

American consumer evaluation right system and its enlightenment

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Abstract: Consumer evaluation right plays an important role in solving the problem of information asymmetry between consumers and operators in the development of platform economy. At present, China has not regulated the right of consumer evaluation, while the Consumer Evaluation Fairness Act of 2016 in the United States is the first act to establish the right of consumer evaluation worldwide. The act clarified the boundary of consumers' evaluation right, inhibited the rampant use of "anti-evaluation clause", and guaranteed consumers' freedom of speech to the maximum extent. When learning from the relevant legislative experience, we should pay attention to improving the accuracy of the basic concept category, pay attention to the role of the counter evaluation clause, introduce the relief way of private litigation to improve the right, and explore the path of localization of regulation.

1. Introduction

The consumer evaluation right is not only an emerging right in the consumer rights pedigree, but also one of the core concepts in the new information mechanism that constructs trust and promotes transactions. The normal phenomenon of information asymmetry between consumers and operators has hindered the smooth operation of the new information mechanism. Therefore, "United Nations Guidelines for consumer Protection" emphasizes that the government should empower consumers to reduce information asymmetry. The platform economy based on the Internet makes the problem of information asymmetry more and more serious. The value and importance of the core right of consumer evaluation in the development of the platform economy are increasing.

Although consumer evaluation is prevalent in the platform economy, and it is very common for consumers to have the evaluation right, the concept of "consumer evaluation right" is not stipulated in China's legislation, and the existing judicial practice and theoretical research have formed different views on its legal regulation. In judicial practice, the court's judgment results on the consumer evaluation right should be different regulation ways, some judgment results that consumer evaluation right belongs to the category of consumer supervision right, applicable to the protection of legal interests; The judgment affirmed that the consumer evaluation right is the legal right of the consumer and the right protection is applicable. Practice needs the support of theory. From the perspective of existing theoretical research, there is no consensus on whether the consumer evaluation should adopt legal interest protection or right protection. Most scholars believe that consumer evaluation should be protected by means of legal interest. Hu Ling (2019) looked for the sources of consumer reviews and believed that in the digital society, the widespread adoption of scoring mechanisms would help to optimize laws and written rules on platforms. Lu Daifu and Lin Weizeng (2017) believe that brushing is an illegal act in the Internet field. In order to effectively implement the legal responsibility of brushing letters, the actor's responsibility should be implemented from the three-dimensional perspective of platform self-discipline, industry regulation and state coercion under the existing laws. Ye Liangfang (2018) also studied the brushing behavior, emphasizing that brushing and trading is the management responsibility of e-commerce platforms. From the perspective of platform, Liu Han and Ye Kairu (2020) believe that legal regulation needs to give more consideration to the structural problems in credit governance. Only a few scholars believe that consumer evaluation should be

protected by means of rights. According to Ying Feihu (2018), consumer evaluation right is the right of consumers to evaluate or rate operators after transactions, and this right needs to be clearly set in laws. Li Chao (2021) believes that consumer evaluation right is an emerging right and an extension of freedom of speech in the Constitution, which should be confirmed by departmental law. To sum up, at present, most scholars' understanding of consumer evaluation right is mostly locked in the category of "consumer supervision right" stipulated in Article 15 of the Consumer Rights and Interests Protection Law. China's legislation does not define the concept of "consumer evaluation right", nor does it set up relevant systems. But in fact, in the Internet business, consumer evaluation of rights to consumers and business operators, platform of this tripartite benefit main body status and objective impact on some aspects, such as trade, if it is wrong to separate regulation, not only causes frequent phenomenon of "false evaluation, increase information asymmetry between consumers and business operators, damage the interests of consumers, also does not favor the platform for the further development of economy. Therefore, it is necessary to establish the right of consumer evaluation by law.

On the other hand, in the legal practice of the development of network trade, the American academic circle has gradually formed a systematic consumer evaluation right system. The communications decency act section 230 of the 1996 for the first-time consumer evaluation content, California in the civil code of 2014 prohibits the use of the evaluation terms, the 2016 consumer evaluation fair act separately on the consumer evaluation of legal regulation for the first time, on the evaluation of consumer rights law confirmed that focus on the evaluation terms of rules and regulations, maximize the safeguard consumers' evaluation of freedom. Reviewing the legal source of consumer evaluation right in the United States, taking the Consumer Evaluation Fairness Act of 2016 as the research object, and sorting out the specific provisions of the act, will be beneficial to the legislative regulation of consumer evaluation right in China, and explore the regulatory path of localization.

2. Overview of the development of American consumer evaluation right system

The United States took the lead in the rapid development of online transactions, and noted the importance of consumers' right to free evaluation to online transactions. It carried out a lot of legislative and judicial practices to protect the rights and interests of consumers and maintain the security and order of online transactions, and promulgated a series of bills.

The Communication Decency Act (CDA), created by The Clinton administration in 1996 at the dawn of The Internet, was designed to regulate vulgar, violent, and sexually explicit content online and to limit minors' access to obscene or indecent material through remote electronic communications. The bill for the most part the terms due to the limitation of speech content too strict, the next year was passed the abolition of the Supreme Court of the United States, think its violation of the constitution of the United States first amendment freedom of speech and repealed, but the Supreme Court has kept the article 230, therefore, which is known as "network space is one of the most important and the most successful legislative provisions". Section 230 of the act states: "Internet platforms are not liable for speech content posted by third-party users; At the same time, allow Internet platforms to block and block offensive content for good faith reasons." The article exempts consumer review websites from liability to third parties, reflecting their legal protection. In this way, Internet platforms and technology companies can avoid liability for content posted by their users while also having the right to censor it. I have access, but it's normal to look the other way. Parliament after the riots, senate Democrats unveiled a new bill (Safe Tech Act), the law of article 230 of the communications decency Act conducted a comprehensive revision, not only protect the large platform of science and technology content to its users from responsibility, also points out that if the content posted on the platform to harassment, discrimination, or other forms of threats to personal abuse, users will be able to Sue the company. In general, this act involves the regulation of consumer evaluation for the first time, but because the legislation cannot anticipate the rapid development of

Internet transactions in the future, it does not stipulate the consumer evaluation right, so this act cannot be used as a model to study the consumer evaluation right system.

With the rapid development of online transactions, consumer evaluation has become a very valuable asset for operators. The positive or not of consumer evaluation not only determines the increase or decrease of operators' income, but also affects their brand reputation. Positive reviews often lead to brand reputation and increased revenue, while poor reviews can ruin an operator's reputation and financial resources. In *Palmer v. Kleargear*, the plaintiff ordered two items from the defendant's website, Klear Gear.com, and never received them. After the plaintiff kept contacting the defendant and did not receive a response, her spouse posted a negative comment on Ripoff Report.com. The defendant then asked the plaintiff to remove the review or report the \$3,500 to the credit reporting agency, saying that the plaintiff had violated the terms of service, which prohibits customers from taking any action that would negatively affect the reputation, products, or services of Klear Gear.com. In the end, the Utah District Court ruled that Kleargear's provision was invalid and awarded more than \$300,000 in punitive damages and costs. As a legislative response to this case, in 2014, The State of California stipulated a counter review clause in its Civil Code, commonly known as "Yelp Law", which prohibits the agreement on consumers' waiver of review rights in contracts, and deems that the punishment, threat or other illegal behavior of consumers' review is invalid. Under state law, businesses that violate such provisions face civil fines of \$2,500 the first time and \$5,000 each time thereafter; For any intentional or reckless action, the fine can be up to \$10,000. The law specifies that the principal enforcer is the state attorney general, district attorney or city attorney, and it also explicitly allows consumers to bring private lawsuits. As far as Yelp Law is concerned, although there are corresponding restrictive provisions on the anti-review clause, this hastily drafted Law has many defects. First, the statute broadly prohibits standard contracts from requiring consumers to waive any prior representations. In some cases, consumers may not have the legal right to post anything they want online, such as trade secrets, proprietary information, confidential records, or fraudulent or defamatory content. Second, such wide-ranging legal provisions could also affect the ability of sites that provide third-party reviews, such as Yelp, to control legitimate online speech that violates the site's terms of use. Parts of this regulation may be inconsistent with the broad exemption for Web sites under section 230 of the FCC. Subsequent judicial review may require a narrowing of the statute considering existing state-specific contract and tort laws, as well as federal laws and regulations. Therefore, the relevant provisions of "Yelp Law" should not be used as a model for the study of American consumer evaluation right system.

Although the provisions of anti-evaluation provisions in Yelp Law have played a good role as a legislative model, with the rampant use of anti-evaluation provisions in various industries and the blank or unclear existing legislation and judiciary, it is urgent to make a legislative response to the anti-evaluation provisions. On December 14, 2016, President Obama signed into law the Consumer Review Fairness Act of 2016 (CRFA), which is the first Consumer Review law in the world to regulate anti-review provisions and protect consumers' freedom of Review. "Online reviews and ratings are critical in the 21st century, and consumers need to provide honest and accurate consumer feedback without fear of retaliation," said Leonard Lance, the primary promoter of the bill. Comb the development course of American consumer evaluation system can be seen, compared with the CDA and Yelp Law, the consumer evaluation fair act of 2016 is a relatively perfect evaluation as the object of regulation bill, the bill limits on operator liability embodies the trading network compared with traditional business operator's particularity, in protecting consumers' rights and interests of the protection of the rights and interests of operators must at the same time.

To sum up, through the development process online transactions and review a series of legal system, we believe that the federal communications standard act and "Yelp Law" has its limitations, can refer to the provisions of the relevant provisions on the comparative analysis, but not as research model of American consumers evaluate right system, while the consumer evaluation fair in 2016 act as the first consumer evaluation Law, the content of around the evaluation terms in the relatively perfect system design, It is mainly divided into three parts: the legal confirmation of the basic concept category, the judgment standard of the legality of the "counter evaluation clause", and the relief

methods of consumers' evaluation right. Therefore, the in-depth study of the act based on this structure has some enlightenment for the legal regulation of consumers' evaluation right in China.

3. The legal confirmation of the category of basic concepts

The category of basic concepts is the most basic content of the design of American consumer evaluation right system. For example, the object and way of consumer evaluation determine the boundary of consumers' rights, and the characteristics and scope of standard terms affect the legitimacy of counter evaluation terms. Of course, although these basic concepts are legally defined in the Consumer Evaluation Fairness Act of 2016, there are still some shortcomings.

3.1 The necessity of legal confirmation of basic concept category

The legal recognition of basic concept categories is a major contribution of the U.S. Consumer Evaluation Fairness Act of 2016. Prior to the federal legislation, local legislation on consumer evaluation protection was limited. Only California had a law on anti-evaluation provisions, and most other states had not followed suit. Even if the laws have been issued, there are no detailed and strict provisions on the basic concepts of consumer evaluation, which makes consumer evaluation in a state of "no good laws to follow". In judicial practice, the courts have different attitudes to the legitimacy evaluation of the counter evaluation clause. For example, in "Galland v. Johnston," a case, the plaintiff in the vacation rental contract required the defendant agree not to use a blog or website with anonymous or not anonymous way complaints, the court dodged against the evaluation terms the legality of the judgment, that the defendant on the web site of the criticism of the plaintiff's service did not meet the requirements of libel, but may have harmed the plaintiff's business, shall bear the liability for breach of contract. In contrast to Galland v. Johnston, in *People v. Network Associates*, the court held that the counter evaluation clause prescribed by the software vendor could be a fraud under New York's consumer protection Law. The opposing rulings in the two cases indicate that the courts have not reached a consensus on the basic concepts of the protection or limitation of the right to consumer evaluation. The embarrassment of legislation and judicature provides operators with operational profit space to abuse the anti-evaluation clause to restrict or deprive consumers of evaluation. The Consumer Evaluation Fairness Act of 2016 established uniform national law across the federal spectrum, clarity of rules, and national applicability, ensuring clearer results at any reasonable time than geographically dispersed state laws. The act's legal recognition of fundamental conceptual categories provides a template and replicable model for other states to eliminate commercial problems including the counter evaluation clause.

3.2 The specific content of the legal confirmation of the category of basic concepts

The Consumer Evaluation Fairness Act 2016 has legally confirmed the concept of consumer evaluation right and standard terms, not only specifying the object and method of consumer evaluation, but also clarifying the characteristics and scope of standard terms, to better guarantee the effective exercise of consumer evaluation right.

The legal confirmation of consumer evaluation right is one of the highlights of the bill. The second part of the bill is entitled "protection of consumer evaluation", which directly points to the consumer evaluation right. In February 2017, the FTC reiterated its legislative purpose in its compliance guidelines for the Act: "The Consumer Evaluation Fairness Act of 2016 protects consumers' ability to share their true opinions about a business's goods, services, or practices in any forum. The FTC has advice to help your company comply with the law." Article 2 (a) (2) of the Act provides the objects and methods of consumer evaluation: Consumer evaluation refers to the evaluation made by consumers to operators and the products they sell or the services they provide by written, oral or image forms. "Image form" includes images, photos, videos, and logos. The definition is broad in scope, covering almost all forms of consumer reviews of merchants and their goods or services, which makes it difficult for merchants to evade the application of the Act, thus better protecting consumers' rights to online reviews.

In addition, the act also makes provisions on the characteristics and scope of standard clauses. Article 2 (a) (3) of this Act stipulates those standard terms refer to the standardized terms used by operators in the process of selling products or providing services to consumers, except for labor contracts or independent contract of work, and directly determine the rights and obligations of the two parties through negotiation. The counter evaluation clause in the labor contract or independent contract of work is not subject to this law. This is because the employer has a legitimate claim under the "agency principle" to require the employee or independent contractor to perform the confidentiality obligation. In addition, Article 2 (a) (3) (a) (ii) of the Act specifically emphasizes that standard clauses should meet the "non-consultation" standard, that is, the validity of counter evaluation clauses reached after consultation between the consumer and the operator will not be evaluated by the Act.

3.3 The inadequacy of legal confirmation of basic concept category

While the Consumer Evaluation Fairness Act of 2016 defines some key terms in the field of consumer evaluation, there are still some deficiencies. First, the wide range of consumer evaluation objects is easy to affect the effectiveness of evaluation information. Article 2 (a) (2) expands the scope of consumer evaluation to other business behaviors of operators in order to maximize the protection of the free space of consumer evaluation right. However, consumer evaluation not only focuses on the quality of products or services, but also involves other factors that are not related to or even irrelevant to the quality of products or services, such as the reputation, publicity, and even private life of operators. Therefore, it is entirely possible that products with high price and good quality will receive less praise.

Second, standard terms do not stipulate the "non-substantive consultation" judgment standard. As mentioned above, section 2 (a) (3) (ii) of the Consumer Evaluation Fairness Act of 2016 excludes standard clauses that have been subject to "substantive consultation" from the scope of adjustment of this Act, but what is "substantive consultation", the operator has ample space to justify the use of this provision. Some scholars believe that unless the operator allows the negotiation of the whole set of standard terms, which is highly unlikely to happen, then the contract is likely to remain a "standard contract" under CRFA and the Act will still apply. Due to the natural information asymmetry and status disparity between operators and consumers, the consultation ability and choice of consumers are severely limited, which provides an institutional incentive for operators to try all means to create the illusion of negotiation, especially the "informed consent" and "click to accept the service" format terms are common.

3.4 The summary that affirmatory about basic concept category law

Fundamental conceptual category of legal confirmation for the evaluation terms the legality of the judgment and violations of the right of evaluation way of relief laid a solid foundation, has carried on the strict definition to the concept of key terms, but because of the limitation of legislation, there are also some problems have not been given, in particular, what is a "substantive negotiations" the legal concept of fuzzy, it also makes the operator to find other ways to circumvent the law applicable, not enough to curb the evaluation terms of abuse, difficult to achieve the purpose of effectively protect consumers right of free evaluation.

4. Criteria for judging the legality of the "counter evaluation Clause"

The rampant use of "counter evaluation clause" not only aggravates the information asymmetry between consumers and operators, seriously restricts consumers' right to choose, but also suppresses consumers' freedom of speech, which is not conducive to creating a fair market competition environment. To regulate the counter evaluation clause, it is necessary to judge its legality first, and the judgment standard of legality is the core content of the Consumer Evaluation Fairness Act of 2016. The act clarifies the main circumstances of the invalidity of the "counter evaluation clause" and its

exceptions, clarifies the right boundary of consumer evaluation, and provides clear compliance guidelines for operators.

4.1 The necessity of judging the legality of the "counter-evaluation clause"

Consumer reviews are crucial to a modern economy. Markets become more powerful and efficient when consumers share their market experiences and guide other consumers to choose the best suppliers and away from the bad ones. Recognizing the importance of consumer reviews on their public image, companies have taken many measures to control consumer reviews. Unfortunately, in their efforts to control consumer reviews, some businesses have adopted contractual provisions that prohibit or limit consumer reviews. These clauses are known as anti-review, gag, or non-disparagement clauses. Many Americans have never personally encountered the counterrating clause; Even if they do, they may not realize it because they never read the contract. However, stopping the counter evaluation provisions is well worth congressional intervention because they are viral and toxic.

The counter evaluation clause was initially widely used in the medical field. In the early 2000s, a company called Medical Justice encouraged doctors, institutions, and other health care providers to adopt contracts that included counter-evaluation clauses. Over the years, the measures and methods of contractual provisions have varied, ranging from an outright ban on patient evaluations to the allocation of ownership of evaluations that patients have not yet written. Medical Justice, the contract may be defined as the medical service provider around 1996, the Health Insurance Portability and Accountability Act (the Health Insurance Portability and Accountability Act of 1996, HIPAA) the confidentiality restrictions in a way, the law limits the patients with Health care providers to disclose information to refute patient evaluation ability, not deprived of their rights to public response to patient evaluation. But in many cases, patients have little choice whether or not to sign a standard contract, such as a patient's choice of health care provider may be limited by insurance, a patient may be experiencing a medical emergency, or a health care provider may refuse to negotiate. Many patients may also consider it a "standard sample" or ignore it amid the pile of documents and forms they must fill out.

Later, counter-review clauses were quickly replicated across the travel and accommodation industries, including holiday homes, hotels, condominiums, and pet shops. In some cases, these providers can impose fines on offenders, without going to court, and simply deduct them from customers' deposits. Some online retailers are also starting to use counter-comment clauses. The most high-profile incident involved Klear Gear, which damaged the credit standing of a customer by fining him for comments he made online and then reporting the unpaid debt to the credit burea when the fine was unpaid. Most of the retailers that use counter reviews are relatively small, crowding out terms of service among themselves, causing counter reviews to spread like a virus. The copying and pasting of anti-evaluation clauses are only a part of its pathology. What is more serious is that it forms vicious competition and disturbs the order of market competition. In general, once the evaluation terms in an industry, they are likely to change the industry standard, because competitors can imitate each other on the terms of the evaluation, especially if the company thinks that their competitors can eliminate or suppress the negative evaluation, thus than those who don't use similar technology to obtain competitive advantage, and CRFA changed the result.

4.2 The specific content of the legal judgment standard of "counter evaluation clause"

The 2016 consumer evaluation fair act is divided into two aspects of general rules and exceptions illustrates in detail the legality of the judgment standard, "the evaluation terms" at the same time in order to coordinate the rights and interests of all parties in the main body, the online trading consumers right of evaluation for the certain limit, provides a clear legal basis for judicial practice.

(1) Main circumstances of the invalidity of the Counter-evaluation Clause

Article 2 (b) (1) of the act lists three situations in which "provisions that impede consumer evaluation are invalid" : (1) provisions that prohibit or restrict consumer evaluation of the operator's products, services or behaviors are invalid; (2) Invalid provisions that impose penalties or charges on consumers who give evaluations; (3) A clause stipulating that an operator has the right to transfer or require a consumer to transfer to any person the intellectual property rights enjoyed by the operator in the content that evaluates the products or services provided by the operator are invalid, unless the operator has a non-exclusive right to license the content. These three situations are the result of legislation summarizing and classifying the anti-evaluation clauses in the existing practice, which reflects the strict regulation of the anti-evaluation clauses.

On the other hand, due to the expansion of rights, if consumers' right of free evaluation is not regulated to some extent, it may infringe on the legitimate rights and interests of other subjects in network transactions. Therefore, in order to coordinate the balance between rights and powers, the act has made certain restrictions on consumers' evaluation rights. First, consumers' right of free evaluation shall not affect the legal obligation of confidentiality, and consumers' evaluation shall not contain any insulting, defamatory or other similar content. Second, if consumer evaluation contained in the infringement of privacy, the content of the image, contains slander, insult, pornographic content, has the racial discrimination, gender discrimination or other inappropriate content, or the consumer evaluation content is clearly incorrect or misleading, or the has nothing to do with the web site of the goods or services provided by the evaluation, contract one party has to remove the comment or refused to let the evaluation content is displayed in its own right, control of the website. At the same time, the prohibitive provisions of the Act on the terms of the contract shall not prejudice the right of a contracting subject to make special arrangements in the contract with respect to photographs and videos produced by his employees or independent contractors for commercial purposes only.

(2) Exceptions to the invalidity of the Counter evaluation Clause

Although the evaluation terms generally are invalid, but there are exceptions, the 2016 consumer evaluation fair act 2 (b) (3) of article lists the terms for the evaluation is not certainly invalid five kinds of situations: (1) allows the operator to format terms stipulated in the consumers shall not be revealed from the operator side as a privilege or confidentiality of commercial secrets or financial information. (2) Allow operators to prohibit consumers from disclosing information in their personnel and medical records that is a clear violation of personal privacy in form terms. (3) Allow operators to prohibit consumers in form terms from disclosing records or information compiled for law enforcement purposes that clearly violate personal privacy. (4) Other consumers, operators, and online platforms under section 2 (b) (2) (C) of the Act referred to above have the right to delete the four situations listed. (5) Allow operators to prohibit consumers from publishing computer viruses, worms, or other potentially destructive computer codes, applications, files, etc. in the form terms. The exception provisions on the invalidity of the "counter evaluation clause" in the Act not only reflect the appropriate restrictions on consumers' evaluation right, but also protect the legitimate interests of operators, and help balance the rights and obligations between consumers and operators.

4.3 The inadequacy of the legal judgment standard of "counter evaluation clause"

Section 2 (b) (3) of the Consumer Evaluation Fairness Act of 2016 excludes "trade secrets" and "financial information" from the scope of the counter evaluation clause, but does not further define the meaning of "trade secrets" and "financial information". This can happen with confidentiality clauses in employer-employee contracts that prohibit employees from disclosing the company's trade secrets and intellectual property, limiting the disclosure of proprietary property and data that are critical to the success of today's business. Trade secrets encourage innovation and discourage unethical behavior. In this case, this obligation of confidentiality prevents individuals from using intellectual property to steal property for their own financial gain rather than for the greater public good. In short, in the world of trade secrets, the benefits of restricting speech are very high. Especially in the digital economy environment, personalized and scene-based consumption has become the mainstream. Do consumers' evaluations based on personalized and scene-based consumption belong to "trade secrets" or "financial information"? This may leave some interpretation space for the

operators' improper expansion of the interpretation of "confidential information". Operators are easy to make restrictive interpretation of "trade secrets" and "financial information", which is not conducive to the protection of consumers' right of legal evaluation freedom.

4.4 A summary of the legal judgment standard of "counter evaluation clause"

Is to recognize the threats from the evaluation terms, CRFA detailed criterion is defined for its legitimacy, make the evaluation of operators and consumers in the network trading laws, by banning the evaluation terms to limit consumer to negative but real evaluation of products and services, to maintain the credibility of the network consumer evaluation and value. But the bill is not further defined "trade secrets" and "financial information", the meaning of the right of consumers to evaluate fuzzy boundaries, in the present platform under the environment of rapid economic development, the operator may damage to consumer right of interpretation and evaluation, so more should pay attention to the perfection of the evaluation terms the legality of the judgment standard.

5. Remedies for consumers' right of evaluation

The remedy means that the judicial or administrative organs provide legal remedies to the citizens, legal persons or other organizations who have been infringed to restore their legitimate rights and interests. The remedy method of consumer evaluation right reflects the effective protection of evaluation right and helps consumers to protect their own legitimate rights and interests. The U.S. Consumer Evaluation Fairness Act of 2016 provides relief methods for infringement of consumer evaluation right, providing basic basis and specific rules for the enforcement of consumer evaluation right cases in the U.S.

5.1 The necessity of setting up the remedy mode of consumer evaluation right

Before the legislation of consumer review, some American Internet trading platforms, such as Amazon, and special review websites, such as Yelp and Trip Advisor, provide consumers with the opportunity to review the goods or services they have purchased. However, consumers' evaluation right is often limited by the "anti-evaluation clause" in standard contracts. The rampant use of anti-evaluation clause in various industries limits consumers' freedom of speech and may result in the effect of "bad money driving out good money", resulting in the distortion of consumer evaluation mechanism. In Lee v. Manovich, for example, patient Lee posted comments critical of dentist Manovich on a dental website. Manovich sued Lee for breach of contract and said he would stop the lawsuit if Lee removed the comments. In the end, though Lee believed his comments were genuine, he removed them because of the high legal costs. Similar cases also occur in other industries. Therefore, in order to protect the legitimate exercise of consumers' right of evaluation, it is necessary to provide special relief methods in the act to protect the legitimate rights and interests of consumers and create a fair market competition environment.

5.2 The specific content of the remedy way of consumer evaluation right

Sections 4 and 5 of the Act provide for enforcement authority by the Federal Trade Commission, state attorneys general, and other state officials with consumer protection duties in cases involving a form contract that prohibits or restricts a consumer's right to evaluation. First, when the rights of its citizens banned by law violation behavior, in order to ensure the rights have been violated state citizens receive appropriate relief, state attorney general is investigating the case and the citizens' right to civil lawsuit filed on behalf of the state, and in such cases filed a civil action shall be notified in written form before the federal trade commission. Second, other state officials with consumer protection duties have similar enforcement powers in such cases as state attorneys general, the right to investigate such cases and file civil suits on behalf of state citizens, and should also notify the FTC in writing before filing civil suits. Finally, to prohibit or restrict the rights of consumers evaluate format contract case, the federal trade commission in addition to the state attorney general and has

the responsibility to protect other state officials have the same permissions, also has the right to intervene state attorney general and other state officials have a responsibility to protect civil lawsuit filed against the cases, to listen to all the matters proposed by civil lawsuit, and appeal. In addition, under the Federal Trade Commission Act, the FTC has the authority to impose administrative penalties on entities that violate prohibitive provisions of the Act.

5.3 The inadequacy of the remedy method of consumer evaluation right

The remedy method of evaluation right stipulated in the act reflects the characteristics of dual judicial track system and the connection between administration and justice, and provides a three-dimensional and comprehensive institutional guarantee for the relief of consumers' evaluation right. But the status of private litigation is unclear by comparing the act with other related areas. Under CRFA, private lawsuits are not allowed and consumers must rely on federal or state officials to file lawsuits on their behalf with the federal FOOD and Drug Administration. However, individual consumers can still take non-CRFA actions under the relevant laws. Therefore, states can also decide whether to allow private actions against counterreview clauses under their state contracts and consumer protection laws. For example, Yelp Law allows individual consumers to file lawsuits against counterreview clauses with state officials who have the duty to protect them. These actions would not be disturbed under THE CRFA. But is it possible to create a private litigation clause in the CRFA to address coordination with other state laws?

5.4 On the consumer evaluation right relief way of summary

It can be seen from the provisions of the act that the Consumer Evaluation Fairness Act of 2016 not only defines the enforcement body of the relief method and its authority, but also coordinates the enforcement power between the Federal Trade Commission and the states. The overall relief method is relatively comprehensive. But throughout involves the consumer evaluation of legislation, the 2016 consumer evaluation fair act is to evaluate the encroach on consumer rights relief way is imperfect, the characteristics of one of the most important is the issue of private litigation, aiming at this problem, can be combined with other law regulation, as well as the results of judicial precedent, set up corresponding terms loopholes.

6. The enlightenment of American consumer evaluation right research to the legal regulation of consumer evaluation right in China

The research and practice in the field of consumer evaluation in the United States have some implications for the legal regulation of consumer evaluation right in China.

6.1 Improve the accuracy of legal confirmation of basic concept category

The 2016 consumer evaluation fair act on consumers' evaluation in the field of related basic concepts defined, although some have fuzziness and controversial concept, cause operators to take concealed in practice means to circumvent the law, but still evaluation area for worldwide consumers legislation has played a very good demonstration effect. In terms of the basic concept category of consumer evaluation right in China, China's existing laws and regulations have not provided for it, only scholars have carried out academic definition, such as should flying tiger that consumer evaluation right is the right of consumers to evaluate or rate operators after the transaction; Li chao on the basis of research should be flying tigers, further clarifying the basic structure of the evaluation of consumer rights, that is the right of consumers to evaluate subject has real consumption experience of consumers, and the rights only after the deal was done, the object of rights is the legal recognition and protection, formed in consumers' evaluation activity of a kind of special interests, namely consumer evaluation right includes right of free evaluation and negative right of defense. In addition, although article 8 of the Anti-Unfair Competition Law and Article 39 of the E-commerce Law of China set the obligation of operators on consumer evaluation, they do not directly stipulate the "consumer evaluation right". Throughout the domestic laws and regulations and related academic

research, no clear and feasible implementation opinions on the legal regulation of consumer evaluation right have been put forward in a complete and systematic way. Malignant cases occur frequently in the field of consumer evaluation, and consumer evaluation right needs legal protection. Therefore, it is urgent to define the concept of "consumer evaluation right" and its specific connotation. To be specific, based on the current situation of consumer evaluation in China, we should define the subject, object, exercise mode, remedy way and other aspects of the right from the perspective of the traditional right regulation, to regulate the consumer evaluation right, and then improve the legal attention to the consumer evaluation right.

6.2 Attach importance to the role of counter - evaluation clause in consumer evaluation

Many studies have shown that "counter evaluation clause" is the key regulatory object of consumer evaluation in the United States, and many laws have defined its legitimacy criteria in detail. The use of counter evaluation clauses is a common phenomenon in the field of consumer evaluation in the United States, and the core of the act is to regulate them legally. Therefore, the act provides detailed enumerative provisions on the invalidity of counter evaluation clauses and its exceptions. CRFA provides false evaluation, but standard did not make clear a regulation, this is because the United States has a more developed to protect freedom of speech legal system and legal traditions, and from a number of laws, to assess multi-angle to adjust and regulate false, such as the federal trade commission act section 5 and the California business and professional code section 17200 ACTS of unfair competition, consumer sales practices act, from the Angle of protection of the rights and interests of consumers, false evaluation regulation. However, in the field of consumer evaluation in China, the counter evaluation clause is not the focus of regulation, and the false evaluation is often a problem. Therefore, when introducing the right of consumer evaluation, China should start from its own situation, draw lessons from the experience of the United States, balance the relationship between the freedom of consumer evaluation and the right of reputation of operators, and strictly define the content of consumer evaluation to prevent the occurrence of false evaluation.

6.3 The introduction of private litigation to strengthen the right relief system

Through a comprehensive comparative analysis of several bills in the field of consumer evaluation, it can be found that there are different remedies for consumer evaluation right, mainly reflected in the need to introduce private litigation. While Yelp Law allows consumers to Sue on their own to protect their rights, the CRFA states that individual consumers can only Sue on their behalf through federal or state officials, not directly. Evaluation of consumer rights relief way in our country, the laws and regulations did not make regulations, scholars also did not mention in the academic research, because this is in reference to the legislation system, on the basis of our country to evaluate the right relief way design, should pay more attention to social influence and harm of illegal activities, arouse the enthusiasm of online trading parties in the main body, protect consumers right of evaluation. First, consumers should have the courage to defend their rights when they are restricted or deprived of their evaluation rights. Consumer can undertake negotiation with operator first, both sides reach reconciliation, operator compensates corresponding loss. Secondly, if the operator does not do anything and does not stop the loss in time, the consumer can report to the Internet platform, and the platform shall exercise the management obligation and deal with it. The platform can place the punishment of operators' illegal behavior on the platform home page, to alert other operators to the seriousness of the infringement of evaluation right. Finally, consumers can also seek relief from the market supervision and regulation department, and the law enforcement agencies in the market supervision and regulation department can carry out punishment, which can not only carry out profit punishment, such as fines, but more importantly, make the behavior play a deterrent effect. In addition, the administrative law enforcement agencies should coordinate with the platform, so that the platform can use its advantages in finding problems and the convenience of technical resources to exercise management obligations to deal with minor violations and punish serious violations with administrative and judicial powers. At the same time, private lawsuits can also be introduced, in

which individual consumers file lawsuits against operators who infringe evaluation rights or platforms and law enforcement agencies that do nothing, to truly remedy rights.

6.4 Strengthen the legal regulation of consumer evaluation right in China

Due to the lack of legal system of consumer evaluation right in China, this paper summarizes the main contents of consumer evaluation right system in The United States. However, considering the uniqueness of China's consumer evaluation right, the extent to which the American system design in the field of consumer evaluation right can be applied to the practice of China's consumer evaluation right still needs to be verified in further local studies. Strengthening of consumers of legal regulation of the power of the evaluation in our country, the system collects the various basic concept of right of evaluation function as well as the right to exercise the way and the relief way, test the effectiveness of the current legal regulation of the power of consumer evaluation and gradually explore new law ought to add content, is to improve the content of the scientific nature and effectiveness evaluation of consumer rights in China.

7. Conclusion

The United States attaches great importance to the important role of consumer evaluation right in the development of online transactions, and gradually forms a systematic consumer evaluation right system from the Communications Norms Act, California Civil Code, and the Consumer Evaluation Fairness Act of 2016. Among them, the relatively perfect Consumer Evaluation Fairness Act of 2016 not only responds to the rampant use of "counter evaluation clause", but also provides legal confirmation of consumers' evaluation right, which is a good example of regulating and protecting consumers' evaluation right through special legislation. In terms of the legal recognition of the basic concept category, the bill focuses on the recognition of the concept category of "consumer evaluation" and "standard clause". In terms of the judgment standard of the legality of the "counter evaluation clause", the bill has made detailed provisions on the legality of the counter evaluation clause from general and exceptional aspects. In terms of consumer evaluation remedies, the Act establishes the enforcement authority of the FEDERAL Trade Commission, state attorneys general, and other state officials with consumer protection duties as enforcement agents, and harmonizes enforcement authority between the FEDERAL Trade Commission and the states. The act clarified the boundary of consumers' right of evaluation, inhibited the rampant use of anti-evaluation clauses, and guaranteed consumers' freedom of speech. However, the ambiguous definition of key terms such as "consumer evaluation", "non-substantive negotiation" and "trade secret" not only provides space for operators to avoid, but also easily causes difficulties in the application of the law. In addition, the lack of private litigation is not conducive to the protection of consumers' right of evaluation. In conclusion, the United States has a evaluation of consumer protection legislation experience, of which the consumer evaluation fair 2016 act is a good evaluation of consumer right system design in the field of law, therefore, our country in the evaluation of consumer rights protection legislation should be further summarize and reflect on and draw lessons from American experience, and combining with its national conditions, forming a complete set of consumers right of evaluation system.

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