

# The Legal Regulation of Unfair Competition in the Era of Traffic Flow

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**Abstract:** On November 22, 2022, the State Administration of Market Supervision and Administration drafted the "Anti-Unfair Competition Law of the People's Republic of China (Revised Draft for Comments)" (hereinafter referred to as the Revised Draft) to solicit opinions from the public. This is another revision since the 'Anti-Unfair Competition Law' came into effect in 2017, and it is also a step forward in the context of the traffic era. The provisions of the 'Internet special provisions' are a major step forward in China's legislation to comply with social development. However, in today's traffic era, new types of unfair competition behaviors emerge in an endless stream. The law itself has a lag, and relying solely on 'Internet special provisions' cannot solve all unfair competition behaviors in the Internet field. Unfair competition in the Internet field has the dilemma of legal application. From the perspective of perfecting the special provisions of the Internet, standardizing the application of the general provisions and the special provisions of the Internet, and giving play to the role of the principle of multi-interest balance, we will promote the legal regulation of unfair competition in the era of traffic.

**Keywords:** Traffic; Anti-unfair Competition; Legal Regulation.

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## 1. Introduction

Today's era is the Internet era with developed science and technology, and the Internet era is coerced by traffic. Based on the current era background and Internet platform, traffic economy came into being. The flow economy has injected new development momentum into the traditional economic society. Traffic in the Internet era generally refers to the number of users on the platform and the number and popularity of page views accessed by platform users. Economic development is a double-edged sword, which can not only promote the prosperity and development of society but also hinder the progress of society if there is a lack of legal regulation to indulge its wanton development. In the era of traffic, the types and methods of unfair competition behavior are different from the traditional unfair competition behavior, but in essence, they are also inextricably linked.

## 2. Types of Unfair Competition in the Era of Traffic

Unfair competition in the market is generally regulated by the "Anti-Unfair Competition Law". "In the latest" Anti-Unfair Competition Law, "there are special Internet provisions that are compatible with the current traffic era, that is, Article 12 of the "Anti-Unfair Competition Law." The Internet special clause enumerates unfair competition behaviors, such as traffic hijacking, improper interference, incompatibility, etc., and the last clause is still the bottom clause. Combined with the case of unfair competition in the era of traffic, the typical Internet unfair competition behavior can be attributed to the following types.

### 2.1. Traffic Hijacking

In the era of traffic, the term 'traffic' is not only of digital significance, no longer limited to the number of users covering the platform, the number of page views, or the number of discussions and reprints of topics, but also a new digital business resource. The large number of running traffic

represents the economic benefits, which is a great temptation for any network digital platform. The traffic hijacking is highly operable, and the traffic of one platform can be introduced into other platforms through technical means, which is the loss of economic benefits for the platform. Therefore, traffic hijacking in real life is often considered to be an act of unfair competition.

In judicial practice, common traffic hijacking mainly includes domain name hijacking, software hijacking, website insertion behavior, etc(Yan, 2023). However, if it is triggered by the user's initiative, whether the page jump can be identified as unfair competition behavior should be analyzed according to the specific situation. Typical cases can be seen in the case of unfair competition between Hangzhou Zhweifeng Information Technology Co., Ltd. and Beijing Jingdong Sanbai Lu Shidu E-commerce Co., Ltd. According to Articles 2 and 12 of the "Anti-Unfair Competition Law," Zhweifeng Company made profits by hijacking the user traffic of Jingdong Company, which damaged the interests of Jingdong Company and constituted unfair competition.

### 2.2. Unfair Data Capture

Data crawling behavior is an Internet technology behavior in which Internet companies analyze web resources through technical means such as web crawlers and integrate relevant data information. The use of web crawler technology for data capture, behavior itself is objective and neutral, but improper data capture behavior will cause chaos in the competition order, resulting in unfair competition(Kexin, 2023).

In judicial practice, data grabbers usually share data resources in the form of a "crawler technology agreement." Crawler technology itself promotes data grabbing and data analysis, but unilateral improper data grabbing behavior makes it easy to form an industry data monopoly in the industry, which also undermines the basic principles of competition and violates the original intention of technology research and development. Typical cases show that Yidu Huida Education Technology (Beijing) Co., Ltd. has unfair competition disputes. Guangzhou Aipin Company and

Shenzhen Aipin Company obtain relevant data resources through data capture technology, and these kinds of rights and interests are protected by law. The improper use of such data resources for their profit by Xueersi Company, Good Future Company, Yidu Company, Good Future Group, and Xueersi School belongs to unfair competition, which destroys the competition order and business ethics of the industry.

### 2.3. Malicious Incompatibility

Malicious incompatibility needs to meet two conditions at the same time, namely 'malicious' and 'incompatible'. Malicious is a subjective psychological state, which can be understood as its behavior knowingly damaging the legitimate rights and interests of other operators and social public interests in unfair competition. 'Incompatibility' itself is a professional term in the field of information technology. In the later period, with the development of the Internet, its conceptual connotation expanded to the field of law, which can usually be understood as 'two choices' and so on (Yu, 2022). Malicious incompatibility refers to the unfair competition behavior of network platform operators using network technology to cause other similar operators to operate with difficulty or unable to operate and exclude later operators. Typical cases can be seen in Chongqing Zhongcheng Network Technology Co., Ltd. and Shanghai 2345 Mobile Technology Co., Ltd. other unfair competition disputes.

### 2.4. Other Types

In the era of traffic, in addition to the above common traffic hijacking, improper data capture, malicious incompatibility, etc., there are other types of Internet unfair competition behaviors such as software bundling, advertising shielding, and non-standard webcast marketing (Rongbiao, 2023). Software bundling, that is, when users download software, they must download another or several software, otherwise, they cannot download the target download software, and there is a bundling relationship between these software. Advertising shielding, that is, network platform operators gain revenue by providing online advertising space, while advertising providers can increase user views and search times in the form of increasing keywords. Similar keywords are easy to mislead consumers into commercial confusion, resulting in unfair competition. Non-standard webcast marketing is not only easy to involve false publicity, but also extremely easy to involve the exclusion of similar operators, forming vicious competition (Ruping, 2023). In addition to the above unfair competition, many other types of Internet unfair competition cannot be listed one by one. The last paragraph of the Internet special clause is the miscellaneous clause, which is summarized in the form of a general blank. This is not only because of the complexity of real judicial practice but also because of the consideration of respecting judicial discretion.

## 3. Difficulties in the Application of the Law of Unfair Competition in the Era of Traffic

Although Article 12 of the Anti-Unfair Competition Law is a special fund for the Internet, it provides a direct legal basis for network operators and law enforcers to abide by the law and enforce the law, but it also has many problems such as incomplete content, which makes the unfair competition

behavior in the era of traffic difficult to apply the law. With the rapid development of the Internet, there are various acts of unfair competition in the era of traffic. It is difficult to solve some acts of unfair competition in judicial practice only by Article 12 of the Anti-Unfair Competition Law. This chapter explores the dilemma of the legal application of unfair competition in the era of traffic and reflects and summarizes from the perspectives of imperfect legal norms, unclear application boundaries of general provisions and Internet special provisions, and difficulties in identifying traffic infringement subjects.

### 3.1. Imperfect Legal Norms

Article 12 of the Anti-Unfair Competition Law of the People's Republic of China in 2017 Operators engaged in production and operation activities through the Internet should abide by the provisions of this law... Before the introduction of the Internet special fund, the unfair competition behavior in the era of traffic was generally based on the application of the general terms, that is, 'Anti-Unfair Competition Law' Article 2. The structure of the "Internet special clause" is a four-paragraph clause. The first three paragraphs specifically regulate unfair competition, and the last paragraph is the miscellaneous clause. However, only three are not enough to deal with the endless Internet unfair competition. If the specific unfair competition behavior is listed, one is to increase the tediousness of the law and the work pressure of the judicial staff, and the other is that the law is too regulated to limit the exercise of the judge's discretion.

There is no prominent regulation and interpretation of the words "malicious" and "improper" in the "Internet special clause." In judicial practice, the use of technical means to carry out unfair competition on the network platform has concealment and complexity. From the perspective of technical means, technical means are neutral and objective (Moran, 2023). Therefore, it is complicated to qualitatively identify the "unfair" nature of competition and the technical means involved in unfair competition according to the "Internet special clause." This leads to the fact that in judicial practice, the application of general provisions is more extensive and numerous than the application of Internet special provisions, and the wide application of general provisions greatly reduces the effectiveness of Internet special provisions. It can be seen from this that although the introduction of Internet special clauses conforms to the development of the traffic era, it is also a great progress of China's law in the Internet era. However, based on the lagging nature of the law, it cannot be fully applied to the development of the ever-changing traffic era, nor can it regulate the endless stream of new types of unfair competition in all aspects.

### 3.2. The Application Boundary between General Provisions and Internet Special Provisions is not Clear.

The general provisions of the 'Anti-Unfair Competition Law' apply to all acts of unfair competition, with a high degree of generality and conciseness, while the structure of the 'Internet special provisions' is 'general + specific provisions + miscellaneous provisions'. Unfair competition in the Internet field can be regulated by 'Internet special provisions'. However, in judicial practice, the general provisions are more frequently applied than the miscellaneous provisions. The main reason for this dilemma in the application of the law is that the applicable boundary between

the general provisions and the special provisions of the Internet is not clear, and the two are prone to confusion.

The general clause is in the case of gaps in the law, the judge applies the general clause according to the experience of judicial law enforcement, which mainly plays a role in making up for it and has strong flexibility. However, because the general clause has a high degree of generality, this remedy is only accidental and should not be regarded as normal(Wenlong, 2023). Before the introduction of the ' Internet special provisions ', the general provisions were used to regulate this new type of unfair competition. The long-term application habits have led to the fact that the frequency of application of the ' Internet special clause ' in judicial practice is significantly lower than that of the general clause, even if it has been issued for many years. The extensive application of the general clause makes the ' Internet special clause ' unable to play its due role and effectiveness(Rongbiao, 2023).

There are some deficiencies in the ' Internet special clause ' itself. The first three paragraphs of the Internet special clause specifically stipulate three kinds of unfair competition behaviors. Although these three paragraphs are condensed and summarized from a large number of unfair competition behaviors in practice. The most common, the most common, and the most widely applicable law are the three kinds of unfair competition behaviors, but the fourth paragraph is used to apply the other types of unfair competition behaviors other than the three kinds of unfair competition behaviors, and its applicability is slightly thin. Although the miscellaneous provisions are flexible, they are not specific and clear enough.

Therefore, combined with the above content, it can be seen that in judicial practice, due to the long-term and extensive application of general provisions, applicable habits are formed, and the general provisions themselves are highly general and applicable. At the same time, the application of the fallback clause of the ' Internet special clause ' is not clear, which requires judges to spend a lot of energy and time in hearing cases and applying the law to judge whether the case can be applied to the law. This leads to the fact that when a new type of unfair competition occurs, the judiciary is more inclined to apply the general clause, which blurs the applicable boundary between the general clause and the Internet special clause, resulting in difficulties in the application of the law.

### **3.3. Difficulty in Identifying the Subject of Traffic Infringement and the Subject of Damage**

The unfair competition behavior mentioned above in the era of traffic is hidden, and the accompanying problem is that the subject of traffic infringement is also hidden. With the rapid development of the Internet, infringement means and technology are updated, and new types of unfair competition are also changing(Gangcheng, 2023). A major feature of the traffic era is the massive amount of information and users. The huge amount of user subjects makes it difficult for the victims of traffic infringement to accurately find the specific infringement subjects, which makes it even less difficult to find the infringement subjects hidden behind the technical means.

In addition to the tort subject, the loss of the damaged subject is also difficult to determine a specific amount of loss in the era of traffic. In the era of flow, the flow is money, and the flow of operation is a huge economic benefit. How to identify the loss, the standard of the loss, the amount of

compensation for the loss, and other problems follow. Although the current ' Anti-Unfair Competition Law ' Article 17. The amount of compensation for the loss of traffic infringement is determined by the statutory amount, the actual loss, and the illegal income obtained by the infringer. However, in judicial practice, the loss suffered by the damaged subject, the time clue of the damage, and the illegal income obtained by the infringing subject are really difficult to determine. In most cases, the amount of compensation for the loss is subject to the statutory amount. Under this standard, although the judge has greater discretion, the amount of statutory compensation is not enough to produce deterrence compared to the actual amount of money lost. It is difficult to reflect the majesty of the law and give the infringer a warning and punishment.

## **4. Legal Regulation of Unfair Competition in the Era of Traffic**

Given the dilemma of the legal application of various unfair competition behaviors in the era of traffic, this paper will improve the legal regulation of unfair competition in the Internet field from the aspects of perfecting the special provisions of the Internet, standardizing the application of general provisions and special provisions of the Internet, and giving full play to the role of the principle of balance of interests, to promote the development and improvement of China's legal system and promote the prosperity and development of China's Internet economy.

### **4.1. Improve the Special Provisions of the Internet**

#### **4.1.1. Improve the Specific Requirements of the Internet Special Provisions**

The fourth paragraph of Article 12 of the ' Anti-Unfair Competition Law ' is called the miscellaneous provisions of the special provisions of the Internet, but its content is highly general, and the expression of the provisions is too rough and general, not ' delicate '. In this regard, the specific constituent elements of the applicable miscellaneous provisions can be added to supplement the unfair competition behaviors stipulated in the first three paragraphs.

From the content expression of the clause, it can be seen that the Internet special clause is to regulate unfair competition behavior in the Internet field from the perspective of the operator. The content of the law can be optimized by increasing the beneficiary of the Internet special clause, that is, the consumer's point of view. Article 1 of the Anti-Unfair Competition Law of the People's Republic of China, this Law is formulated 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. China's "Anti-Unfair Competition Law" is also one of the legislative purposes to protect the legitimate rights and interests of consumers. Therefore, the protection of the legitimate rights and interests of consumers should be paid attention to(Qingyun, 2022).

#### **4.1.2. Improve the Judicial Interpretation of Internet Special Provisions**

The content of the "Internet Special Provisions" only lists three kinds of unfair competition behaviors in the specific Internet field. The listed content is really limited and the coverage is narrow, so it is difficult to effectively regulate

various new types of unfair competition behaviors. Although there are miscellaneous provisions, the content of miscellaneous provisions is too broad, which brings great pressure to judicial practice. Given the problems in the legislative provisions, the existing deficiencies can be made up by issuing judicial interpretations of the special provisions of the Internet. By issuing relevant judicial interpretations, we will reflect and summarize the new type of unfair competition behavior, sort out the constituent elements and identification standards of the new type of unfair competition behavior, and form new judicial guidance cases, to retain the space for the new type of unfair competition behavior that may occur in the future (Yuanyuan et al.).

At the same time, through the release of judicial interpretation to explain the specific content of the Internet special provisions, such as the word 'malicious'. "Malicious" is a subjective psychological state. The identification of "malicious" is also determined by the subjective psychology of the judiciary. Each person's growth experience and three views are different, which leads to different standards and degrees of identification of "malicious." If there is no clear identification standard, this will greatly increase the pressure on judicial staff, and there will be different judgments in the same case (Qingyun, 2022). Therefore, issuing corresponding judicial interpretations to determine specific and operable identification standards, will greatly promote the improvement of Internet special provisions and promote the application of laws to regulate new unfair competition behaviors.

## **4.2. Regulating the Application of General Clauses and Internet Special Clauses**

### **4.2.1. Clarify the Order of Application of General Clauses and Internet-Specific Clauses**

There should be a certain order of application between general provisions and special provisions. The general provisions are highly general and can be applied to all acts of unfair competition. Although the miscellaneous provisions of the Internet special provisions are also widely applicable, they are only limited to unfair competition in the Internet field. According to its nature, the special provisions of the Internet should be special laws and should be given priority. For acts of unfair competition that fall within the scope of application of the "Internet special clause," special clauses should be actively applied. For acts of unfair competition that cannot be applied or do not fall within the scope of the special law, general clauses can be applied. However, the general clause only supplements the Internet special clause, and reliance on the general clause should be avoided in judicial practice.

### **4.2.2. Restrictive Interpretation of Miscellaneous Provisions**

The provisions of the miscellaneous provisions are too broad, which leads to the application of the law in judicial practice is too extensive. It should be interpreted restrictively, and its application should be limited to the scope stipulated by the miscellaneous provisions, strictly following the legislative purpose and original intention of the special provisions of the Internet (xiufen, 2022). At the same time, the miscellaneous provisions and the first three paragraphs of the Internet special provisions are in a parallel position, and the vicious and evil consequences of the unfair competition behavior stipulated by them should be the same as the unfair competition behavior stipulated in the first three paragraphs.

## **4.3. Play the Role of the Principle of Balance of Multiple Interests**

Article 1 of the Anti-Unfair Competition Law of the People's Republic of China. This Law is enacted 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. It stipulates that it protects the legitimate rights and interests of operators and consumers, and in judicial practice, judicial staff should also take into account the social and public interests. Therefore, the unfair competition in the era of traffic mainly involves the interests of the three parties, namely, the public interest, and the legitimate interests of operators and consumers. To balance the multiple interests of these three parties, the principle of balance of interests is crucial. Otherwise, there will be a phenomenon of unbalanced multiple interests and multi-party conflicts of interest in judicial practice (Feifei, 2022). However, in the market environment, one party will benefit from one party will be damaged. How to create a win-win situation or achieve a balance of interests, it is necessary to give full play to and correctly apply the principle of balance of multiple interests. The principle of balance of interests should balance the interests of social public interests, operators, and consumers, and form a relative balance of interests among the three, to achieve the minimum loss and the maximum benefit, which requires a balance of interests among the three.

First of all, the social public interest is much higher than the interests of operators and consumers. Whether it is the content of the law or the judiciary in the review of new acts of unfair competition, we must first consider the social and public interests. The principle of balance of interests includes the meaning of "specific analysis of specific issues." In the era of traffic flow, the investigation and examination of social public interests should also be combined with the background of the times.

Secondly, the interests of operators can be measured from two aspects. One is the implementation of unfair competition to damage the legitimate rights and interests of other operators of the operator's interests; the second is the interests of operators who have suffered losses due to the implementation of unfair competition by other operators. There is no difference between the two interests (Qingyun, 2022).

Finally, the legitimate rights and interests of consumers are not highlighted in the 'Internet special law'. In judicial practice, judges do not fully protect the legitimate rights and interests of consumers in the trial of unfair competition. Due to the particularity of the interests of consumers, the judge in the review of unfair competition, in addition to the primary consideration of social and public interests, the second should take precedence over the consideration of the legitimate interests of consumers. Protecting the legitimate rights and interests of consumers is part of the current 'Anti-Unfair Competition Law' that needs to be revised with extreme attention. Therefore, under the effect of the principle of multi-interest balance, we can consider giving consumers the right to collective action. Based on the environment of the traffic era, the implementation of unfair competition will eventually affect consumers. Consumers are at a disadvantage and their legitimate rights and interests will be damaged to a certain extent. Giving consumers the right to collective action is not

only helpful to the regulation and supervision of the Internet competition order but also a new way for consumers to safeguard their legitimate rights and interests(Meihan, 2022).

Therefore, we should give full play to the principle of multi-interest balance, first consider the social and public interests, give priority to the interests of consumers, and then consider the interests of operators, to achieve the balance of interests among the three parties and promote the legal regulation of unfair competition in the era of traffic.

## References

- [1] Feifei, W. (2022). Research on the legal regulation of Internet unfair competition.
- [2] Gangcheng, Z. (2023). The Legal Regulation of "Traffic Infringement" Unfair Competition Behavior. *Modern Marketing (Next Issue)* (07), 164-166.
- [3] Kexin, M. (2023). Research on the Identification Standard of Data Capture Unfair Competition Behavior.
- [4] Meihan, H. (2022). Legal Regulation of Unfair Competition Behavior on the Internet.
- [5] Moran, Z. (2023). On the Legal Regulation of Platform Unfair Competition.
- [6] Qingyun, P. (2022). Research on Legal Regulation of New Internet Unfair Competitions.
- [7] Rongbiao, L. (2023). Research on the Legal Issues of Identifying New Unfair Competition Behavior on the Internet.
- [8] Ruping, C. (2023). Legal Regulation of Unfair Competition in Live Broadcasting with Goods. *Journal of Shanxi Political Science and Law Management Cadre Institute*, 36(02), 54-57.
- [9] Wenlong, L. (2023). The application and improvement of the Internet section of the Anti-Unfair Competition Law. *Price Regulation and Anti-monopoly in China* (05), 49-52.
- [10] xiufen, T. (2022). Research on the path of judicial application of new Internet unfair competition practice.
- [11] Yan, W. (2023). Regulation Path and Improvement of Anti-unfair Competition Law on Traffic Hijacking.
- [12] Yu, S. (2022). Research on Competiton Law Regulation of Malicious Incompatible Behavior on Internet Platforms.
- [13] Yuanyuan, W., Songhan, W., & Yujie, Z. (2022-06-06). Research on the Legal Issues of the "Internet Unfair Competition Act" Clause. B03.