

## Analysis of Legal Liability of Excessive Consumer Rights Protection

HUANG Jing<sup>[a],\*</sup>; WANG Jingyuan<sup>[b]</sup>

<sup>[a]</sup>Lecturer, School of Economics and Law, University of Science and Technology Liaoning, Anshan, China.

<sup>[b]</sup>Dalian Xigang District People's Procuratorate, Dalian, China.

\*Corresponding author.

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### Abstract

Expression of “consumer rights over” this is relative to the consumer as determined in accordance with national current law rights and rights as expected, there is a right foundation under the premise of means and purpose over. Consumers' excessive rights protection is essentially a kind of private remedy. The key to whether this kind of private remedy should bear legal responsibility is whether it breaks through the boundary of private remedy. If the “excessive rights” act does not violate the prohibitive provision of the law, does not harm the legitimate rights and interests of others and violates the social public interests, it is still legitimate, belongs to the scope of rights protection; vice versa.

**Key words:** Excessive rights; Private relief; Behavioral boundaries; Legal liability

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### 1. THE CONSENSUS COGNITION OF CONSUMERS' EXCESSIVE RIGHTS PROTECTION

Recently, a consumer's rights experience called Li Haifeng once again triggered the whole society's

concern for “excessive rights”. In December 2014, the Heilongjiang truck driver Li Haifeng in the delivery of 4 packs of Mairong instant noodles, after eating diarrhea symptoms after abdominal pain, he found that 4 packets of instant noodles have expired nearly a year, in addition, vinegar bag has obvious foreign bodies. He then dialed 12315 complaints Hotline, the other side with expired food does not accept complaints as a result of refusing to apply for protection, so he found a test body on the Internet. January 2015, Li Haifeng will be the vinegar packet to find on-line inspection of the detection of qualified inspection agencies, Xi'an National quality inspection to detect, detection is heavy metals, the results of the test is Mercury 0.4596 mg/kg, nitrate 11 mg. That is to say, mercury content exceeds 4.6 times. Li Hai then sent the test results to this Mairong company claim 4.5 million yuan, this Mairong company said it can compensate Li Haifeng seven boxes of instant noodles and part of the telephone charges, Li Hai not accept. In the case that compensation cannot be agreed, Li Haifeng on personal microblogging and the Internet to release the Mairong company's products in the mercury exceeded, there are industrial salt and carcinogens and other comments. March 27, 2015, the Mairong company chose to call the police. November 4, 2015, Hebei Province Longyao County People's Procuratorate accused the accused Li Haifeng guilty of extortion, to the Longyao County People's court to prosecute. On December 18, 2015, the court ruled that Li Haifeng was sentenced to 8 years and 6 months in prison for extortion, with a fine of \$20,000.<sup>1</sup> There is a great

<sup>1</sup> Expert interpretation of the quality of law and consumption rights behind the Li Hai Mairong case (i). Retrieved from <http://www.cqn.com.cn/news/zgzlb/dier/1120914.html> 2016 Year February 1 edition, visit time: March 5, 2016.

controversy in the theory, practice and public opinion of this verdict.<sup>2</sup>

Similar consumers because of “excessive rights” and triggered the discussion of the community are numerous cases, more typical is the Huang “sky-expensive notebook claims.”<sup>3</sup> February 2006, Huang purchased an ASUS v6800v laptop computer worth 20,900 yuan, in the maintenance process found that the computer CPU as a test version of the banned circulation, and then put forward 5 million of dollars “punitive” compensation. After the company alarm, the Huang was arrested by police for extortion and punishment. November 9, 2007, after 294 days of arrest, the procuratorate of Haidian district of Beijing made a decision not to prosecute the Huang. Even so, the debate over the issue has not ceased (Liu, 2006).

Through the introduction of the above cases, can form a preliminary judgment, in the process of consumer excessive rights there are some common. The author refines the commonness and gives the preliminary judgment:

(a) The rights and interests of consumers in the process of buying and using goods or receiving services are infringed.

In the case of “excessive rights” of consumers, the legitimate rights and interests of consumers are infringed, which may be right of personal rights or rights of property and reputation. This makes the relationship between the consumer and the operator from the contract legal, into the legal relation of breach of contract or the legal relation of tort liability, so that consumers have the right foundation to defend their lawful rights and interests.

What we are talking about here is the right basis for the rights to protect the legal rights of citizens under the Constitution, the general principles of civil law and the protection of consumer rights and interests. Article 11<sup>th</sup> of the Consumer Protection Law stipulates that consumers shall enjoy the right to compensation according to law for the injury to the person or property of the purchaser, the use of goods or the receiving service. On the other hand, from the thought of natural law, this kind of right is also a natural right that human beings are born to enjoy. In a natural state, everyone has an equal natural right, namely: the Right to life, liberty, property.<sup>4</sup> With the emergence of the nation-state, this kind of natural right also passes through the social contract form to the country, becomes

one kind of legal right, but people still retains the right in the natural state.<sup>5</sup> If the right foundation of consumer excessive rights is interpreted in the sense of natural law, at least some scholars may be relieved of its criticism.

(b) Consumers have chosen to negotiate their own rights with the operator, not to take judicial proceedings relief and third-party mediation rights.

According to article 39<sup>th</sup> of the consumer Rights and Interests Protection Act, when consumers and operators dispute the rights and interests of consumers, we can choose five kinds of rights approaches, such as negotiation, mediation, complaint, arbitration and judicial action. Through the above case, it can be found that “excessive rights” of consumers in the legitimate rights and interests of the infringement when all choose to negotiate with the operator, which in itself is in line with the provisions of the law and through the analysis of the reasons, we can not find that the reason why consumers choose to negotiate this way rights, but also as a rational “economic person” after careful consideration of the choice of rights. First, this approach is the most cost-effective dispute resolution method. Second, consumers are less confident about other ways to resolve disputes. At present, China’s market supervision and management departments and other relevant departments due to technical or personnel issues, the consumer’s report generally can not be given a convincing treatment,<sup>6</sup> even in some cases, there are various interests collusion, ends situation; and consumer associations because there is no law enforcement power, The practice of prevarication to the court after conciliation resulted in the consumer’s lack of confidence in settling disputes through litigation, administrative treatment or mediation.

(c) In the process of consultation, consumers have adopted the means of negotiation for the media exposure.

As the consumers of the rights of negotiation, they have basically grasped the fatal weakness that the managers in the information age do not want the negative information of the enterprises to be publicized. First of all, it is certain that the reputation of commercial reputation for business survival and development is crucial. Once the negative information of the operator is made public, the reputation of products and corporate reputation will be greatly declined through various marketing methods, thus seriously affecting the business efficiency and market returns. At the same time, the spread of media exposure is far better than the publication of judicial judgments on the operator’s impact.

<sup>2</sup> “The People’s Court,” reported in the 2<sup>nd</sup> edition of July 28, 2015, the “exorbitant claim” is not equal to extortion, and later in the 6<sup>th</sup> edition of February 1, 2016 reported the “sky-sky Rights: and Extortion step Away”; *China Youth Daily*, 1<sup>th</sup> edition of the “exorbitant claims” Rights or extortion.

<sup>3</sup> “Huang Asus rights event” legal track, “Legal Daily” network version of [http://www.legaldaily.com.cn/zmbm/content/2009-03/19/content\\_1056043.htm](http://www.legaldaily.com.cn/zmbm/content/2009-03/19/content_1056043.htm) node=7571, accessed on March 5, 2016.

<sup>4</sup> Locke: “Government” (Next), 1983 edition of the Commercial Press, p.14.

<sup>5</sup> He, Z. P. (2005). Non-natural rights. Containing the Rule of Law and Social Development (3<sup>rd</sup> ed., p.19).

<sup>6</sup> Recently, the consumer network to buy Garfield Cat was received by the Earth cat, after fraud to the police station report and 12315 rights are a wall, consumers set up their own rights alliance, find clues to criminals, most of the realization of the purpose of safeguarding. See “The net buys the Garfield cat to receive the Earth cat, the network market urgently awaits strict”, the Chinese Court network, the visit time: March 8, 2016.

(d) The amount of consumer claims exceeds the ceiling of the country's existing legal setting.

The new Consumer Protection Act of March 15, 2014, which provides that consumers who are injured by fraudulent acts of the operator, may claim that the loss of compensation is three times times the price of the goods purchased or the cost of receiving the services. The cause of personal injury can be claimed on the basis of actual damages to the operator to undertake twice times compensation. However, in the case of "excessive rights", the amount of compensation that consumers claim to businessmen exceeds the limit of the amount of compensation that should be given to consumers as defined in the Consumer Protection Act and the Food Safety Act.

(e) The public authorities adopt a cautious approach to such rights.

Whether it is "Asus notebook case" or "ice cream case" or "Chen Stuffing moon cake case", the Procuratorate and the court have finally taken the attitude of cautious use of criminal law. The Asus laptop case also received \$29,000 in state compensation.<sup>7</sup> It shows that the state public power organ is legal or illegal to the behavior of consumers over rights, and there is a vague heart in the aspect of crime and non crime. This is also doomed to the deep research and exploration of the problem is very meaningful. Just as the cases of "fake buy-off" were judged differently in different cases, and the resulting controversy continued for several years, finally, the provisions of article III on the application of law in the trial of food and drug dispute cases promulgated by the Supreme People's Court will end the debate on this issue and clarify the value orientation of judicial adjudication,<sup>8</sup> is conducive to better law enforcement and justice. In the same way, the discussion of consumer excesses is to urge the national level to introduce relevant legal provisions and judicial interpretations as soon as possible, so as to clarify the criteria for judging the issue, so as to achieve the goal of determining the dispute.

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## 2. THE ESSENCE OF CONSUMER EXCESSIVE RIGHTS IS A KIND OF PRIVATE RELIEF

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The author thinks that it is important to see the nature of

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<sup>7</sup> Asus Sky Claim: Huang received more than 29,000 yuan of national compensation, "Xinhua" Network edition. Retrieved from [http://news.xinhuanet.com/2009-05/09/content\\_11339483.htm](http://news.xinhuanet.com/2009-05/09/content_11339483.htm), Access time: March 5, 2016.

<sup>8</sup> The Supreme People's Court rules on the application of law in the trial of food and drug Disputes Article III stipulates that, as a result of disputes over the quality of food and medicine, the purchaser advocates for the right of the producer and the seller, and the producer and seller are still buying the goods to defend the problem of the quality of the food The people's Court shall not support.

this kind of behavior in order to take legal responsibility for the excessive rights of consumers. If we can correctly judge the nature of the excessive rights of the consumer, it will fundamentally establish and draw a line between legal rights and legal liability, which is of great significance to both consumers and operators. Through the abstract generalization and analysis of the above-mentioned cases, the author thinks that the essence of consumer's excessive rights behavior is a kind of "private remedy".

Excessive rights in itself is not a legal term, it is relative to the public remedy, that consumers in the rights of protection means and the amount of rights beyond the "public remedy" degree. But we must also remember that this approach does not transcend the "natural rights" of the degree, as long as no more than the boundaries of private relief, consumers can still through the private relief of the way to maintain their legitimate rights and interests.

First of all, from the perspective of rights, most consumers in the "excessive rights" when the use of media exposure to the way rights. We also mentioned that this approach is the right to freedom of expression given to citizens by law. As long as consumers do not take forceful or violent forms of rights, the exposure and coercion in negotiation is a kind of spiritual burden that the operator should bear because of infringing on the interests of consumers, and it is a tolerable obligation which should be borne by them. Therefore, it cannot be called excessive.

Second, from the level of rights, the majority of consumers in the "excessive rights" to advocate more than the amount of public relief limits of the rights, it is also considered excessive. But legally speaking, whether it is "consumer rights and Interests protection law" three times times compensation or "food safety law" of 10 times the compensation, the limit is in the public power relief as the premise of the rights limit, rather than private relief of the rights of the upper limit. The amount of rights protection is only the specific embodiment of the scope of private relief rights, there is no excessive measurement standard. Moreover, whether the amount of punitive damages of the public remedy can really make up for the loss of the consumers is still to be examined by society.

Therefore, the formulation of the excessive rights of consumers is not objective in itself, and it is entirely in the perspective of the public relief people, ignoring the existence of the natural right of the consumers to claim the right in accordance with the law.

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## 3. THE LEGAL LIABILITY COGNIZANCE OF EXCESSIVE CONSUMER RIGHTS

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### 3.1 The Cognizance of the Criminal Liability of Excessive Rights of Consumers

#### 3.1.1 Consumer Excessive Rights and Extortion

Consumers in excessive rights or in private relief, the most easily identified as constituting the "blackmail crime."

**Blackmail** The crime of extortion refers to the method of applying the threat or coercion to the victim with illegal possession for the purpose of imposing a large amount of public or private property or repeated extortion (Li et al., 2014). From the subjective aspect of the constitution of the crime, the subjective intention of the perpetrator is to take the illegal possession as the aim; the object of the infringement is the ownership of the public and private property.

First of all, we can analyze the consumer’s private remedies to ask for high compensation is a kind of illegal possession for the purpose of intentional tort? The so-called illegal occupation refers to the possession of people without rights (Jiang, 2007), in case of infringement of consumers’ rights and interests, consumers have transformed from buyer and seller in general economic activity into creditor and debtor in legal relationship, so consumers have the right to claim as creditor. In other words, in the existence of legitimate possession of the right basis, only for the amount of possession of both sides is uncertain. Some scholars think that more than part of the lack of possession, the author thinks that it is because of the uncertainty of the content of the right, and can not subjectively determine the amount of compensation to become the basis of conviction. Therefore, the “ASUS expensive notebook claims” is a clear right basis, the right content of the case is not determined to claim the case of exorbitant compensation, the law can not therefore be identified as illegal possession for the purpose of the intention.

On the other hand, for the introduction of a “fake foreign milk powder” two claims, because the operator and Lee have already reached a compensation agreement on the damage, then the rights and obligations have been fulfilled respectively. There is no right foundation for Li’s second claim, and the second or duplicate claim belongs to the illegal possession, which can be regarded as the subjective element that constitutes the crime of extortion.

Secondly, the judgment of the objective aspect of the threat and coerce behavior. If the behavior of consumer excessive rights is considered as a kind of private remedy, the behavioral boundary of private remedy should be held to the corresponding legal responsibility for the serious infringement of the legitimate rights and interests of the powerful private relief acts. And for the private relief process through negotiation or face-to-face or through the relevant mail, telephone and other means of peaceful communication, as long as the consumer exposure to the media is objective truth, then this threat or blackmail is aboveboard, is the other party should bear a spiritual burden, exposure is not sufficient to cause spiritual compulsion in the mind of the operator (the intended legal person). Moreover, in the case of the difference between

consumers and operators in the objective power, the power of consumer rights is very weak, and proper use of such a negotiation technique is not prohibited by morality and law.

Conversely, if the consumer asks for a threat or coerce to expose the content is false, there is no objective facts as the basis, then this threat or coerce is not a bargaining chip, but a fraud. If the consumer does not expose and threaten to coerce the operator is to constitute extortion, if the exposure may also constitute damage to commercial reputation, merchandise reputation crime, choose a heavy punishment. So for Li Hai eating instant noodles damage, the author believes that the first stage of the protection of Li Hai is in accordance with the law to protect their rights and interests, in the case of complaint 12315 without the circumstances of the choice of private remedies, not the implementation of strong private remedies, but also the normal negotiation of claims, although the price is not illegal. However, in the absence of consensus between the two sides through the microblogging and the Internet both to promote the real situation and also walk the false information (mainly refers to the instant noodles to their mother’s cancer) there is a part of the public misleading, the act of partially spreading false information shall bear the corresponding legal responsibility. Whether or not to bear criminal responsibility depends on whether the dispersal behavior causes serious actual loss to the victim.

**3.1.2 Excessive Consumer Rights and Other Criminal Offences**

Consumer excessive rights in the case of a variety of, in addition to the more typical “exorbitant compensation type” excessive rights, “extortion” excessive rights, there are “derogatory goodwill” excessive rights, “disturb

**Table 1 Judgment of Criminal Legal Liability**

Excessive rights type	Legal liability	The nature of legal liability
	Compensation type	
Blackmail type		No rights basis, exposure is a threat, infringement of the legitimate rights and interests of the operator, the exorbitant liability
Discredit the Goodwill type		The exposure content has no factual basis, infringes the operator’s goodwill right, loses serious, and constitutes a criminal offence
Disturb order type		The right foundation, the use of powerful private remedies, serious infringement of social public interests, constitute a crime

order” excessive rights. For the “defamation of goodwill” excessive rights if the plot to achieve a serious degree of crime, the Criminal Law Article No.221 damage commercial reputation, merchandise reputation crime. For “disrupting the order” of excessive rights, such as because of aircraft delays or train delays, in public places to denounce the right to defend, beating staff members belong to this type, for this “disorderly order” excessive protection belongs to the obvious strength of the private relief, because of violating the law of the prohibition of the provisions, infringement of the legitimate rights and interests of others, Violates the social public interest, therefore, if serious to achieve the degree of crime also must investigate the criminal responsibility.

### **3.2 Cognizance of Civil and Administrative Legal Liabilities of Excessive Consumer Rights**

Due to the difference of the severity of the infringement and the quality and quantity of the illegality, the law of the above-mentioned types of excessive rights will be given the administrative responsibility and civil liability in the absence of criminal responsibility. The civil subject, the administrative organ and the judicial adjudication organ will hold the litigant’s corresponding legal responsibility according to the difference of the case.

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## **CONCLUSION**

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As a legal person, from a moral point of view, the excessive rights of consumers should not be affirmed, because our cultural tradition does not advocate “to be justified.” But for this kind of behavior, we have to reflect on why this kind of consumer private relief behavior, our current legal system whether there are loopholes, whether there is a crisis of trust, whether there is a lack of humanistic care. Instead of blindly using the existing legal system, especially the penalty to eliminate this accidental free, deprived of consumers as human basic natural rights. But should be strict with the law has others, establish the authority of legal rule of law, so that people have confidence in the law, is willing to return all disputes to the legal level to resolve, thus forming a good moral fashion, to realize the concept of law and the virtuous interaction of morality.

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