

E-commerce - China

New measures on internet trading introduced

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Introduction

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Introduction

Operating online can have its challenges. Turbid online trading, rampant counterfeiting and the difficulty of filing related complaints have been ascribed to the lack of regulation and supervision. Effective measures to combat these issues are called for worldwide. As online trading is quite a new phenomenon in China, as yet there is no perfect solution to the problems connected with it.

On June 1 2010 the State Administration for Industry and Commerce (SAIC) issued the Provisional Measures for the Administration of Trade and Services on the Internet, a first-of-its-kind prescriptive document designed specifically to regulate trading conduct on the Internet, applicable nationwide. The document, which came into effect on July 1 2010, is regarded as a great leap forward in the supervision of online trade and is worth careful study.

Advantages and improvements

Real-name registration and examination

One of the core rules of the measures is real-name registration. Anyone wishing to open an online shop must submit his or her genuine identity information, such as name and address, and a legal person is required to tender and publish its business licence data. Operators of online trading platforms have a duty to examine and register this information. This rule is generally consistent with the current operation of the mainstream online trading platforms.

Real-name registration aims to expose the identity of any potential infringers. In the case of an online shop owner committing an infringing act, the Administration for Industry and Commerce (AIC) will have instant access to the infringer's real identity information, which will make law enforcement much easier.

Greater supervision

The measures require that an inspection and supervision system be established by the platform operator with regard to its tenants and their goods sold online. If the operator spots any offence, it should report it to the local AIC, aim to put a stop to it promptly and shut down the online shop involved when necessary. Where an infringement is detected by the AIC, the operator should cooperate with the AIC by producing the offender's registration data. This rule gives the AIC the right to investigate and collect evidence – a right exclusively enjoyed by the police in the past, thus improving administrative enforcement efficiency.

The measures also require the platform operator to keep online traders' registration information and transaction data. It must keep identity information for two years after the shop stops operating and transaction records for two years after a transaction is concluded. This will help law enforcement departments to track the infringer's sales records, and where appropriate, to impose administrative penalties or charge the infringer with criminal liability.

Better protection of consumers' and IP owners' rights

According to the measures, when consumers' legitimate rights are infringed, the operator has a duty to assist them in safeguarding their rights by disclosing the culprit's registration information. This stipulation will effectively solve the problem of how to

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identify a counterfeiter.

With respect to the operator's liability for infringement, the measures invoke the Tort Liability Law to induce a 'notification and deletion' procedure. Following an infringement by an online trader, the rights owner has the right to give notice to the operator requesting it to delete, block or break relevant links. An operator that fails to take necessary measures on receipt of such a notice will be jointly and severally liable with the infringer for the extended damage due to its inaction. Currently, the mainstream online trading platforms have their own infringement treatment procedures in place.

Differentiated punishments

The measures provide that in the case of serious infringement, the AIC has the right to ask the telecommunications authority temporarily to block or stop access to an infringing website. After an administrative penalty decision is made, the AIC may order the closure of the website, depending on the circumstances of the infringement. This measure is for websites with independent domain names. It diversifies the administrative penalties and provides a legal basis for the AIC's order to close a website.

Disadvantages and weaknesses

Administrative jurisdiction

The measures stipulate that an infringement conducted on the internet will be dealt with by the AIC at the place where the operator of the infringing website is located. Where it is difficult to punish an offender who is elsewhere, the case may be transferred to the relevant AIC. This rule may considerably hamper the efficiency of administrative enforcement. Take taobao.com as an example. Most online traders taobao.com are located outside of Hangzhou City, where the website is registered. If all infringement complaints are to be taken up by the Hangzhou AIC before transfer, the operability of online trade supervision will be diminished greatly. It seems more reasonable to put an infringement under the jurisdiction of the AIC at the place where the offence occurs or where the infringer is domiciled in accordance with the General Principles of the Civil Law of China.

Internet service providers

The measures require internet service providers to keep applicants' registration information for only 60 days. As a result, the law enforcement department may have no access to the real information about an infringer when an infringement occurs.

Legal liability

The measures impose a fine of up to Rmb10,000 on a platform operator that refuses to cooperate with the enforcement department or breaches its obligation of retaining information. This penalty may be too light to deter some delinquent platform operators.

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