

E-commerce Format Clauses in the Contract

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Abstract—Format terms is to formulate a special clause in advance, the purpose of which is one of the parties to contract the convenience of entering into a contract, but not with other very agree that the parties agreed on unilateral writing to formulate a special terms of the contract in advance. Format terms has a number of features is first proposed in advance, followed by the purpose is to reuse, the last is not and trade negotiations. Because of these characteristics, make its and e-commerce is very fit, widespread use of format terms helps to quickly determine the electrical contractor in the contract, the rights and obligations of buyers and sellers and significantly reduce the transaction cost, to the improvement of transaction efficiency. Also emerge some problems, however, need to analyze the format clauses and suit the remedy to the case, through standardized control, special examination methods such as optimizing its use in the actual effect.

Keywords— The electronic commerce contract; The format contract; Standard term

I. INTRODUCTION

Although format terms with many advantages, however, it is important to note that the terms of the contract to bring convenient at the same time, also there are many problems and hidden dangers. E-commerce platform, for example, the merchants of prevention, to push the inspection responsibility more to the consumer, during the reasonable of law's the law, to both sides agreed on how many hours of receipt of the goods; Or agreement set forth on both sides is consistent with Italian style and packing of the goods instead of the old and new random delivery, such a scenario, but for the most part will not affect the use of the goods, but in some consumers of extreme value to design scenarios such as tide of toy will be crucial in the choose and buy, therefore, merchants unilaterally by the network platform or network, and consumers in order to conclude the contract can only choose to accept the standard clauses in terms of the contract. Take the rights and interests of consumers will suffer the risk of infringement. In the long run, will also destroy the fair trade environment, have a negative impact on the development of the e-commerce industry. Therefore in the field of electronic commerce, it is necessary to make a special explanation for format terms or special understanding, in order to balance the rights and obligations on both sides, promote the harmonious development of industry of the final result.

II. THE HISTORY CHANGE OF FORMAT TERMS

A. The Definition of Terms in the Format and User Obligations

First, the definition of "civil code" choose to format terms as the first paragraph, the using of the obligations as the second paragraph. Whereas the combined with law governs the idea, the using of the obligations as the first, the definition of format terms as the second paragraph. Will look from the logic, offline definition is more reasonable. Second, the civil code to the requirement of format terms to provide one of the parties is higher, are demanding "to exempt or mitigate the liabilities with all major concern from the other terms and conditions" and "contract law" to provide the same party shall state obligation with tips on what clause refers to "waive or limit its liability" clause. Can see the content of the

requirements specification are added to the "wait" word, with the clauses of the requirement is a major concern, not only as to exempt or mitigate the responsibility of the terms in the first place. In the end, of the first paragraph of article four hundred and ninety-six of the civil code is in the raising the second sentence, to the other party to coat a who advocates the rights of the terms of the contract not become the contract content., of course, in order to realize the right of the three major premise, the first is the provider of format terms did not fulfill the instructions for the first paragraph of article four hundred and ninety-six of the first a few words of obligation, and the dealing party client noticed but did not understand the content of the terms and conditions, or didn't notice the format clauses, the last is the former exists between legal causation. Provisions were used in the "cause" two characters showed that require the existence of causation. Because if some format clauses do not need special label to remind the other party will be bound to find trading, or it will not lead to trade the other party does not understand, there is no causal relationship, the second sentence of the first paragraph of article four hundred and ninety-six in this case there is no suitable space. Although there are some shield type clause is the direct effect of , but is, in general, the term "civil code" in the definition of format terms and users of the obligations stipulated more detailed more reasonable. Therefore, in the interpretation of the Internet should pay attention to what is the terms of the major interests with each other.

B. In Terms of Format Contract is Invalid

First, in of the first paragraph of article four hundred and ninety-seven of the civil code, for the contract invalid legal situation, not stipulated in the "contract law" article 40 of the civil code so meticulous, civil code to first make the effectiveness of the civil juristic ACTS in the third quarter, chapter 6, the different kind of civil legal act the evolution of the effectiveness. No change for disclaimer in the contract is invalid. Secondly, for the second paragraph of article four hundred and ninety-seven and paragraph 3, its relative to the second paragraph of article 40 of the "contract law" has made some adjustments. First joined the limiting condition before the second paragraph "unreasonable" will relieve format of the original terms of the contract provider party responsibility,

increase the contract relative party liability limits the two circumstances, that is not as long as reduce his responsibilities, increases the responsibility is not immediately to format terms. Second, joined the limit in the second paragraph of the contract the other main power, also absorbed into the law, do make the legal system more complete. Third, will eliminate each other right main as a separate, that rule out the other rights are more common in the previous law practice, and also more need to governance, and eliminate the effect of the other main power and the original paragraph 1 of article 40 of the "contract law", is not unreasonable to join us to discuss. Because the main rights is vital for one of the parties, if the other party, the main power to exclude the format contract terms provided one party must be the possibility of abuse their dominant position. In the Internet e-commerce contract, therefore, should focus on review what powers belong to the party's main what rights do not belong to one of the parties rights. What the limits to what reasonable limit to reasonable. Both need to be combined with the specific type of contract and the specific situation to be clear.

C. The Interpretation of the Format Contract

This article does not change what is just the provisions in article four hundred and ninety-eight of the transformed from article 41. Article four hundred and ninety-eight the provisions were divided into three sentences, in turn, corresponds to the format terms to explain three rules: "explain" usually "explanation" triple rule "of format terms priority". First of all, about general explanation. First, from the point of subject, the format clause to disputes between parties, and not to the level of the experts and scholars to examine the content of the clause, but usually people understand understanding shall apply. Secondly, as to be general public usually in some cases there is also a upgrade into have certain knowledge reserve, for example, when the parties to a contract are know each other is a specific industry professionals, as the social people usually growing experience and insights. In the electronic commerce contract, when negotiations both sides very clear know each other is the personnel or the other can you draw from each other's language and other evidence is the personnel, can satisfy the auburn. Secondly, from the point of guest body, format in terms of the contract terms should be daily popular explanation, in general, special language explanation space exists in format terms. Second, about unfavorable interpretation. First of all, its and is usually defined as the order status, apply, should apply often explain, when usually explain cannot meet the needs of the reality of happens, can use the unfavorable interpretation. For example, the henan sanmenxia city intermediate people's court to make three final word no. 199 (2004) people in the civil judgment. Insurance company bin did not specify the exact meaning of the "heart transplant", and the case belong to the insurance contract clauses in the standard clauses, so use the provider against format terms of explanation, to support the request the plaintiff li mou. In the Internet business, the general conditions of supplying are merchants, if use against the interpretation of the merchants there may be some problems, because using this explanation method, should pay attention to the defensive

dominance is the deal, because this explanation method and the main body of strong or weak position is closely related. Finally is a standard term priority rules, in practice, some businesses in order to facilitate downloaded from the Internet contract template to use, and modify, in this case, there may be for the same item, not the format terms and agreed format terms are made. At this time should be in accordance with the provisions of the consumers and businesses, and then use the interpretation of the standard term is somewhat redundant. But is live, not all cases can use a standard term priority rules, because in some cases, the provisions of the transactions the parties may be trading party b party to use its own advantage of unfair.

III. THE ELECTRICITY PROMPT OBLIGATION OF FORMAT CLAUSES IN THE CONTRACT

A. Instructions for the Way

Firstly, the appearance of the transaction documents, in the Internet in e-commerce, in many cases, consumers think is hanging on the web page for a advertising, it is in fact it is part of the deal contract documents, this kind of situation if not constitute fraud or gross misunderstanding, have suitable format terms and conditions of the space. Therefore, a clear distinction between contract documents and the necessity of web advertising is now. So, is the only thing that can effectively prompt network trade in consumers pay attention to the positioning images in law, more cautious straighten this file in its position in the heart, to achieve a reasonable standard of attention. As the general public, its advertisement in reading and reading under the conditions of contract under the condition of attention is different. Secondly, not all change in the contract format terms and conditions of the font or color or bold underlined and symbols, can be considered as the instructions for the duty. In the practice of the judge are similar views. And under the condition of Internet, change the font or color of the contract, there is a possibility, consumers think this is the need of business used to beautify the text and do the special design, as a result, this also is on the part of the importance of appearance to make a special deal file to confirm each other.

B. The Other Party to Receive

According From the law point of view, did not make clear a regulation of the other party to accept or agree, from a logical point of view, however, suggests that obligation is closely connected with the other party's consent. And this kind of agreed to a deal but also because of different situations should make a difference. The consent of the first shall be the difference between the express and implied consent. Because the implied consent has greater randomness, for the other party's interest protection also more uncertain, so the other party to accept should be implied by more restrictions. Not just because they are signed by the parties in the contract text completely presumed consent to all of the format clauses in the contract text, especially in the case of a contract was very much. As a result, the other party implied consent should be limited, not only need to meet the reasonable instructions of format terms carry donor obligation, more importantly, a

uniform way should be more clear. From the nature of the article different point of view, should make a certain distinction, if it is the general format terms, implied consent in principle should be used, as long as there is the other party to sign the documents, also represents the other party for the general article format of the file to be agreed. Whether or not, in fact, the other party knew about the content or meaning of the standard clauses, even said that if the other party at the time of conclusion of the contract in the true sense can read these format terms aside. But for some influence of format terms the rights and obligations of relative person, even if the parties signed nor the in accordance with the identified as is recognized for exception clause. Because general agree that cannot be considered special terms into the contract, otherwise will greatly extrusion relative person's right, from the Angle of aerial format terms provide the instructions for one party has obligations. Possible solutions, make a special statement, claim to accept these terms and conditions. Such as the Italian civil code disputes also provided for by article 1341. And for some important occasions or condition in which the instructions, need to which a few place is relatively full name read and understand.

C. Not to Make Instructions for the Legal Consequences

For are under no obligation to make reasonable instructions for the format of the terms and conditions, how to maintain the legal consequences, there is some controversy and different point of view. "Civil code" regulation of the content is "the clause does not become" the content of the contract did not specify the terms of legal consequences, thus derived from three different explanations. The terms of the first is that it is revocable, revoked after not be combined with the content of the nature. Second is recognized as invalid clause, the clause is invalid after not naturally to the contents of the contract.³⁰ decided that it was not effective, since from the beginning is invalid, so also naturally become the content of the contract. Although seems to be little difference, but still need further discussion in legal sense clear its meaning. First of all, revocable terms, although after the cancellation is not the content of the contract, but there is a cancellation before time. And, as it is not very suitable revocable, because "civil code" in article one hundred and fifty-one to one hundred and forty-seven, provides for the cause of the revocable. Branch, seems to be not very suitable for, obviously not instructions for compulsory and unfair, stress plot differ very far. Second, must achieve significant misunderstanding can be the cause of the revocable, is only the format contract party did not explain the obligation cannot meet the major misunderstanding on the connotation, lifting weights to bright light, more not fraud. Second, the invalid's point of view, this view is not very valid. Because first of all, the current is not legal administrative rules for the instructions for the format contract obligation to make mandatory provisions, in theory is not suitable to make mandatory provisions, so there is no applicable civil code in the space of article one hundred and fifty-three of the contract shall be invalid. Second, the format contract party had no motive colluding with the format of the contract signed, and there is no damage the legitimate rights and interests of others.

So can't use the article one hundred and fifty-four of the contract shall be invalid. Finally, has yet to take effect point of view, and from the Angle of contract, the contract of the need to offer and promise, if the format contract party without giving instructions for duty, for the format contract, it must be hard to understand the original contract, party b and to follow your heart. Therefore, break down the whole contract, separate this a few article format the paragraph as no effect is likely to be in order.

IV. LIMITATION OF FORMAT TERMS

A. Standardization Control

Because when consumers and businesses to do trading, can obtain information ability is far lower than the businessman, and in addition to the legal and professional knowledge application, the consumer is difficult to compare with the businessman, partial businessman will pass to reduce printing methods such as font increase the difficulty of obtaining information. In a variety of reasons have led to the consumer is not willing to, even can't really read may be hidden within the format clauses in the contract. From another perspective, market operators to get not by these terms and conditions as the competitive advantage, often happen to coincide to dip the competition, so as to make the format terms more concealed, more easily enroach on consumer rights. But from another perspective, the contract is always in the market, national force set up a set of standard contracts should not be a gain peace and stability in the order, this is not possible, the outcomes to all want to get week, so how to achieve the balance between the two is particularly important. As mentioned earlier, format of the contract signing party information cost is larger, so considering from the direction of reduce the cost of access to information, can draft standards for some of the terms and conditions of the text. And for the instructions for how to make some standardization, procedural regulation, used in the supply market, under certain conditions can be forced to use for these terms. As professor sun-fly puts it, the method has been widely applied in the field of financial consumer, such as China's insurance regulatory authority as early as more than a decade ago has begun drafting standardization to the insurance clause and the information disclosure work. On the basis of standardized information, simplify aims to further reduce the amount of information and complexity. Way through the contract and other information to disclose the terms of has a significant effect on consumers, at the same time complementary with intuitive methods, such as digital rating score, provide convenience for consumers more choice. P. Warning aimed at enhancing the terms of the significant level in order to attract consumer attention, can adopt the method includes setting up a special warning bar, confirmation, copy terms for many times, individualized warning information, etc. Warning can not only enhance the chance of consumer information, at the same time can also be overcome to some extent consumer information ignored cognitive limitations.

B. Special Contract Review Mechanism

Although the contract is the root cause of the market, but is required in some specific areas of public control, so comfortable when introducing some collective factors can also ease mentioned above, the problem of format terms. In fact is the use of colour is stained with public rights force some organizations or individuals in order to replace the spontaneous transaction form of the disorder. The terms of the collective to draft the same focus on preventive control, its in essence belongs to self regulation mechanism of socialization. Terms and conditions in the process of drafting the addition of consumer groups have help balance on both sides of the negotiating position, enhance consumer groups the influence degree of the result of the distribution of rights and obligations, lack of freedom of contract to individual contracting level at the collective level to restore.

C. The Standard Instructions for Duty

First of all, can be authorized content of different boundaries, classify. This is not a requirement of the format of the contract signing party agreed to, respectively. Compared with the previous generalized agreed to a key, form this way has made consumers more profound understanding of its authorized content advantage effect. That is used repeatedly remind not drawn out and the contract section directory is to alert users to identify. From the format contract cost into consideration, format contract to party b, almost no extra cost, because it only needs the original agree field respectively replaced by field, such costs are negligible. Although this may increase the format contract party reading time, but for its understanding cost reduction. For but actually in the original case, the cost is almost no one party signing the contract, because they almost can't read the text and make a sign, but

given that go against their rights protection so the changes for the contracting costs minimal. Second, as mentioned above, the format contract party may not read, even if the text rights respectively, authorized content project list, signing party still has great may not be able to understand its real meaning. So format terms suggest that need a reasonable way, and, to add some specific representation of meaning of words, is particularly important. Hui because these words are for the general public can understand the words, such as "your responsibility has" "your obligations" , with bold or other special ways of text prompt signed can make more understand the content of the contract, party b can also provide text one more perfect obligation to fulfill their obligations.

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