can help operators to quickly accumulate users and expand market share, which should belong to a business model of operators. With the development of the Internet industry, some operators would provide a charged service model after accumulation of users. In this case, the website also provides charged email service. In essence, by providing the email service, the defendants were still carrying out business operations as market entities, and shall thus not be exempted from corresponding legal responsibilities on the ground that the service was provided “free of charge”. To sum up, the clause involved in the case concerned the major interests and concerns of the plaintiff, but

the defendant failed to fulfill the obligation of reminding the plaintiff, so the clause shall have no effect on the plaintiff.

[Adjudication Result]

The court ruled that the “mailbox emptying” clause in the Free Mailbox Service Terms of the Website shall have no effect on the plaintiff Wang X; and all other claims of the plaintiff Wang X were dismissed. Neither party appealed after the judgment of first instance was made, and the judgment has come into force.

Case 2

In-game Mirror Image Case: Using Virtual Characters to Reproduce "Identifiable" Image of Film and TV Characters Constitutes Infringement of Other People's Right to Likeness

—— Yang X v. XX Network Technology Co., Ltd. over Internet Infringement Liability Dispute

[Significance]

The iteration of information technology and the update of communication means in the era of digital economy have promoted the innovation in the forms of likeness, evolving from portraits and photos to traditional carriers like films, sculptures and drawings and now extending to include virtual characters like personal cartoon portraits. And the wide application of videos, AI, and photo editing software arising from the development of Internet big data has led to more diversified forms of infringement of the right to likeness. This case has involved the dispute over a new type of infringement of the right to likeness after the implementation of the Civil Code, through which an effective response was made to the issue whether a user's act of imitating the image of a film and television

character of the right holder and creating a highly similar in-game virtual character constitutes an infringement of the right to likeness.

[Case Facts]

Yang X is an actor who played a role in a famous film. XX Network Technology Co., Ltd., the developer of the game involved in the case with the same theme as the film, produced and used without authorization a virtual character in the game which was highly similar to the image of Yang in the film to promote its game product.

The plaintiff Yang X believed that when promoting its game product, XX Network Technology Co., Ltd. used his likeness without authorization to attract the attention of users through the celebrity effect, thereby obtaining more commercial benefits, which could easily mislead consumers to think that Yang had a cooperative relationship with the game involved, constituting a serious fraud to consumers. Yang requested the court to order XX Network Technology Co., Ltd. to make a public apology and compensate Yang for the economic loss and reasonable expenses for safeguarding rights.

The defendant XX Network Technology Co., Ltd. argued that it

did not use Yang's likeness, because the virtual character in the game involved and the likeness of Yang had many significant differences in features including but not limited to the eye shape, furrows under the eyes, eyebrows, nose, ears, face shape, skin color, etc., and thus there was no infringement of Yang's right to likeness; and that the basis of the right claimed by Yang was wrong, which was arbitrarily expanding the coverage of the right to likeness since the virtual character used in the game and the likeness of Yang had no identicality "in the external image by which a specific natural person can be identified" as stipulated by law.

[Key Points of Adjudication]

The image of a film and television character should be protected by the right to likeness as long as the image can reflect the "external image" by which a natural person "can be identified". Whether the use of a virtual character to reproduce the image of the film and television character constitutes an infringement of the right holder's right to likeness should be determined by judging whether the virtual character and the image of the film and television character are identical. As long as being clear and recognizable, they should be considered as identical, and then a one-to-one correspondence with the right holder can be

established.

[Adjudication Result]

The court ruled that the defendant XX Network Technology Co., Ltd. shall make an apology to the plaintiff Yang X and compensate the latter for the economic loss and reasonable expenses for safeguarding rights. Neither party appealed after the judgment was made, and the judgment has come into force.

Case 3

Electronic Coupon Case: Setting an Invisible Threshold for the Use of Virtual Property Constitutes Infringement of Consumers' Rights and Interests

——Sun X v. Beijing XX Ecommerce Company over Network Service Contract Dispute

[Significance]

At present, the new business model of redeeming membership rewards points (coins) for virtual property (coupons) on network platforms has formed a certain industrial cluster and transaction scale and enhanced the stickiness of consumer-users, which can meet diversified and personalized consumption needs. It has been made clear through this case that operators should disclose the specific information attached to electronic coupons in a comprehensive, authentic, accurate and timely manner to protect consumers' right to be informed and right to make choices. If setting time limits for redemption, rules of use, restrictions or specified contents and other important information for electronic coupons in webpage promotion but failing to truthfully inform consumers of the same, operators shall bear responsibilities for failing to inform consumers of commodity information in a

truthful and comprehensive manner. When the value of electronic coupons cannot be determined, the amount of compensation shall be determined from the perspective of protecting the legitimate rights and interests of consumers to the maximum extent.

[Case Facts]

During the "Super City" activity of XX online shopping mall's Super Brand Day, Sun X redeem 19,999 super coins obtained in the activity for a coupon entitled "TOP SPORTS: Get an RMB 299 deduction for your pay at or over RMB 299". The redemption list showed: Coupon titled "TOP SPORTS: Get an RMB 299 deduction for your pay at or over RMB 299", super coins "19,999", "20 coupons in total: 20 coupons have been redeemed", and "redeemed". To the left of the coupon involved there was the picture of a Nike short-sleeved T-shirt. In the process of using the coupon, Sun was told that it was only applicable to two short-sleeve T-shirts of fixed size in the store involved. Sun thus filed a lawsuit, claiming that Beijing XX Ecommerce Company had the intention to defraud consumers and should return the marked value of RMB 299 of the coupon and pay the punitive damages of RMB 897.

[Key Points of Adjudication]

Did the marking of the “coupon” involved in the case constitute fraud?

Before the redemption, the product shown in the picture displayed to the left of the coupon involved was a Nike short-sleeved T-shirt, which was basically consistent with the use scope of the coupon. As can be seen from the list of other coupons for Blueteeth earphones, shampoo, etc. provided by Sun, the coupons provided for the activity were all coupons for specific products, not universal coupons. In the “Use Interface” and “Details” pages of the coupon involved, the store, brand, applicable period, product model and other information were further indicated. Sun claimed that the coupon involved only stated “TOP SPORTS: Get an RMB 299 deduction for your pay at or over RMB 299” in the title but did not mark restrictions like “for Nike short-sleeved T-shirts only” in advance. After comprehensive consideration of the Rules for the “Super City” Activity of XX Super Brand Day, the marked information in the title of similar coupons and the information provided in different pages of the coupon involved, it can be concluded that there was a lack of preciseness in the setting of the coupon involved by Beijing XX Ecommerce Company, but there was not enough evidence to infer that Beijing XX Ecommerce Company had the

subjective malicious intention to make false publicity and use shoddy products to replace good products. The problem shall belong to a defect in the webpage publicity and did not constitute fraud.

What kind of responsibility should Beijing XX Ecommerce Company bear?

In this case, Sun X provided the screenshots before and after the redemption of the coupon involved. Before redemption, the coupon interface showed “TOP SPORTS: Get an RMB 299 deduction for your pay at or over RMB 299”; after redemption, the interface showed “Restrictions on products: this coupon is only applicable to certain products in the store”, and there were only two short-sleeved T-shirts available in the product details interface. It can be seen that important information about the coupon involved, such as the applicable period and rules of use and restrictions, can only be viewed in specific pages after the user has completed the redemption, and there was no “return” option in the whole redemption process. The types of products available for selection are important factors of consideration for consumers in online shopping. As the sponsor and organizer of the “Super City” activity of the Super Brand Day, Beijing XX Ecommerce Company, by failing to mark the restrictions such as

the applicable scope of products and conditions of use in advance in the coupon entitled “TOP SPORTS: Get an RMB 299 deduction for your pay at or over RMB 299”, failed to fulfill the responsibility of truthfully and comprehensively informing consumers of the product information.

Value determination of the “coupon” involved

In this case, Sun X completed a series of acts like signing in and inviting friends and chose to redeem the 19,999 super coins obtained thereby for the coupon involved in accordance with the Rules for the “Super City” Activity. The coupon had three particularities: first, it was virtual, stored in the server of the network platform, and cannot be cashed out; second, it was dependent, as the acquisition and use of the coupon had to satisfy the condition of “pay at or over RMB 299”, and the use thereof was limited to the store of “TOP SPORTS” during the “Super City” activity which has been removed from the shelves at present; third, the coupon involved was issued for promotion during the “Super City” activity, which was not negotiable and had no definite currency exchange value. Therefore, determining the value of the coupon involved in this case was the prerequisite for compensating for Sun’s economic loss.

Considering the facts of the case and the statements of both

parties, the value of the coupon involved may be determined with reference to three standards. The first was the marked value. The title of the coupon involved was “TOP SPORTS: Get an RMB 299 deduction for your pay at or over RMB 299”, the literal interpretation of which would be “you can enjoy an RMB 299 reduction when the price of the products to be bought exceeds RMB 299”. According to the marked information, the value of the coupon involved can be identified as RMB 299. The second was the consideration of the super coins. Since Sun X redeemed 19,999 super coins issued by XX online shopping mall for the coupon involved, the value of the coupon involved shall be the value of the 19,999 super coins. According to the Description of Situation provided by Beijing XX Ecommerce Company, the consideration standard between the super coins and the X Beans was that one can redeem 2,000 super coins for a “lucky treasure box” containing 500 X Beans (with the worth of RMB 5), based on which it can be calculated that the value of the 19,999 super coins was about RMB 49.9. Thus, the value of the coupon involved can be identified as RMB 49.9. The third was the order price. The screenshot of the order provided by Sun showed that the price of the purchased short-sleeved T-shirt after using the coupon was RMB 69. Therefore, based on the value of

the product in the order, the value of the coupon involved can be identified as RMB 69.

Seen from the title of the coupon, “TOP SPORTS: Get an RMB 299 deduction for your pay at or over RMB 299” meant that the maximum realizable value of the coupon was RMB 299. Seen from the quantity, “20 coupons in total: 20 coupons have been redeemed” meant that the coupon enjoyed some scarcity, so the value thereof cannot be determined only by the value of the corresponding 19,999 super coins and the X Beans. In addition, during the trial, Sun also argued that the 19,999 super coins were not provided for free, but required a lot of time and energy to complete tasks that helped Beijing XX Ecommerce in promotion, which should also be used as a reference factor for determining the value of the coupon involved. From the perspective of protecting the legitimate rights and interests of consumers to the maximum extent, considering the above factors, the value of the coupon involved was determined as RMB 299 by mainly referring to the marked value of the coupon involved.

[Adjudication Result]

The court ruled that Beijing XX Ecommerce Company shall compensate Sun X for RMB 299. Neither party appealed after

the judgment was made, and the judgment has come into force.

Case 4

Case over Personal Information of the Deceased: Personal Information Processors Shall Bear the Obligation of Protecting Personal Information Rights of the Deceased

—— Guo X et al. v. Shanghai XX Technology Company et al. over Personal Information Protection Dispute

[Significance]

This case has provided a pilot model of practice in the protection mode of the personal information of the deceased. Protecting the personal information rights of the deceased is not just a promise made by written laws. These rights are important rights protected with great efforts in the judicial practice of China. The practical relevance of this case lies in three aspects. First, the case has helped clarify that after the death of a user, the personal information processor should still be obliged to protect the personal information rights of the deceased and allow the close relatives thereof to retrieve and make copies of the personal information of the deceased. Second, the case has helped clarify the boundary of a personal information processor' obligation in protecting the personal information of the deceased,

which includes "providing other reasonable channels for retrieving the personal information of the deceased" and "no longer allowing other personal information processors based on business connections to actually control the personal information of the deceased". Third, it has helped determine the reasonable boundary to be observed by natural persons in retrieving and making copies of personal information, i.e., the principles of "legality, necessity and justifiability" shall be observed. In this case, the four plaintiffs requested to realize the rights of retrieval and making copies by directly logging in to the account of the deceased, which obviously risked infringing on the legitimate rights and interests of a third party and was thus not supported by the court. This case is a classic case over the protection of personal information of the deceased. The judgment has truly demonstrated the effective way to balance personal information rights and the legitimate commercial interests of personal information processors. The so-called balance of interests is no longer empty talk, but a clear and operable logic of adjudication.

[Case Facts]

Li X, a close relative of the four plaintiffs, was engaged in the related business of a platform in Beijing before his death. The

defendant I, Beijing XX Company, was the operator of the platform's business in Beijing; the defendant II Shenzhen XX Company and defendant III Shanghai XX Technology Company were respectively the operators of the platform's employee-end app and client-end app; and the defendant IV Shanghai XX Human Resource Company was responsible for settling the salary for Li based on the statistical business data provided by Beijing XX Company.

In 2021, Li died unexpectedly. In order to protect their legitimate rights and interests, the four plaintiffs tried to log in to Li's account on the employee-end app to check Li's attendance records and other personal information, but found that the account had been deactivated by Shenzhen XX Company, leaving the relevant information unable to be checked. The four plaintiffs believed that the defendant II Shenzhen XX Company's act of deactivating Li's account left them unable to check Li's personal information, which seriously hindered them from safeguarding their own legitimate rights and interests and thus infringed on their right to claim personal information rights. The four plaintiffs also believed that the four defendants had all processed the above personal information of Li based on their respective business needs. Therefore, the four plaintiffs filed a

lawsuit against the four defendants, requesting the court to order the four defendants to provide the relevant personal information of Li claimed thereby and bear the corresponding tort liability.

The defendant II Shenzhen XX Company argued that it was a normal managerial act to deactivate Li's account after his death; and that although it deactivated Li's account, the clear guidelines on the retrieval of personal information by users and their close relatives as provided in the privacy policy of the employee-end app had provided other reasonable channels for the four plaintiffs to retrieve Li's personal information. In addition, the four defendants jointly argued that they did not control the personal information claimed by the four plaintiffs, and thus did not commit infringement, should not bear tort liability, and could not provide the four plaintiffs with the personal information claimed thereby.

[Key Points of Adjudication]

The four plaintiffs had the right to claim rights to Li's personal information.

Article 49 of the Personal Information Protection Law of the People's Republic of China has stipulated that if a natural person dies, the close relatives thereof may exercise the rights to handle

the personal information of the deceased, such as consultation, duplication, rectification, and deletion, for their own legitimate and justifiable interests, unless the deceased has made other arrangements before his/her death. According to this provision, on the premise of Li's death, the four plaintiffs, as the close relatives of Li, should meet the following conditions in order to claim rights to the personal information rights and interests of Li: the claim was targeting the relevant personal information of Li; the claim was aimed at safeguarding the legitimate and justifiable interests of the four plaintiffs themselves; and Li had made no other arrangements before his death.

First of all, the four plaintiffs required the four defendants to provide specific personal information such as Li's attendance records, which belongs to the exercise of rights to Li's relevant personal information; secondly, according to investigation, the above personal information may be related to the cause of Li's death, based on which the four plaintiffs had filed a separate lawsuit. The four plaintiffs were safeguarding their own interests by claiming rights to Li's personal information and did not violate legal provisions and public order and good morals; finally, there was no evidence in this case to show that Li had made any arrangement before his death for his close relatives to

exercise their rights to his personal information after his death, and thus the four plaintiffs had the right to claim rights to Li's relevant personal information.

Direct login to Li's account by the four plaintiffs in order to exercise their rights does not conform to the principles of legality, justifiability and necessity.

Although the Personal Information Protection Law has stipulated that the close relatives of the deceased can claim rights to the relevant personal information of the deceased, Article 5 thereof has also stipulated that the processing of personal information shall follow the principles of legality, justifiability, necessity and good faith. Therefore, network service providers should process the personal information of the deceased in a legal, justifiable and necessary manner, and should not allow the close relatives thereof to claim rights to the relevant personal information of the deceased by all means without any restrictions.

For the personal network account of the deceased before his/her death, as there may also be the private and personal information of a third person in the account, directly allowing close relatives to log in to the account to view relevant content may infringe on the relevant rights of the third person, which is contrary to the

specific provisions and legislative purposes of the Personal Information Protection Law. In this case, Li's account also involved the personal information and business information of third persons not involved in the case, and thus it was not inappropriate for Shenzhen XX Company, a network service provider, not to allow the four plaintiffs to directly log in to Li's account to exercise their rights.

The personal information processors did not exclude the four plaintiffs from exercising their rights through other reasonable channels, and thus did not commit infringement.

According to investigation, Shenzhen XX Company did stipulate in the privacy policy of the employee-end app the contact department and specific contact information for exercising rights with respect to the protection of personal information, so it did not refuse the four plaintiffs to exercise their rights. Therefore, Shenzhen XX Company already provided other reasonable channels for the four plaintiffs to exercise their rights, and the act of deactivating Li's account did not directly exclude the four plaintiffs from exercising rights to Li's relevant personal information. Furthermore, the four defendants indeed did not control the personal information claimed by the four plaintiffs, and thus they did not commit

infringement and could not provide the personal information of Li. To sum up, all the claims of the four plaintiffs lacked factual and legal basis, and were thus not supported by the court.

[Adjudication Result]

The court made the judgment of first instance, dismissing all claims of the four defendants. Neither party appealed, and the judgment of the case has come into force.

Case 5

Personal Information Checking and Copying Case: Personal Information Processors Shall Choose a Reasonable Way to Provide Information Based on Their Information Storage Forms and Capacities

—— Zhang X v. Beijing XX Information Service Company over Personal Information Protection Dispute

[Typical Significance]

This case has enabled positive and beneficial explorations on the exercise of personal information-related rights from many aspects. First, it has helped clarify the principle of good faith to be observed by individuals in exercising the right to check and make copies of personal information. The principle of good faith is not only a fundamental principle of the Civil Code, but also is ascertained by Article 5 of the Personal Information Protection Law. Therefore, both personal information processors and individuals should abide by the principle of good faith. Individuals shall not abuse their rights when exercising their rights related to personal information. Second, it has helped clarify the object of personal information to be checked and made copies of, which shall generally be limited to one's own

personal information. If the relevant information is inseparable from other people's information, then the legitimate rights of the other subjects of the personal information shall not be infringed, and the impact caused to other subjects should be as little as possible. Third, it has helped clarify the way in which personal information processors fulfill relevant obligations. As long as individuals' demand for checking and making copies of his/her information are met, personal information processors can choose a reasonable way of providing information according to its information storage forms and storage capacities, without strictly following the requirements and instructions of the individuals, which is also the embodiment of the principle of good faith. This case is a typical case over the right to check and make copies of personal information, which can provide a reference solution and path for the handling of similar cases in the future.

[Case Facts]

Zhang X, in order to understand the use of his account, required the platform to send to the designated mailbox in the form of an editable xlsx file the complete browsing history of the account since registration, including the name, publishing time and view count of each video viewed, the account names of the uploaders,

and the specific time when Zhang watched the video.

Beijing XX Information Service Company, the operator of the video platform, expressed that since users can independently check and make copies of personal information through functions like “Viewing History” and “Feedbacks and Help”, and the names of videos and account names of uploaders were the personal information of not only Zhang but also the uploaders, Beijing XX Information Service Company would provide the information to Zhang by providing the playing links in order to avoid infringing on the video uploaders’ personal information rights and interests.

Zhang X, refusing to accept the form of provision, filed a lawsuit to the court against Beijing XX Information Service Company.

[Key Points of Adjudication]

Individuals can apply to network service providers to check and make copies of their browsing history in network activities. However, when some information belongs to the personal information of multiple subjects, the balance of interests shall be fully considered by observing the following principles: first, the subject who checks and makes copies of the personal

information should have legal and reasonable interests therein; second, the legitimate rights of other subjects should not be infringed, and the impact on other subjects of the personal information should be as small as possible.

Regarding the ways for personal information processors to fulfill relevant obligations, on the premise of not hindering the exercise of individuals' right to check and make copies of personal information, personal information processors may choose a reasonable way of providing information based on their information storage forms, storage capacities, the costs of checking and making copies, etc.

[Adjudication Result]

Before the trial of first instance started, Beijing XX Information Service Company provided the personal information required by the plaintiff in the form of a sheet and links. The court recognized the act of the defendant and dismissed the claims of the plaintiff. Refusing to accept the judgment, the plaintiff filed an appeal. The court of second instance upheld the original judgment, despite some corrections on the part concerning the litigation cost.

Case 6

Personality Rights-related Injunction Case: Personality Rights-related Injunctions Can Be Issued Against Actors Continuing to Commit Infringement During Litigation Process

—— Dong X v. Xiao X over Internet Infringement Liability Dispute

[Typical Significance]

In this case, the Beijing Internet Court issued its first injunction against the infringement of personality rights. In cases involving cyber violence, with the rapid spreading of infringing information in the network, infringing acts may cause irreparable harm to victims if not stopped in a timely and effective way. Amid this background, it will be more beneficial to stop infringing acts and protecting the legitimate rights and interests of the victims in time by actively exploring the application of injunctions against infringement of personality rights in cases involving cyber violence. When applying the system of personality rights-related injunctions, the court usually considers the applicant, the possibility of violating laws, the urgency of issuing an injunction, the balance of interests, the

scope of claims, etc. For infringing acts that may cause irreparable harm to the infringed, the timely issuing of personality rights-related injunctions will be conducive to safeguarding the legitimate rights and interests of the right holder in a timely and effective way.

[Case Facts]

The defendant Xiao X did more than 40 live broadcast events in nearly one year and in this process published a large number of videos targeting the plaintiff Dong X, which contained a lot of insulting words and vulgar language and were full of abuse and personal attacks. During the trial of the case, after the interpretation made by the court, Xiao continued to make infringing remarks in the form of regular live broadcast every night and disclosed several digits of Dong's identity number, due to which Dong filed an application to the Beijing Internet Court for a personality rights-related injunction.

[Key Points of Adjudication]

Article 997 of the Civil Code of the People's Republic of China has stipulated that where a person of the civil law has evidence to prove that an actor is committing or is about to commit an illegal act that infringes upon his personality rights, and that

failure to timely stop the act will cause irreparable harm to his legitimate rights and interests, the person has the right, in accordance with law, to request the people's court to order the actor to stop the act.

According to the evidence produced by the plaintiff Dong X and the defendant Xiao X and the ascertained facts, Xiao published a large number of videos in the form of live broadcasts in nearly one year which contained a lot of insulting words, and it was highly possible that the content therein was targeting the plaintiff Dong X. After the court made interpretation to Xiao in court, Xiao continued to make insulting remarks in the form of regular live broadcast every night, and it was highly possible that the content therein was targeting Dong. Given Xiao's past acts and the actual situation of this case, it was more likely that Xiao was committing infringement and would continue to commit infringement. In addition, the view counts of the live broadcast videos were quite high. If not stopped in time, the infringement would significantly increase the plaintiff's burden of safeguarding the rights thereof, leading to further expansion of the scope of the infringement's impact and the consequences of the harm.

A thorough view of the content of Xiao's live broadcasts showed

that Xiao used insulting words many times with vulgar language, and most of the content was comments on the right and wrong of others, without other substantive content. Issuing a personality rights-related infringement injunction against the infringing act involved was conducive to regulating the online words and deeds of netizens and maintaining a clear cyberspace order.

[Adjudication Result]

The court ordered that Xiao X shall immediately stop publishing content that would infringe Dong X's right to reputation in the account involved, and the ruling on the personality rights-related injunction shall take effect when it was served on the defendant. At present, the defendant has stopped publishing infringing content.

Case 7

Case of Girl Abuse Video Being Posted Online: Exercising the Right of Supervision by Public Opinion Shall Not Violate the Principle of "Maximizing the Interests of Minors"

——Li X v. Wei X over Dispute of Infringement on Right to Likeness, Right to Privacy and Right to Reputation

[Typical Significance]

It has been made clear through this case that in determining whether the act of an actor infringes the personality rights of a minor, the principle of "maximizing the interests of minors" should serve as the benchmark to solve related contradictions and conflicts, and the supervision by public opinion should also put the rights and interests of minors in the first place. This case was selected as one of the Ten Major Media Law Cases in China in 2020 and the Ten Major Events in the Rule of Law in China in 2020. The judgment of the case was awarded the second prize in the Online Mutual Evaluation and Selection Campaign of Excellent Judgment Documents of Beijing Courts and awarded as the "Outstanding Judgment Documents on Minors-related

Trials in Beijing Courts in 2022".

[Case Facts]

One morning in 2019, when Li X was crying because she didn't want to go to school, her parents tied her to a tree to criticize her. Passerby Wei X captured the above process with his mobile phone and posted the video on a platform for spreading, which caused a heated discussion among netizens. The plaintiff Li X filed a lawsuit to the court on the ground that the photographer Wei X infringed her right to likeness, right to reputation and right to privacy, demanding that Wei X should stop the infringement, make an apology and compensate for the loss. The plaintiff Li also claimed that the operator of the platform, failing to respond in time when her father requested the deletion of the video and leading to further expansion of the loss arising from the infringement, should be jointly and severally liable with Wei X.

[Key Points of Adjudication]

In cases involving minors, the principle of "maximizing the interests of minors" shall serve as the benchmark to solve related contradictions and conflicts.

Minors, the future of the country and the hope of the nation, are

not yet mature both physically and mentally. For this reason, China has specially formulated the Minor Protection Law to give them special care and put their protection first. The public has the right to make comments and criticize inappropriate behaviors in society, but such criticism should be limited to a certain extent. In particular, when minors are involved, their rights and interests should be put in the first place. In determining whether the act of the actor infringed the personality rights of Li, the court shall take the principle of "maximizing the interests of minors" as the benchmark to solve related contradictions and conflicts and make judgment after comprehensive consideration of the occupation of the actor, the scope of impact, the degree of fault, as well as such factors as the purposes, methods, and consequences of the act.

People have the right to privacy even in public places.

Although privacy emphasizes keeping private, it does not mean that activities conducted in public places do not necessarily constitute privacy. If these activities carried out in a specific public place are only known to some people and, once widely publicized, would cause great harm to the personality interests of the right holders, they should also be protected as privacy. Therefore, whether privacy exists and what its scope is should

be defined from the perspectives of the will of the right holders and the general reasonable cognition of the society. In circumstances where the right holder is a minor, the actor should perform a higher duty of care so that the legitimate rights and interests of minors are protected to the maximum extent. In this case, first of all, the parents of the minor explicitly opposed the defendant's shooting; second, the spreading of the video by the defendant expanded the scope of the plaintiff's privacy being known; third, the video captured the girl's underwear. Therefore, the court found that the infringement of the right to privacy did exist.

[Adjudication Result]

The court determined that the defendant violated the plaintiff's right to likeness and right to privacy and ruled that the defendant shall apologize to the plaintiff and compensate the latter for mental distress and economic loss as appropriate.

Neither party appealed after the judgment of first instance was made, and the judgment has come into force.

Case 8

Case of Right to Likeness over Body Parts: Identifiable Pictures of Body Parts Shall Fall in the Protection Scope of the Right to Likeness

—— Liu X v. Beijing XX Service Company over Right to Likeness Infringement Dispute

[Typical Significance]

This is a case that involved a new type of infringement of the right to likeness after the implementation of the Civil Code and was tried by applying the latest provisions of Book Four: Personality Rights of the Civil Code. The judgment has made it clear that the close-ups of body parts, though generally not enough for the public to clearly identify them as belonging to a specific natural person, can be determined as identifiable if the pictures and texts provided are enough for the public to associate the character reflected by the media with a specific natural person. The judgment of this case has embodied the legislative spirit of substantive and complete protection of citizens' right to likeness, which will facilitate the public's understanding of the positive changes in the protection of the right to likeness and promote the formation of a law-abiding

atmosphere of respecting other people's likeness.

[Case Facts]

The plaintiff Liu X is a well-known track and field athlete. The defendant is the authenticated operator of the WeChat official account involved in the case. On May 8, 2015, the defendant published an illustrated article entitled "Even an Ordinary Man Can Fly and Become a Great Man" on the WeChat official account operated thereby, in which 9 pictures were used, including 1 close-up picture of face and 8 close-up pictures of body parts like the head, limbs and trunk (specifically including 1 close-up of left eye, 1 close-up of mouth, 1 close-up of right ear, 1 close-up of hand, 2 close-ups of feet, 1 close-up of chest and 1 close-up of back). All the 9 pictures are marked with words. At the beginning of the article there was the following text description: "He came into contact with hurdling at the age of 13; he won the golden medal in the Athens Olympics in 2004, breaking a record; he then broke the world record with the result of 12.88 seconds in Lausanne, Switzerland in 2006, making all yellow people proud and elated!" At the bottom of the article, there was such text description as "Not just Liu X, but every worker and every ordinary person is like this". At the end of the article, there were publicity content like "XX Domestic Helper

Platform: tens of thousands of housemaids, maternity matrons, and babysitters waiting online for your selection" and other information like WeChat QR code. In addition, as of April 28, 2022, the article involved had been deleted. A comparison showed that the pictures published in the article involved were the same as those published in the Weibo account of a well-known sports brand on April 7, 2015.

[Key Points of Adjudication]

In determining an infringement of the right to likeness: first, it is necessary to distinguish whether the situation involved meets the three elements of likeness: "external image", "reflected on a media" and "identifiability", that is, to clarify whether the defendant implemented the act of using the likeness; and second, it is necessary to analyze the possibility of reasonable use and whether lawful authorization has been obtained, that is, to clarify whether the defendant's act of using the likeness was justifiable.

Did the use of local close-ups constitute the use of likeness?

"External image" is not limited to facial image, but also covers other images, as long as they can present the external image of a natural person and allow others to clearly recognize that that

external feature belongs to a specific natural person. “Reflected on a media” covers such media as video recordings, sculptures, and drawings. Differences in the media do not affect the judgment of infringement of the right to likeness. “Identifiability” is the essential feature due to which the right to likeness belongs to a phenotypic personality right. In determining the identifiability of the likeness, one should consider the identifiability of the media involved itself as well as whether the words, pictures and other contents provided for the media of the likeness would make the general public associate the image reflected by the media involved with a natural person. When used alone, close-up pictures of body parts are generally not enough to make the public clearly recognize that the relevant parts belong to a specific natural person, but considering that the factors such as pictures and text descriptions in the use form of the media were enough for the general public to recognize the close-up pictures were of the plaintiff himself, the close-up pictures can be determined as having met the standard of identifiability.

Did the use of likeness belong to reasonable use if the use did not cause derogation of the image?

There are five circumstances of reasonable use of the right to

likeness, including use for personal study, art appreciation, or scientific research; use for conducting news reporting; use for a State organ to perform its responsibilities in accordance with law; use for demonstrating a specific public environment; and use for protecting the public interests. This stipulation aims to coordinate natural persons' rights and interests to likeness with the public interests, including the promotion of social progress, cultural development, freedom of the press, social public interests and national interests. The defendant argued that its act did not constitute infringement because the content of the article involved was praising Liu's fighting spirit, which did not derogate the image of the plaintiff. However, its act did not belong to any circumstances of reasonable use. A comparison with even the closest circumstance, i.e., use for personal study, art appreciation, or scientific research, would show that the defendant's act of posting the plaintiff's likeness pictures on the Internet so that anyone could obtain them at any time does not meet the constitutive requirement of "using publicly available images of the person holding the right to likeness to the extent necessary" as required for that circumstance.

[Adjudication Result]

The defendant shall make an apology to the plaintiff and

compensate the latter for the economic loss of RMB 5,000.

Case 9

Case of Mobile Phone Number Leakage in Hit TV Series: Intruding on Other Persons' Private Life by Improper Disclosure of Contact Information Constitutes Infringement

—— Huang X v. Khorgos XX Film Company and Zhuhai XX Film Company over Right to Privacy Infringement Dispute

[Typical Significance]

With the development of information technology and digital technology, as well as the implementation and popularization of the policies of "real-name registration systems" for mobile phone use and Internet access, private mobile phone numbers are widely used to create accounts on various social media applications, which are objectively more closely related to people's private life. In this case, from the perspective of protecting the rights and interests to undisturbed private life, indirectly disturbing others in a physical way by improperly disclosing private mobile phone numbers was determined as an infringement of the right to privacy, thereby clarifying the specific criteria for determining the infringement of the right to

undisturbed private life as a right to privacy.

[Case Facts]

Huang's private mobile phone number registered with Huang's real name was displayed in the broadcast scenes of a hit network TV series, due to which Huang was frequently disturbed by phone calls and WeChat messages from strangers. Huang, claiming that Khorgos XX Film Company and Zhuhai XX Film Company which produced the TV series infringed on her undisturbed private life, filed a lawsuit to the court demanding that the two companies shall eliminate the influence, make an apology and make compensation for the mental distress thereof.

Khorgos XX Film Company held that: the mobile phone number involved in the case was purchased and used by an authorized worker of the crew during the filming of the network TV series involved and, after being no longer used by the crew, sold again by an operator, which the producer did not know, and thus the producer had no intention of infringement; after receiving the plaintiff's complaint during the broadcast, it took measures immediately to blur out the scenes involved and informed the plaintiff of the situation, without any act of laissez-faire, and thus it had no subjective fault; the evidence submitted by the plaintiff could not prove that the disturbing phone calls and

WeChat messages were related to the network TV series or that the plaintiff's normal life was disturbed, and serious mental distress was caused thereto. Zhuhai XX Film Company held that it was only the presenter of the network TV series and did not participate in the actual production thereof, thus having no obligation to review and supervise the content of the TV series.

[Key Points of Adjudication]

This case happened before the implementation of the Civil Code, when the concept of right to privacy was not clearly defined by the law. With reference to the provisions of the promulgated and to-be-implemented Civil Code and previous judicial practice, it can be confirmed that privacy usually includes two aspects: the undisturbed private life of a natural person; and the private space, private activities, and private information of the natural person that he does not want to be known to others. Obviously, the protection of undisturbed private life (the right to undisturbed private life) is included in the right to privacy system.

Since Huang's mobile phone number does not belong to private information, the leakage thereof will not constitute an act of infringing the right to privacy by processing private information. The undisturbed private life refers to a natural person's right to

maintain a stable and quiet private life and reject the improper intrusion by others; it includes not only a stable and quiet life without physical intrusion by others through phone calls, text messages, social media apps, etc., but also a state of private life without the danger of being significantly intruded on. Therefore, the subject of infringement can be the person who directly commits the physical intruding act, or the person who does not directly commit physical intruding act but causes the right holder to be disturbed by others or put the right holder at a significant risk of being disturbed. The standard of determination must be whether the state of personal life of the right holder has changed due to the intervention of this act, and whether this change has caused a certain degree of intrusion on the person's private life. The judgment of "a certain degree of intrusion" here shall not be based on the personal feelings of the party involved, but on the feelings of general rational people after considering social customs and other relatively objective factors. Furthermore, the principle of fault liability shall apply to the infringement of the right to undisturbed private life. In determining the fault of the actor, one should consider factors like the nature of the act, the predictability of the harm caused by the act and the cost of avoidance, as well as the usage of

trade to reasonably determine whether the actor has fulfilled the corresponding duty of care.

In this case, whether the accused act infringed the plaintiff's right to undisturbed private life can be examined from the following four aspects:

Regarding the harming act

In this case, the producer of the network TV series involved in the case used the mobile phone number involved in the TV series for the role therein without Huang's knowledge and made it public on the Internet, which may cause many netizens to disturb Huang by phone calls, social media applications and other means, putting Huang in danger of being disturbed. No matter whether there were strangers actually disturbing Huang or not, the act, going against Huang's wish for her private life not to be disturbed by others, would make Huang suffer the fear and pressure of being disturbed, which constituted an intrusive intervention in her personal life, involving an infringement of the due undisturbed state in her private life.

Regarding the consequences of the harm

According to the evidence on file, it was not difficult to judge from the way and the scope the mobile phone number involved

was used and made public that Huang's private life was obviously in danger of being intruded on by strange netizens. In fact, after the number was made public, Huang received a number of strange phone calls and friending applications on WeChat when Huang was relatively busy with study and work just before graduation at that time. It can be well imagined that the frequent intrusions by phone calls and WeChat messages by many people in a short period of time had a huge negative impact on Huang's life. In addition, after the producer blurred out the scenes broadcast on the authorized websites, Huang still received disturbing WeChat messages from strange netizens, which showed that there was a potential risk of continued intrusion. These intrusions obviously exceeded the limit that Huang should tolerate and destroyed Huang's undisturbed private life.

Regarding the causal relationship

In this case, both the significant risk of Huang's private life being intruded on and the actual intrusions by netizens were caused by the improper disclosure of the mobile phone number involved in the network TV series and the setting of the number as being owned by the role in the TV series which aroused the curiosity of netizens watching it. Therefore, there was an

inevitable connection between the accused act and the consequences of the harm suffered by Huang, which constituted an objective causal relationship.

Regarding the subjective fault

According to the evidence on file: first, the producer used the mobile phone number involved in the network TV series involved without taking any risk prevention measures. Although the producer argued that it entrusted a worker of the crew to buy the mobile phone number involved during the shooting process and was entitled to use it, this argument cannot be proved by conclusive evidence and was not recognized by Huang. Therefore, the court did not ascertain this argument. Second, even if the producer, as it claimed, being a professional film and TV series production unit had the ability to understand and judge the normal cycle of a film or TV series from production to broadcast, the fact that Huang was possessing the mobile phone number involved then showed that the period of legal use claimed by the producer was obviously shorter than the normal production and broadcast cycle of the TV series involved. Third, existing technologies and artistic expression methods could provide the producer with a variety of methods and choices to deal with the problems with the presentation of real information

to reduce the risk of infringement. Considering the facts of this case, the relevant processing methods were simple and easy to obtain, not requiring much too high production costs of the producer. Based on the above analysis, the producer, in using the mobile phone number involved in the scenes of the network TV series, had the subjective fault as it failed to fulfill the corresponding duty of care and took a laissez-faire attitude towards the possible infringement risk.

To sum up, Khorgos XX Film Company and Zhuhai XX Film Company used the mobile phone number now legally owned by Huang for the role in the TV series without the plaintiff's knowledge and made it public on the Internet, which not only caused many netizens to disturb Huang by phone calls, social media applications and other means, intruding on her communication, but also put Huang in a significant danger of being disturbed and feeling fear and pressure, which was against Huang's wish for her private life not to be intruded on by others. Khorgos XX Film Company and Zhuhai XX Film Company used the mobile phone number involved in the network TV series involved without taking necessary risk prevention measures or fulfilling the corresponding duty of care, causing Huang's private life to be intruded on, so they had the subjective

fault and committed infringement on Huang's right to privacy.

[Adjudication Result]

The defendants Khorgos XX Film Company and Zhuhai XX Film Company shall compensate the plaintiff Huang X for pains and suffering of RMB 3,000 and attorney's fees of RMB 1,000 within ten days after the effective date of the judgment.

Neither party appealed after the judgment of first instance was made, and the judgment has come into force.

Case 10

We-media Slandering Article Case: We-media Should Not Become the "Black Ghostwriter" in Unfair Competition

—— Beijing XX Real Estate Agency v. Yang XX over Right to Reputation Infringement Dispute

[Typical Significance]

We-media operators, when expressing their opinions through we-media, need to based their voices on objective facts. Publishing false information for the purpose of gaining traffic as well as monetizing popularity will infringe on others' right to reputation. Market operators, when using we-media for online promotion, must act within the scope permitted by laws and regulations and must not fabricate or spread false information or even hire "black ghostwriters" to publish "slandering articles" for the purpose of slandering competitors and disrupting the market competition order. This case has "fought" the hidden industrial chain of "slandering articles", leaving bad we-media reaping the consequences and guiding we-media to establish public trust therein and maintain a healthy market competition order.

[Case Facts]

The plaintiff is a well-known domestic real estate agency which registered its trade name as a trademark that gradually becomes a well-known trademark in China.

On July 15, 2018, the article involved in the case was published on a WeChat official account. The article narrated, analyzed and evaluated the negotiation between a real estate developer in XX city and an enterprise indirectly held by the plaintiff on the distribution of a real estate project in 2018, and referred to the enterprise with the plaintiff's trademark. The plaintiff held that this article, taking the plaintiff's trademark as the target of attack, was full of strongly derogatory and insulting words like "fraud", "shameless", "greedy" and "robbery" and fabricated false scenarios of disrupting market like "fighting" and "stealing clients", which was deliberately uglifying, insulting and derogating the plaintiff's reputation. In addition, the article was published the day before the enterprise indirectly held by the plaintiff signed the distribution agency contract of the above-mentioned real estate project, and as soon as it was published an enterprise in the same industry asked its employees to forward the article. The plaintiff suspected that the publication and spreading of the article involved were instigated

by a competitor, with the intention of creating negative news of the plaintiff to influence the signing of the contract. The operator of the we-media was Yang XX. The plaintiff claimed that Yang XX shall apologize and compensate the plaintiff for the property loss and reasonable expenses of over RMB 600,000 in total.

Yang argued that he should not bear tort liability because: though the WeChat official account was registered and used thereby, the article involved was published for friends and did not specifically refer to the plaintiff; the content of the article was comments made on the real estate industry within a tolerable range, which belonged to the expression of personal opinion, not insulting or slandering; the WeChat official account had little influence, and the article involved was deleted in time, so there was no adverse effect on the plaintiff.

[Key Points of Adjudication]

Yang's publication of the article involved damaged the plaintiff's reputation.

In the article involved, there was negative evaluation on the distribution business of the specific real estate project engaged by the enterprise indirectly held by the plaintiff, and the

plaintiff's trademark was used to refer to the enterprise. Therefore, the article involved in the case involved the corporate interests of the plaintiff, due to which the plaintiff had the right to file the lawsuit of this case. After its publication, the article involved was enough to lead the readers to form a negative evaluation of the plaintiff's business operations, resulting in damage to the reputation thereof.

Yang XX has subjective fault by publishing the article involved.

As the registered and actual user of the WeChat official account involved in the case, Yang XX should bear the burden of proof for the authenticity of the article and the source of information. Even though Yang refused to disclose the true intention of publishing the article involved, the court can still identify the true purpose thereof based on the content of the article involved and the evidence on file. Yang published and spread the article involved the day before the enterprise indirectly held by the plaintiff signed the real estate project distribution contract, pointing out that the enterprise had improper acts like suppressing peers and deceiving clients, but could not prove the source of information. His intention of discrediting the reputation of the plaintiff and influencing the signing and performance of the distribution contract was quite obvious. The

strongly derogatory and insulting words in the article had gone beyond the scope of reasonable criticism and supervision by public opinion, making Yang subjectively at fault.

Yang's publication of the article involved caused economic loss to the plaintiff.

The trademark of an enterprise also represents the brand thereof, and the brand value of the enterprise is related to the interests thereof. An enterprise not only enjoys sales opportunities brought by its premium brand, but also suffers negative impact on its assets and operations due to a brand crisis. Though not directly affecting the distribution business of the enterprise indirectly held by the plaintiff, the article involved was widely spread through we-media channels, allowing relevant consumers, suppliers, media and even the public to receive negative comments on the plaintiff's corporate brand, which seriously affected the reputation of the corporate brand and caused potential economic loss to the business operations thereof. Yang infringed on the plaintiff's right to reputation and should bear corresponding legal responsibilities.

[Adjudication Result]

The defendant Yang XX shall make a public apology to the

plaintiff and compensate the latter for the property loss of RMB 200,000 and the reasonable expenses of RMB 41,000, which totaled RMB 241,000.

北京互联网法院
BEIJING INTERNET COURT