

On the Legislative Purpose of the Anti-Unfair Competition Law -- Interpretation of Article 1 of the Anti-Unfair Competition Law

Qianyue Ma

School of Law, China Jiliang University, Hangzhou, Zhejiang, China.

Keywords: anti-unfair competition law, interpretation, promotion, operator legal rights and interests, consumers legitimate rights and interests

Abstract: There are many new contents in the newly revised Anti-unfair Competition Law, such as the recognition and regulation of network unfair competition behavior, the coordination with the behavior identification of the Anti-monopoly Law, and the expression of the concept of subject and so on. Behind the amendment, returning to the level of legislative purpose and intent, the change of words is also a response to and reaffirmation of many changes. Compared with the anti-unfair competition law of the 1990s, with the new situation, and the emergence of new problems, the hope of legal regulation also rose from "guarantee" to "promote". In this paper, through hermeneutic method, from the perspective of the whole semantic view, the author makes a study of "anti-injustice". Article 1 of the Act is interpreted in order to analyze the choice of interests contained in the legislative purpose of this Law.

1. Introduction

At the 30th meeting of the Standing Committee of the 12th National People's Congress on November 4, 2017, the draft amendment to the Anti-Unfair Competition Law was reviewed and approved. It has been adopted for more than 20 years since the Anti-Unfair Competition Law of 1993. Today, the Anti-Unfair Competition Law is adjusted and revised based on the existing laws and regulations and the new phenomena and new problems that have emerged in social and economic life. Article 1 of the revised Anti-Unfair Competition Law stipulates that this Law is enacted in order to promote the healthy development of the socialist market economy, encourage and protect fair competition, stop unfair competition, and protect the legitimate rights and interests of operators and consumers. This article clearly reveals the legislative purpose of the Anti-Unfair Competition Law. This article will demonstrate the purpose of this law more specifically and clearly through the interpretation.

2. Promoting the Healthy Development of the Socialist Market Economy

2.1. "Promotion"

Compared with the provisions of the original Anti-Unfair Competition Law promulgated in 1993, it

can be found that the expression of the first article of this Law has been changed from "guarantee" to "promotion". Looking back at the three deliberations of the draft Anti-Unfair Competition Law, Even though the word "guarantee" has not been changed in the third review draft, why the word change has been made in the final text of the "Anti-Unfair Competition Law", and a more profound meaning can be found through the interpretation of the law.

2.1.1. "Promotion" in Semantic Interpretation

According to the definition of the dictionary, "promotion" promotes the development forward and expresses a process of dynamic advancement. Compared with "guarantee", it means a layer of forward thrust. On the one hand, after the amendment of the "Anti-Unfair Competition Law" to carry out the corresponding legislative and technical operations, the scope of adjustment has a clearer and clearer boundary with the laws of the Anti-Monopoly Law and the Tendering and Bidding Law. The Anti-Unfair Competition Law will be more focused on the regulation of the behaviors that the law itself is given upon after its formal implementation on January 1, 2018, with the relatively independent legal status and the Anti-Monopoly Law. The competition law plays the role of "economic constitution", which is a manifestation of the "promotion" force. On the other hand, because of its dynamic booster meaning, "promotion" has the meaning of "longitudinal in-depth" as the verb of "health and health development" in this statement, so that the "unfair competition law" is not limited to the regulation market. Competitive behavior, the elimination of the economic environment that breeds unfair competition, but the higher level of responsibility that is given more positive protection and promotes the healthy development of the market economy.

2.1.2. "Promotion" in the System Interpretation

This "Anti-Unfair Competition Law" was amended. In addition to the adjustment of individual words in the first article, Article 6 of the Act (Article 5 of the original law), Article 7 (Article 8 of the original Law), and the ninth Articles (Article 10 of the original law) and other provisions also make language changes based on the basic spirit of legislation, the typical expression is to change the "can not use xx means to implement XX behavior" to "do not implement the following XX behavior", its regulation and adjustment The key object is transferred from the original means to a type of behavior, and the situation specified in this law is expanded from the common means of behavior to the behavior, which is an extension of the content of the regulation object, thereby enhancing the role of regulation. Such amendments are conducive to the definition and punishment of unfair competition behaviors by relevant institutions in the process of law enforcement against unfair competition, and the legal and illegal boundaries are clear, which is conducive to safeguarding the legitimate interests of other operators, and the third party facing the competition process. The legal rights of consumers are not only consistent with the legislative purpose of the legislative technology, but also the spirit and purpose of the specific rules. It explains the determination and pursuit of promoting the healthy development of the market economy.

2.1.3. "Promotion" at the Legislative Technical Level

The "Anti-Unfair Competition Law" and the "Anti-Monopoly Law" jointly adjust the competition behavior. Since the "Anti-Monopoly Law" was promulgated in 2007, the amendment of the "Anti-Unfair Competition Law" should be consistent with the language of its provisions. The second half of the first article of the Anti-Monopoly Law is "Promoting the Healthy Development of the Socialist Market Economy". From the perspective of putting the two laws into equal role, the revision to "promotion" makes the legislative language unified. The independent status and realistic pertinence of the Anti-Unfair Competition Law have the need to apply the law to solve real

problems and regulate corresponding behaviors in today's social and economic activities. On the other hand, it is considered in conjunction with the revision of the specific provisions of the entire law. The ultimate goal is to protect rights and promote healthy economic development.

2.2. Promoting the "Healthy Development" of the Market Economy

The basic elements of market economy include market subject, market system and market mechanism. The equal relationship between market entities is conducive to the effective and reasonable competition. The diversified market system provides abundant resources for the occurrence of free competition and exchange behavior. And enable it to achieve resource allocation through market operation mechanisms. From the perspective of the "Anti-Unfair Competition Law", the promotion of market economy development mainly lies in the regulation of the excessive competition of excessive pursuit of self-interest and the intervention of legal, administrative and judicial power under the condition that the market mechanism is fully effective. In the process of unfair competition, in order to protect the market participants' fair competition rights, and thus protect the interests of operators and consumers, only by regulating unfair competition behaviors and monopolistic behaviors, can create a level playing field and produce adaptive competition. The market's main body of the environment forms a virtuous circle.

From the perspective of the operators, the healthy development of the economy is based on the principles of voluntariness, equality, justice and integrity of the competition entities to carry out economic exchanges and realize transaction interaction. In terms of behavior, healthy economic development requires that operators involved in market economic activities must abide by laws and business ethics, both in vertical monopoly behavior and in horizontal industry competition. From the perspective of the market system, when labor, production capital and other markets are interconnected and mutually restrictive, and gradually form an open, competitive and orderly pattern, anti-unfair competition can effectively remove the impact, interference, pollution, health, sustainable and stable development. Part of the factor. From the perspective of market mechanism, free exchange and free competition are important aspects of the operation of the market economy. The exchange process focuses on protecting consumer rights. For the time being, the focus of competition is on the acquisition of interests between operators and their own rights and interests, and unfair competition. As part of the law enforcement of law enforcement, law enforcement intervenes to curb the allocation of market resources to an irrational abyss, thus promoting the effective use of rational resource allocation results.

Therefore, the "Anti-Unfair Competition Law" is indispensable from the perspective of basic elements. From the reverse regulation, the elimination and elimination of illegal behaviors, and the protection of freedom within the limits of competition activities, the role of the competition is becoming more and more important. The power of the negative "shield" embodied by "guarantee" has turned into a positive "promoting" the power of the "spear" of the healthy development of the market economy.

3. Encourage and Protect Fair Competition

"Fair competition" is the kind of one, two or more market entities in the process of production and management, based on the principles of fairness, equality and openness, and compliance with laws and regulations, through the role of funds, technology, labor, resources and other factors. The act or state of providing the same or similar goods or services to the same consumer, or accepting the same or similar goods or services of the same supplier, and trying to maximize their own interests.

The value and significance of fair competition, on the one hand, sets the bottom line of behavior for the free competition behaviors implemented in order to form a market order, and maintains the

balance of interests among the subjects involved; on the other hand, it reduces the behavior patterns, business perceptions, etc. among the competition subjects. The negative effects caused by the differences in factors, and based on the basic spirit of survival of the fittest and survival of the fittest, reshape basic business ethics and consumer confidence, and build a benign market operation and circulation system.

Corresponding to fair competition is the indispensable driving force of free competition, fair competition and free competition. From the perspective of the relationship between the two, the Anti-Unfair Competition Law will encourage and protect fair competition. The reason for the purpose of legislation, on the one hand, the market needs to pursue the free competition of efficiency to drive development, to stimulate the enthusiasm, initiative, and creativity of market participants, in order to maximize the lowest price, the best goods or services, but the excessive freedom, The tendency of abuse requires fairness as a hard standard to intervene. Therefore, free competition in a market economy should be discussed in the context of fair standards. On the other hand, fair competition as an essential form is an ethical norm for free competition. It is the promotion of the value of free competition. There is no freedom of competition. There is no way to talk about fairness. Without the constraint of fair competition, free competition will also let itself go. The Anti-Unfair Competition Law necessarily regulates competitive behavior to achieve freedom and efficiency, but puts it on the text. The protection and pursuit of fairness not only responds to the interests of the various parties involved, such as competitors and competitors. Between the consumer and the consumer, it also implies a hidden requirement for a reasonable balance of market resources.

4. Stop Unfair Competition

4.1. "Stop"

According to the dictionary explanation, “stopping” means forced stop and forced stop, which is used to correspond to the administrative and mandatory enforcement of anti-unfair competition. Compared with other competitive behaviors, such as monopolistic behaviors, it can be said that most of the operators' behaviors in unfair competition are individual implementations for additional interests. It is not a joint, centralized, etc. that requires multiple subjects to act together, and is a relatively micro-behavior. Such as confusing behavior, infringement of trade secrets, false propaganda, illegal sales of prizes, obstructing or undermining the behavior of legitimate online products or services. Such behaviors, when legally involved in regulation and administrative power intervention, mean that behavior has begun, In the process of implementation or after implementation, the result of unfair competition damage, it can be found that it lacks the stage of prior approval and administrative review compared with the behavior that may cause monopoly, so that the use of “suppression” in the law is only The controlling role of suspected unfair competition behavior after the event, such as conducting investigations and taking measures. This also explains why Article 1 of the Anti-Monopoly Law contains “prescriptions of prevention and suppression” and its “stopping” contains restrictions on the preparation of ex ante acts, while this Law only emphasizes “suppression”.

4.2. Unfair Competition Behavior

Article 2, paragraph 2 of this Law stipulates: The term "unfair competition behavior" as used in this Law refers to the behavior of the operator in violation of the provisions of this Law in the production and business activities, disrupting the market competition order and harming the legitimate rights and interests of other operators or consumers. .

The unfair competition behavior stipulated in this article compares the expression before the revision of the law. "Unfair competition as mentioned in this Law refers to the behavior of the operator who violates the provisions of this Law and damages the legitimate rights and interests of other operators and disturbs the social economic order". Accurate, and modify the content of the general provisions from "unfair competition" to "unfair competition behavior", indicating that unfair competition includes not only behavior but also competition status, so that the concept of definition becomes more different from the extension of the extension. For fit. The other points that are mainly revised in this article are: increasing the "in production and business activities", restricting the stage of the operator's implementation of unfair competition, and second, "damaging the legitimate rights and interests of consumers", in line with the provisions of the first legislative purpose. Incorporating consumer rights into the scope of protection means that the result of determining the damage caused by a competitive behavior to the legitimate rights and interests of consumers can be characterized as unfair competition behavior, thus making the judgment standard more than the damage to the business interests. At the first level, the regulation of unfair competition is more strict. The third is to define the "social economic order" as "market competition order" and to exchange the positional relationship between rights protection and disordered order, reflecting the emphasis of the newly revised "Anti-Unfair Competition Law" on the protection of market participants' rights and interests.

5. Protect the Legitimate Rights and Interests of Operators and Consumers

5.1. Analysis of Two Kinds of Understanding

From a semantic point of view, this sentence has two kinds of understandings, one is to protect the operators and protect the legitimate rights and interests of consumers; the other is to protect the legitimate rights and interests of the operators and protect the legitimate rights and interests of consumers.

First of all, the operators are in the competitive activities. This regulation makes unfair competition behaviors. In the legitimate competition, the normal gains and losses of the operators are adjusted by the market competition process. Only when the unfair competition violates their legitimate rights and rights In the case of reasonable and improper loss of interests, the administrative power shall be intervened in accordance with the Anti-Unfair Competition Law to protect the legitimate rights and interests of the operators. Secondly, in the process of market trading and competition, the relationship between operators and consumers has natural inequality. One of the characteristics of the economic law department is to give more regulation to the strong and give more protection to the weak. From this perspective Look, this sentence is inclined to the second. Finally, the protection of the competition law for the operator is ultimately reflected in the correction and maintenance of the competition process and results. The protection of legal rights and legitimate due benefits is especially important for the participants of legitimate competition.

Therefore, through the interpretation of the law, the understanding of the sentence tends to protect the legitimate rights and interests of the operators and the legitimate rights and interests of consumers.

5.2. The Legitimate Rights and Interests of the Operator

"Equity" means rights and interests. The two are related to each other. If there is a certain right, the corresponding interests can be obtained according to the right. Therefore, the legal rights in this explanation are the rights enjoyed by the operator according to law and the benefits according to law. From the perspective of this law, according to the various forms of expression of unfair

competition behavior, the legitimate rights and interests of the operators can be divided into three categories, namely, fair competition rights and business autonomy, and one type is infringed by specific behaviors in competition. Specific rights, such as intellectual property rights, are legal benefits that have not yet been expressed as rights, such as business reputation, commodity reputation, competitive advantage, customer base, etc.

As far as the first category is concerned, whether fair competition can be raised into a right is still controversial, but the creation and existence of fair competition rights respond to many provisions and rights in the Anti-Unfair Competition Law, such as after the amendment. Article 17 provides a standard for justification for judicial practice; on the other hand, the right to fair competition becomes a form of rights, which constitutes an emphasis and reaffirmation of “encouraging and protecting fair competition”, which is in line with legislative intent and legislative purposes. The right to fair competition is the right of operators to participate in market competition. It involves the relationship between operators and other market entities. It emphasizes a horizontal right, which is different from business autonomy. Business autonomy involves enterprises and governments, shareholders, and internal employees. The relationship emphasizes the right of independent production, management, decision-making, and interference from others. It is a vertical right. Both of them may be harmed in the process of competition. After unfair competition, the right to fair competition and the benefits based on the right will be harmed. The autonomy of the operation may be subject to specific follow-up investigations and other acts. damage.

As far as the second category is concerned, if the intellectual property rights are clear civil rights, the infringement of intellectual property rights, etc., is an infringement of the absolute civil rights of the operator. The legitimate rights and interests of the operator include specific and specific civil rights. If the right can be clearly affirmed and violated in the act of unfair competition, it is directly concluded that the competitive act infringes the legitimate rights and interests of other operators.

As far as the third category is concerned, the legal benefits that are not determined to be rights have different meanings in different competition behaviors and judgment documents. For example, false propaganda damage may be business reputation, commodity reputation or the customer’s customer base, competitive advantage. Etc., according to the specific behavior of the different forms of specific analysis of the legal benefits of damage.

Therefore, based on the concept of balance and coordination of economic law, although the legitimate rights and interests of operators are rarely specified in the legal provisions, from the perspective of the legislative purpose of the Anti-Unfair Competition Law, the protection of honesty and law-abiding, fair and fair competition It is as important as protecting consumer rights.

5.3. Legal Rights and Interests of Consumers

The modern anti-unfair competition law has three legislative purposes: to protect the legitimate rights and interests of operators, to protect consumer rights and to maintain market competition order in order to safeguard the public interest.

In this context, the legitimate rights and interests of consumers refer to the rights and interests of the consumers who are illegally infringed during the transaction process or the completion of the transaction due to unfair competition behavior in the market competition process. The protection of the legitimate rights and interests of consumers in this article is consistent with the purpose of modern competition law. However, looking at the whole law, in the specific provisions of the design, consumers are not included in the subject of the right to appeal. If Article 17 of this Law stipulates that the legitimate rights and interests of the operator are damaged by unfair competition, they may go to the people's court. In the case of litigation, “consumers” were included in the draft for review of the revised draft Law, but were deleted after review. It can be understood that it is based on the

following two considerations: First, whether it is in the market competition or in daily transactions, the actual damage is one or a few rights of the consumer, combined with the existing "consumer" In the case of the Law on the Protection of Rights and Interests, consumers who are harmed can file a lawsuit and claim for compensation according to the law; second, this law is part of the competition law, and it is a necessary measure to protect the rights of the operator. If this law increases consumption The right to appeal, it is necessary to consider whether it will affect the regulation and adjustment of the competition behavior of this law, and focus on the protection of consumers. This is not conducive to the play of the natural function of this law, and will once again cause a chaotic situation in which this law intersects with the provisions of other laws. However, from the perspective of protecting consumer rights, it should be discussed that "the legitimate rights and interests of consumers" refers to the specific right to know (Article 8 of the Consumer Law), the right to choose independently (Article 9 of the Consumer Law), and the right to fair trade. (Article 10 of the Consumer Law), or refers to the consumer's overall and general rights formed based on the division of market players in the competition, the consumer, and the consumer's position in the competition between the two parties. Enjoy the basic and general treatment in accordance with the principles of market transactions and legal norms. If the former understands the legal rights, then it is more reasonable to remove the "consumer" in Article 17 of this Law. If the latter is understood, then removing the "consumer" is actually limiting its right to appeal. It conforms to the multiple purposes of modern competition law and the legislative pursuit of the Anti-Unfair Competition Law.

6. The Overall Semantic View

In the first statement of the "Anti-Unfair Competition Law", put "promoting the healthy development of the socialist market economy" in the first sentence, followed by "encouraging and protecting fair competition and stopping unfair competition behavior", and finally " This Law is enacted to protect the legitimate rights and interests of operators and consumers. Looking at the structure of this article, adopting the total-point-total structure, putting the pursuit and basic spirit of the two categories of protection rights and promoting economic development to the forefront, highlighting its legislative purpose, and arranging from small to large in terms of logic. The expression of the purpose of legislation is in stark contrast. Analyze the general structure of the total score. The healthy development of the market economy needs to encourage and protect fair competition, stop unfair competition, and protect the rights of consumers and operators. Finally, it is based on competition between operators and consumers and operators in the process of competition. The harmony and positive situation of various relationships between the two parties, the realization of the transition from the macroeconomic development to the protection of the main rights and interests, that is, the two ends are long-term goals, and the middle is the specific purpose. From the semantic expression, it highlights the emphasis on the long-term goal. Compared with the arrangement of other legal provisions, such as the Anti-Monopoly Law, the first is the prevention and suppression of behavior, and finally the protection of rights and the promotion of development, in line with the causal logic from small to large, Consumer Protection Law "The protection of rights and interests, and the promotion of development, have their own logical relationship. Therefore, as far as the Anti-Unfair Competition Law is concerned, its pursuit seeks to achieve a relative balance between the interests of stakeholders and stakeholders through the regulation of unfair competition behaviors, and promotes competition through the formation of good relationships.

References

- [1]. Wu Weiguang, *criticism and Reconstruction of Competition relationship in Anti-unfair Competition Law-from the perspective of systematic understanding between legislative purpose, business ethics and competition relationship.*

- Contemporary Jurisprudence*, 2019 (1): 132-139.
- [2]. Wang Ruihe, *the people's Republic of China anti-unfair competition law interpretation*. Law Publishing House, 2017.
- [3]. Ning Lizhi, *the Anti-unfair Competition Law revised gains and losses*. *Research on legal Quotient*, 2018 (4): 118:128.
- [4]. Zhu Jingwen, *Jurisprudence*, Renmin University of China Press, 2018.
- [5]. Dai Long, Hao Junqi, Tan Bingyu. *A summary of the Symposium on Major Issues in the Revision of the Anti-Unfair Competition Law*. *Competition Policy Research.*, 2017(4): 83:96.
- [6]. Meng Yanbei, *On the Restriction of the Anti-unfair Competition Legislation on the Operation of Business Autonomy -- A Case Study of the Anti-Unfair Competition Law (Revised Draft for Review)*. *Journal of China University of Political Science and Law*, 2017(2) :135:145.
- [7]. Li Yougen, *The Initial Discussion on the Right of Fair Competition of Operators -- Based on the Arrangement and Research of Cases[J]*. *Journal of Nanjing University*, 2009(4):54:66.
- [8]. Kong Xiangjun, *Innovative Application of Anti-Unfair Competition Law*, China Legal Publishing House, 2014.
- [9]. Zhang Shouwen, *Principles of Economic Law*, Peking University Press, 2013.