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Improvement of the Punitive Compensation System in the Consumer Rights Protection Law

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Abstract

The punitive damages system has the basic characteristics of being punitive, additional and statutory, and its application is of great value to the protection of consumer rights. At present, in the field of consumer rights protection, the application of punitive damages still has problems such as the unclear identity of the consumer subject, the unclear identification of the fraudulent behavior of operators, and the overly rigid calculation method of punitive damages. To improve the punitive damages system, we should further clarify the definition of the "consumer" subject, clarify the identification standards of the fraudulent behavior of operators, and set up relatively flexible punitive damages calculation rules, so as to better protect the legitimate rights and interests of consumers and achieve a balance of multiple interests.

Keywords

Punitive Damages; Consumer Protection; Fraudulent Behavior.

1. Introduction

With the continuous development of China's socialist market economy and the stable operation of the national economy, the consumption demand and consumption capacity of Chinese residents have been continuously improved. In recent years, the state and local governments have continuously implemented more and more policies to promote residents' consumption and stimulate domestic demand for economic development. The consumer market has become increasingly prosperous, but at the same time, more consumer infringement disputes have also occurred. In order to better regulate the risks of consumer infringement, the state promulgated and implemented the "Consumer Rights Protection Law" in 1993, and stipulated punitive compensation clauses for consumer infringement. The current "Consumer Rights Protection Law" uses Article 55 (Article 55 of the Consumer Protection Law of the People's Republic of China: "If an operator engages in fraudulent behavior in providing goods or services, he shall, at the request of the consumer, increase compensation for the losses suffered by the consumer. The amount of increased compensation shall be three times the price of the goods purchased by the consumer or the cost of receiving the service; if the amount of increased compensation is less than RMB 500, it shall be RMB 500. If otherwise provided by law, such provisions shall apply. If an operator knowingly provides goods or services with defects to consumers, causing the death or serious health damage of consumers or other victims, the victims have the right to require the operator to compensate for the losses in accordance with Articles 49 and 51 of this Law and other legal provisions, and have the right to demand punitive damages of up to twice the losses suffered.") as the basis for the adjudication of punitive damages, giving consumers the right to require operators to double their losses. This reflects the primary legislative intention of the law for consumer rights protection, and is conducive to achieving a balance of multiple interests and meeting the inherent requirements of maintaining public interests [1]. The punitive damages system has three basic characteristics: punitiveness, additionality and statutory nature, and it continues to progress and develop in practical applications. Its application is of great value to the protection of consumer rights. However, in current practice, the punitive damages system of the Consumer Rights Protection Law is still not perfect, and there are certain problems, such as the identity of consumers has not been clarified, the identification of fraudulent behavior of operators is unclear, and the calculation method of punitive damages is too rigid. If these problems are not solved, it will be detrimental to protecting the legitimate interests of consumers, and the consumer market environment will be damaged, which is not conducive to China's economic development or people's livelihood. Therefore, the punitive compensation system still needs to be further improved to solve the current consumer hot issues that the Chinese government attaches great importance to, stimulate domestic demand for economic development, and promote people's livelihood.

This article aims to start from Article 55 of the Consumer Protection Law, explore the basic characteristics and important value of the punitive damages system, analyze the application difficulties of the punitive damages system of the Consumer Protection Law in practice, and examine the problems. Finally, it proposes a path to improve the punitive damages system of the Consumer Protection Law. By clarifying the definition of the "consumer" subject, clarifying the identification standards for fraudulent behavior of operators, and setting relatively flexible calculation rules for the amount of punitive damages, the punitive damages system can be further improved, in order to maximize the function and value of the punitive damages system, make full use of the unique advantages and role of the system, better protect the legitimate rights and interests of consumers and achieve a balance of multiple interests, maintain a clean and stable market order, and contribute to the construction of a socialist market economy.

2. The Basic Characteristics and Important Value of the Punitive Compensation System in the Consumer Rights Protection Law

2.1. The punitive damages system has the basic characteristics of being punitive, additional and statutory

Damages under civil law are generally of a compensatory nature, while the punitive damages system is also widely used in the field of civil litigation. Like the compensatory damages system, it is of a compensatory and remedial nature, compensating the victim's losses and providing full relief for the victim. It is worth noting that the punitive damages system is different from the compensatory damages system. In addition to the general characteristics of civil damages, namely, providing relief and compensation to the victim, punitive damages also have their own unique basic characteristics of punitiveness, additionality and statutory nature.

First, the punitive compensation system is punitive. As the name implies, punitiveness is the most important basic characteristic of the punitive compensation system. The punitive compensation system is based on compensation, increases the compensation liability of infringing operators, and punishes and deters illegal operators through high amounts of damages. Punitive compensation is a mixed sanction measure that combines the characteristics of public law and private law. It can effectively integrate the punishment of infringement and the relief of victims, and achieve comprehensive justice of the law [2]. In the field of consumer rights protection, the purpose of establishing punitive compensation liability is to take severe punishment measures, so that illegal operators suffer severe punishment and have a deterrent effect on other operators, thereby further playing the role of preventing illegal behaviors from occurring in the entire social market business environment. Compared with the compensatory compensation system, this characteristic of the punitive compensation system not only plays a role in safeguarding the rights and interests of victims, but also achieves a balance of interests among consumers, operators, and society.

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Second, the punitive damages system is additional. Generally speaking, based on the principle of compensatory damages, civil compensation is based on compensatory damages. As long as it is sufficient to compensate the victim for the loss, it can meet the general civil compensation liability requirements. Punitive damages are different. They are additional compensation for losses on the basis of general civil compensation, so they are actually additional to the compensation liability. Because in the field of consumer rights protection, the behavior of some unlawful operators will bring serious life and health risks to consumers. If only general civil compensation is applied to such behavior, it will be difficult to achieve the legal effect of punishing infringing operators. The use of punitive damages liability means that additional compensation is made on the basis of general civil compensation. The purpose is to provide victims with more reasonable and fair relief.

Third, the punitive damages system is statutory. As an additional form of liability for civil compensation, the application of punitive damages must be carried out in accordance with the law and based on the provisions of relevant laws and legal provisions. Not all infringement cases can be subject to punitive damages, and the applicable conditions for punitive damages must be grasped. At the same time, in practice, judges should exercise discretion with caution, and should not increase the amount of punitive damages subjectively and arbitrarily. They should fully reason and demonstrate to avoid causing improper damage to the rights and interests of the defendant, so that the rights and interests are overly tilted towards consumer protection, which is not conducive to the balance of multiple interests such as operators and undermines market vitality.

2.2. The application of the punitive compensation system is of great value to the protection of consumer rights and interests

Legal value is "the positive significance or usefulness of the law reflected in the relationship between subject and object" [3]. The punitive compensation system has three inherent functions: relief, punishment and deterrence [4], and is of great value to the protection of consumer rights.

First, the application of the punitive compensation system provides adequate relief for damages to consumer rights. Punitive compensation not only compensates the direct losses suffered by the infringed consumers, that is, the losses of the purchased goods or services themselves, but also its multiple compensation fully compensates consumers for the indirect losses caused by the fraud of operators, such as the damage to life or health caused by the purchase of counterfeit and inferior goods. In this way, consumers receive more fair and just relief, and the interests of consumers are taken into consideration to the greatest extent, so that consumers are not only compensated in material terms, but also comforted in spirit. Therefore, the application of the punitive compensation system promotes the realization of substantive fairness and directly tilts the interests of consumers. At the same time, the application of the punitive compensation system also indirectly promotes consumers' awareness of rights protection. In the past, due to various reasons such as high rights protection costs, consumers' difficulty in obtaining more information, and low compensation amounts, consumers often hesitated to exercise their rights, which discouraged consumers' enthusiasm for rights protection and consumers' interests were not fully remedied and protected. The current "Consumer Rights Protection Law" explicitly stipulates that consumers whose rights are damaged have the right to obtain punitive compensation in multiples of losses, which to a certain extent stimulates consumers' motivation to protect their rights. From the perspective of law and economics, the benefits of exercising rights protection far outweigh the costs of rights protection, so consumers will naturally take the initiative to protect their rights. Therefore, the punitive compensation system promotes the enhancement of consumers' awareness of protecting their own rights and interests to a certain extent. Its high compensation greatly encourages consumers to fight against illegal acts that damage their own rights and interests, improves consumption levels and consumption capabilities, and is more conducive to the realization of the overall consumer interests of the whole society.

Secondly, the application of the punitive compensation system effectively combats and punishes illegal operators. In order to pursue more profits, operators often use unfair means to defraud consumers. The application of the punitive compensation system makes operators suffer huge penalties for their illegal behavior and bear high punitive compensation liability. From the perspective of rational people, the increase in the cost of breaking the law often makes it more costly than gain, so operators give up illegal behaviors that harm consumer rights. At the same time, the application of the punitive compensation system has a deterrent effect on all operators, which is conducive to curbing illegal behavior at the root and protecting consumer interests from damage.

Finally, the application of the punitive damages system is conducive to maintaining a good market environment. Based on the relief, punishment and deterrence functions of punitive damages, it helps to purify the market environment and maintain the harmony of the overall market environment. On the one hand, operators dare not wantonly infringe on the rights and interests of consumers. On the other hand, consumers also have the awareness of actively safeguarding their rights, achieving an effective balance of interests between consumers and operators, thereby maintaining a good market environment and promoting the realization of the overall social public interest, including consumer interests.

3. The Practical Dilemma of the Punitive Compensation System in the Consumer Rights Protection Law

In the field of consumer rights protection, the purpose of adopting the legal liability form of punitive damages is to increase the severe punishment of bad businesses that infringe on consumer rights, play a deterrent role, reduce the occurrence of such behaviors, and better maintain a clean consumer market environment. However, in actual judicial application, we have also found some problems. The courts often have completely different attitudes towards the application of punitive damages, and there are certain practical difficulties in the application of the punitive damages system.

3.1. The identity of the consumer has not yet been clarified

According to the law, the Consumer Rights Protection Law stipulates the applicable subjects of the legal liability for punitive damages. Only when certain subject conditions are met can a person be identified as a “consumer” as described in the law, and then enjoy the special legal rights of punitive damages. Therefore, identifying the subject identity of “consumer” is the most basic prerequisite for applying punitive damages. However, at present, there is no law in China that explicitly defines the definition of “consumer”. In practice, how to define “consumer” varies from court to court at different levels. Article 2 of China’s Consumer Rights Protection Law stipulates: “Consumers who purchase, use goods or receive services for their daily consumption needs shall be protected by this law (Article 2 of the Consumer Protection Law of the People’s Republic of China: “When consumers purchase, use goods or receive services for their daily consumption needs, their rights and interests are protected by this law; if not provided for in this law, they are protected by other relevant laws and regulations.”)”. It is not difficult to find that this article can be said to be merely stipulating that the behavior of consumers that meets certain conditions can be protected by the Consumer Rights Protection Law, but it does not define and clarify the concept of “consumer” itself. Then, due to the ambiguity of this provision, judges have different views on the behavior of “for living needs” in judicial practice. As a result, judges are unclear about the specific standards and conceptual definitions of consumer identity in the process of exercising their discretion, which ultimately leads to judicial disputes and confusion, and the phenomenon of different judgments in the same case occurs frequently. For example, moon cakes, jujube cakes and other gifts purchased by the unit on holidays are distributed to internal employees. Then, is it also for living needs for employees to eat them at home? At the same time, whether "those who know that they buy fake goods" that often appear in practice can be identified as consumers and whether punitive damages can be applied has also become a hot topic of close debate in academia and practice. There are great differences in opinions. These problems are difficult to resolve, which will be detrimental to the full application of the punitive damages system and thus affect judicial fairness and justice.

3.2. Unclear identification of fraudulent behavior by operators

At present, the provisions of China's Consumer Protection Law stipulate that if an operator has "fraudulent behavior", punitive damages shall be applied to bear corresponding responsibilities. However, in actual judicial practice, due to the lack of specific behavior measurement standards and methods, there are considerable obstacles in determining whether an operator has committed fraudulent behavior. Specifically, how to understand the term "fraud" and how to make reasonable judgments and interpretations in the judiciary are not clear in the law, and there are no relevant standards to define it. Therefore, there is a certain ambiguity in its application, making it difficult for the punitive damages system to play its due effective role in judicial practice. Generally speaking, "fraud" in the Civil Code is often manifested as a situation in which one party "intentionally informs false information" or "intentionally conceals the truth", causing the other party to fall into a wrong understanding [5]. However, as the intersection of civil law and economic law, the Consumer Protection Law does not make direct and clear provisions on the constituent elements and identification standards for the identification of "fraudulent behavior". Therefore, there has been controversy over whether the identification of "consumer fraudulent behavior" is applicable to the relevant provisions of the civil law. At the same time, in actual practice, different courts have different views on the identification and judgment of fraudulent behavior. Based on the analysis of 185 judgment documents of consumer rights protection cases involving fraudulent behavior from 2021 to 2024 retrieved from the China Judgment Documents Online, the following views are generally formed on the identification of fraudulent behavior of operators, as shown in the figure:

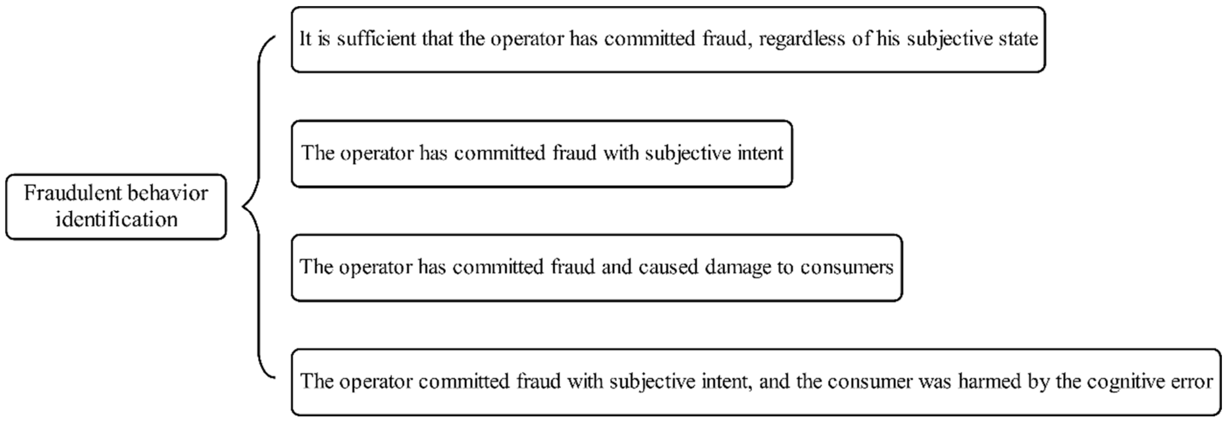

Figure 1. Fraudulent behavior identification
Source: China Judgment Documents Network

In the field of consumer rights protection law, on the one hand, there are different views in the academic community on the identification and summary of fraudulent behavior. Some scholars believe that consumer fraud can be roughly summarized into four categories in terms of its content: fraud about the goods or services themselves, price fraud, fraud in sales methods, and contract fraud [6]. Other scholars summarize the types of consumer fraud as quality fraud including product defects, quality and safety hazards, quality defects, etc., label fraud including product labeling that violates national standards, misleading publicity, false publicity, concealment of true information, etc., and price fraud such as illegal price labeling, discounts after price increases, and low-price bidding [7]. On the other hand, there are also completely different views on whether the scope of identification of fraudulent behavior should be broad or strict. One view is based on the perspective of consumers, believing that in market transactions, consumers are difficult to grasp more information than operators and are often in a weak position, so protection should be tilted towards consumers, and the scope of identification of fraudulent behavior should be appropriately expanded to constrain the behavior of operators to a greater extent. If the identification of fraudulent behavior is too strict and narrow, some unscrupulous operators may try every means to circumvent the law and it will be difficult to identify their fraudulent behavior, and they may develop a fluke mentality, which will ultimately make the punitive compensation system empty and difficult to play its due legal value. Therefore, the scope of identification of fraudulent behavior should be broader to better punish illegal operators and maximize the protection of consumers' legitimate rights and interests. If we consider the issue from the perspective of operators, then the scope of identification of fraudulent behavior should of course have more stringent restrictions, that is, general behavior is difficult to be identified as fraudulent behavior, so operators do not need to bear high punitive compensation, but the academic community generally holds a negative attitude towards this.

Therefore, in response to the unclear identification of fraudulent behavior of operators in the context of punitive damages, we urgently need to explore solutions and clarify the identification standards for fraudulent behavior in order to achieve a balance in the relationship between consumers and operators and better reflect the purpose and value of the design of the punitive damages system.

3.3. The calculation method of punitive damages is too rigid

China's Consumer Rights Protection Law stipulates that punitive damages should be determined based on the degree of infringement, maliciousness, and losses suffered by consumers. However, due to the lack of further detailed and clear calculation methods and specific amount ranges, the amount of compensation is prone to subjective deviations, which is inconsistent with the principles of fairness and uniformity of the law.

In terms of the amount of punitive damages, China's Consumer Protection Law first stipulates in Article 55, paragraph 1 that the amount of compensation shall be increased by three times the original price of goods or services, and 500 yuan shall be set as the minimum compensation standard. Secondly, Article 55, paragraph 2 of the Consumer Protection Law further stipulates that for serious and bad circumstances, the compensation shall be further increased, that is, it shall be determined according to the compensation of several times the actual loss [8]. These provisions reflect the legality and certainty of the amount of punitive damages. Although they are convenient for judicial application, they are too rigid and difficult to achieve fairness and justice. For example, in the actual consumer market, for high-priced goods such as automobiles, if the punitive damages calculation method stipulated in the law is applied, the huge amount of compensation generated often brings huge economic pressure to some operators, putting them in an unrelieved predicament, which will be detrimental to the development and prosperity of the market and make the socialist market economy lose its vitality. At the same time, for small and low-priced goods, the punishment intensity is often difficult to reach the cost of consumer litigation, so consumers are unable to protect their legitimate rights and interests. Therefore, we need to urgently formulate and improve the calculation method and standards for the amount of punitive damages and find a more reasonable model to achieve the substantive justice goals embodied in the application of punitive damages in the field of consumer protection.

4. The Path to Improve the Punitive Compensation System of the Consumer Rights Protection Law

4.1. Clarify the definition of “consumer”

In view of the importance of punitive damages in protecting consumer rights, it is recommended to clarify the definition and scope of “consumer” in the Consumer Rights Protection Law so as to accurately determine the objects to which punitive damages may be applied.

Clarifying the definition of the subject of “consumer” is a prerequisite for the application of punitive damages. At the legislative technical level, we should further improve the “Consumer Rights Protection Law” and clearly define the concept and meaning of “consumer” in the legal provisions, so as to deeply analyze the connotation of “consumption for living needs”, clarify the subject of behavior and the way of behavior, and better define the scope of the subject of “consumer”. At present, there are two standards for defining “consumer” in academia: objective behavior theory and subjective psychology theory. Referring to the current legal provisions and practices, the objective behavior theory should be adopted. As long as it is proved that the actor has purchased goods or services and then did not resell them, it can be determined that they are “for living consumption needs”, and the actor can be determined to have the legal status of “consumer” [9]. On this basis, we can also recognize that the “knowingly buying fake goods” that is the most controversial and widely discussed in practice is also “for living consumption needs” and has the status of consumer subject qualification. As for the concerns that this may be detrimental to market stability, disrupt market order, and waste judicial resources, we can further improve the construction of the punitive damages system from other aspects. For example, as will be mentioned below, the setting of punitive damages amounts must be improved and continuously adjusted to suit the needs of judicial practice and objective reality.

At the same time, it is recommended to issue relevant judicial interpretations of the Consumer Rights Protection Law to appropriately extend the scope of the subject identified as “consumers”. The author believes that “purchasing, using goods or receiving services for living needs” is not limited to individual consumers, and units can also be regarded as “consumers” in this law depending on the specific circumstances. “Purchasing, using goods or receiving services for living needs” is mainly to distinguish between business and profit situations. Some units purchase moon cakes, cakes, daily necessities, etc. or provide free services on holidays in order to provide benefits to employees. In this case, the items purchased by the unit are not for production or operation, but are enjoyed by individual employees of the unit, and should also be regarded as consumers.

4.2. Clarify the criteria for identifying fraudulent behavior by operators

From Article 55 of the Consumer Rights Protection Law, we know that the elements of the identification of fraudulent behavior of operators include the subjective psychology and objective behavior of operators. Therefore, the identification standards of fraudulent behavior of operators can be further clarified from these two aspects. First, the subjective “intention” of operators must be a constituent element of fraud. On this basis, it is recommended to include “gross negligence” in the fraudulent behavior of operators in providing certain goods or services, such as food and medicine, which are related to people’s livelihood. Because food, medicine and the life and health of consumers are closely linked, operators should perform a higher duty of care in the process of providing these products or services. Therefore, if consumers may suffer from the risk of life and health damage or have suffered damages due to their gross negligence, they should bear punitive compensation liability [10]. In addition, Article 55 of the Consumer Rights Protection Law has too narrow provisions on the subjective malice of operators. When revising the law in the future, it is recommended to include "taking advantage of others' danger" and "coercion" in the scope of application of punitive compensation, so as to deter operators and further regulate their behavior, so that the legitimate rights and interests of consumers can be more effectively protected [11]. Secondly, the objective fraudulent behavior carried out by the operator includes both the active fraudulent behavior of "deliberate fraud" mentioned above and the passive fraudulent behavior of inaction, such as "deliberate non-information". In addition, we should take into account the new consumption patterns, consumption forms, and consumption structures under the new situation, and suggest further expanding the scope of identification of consumer fraud, increasing efforts to constrain the behavior of operators, and imposing certain restrictions on the behavior of operators, which will play a good preventive role, thereby facing the new problems arising from the complex and ever-changing new social life and maintaining the stability of the consumer market.

Finally, in the protection of consumer rights, the author believes that due to its own special nature, the identification of the fraudulent behavior of the operator should be separated from the traditional civil law theoretical framework and incorporated into the scope of economic law for further consideration. The punitive damages it should deal with are also different from the compensation liability of the civil damage compensation principle. "Fraud" under the perspective of economic law has its particularity in terms of constituent elements and identification standards. It is recommended to formulate clear standards by issuing relevant interpretation regulations or implementation rules to reduce judicial difficulties, rather than directly applying relevant provisions of civil law. In addition, in the application process, judges still need to specifically examine whether the operator has subjective malice and fraudulent behavior, refine the identification standards of the operator's subjective malice, comprehensively consider the severity and bad nature of the illegal behavior, the consequences of consumer harm, the operator's violation of regulations, social impact and other factors, and comprehensively judge whether punitive damages are applicable, so as to ensure that the application of punitive damages can fairly and accurately reflect the degree of fault of the operator.

4.3. Set up relatively flexible rules for calculating punitive damages

In view of the application problems in real life caused by the unreasonable setting of the punitive damages amount stipulated in Article 55 of the Consumer Protection Law, in order to make the compensation fairer and more reasonable and balance the interests between consumers and operators, we need to scientifically and rationally improve the existing punitive damages system design.

On the one hand, it is recommended to establish a hierarchical application model for the establishment of punitive damages [12]. For goods or services, a distinction should be made between general and special. For general goods or services, a fixed model of "three times compensation" for the price and "two times compensation" for the loss should be adopted, while for special goods, a flexible range of maximum and minimum amounts should be set according to the specific actual situation. For example, for small-value goods and services, the minimum amount should not be lower than the cost of consumer prosecution, while for high-priced products such as automobiles, a maximum amount should be set, and the economic situation of the operator should be appropriately considered. Of course, we should not only pay attention to the amount of goods and services, but also fully consider their nature. If it is food or medicine, then the punishment of the operator should be strictly increased. Any illegal behavior that harms the life, health and safety of citizens is highly condemnable, so as to warn and deter the operator, which is conducive to purifying the market environment.

On the other hand, the design of the punitive damages system requires a complete application and supervision mechanism. Strengthen the unity of principle and flexibility in the judicial application of the punitive damages system, comprehensively consider multiple factors such as the victim's loss, the infringer's illegal income, the operator's own business conditions, and social effects for evaluation and discretion, so as to effectively punish illegal acts, prevent future violations, and promote compliance with legal norms [13]. At the same time, it is recommended to introduce a third party to supervise the application of the punitive damages system to avoid excessive or low compensation, so as to determine a more reasonable and fair amount of compensation and give full play to the value function of the punitive damages system.

5. Conclusion

The punitive compensation system established in Article 55 of China's Consumer Protection Law has intensified the punishment of illegal behaviors of operators, which is conducive to safeguarding the legitimate rights and interests of consumers as the disadvantaged party to a greater extent. However, in the actual application of the system in specific judicial practice, there are still problems such as the definition of consumer identity, the identification of fraudulent behavior, and the calculation of compensation amount that need to be solved urgently. Based on this, from the perspective of maximizing the protection of consumer rights and the overall interests of the economy and society, the connotation and extension of the subject identity of "consumer" should be clarified, the composition of consumer fraud should be fully identified, and the compensation amount should be set scientifically and reasonably. Only in this way can the punitive compensation system be further improved and better applied in the field of consumer rights protection, so as to enhance the vitality of the consumer market from a long-term perspective, stimulate domestic demand, and promote the improvement and development of the socialist market economy.

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