

Fraud in the Consumer Protection Law: Reconstruction of Rights, Obligations, and Burden of Proof Based on Fundamental Legal Relationships

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Consumer Protection Law; fraud; merchants' disclosure obligations; prima facie evidence

Abstract

This study addresses the judicial application challenges in determining fraud under China's Consumer Protection Law (hereinafter referred to as the "Consumer Law"), including inconsistent constitutive requirements and an imbalanced burden of proof. Starting from the dual nature of fundamental legal relationships, this research systematically reconstructs the system of rights and obligations and the rules of burden of proof for fraud under the Consumer Law. The study finds that the traditional theory's singular characterization of Consumer Law relationships as civil in nature leads to inherent conflicts between consumer protection objectives and legal application rules. By clarifying that the Consumer Law possesses the dual attributes of both civil legal relationships and economic legal relationships, this study proposes the following: regarding constitutive requirements, it specifies that the determination of fraudulent acts must incorporate the four elements of "fraudulent act + subjective intent + erroneous understanding + causation," integrates the departmental regulation "Measures for Penalizing Acts That Infringe on Consumer Rights" into the sources of adjudication, reconstructs the system of merchants' disclosure obligations with the consumer's right to know at its core, and clarifies that a violation of disclosure obligations must meet the constitutive requirements of fraud to be deemed fraudulent; regarding the burden of proof, it establishes a burden-of-proof mitigation rule centered on prima facie evidence to resolve the difficulty consumers face in providing evidence.

Research Article

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1. Introduction

1.1 Background and Issues

The 2013 revised Consumer Rights Protection Law of the People's Republic of China (hereinafter referred to as the "Consumer Law") Article 55 grants consumers the right to claim punitive damages ("refund plus triple compensation") when subjected to "fraudulent acts" by merchants(Xiao, 2020). However, due to inconsistencies in the application of constitutive requirements for fraud under the Consumer Law, discrepancies in judicial sources, ambiguous scope of merchants' disclosure obligations, and non-uniform and unreasonable evidentiary standards, fraud has become difficult to determine and prove. As a result, punitive damages often fail to be realized. This not only undermines the Consumer Law's role in protecting consumer rights and regulating the order of the socialist market economy but has also led to numerous contradictory rulings in similar cases, further disrupting the uniformity of legal order. (Zhan & Liu, 2023)

1.2 Literature Review and Research

Existing studies on the punitive damages ("refund plus triple compensation") under the Consumer Law are mostly confined to purely debating the public or private law nature of the Consumer Law without guiding practical application, independently discussing the constitutive requirements of fraud under the Consumer Law without integrating them with its legal nature and burden of proof, isolated examinations of the scope of merchants' disclosure obligations without linking them to the constitutive requirements of fraud, and vague assertions about the necessity of shifting the burden of proof without providing sufficient justification or concrete implementation pathways(Yang, 2010, pp. 7-26). Consequently, these studies fail to offer judicial practitioners persuasive arguments or clear guidance, leaving the determination of fraud under the Consumer Law in a state of confusion in practice.

1.3 Research Objectives and Approach

To address these challenges, this paper integrates civil law and economic law perspectives, using the characterization of fundamental legal relationships as the starting point to analyze the causes of confusion in determining fraud under the Consumer Law. On this basis, it reconstructs the substantive rules and burden-of-proof framework for fraud under the Consumer Law, aiming to provide clear judicial guidance.

The paper is structured as follows: Part 2 examines the current state of confusion in determining fraud under the Consumer Law; Part 3 analyzes the causes of this confusion; Parts 4-6 propose specific solutions, respectively addressing the reconstruction of constitutive requirements, the application of legal sources, the system of disclosure obligations, and the mitigation of the burden of proof; Part 7 concludes by summarizing the findings.

2. Current Chaos in Identifying Fraud Under the Consumer Law

The term "Consumer Rights Protection Law" is generally understood in both broad and narrow senses. In the narrow sense, it refers solely to the *Consumer Law*; in the broad sense, it encompasses all legal norms enacted and promulgated by the state that serve the function of protecting consumers. Unless

otherwise specified as the *Consumer Law*, this paper adopts the broad definition(Xie, 2003).

Currently, there is no uniformity in the constitutive requirements and standards for identifying fraud under the Consumer Law. Regarding the constitutive requirements alone, three different viewpoints exist, all of which are applied in judicial practice, reflecting the chaotic application and inconsistent adjudication standards for identifying fraud under the current legal framework(Xiao, 2020).

The first view, representing the prevailing theory, holds that the constitutive elements of fraud under the Consumer Law should adopt the four requirements stipulated in Article 68⁴ of the Supreme People's Court's Opinions on Several Issues Concerning the Implementation of the General Principles of the Civil Law of the People's Republic of China (Trial Implementation) (hereinafter referred to as the "Opinions")(Wang, 2014): the fraudulent party has an intent to deceive, the fraudulent party has committed a fraudulent act, the deceived party has fallen into erroneous judgment due to the fraud, and the deceived party has made a declaration of intent based on such erroneous judgment. Scholars supporting this view argue that since the Supreme Court has already provided an interpretation of "fraud," this interpretation should apply. Moreover, as the Consumer Law is a special law within civil law, the general provisions of civil law should govern its application. The second view adopts a three-element theory, which does not require proof of the fraudulent party's subjective intent. Instead, it only necessitates a fraudulent act, the deceived party's erroneous judgment, and the deceived party's erroneous declaration of intent. The third view advocates a two-element theory, requiring only the merchant's subjective fault and the commission of a fraudulent act, without considering whether the consumer was misled into erroneous judgment or whether their declaration of intent was based on such judgment(Wang, 1998).

In practice, the prevailing four-element theory is often combined with the "beyond a reasonable doubt" standard of proof to determine whether fraud under the Consumer Law has occurred. However, this approach frequently results in the merchant's "subjective intent" being difficult to establish, thereby precluding the application of the "refund plus triple compensation" punitive damages. This effectively "shuts the door to compensation relief for the vast majority of fraud victims."

3. Reasons for Chaotic Identification: Misclassification of Fundamental Legal Relationships

The fundamental legal relationship determines the rights-obligations framework and the burden of proof in litigation procedures. Therefore, before discussing the specific rights-obligations relationship and burden of proof regarding fraud under the Consumer Law, it is essential to clarify its fundamental legal relationship.

3.1 Characterization of the Fundamental Legal Relationship in the Consumer Law: Dual Nature of Civil and Economic Legal Relationships

As mentioned earlier, there are three main perspectives on the constitutive elements of fraud under the current Consumer Law. The four-element view is essentially based on the premise that Article 55 of the Consumer Law falls under civil legal relationships(Wang, 2013). The two-element and three-element views primarily argue that due to the asymmetry of information and power between consumers and businesses, fraud should be categorized under anti-unfair competition law. Some scholars further contend that the legal relationship between consumers and businesses is primarily a civil legal relationship, but one where the state provides special remedies. The author agrees with this view, recognizing that the legal

relationship constitutes both civil and economic legal relationships. In the United States, most state consumer fraud statutes do not require proof of the merchant's subjective intent, reflecting the features of economic law.

3.2 Distinct Regulatory Scopes of the Dual Fundamental Legal Relationships in the Consumer Law

1. Priority of Special Law Over General Law: The rights-obligations framework under the economic legal relationship should supersede those under civil law. The fundamental legal relationship shapes distinct frameworks. In civil legal relationships, the duty of disclosure is relatively general. Under the Consumer Law, the imbalance necessitates special protection for consumers. Violations may constitute "fraudulent acts" under Article 55. The consequences of fraud differ between civil law and the Consumer Law. The author argues that the burden of proof should also differ (Wang, 2023).

2. Civil Legal Relationship in the Consumer Law as a Foundation: Article 4 of the Consumer Law establishes behavioral norms reflecting civil legal characteristics. Regarding legal liability, the relationship constitutes both civil and economic legal relationships. The punitive "refund plus triple compensation" under Article 55 transcends civil law principles.

3.3 Root Cause of Current Chaos: Application of Incorrect Fundamental Legal Relationship

The chaotic identification stems from applying civil law frameworks while ignoring the economic law nature of consumer relationships. The prevailing four-element approach with "beyond reasonable doubt" standard belongs to civil law framework. Civil law imposes strict fraud regulations because revocation rights may invalidate contracts. This maintains transactional security but is inappropriate for consumer fraud cases where equality is absent. The Consumer Law's punitive damages serve distinct purposes from civil liability systems (Wan, 2017). Applying civil law standards to consumer cases contradicts legislative intent and harms consumer interests. Judicial practice should realign with the economic law nature of consumer relationships by adjusting constitutive requirements and proof standards accordingly.

4. The Legal Basis for "Refund Plus Triple Compensation" Punitive Damages in Consumer Law Fraud Cases

4.1 Establishing Constitutive Elements Based on Economic Legal Relationships

As previously discussed, the mechanical application of civil law fraud standards to determine fraud under the Consumer Law has deviated from the foundation of economic legal relationships regulated by the Consumer Law, resulting in incompatibility and contravention of the legislative intent of the Consumer Law. Therefore, the author argues that it is necessary to reconstruct the rights-obligations framework and burden of proof based on the economic legal relationships governed by the Consumer Law (Qian & Liu, 2014). The author maintains that the constitutive elements of fraud under the Consumer Law can still follow the four-element framework (fraudulent act, fraudulent intent, misconception, and causation), but these elements should be established on the basis of economic legal relationships, with their specific content and meaning differing from those in civil law.

Regarding fraudulent acts: According to the four-element framework, the primary forms of fraudulent acts are "intentional provision of false information" and "intentional concealment of material

facts by parties with disclosure obligations.” As mentioned earlier, the extent of disclosure obligations differs between civil law and the Consumer Law. Civil law imposes relatively lower disclosure requirements, while the Consumer Law sets higher standards. A business’s violation of consumers’ right to know or breach of disclosure obligations may constitute fraud under the Consumer Law. However, the specific boundaries and standards for disclosure obligations under the Consumer Law will be detailed in the chapter on “Merchants’ Disclosure Obligations.” (Prütting, 2006)

The question of whether fraudulent intent should be required has generated considerable debate in both practice and academia, with three main perspectives emerging: The first and second views both argue that the Consumer Law does not require intent - the first because the Consumer Law, as a special law, should apply strict liability without considering the merchant’s subjective state; the second because consumers’ limited capacity for evidence collection makes it difficult to prove merchant fraud. The third view contends that fraudulent intent should be required under the Consumer Law, as the Supreme Court’s clear interpretation should not be disregarded, and the law should not unconditionally favor consumers (Pan, 2018).

The author believes that the Consumer Law should retain the intent requirement. Article 1 of the Consumer Law states its legislative purpose as protecting consumer rights, maintaining socioeconomic order, and promoting healthy development of the socialist market economy, while Article 4 establishes the principle of good faith that both businesses and consumers must follow. Thus, the intent requirement for fraud under the Consumer Law derives from these legislative purposes and guiding principles - punishing intentional misconduct while addressing non-intentional cases separately. The first view’s weakness lies in excessively increasing merchants’ obligations. The punitive damages provision in Article 55 of the Consumer Law serves to deter and punish dishonest business practices. Merchants acting intentionally deserve punishment, while those without fraudulent intent but merely at fault should not face excessive penalties. As for the second and third views, the author attributes the difficulties in evidence presentation and unreasonable burden of proof to the misalignment of rights-obligations frameworks and burden of proof with their proper legal foundations, as critiqued earlier. The author advocates establishing these frameworks based on economic legal relationships. Consequently, traditional perspectives either excessively protect consumer interests or rigidly adhere to misaligned civil law frameworks, both failing to reflect the proper meaning of economic legal relationships under the Consumer Law. We must not deny the proper rights-obligations framework of the Consumer Law due to these misalignments. The current unreasonable burden of proof issues will be reconstructed in the “Burden of Proof Mitigation” chapter based on the economic legal relationships of the Consumer Law (Rosenberg, 2018).

Regarding misconception and causation, the author argues that both elements must be present. According to the legislative purposes of protecting consumers’ right to know and right to choose, along with the principle of good faith, the Consumer Law protects honest, good-faith consumers. First, concerning misconception: if consumers were not actually misled - meaning they made purchasing decisions knowing about false claims or intentional concealment - they cannot claim to have been deceived or that their right to know was violated. Such mutually consensual transactions should not trigger punitive damages under Article 55. Second, regarding causation: even if consumers held misconceptions, these must have materially influenced their decisions (Ma, 2014). In other words, insignificant misconceptions that consumers disregard and that would not affect their ultimate decisions cannot constitute violations of consumers’ right to choose, nor can they establish “fraud” warranting protection under the Consumer Law, thus precluding punitive damages. Furthermore, neglecting both misconception and causation could encourage “knowing purchase of counterfeit goods” claims. While supporting professional anti-fraud

activists' claims for punitive damages might help compensate for insufficient government market supervision, deter merchant fraud, and promote better business practices under the Consumer Law's purposes of protecting consumers and maintaining socioeconomic order, such "knowing purchases" themselves violate the good faith principle in the Consumer Law. The law should not combat dishonesty with dishonest means. Therefore, both misconception and causation are indispensable elements.

5. Disclosure Obligations: Construction Centered on Consumers' Right to Know

The current determination of fraud under the Consumer Law exhibits considerable confusion regarding merchants' disclosure obligations.

First, merchants' disclosure obligations remain unclear, unsystematic, and inconsistent with the obligation system centered on consumers' right to know, leading to divergent legal applications.

Second, even for established disclosure obligations, whether their violation constitutes fraud, what degree of violation qualifies as fraud, and how violations connect with the constitutive elements of Consumer Law fraud all demonstrate significant confusion.

5.1 Inconsistent Standards for Disclosure Obligations in Current Judicial Practice: The Division Between Two Major Obligation Systems

As mentioned earlier, civil legal relationships between equal parties do not impose extensive disclosure obligations, whereas the Consumer Law, based on economic legal relationships, grants consumers a right to know absent in civil law and imposes heavier disclosure obligations on merchants to protect disadvantaged consumers(Lu, 2014). Therefore, whether merchants have fulfilled disclosure obligations often serves as the premise for determining if they have committed the "fraudulent act" element under the Consumer Law.

However, in the current Consumer Law framework, while consumers' right to know originates from the Consumer Law itself, merchants' disclosure obligations mostly derive from administrative regulations and normative documents, typically with narrower coverage than the right to know. This creates a fragmented and unequal relationship between the two, because "information that should be disclosed based directly on consumers' right to know does not necessarily correspond to content derivable from merchants' disclosure obligations."

Consequently, current judicial practice has developed two distinct standards for determining whether merchants' conduct violates disclosure obligations in "fraudulent acts": one based on infringement of consumers' right to know, and another based on violation of administrative regulations and normative documents.

5.2 Establishing a Disclosure Obligation System Centered on Consumers' Right to Know, Supplemented by Administrative Regulations and Normative Documents

From a rights-obligations perspective, under the rights-based view, "rights are the ends, obligations the means; the purpose of legal obligations is to safeguard the realization of rights." Thus, "establishing merchants' disclosure obligations aims to protect consumers' right to know, with the right determining the content and function of obligations." Therefore, consumers' right to know and merchants' disclosure

obligations should form a unified system(Liu & Wang, 2016).

The author argues that the scope of merchants' disclosure obligations should center on consumers' right to know, supplemented by administrative regulations and normative documents. As discussed, fundamental legal relationships determine rights-obligations frameworks, and rights in turn determine obligations. Hence, merchants' disclosure obligations should be defined by consumers' right to know arising from economic legal relationships under the Consumer Law. Administrative regulations and normative documents provide supplementary, categorized obligations that beneficially reinforce consumer protection.

However, the right-to-know-centered obligations must have reasonable boundaries. Without limits, excessively burdensome obligations would not only unreasonably burden merchants but also hinder consumers from obtaining effective information. Yet as rights determine obligations, defining the boundaries of right-to-know-centered obligations first requires delineating the right to know itself.

Given law's inherent lag, stability, and pursuit of concise expression, it cannot possibly regulate every detail. This necessitates "general clauses" - provisions containing legislators' abstract value orientations that require judicial concretization in individual cases. These clauses maintain legal stability while adapting to social changes, serving functions of value supplementation and gap-filling in legal application, thus playing vital roles in social guidance and behavioral regulation.

Therefore, the author considers Article 8 of the Consumer Law as currently the optimal standard for defining the right to know. Its first paragraph establishes a general clause for the right's essence, specifying that its object is "true information about goods or services," excluding information like trade secrets or personal rights of others that fall beyond merchants' disclosure obligations. This principled provision demonstrates flexibility in addressing dynamic realities - guiding rule-making while providing adjudicative guidance amidst regulatory gaps or conflicts, thereby unifying the right to know with disclosure obligations. The second paragraph enumerates and categorizes "true information" under the first paragraph's guidance, facilitating consistent legal application, and includes a catch-all provision ("other relevant information") for unforeseen circumstances.

Thus, merchants' disclosure obligations should center on consumers' right to know under Article 8, supplemented by obligations in administrative regulations and normative documents, achieving multi-layered consumer protection(Liu, 2010).

5.3 Legal Sources Applicable to Consumer Law Fraud Determinations

5.3.1 Status of Departmental Rules

After discussing constitutive elements, we must identify legal sources for Consumer Law fraud determinations. The major dispute in practice and scholarship concerns whether departmental rules like the Measures for Penalizing Violations of Consumer Rights (hereinafter "Measures") issued by the State Administration for Industry and Commerce can serve as bases for fraud determinations, and the evidential value of administrative penalties derived therefrom. Although departmental rules hold lower legal status than laws, their content directly addresses fraud determination(Liu & Xu, 2013).

Some scholars oppose applying departmental rules to fraud determinations. One view argues these rules aim to guide administrative enforcement rather than judicial adjudication. Another contends their legal effect is too low and conflicts with higher laws like the Supreme Court's interpretations.

The author maintains that departmental rules should apply to Consumer Law fraud determinations alongside the Consumer Law itself.

(1) As initially stated, this paper adopts a broad definition of Consumer Law encompassing all

consumer-protective legal norms, including departmental rules.

(2) Both the 1996 and revised 2015/2020 Measures explicitly state in their first articles that they aim to protect consumer rights pursuant to the Consumer Law, thus belonging to the economic legal relationships governed by the Consumer Law.

(3) The second opposing view again stems from misaligned fundamental legal relationships, mistakenly applying civil law frameworks to economic legal relationships - an issue extensively addressed earlier.

5.3.2 Progressive Aspects of Departmental Rules

In fact, the Measures' clarification and categorization of fraudulent acts essentially objectify subjective fault in Consumer Law fraud, representing inevitable legal progress. This approach alleviates consumers' evidentiary burdens while promoting adjudicative consistency and persuasiveness, warranting support.

5.3.3 Evidential Value of Administrative Penalty Documents Based on Departmental Rules

From an evidentiary perspective, departmental rules and their administrative penalty documents should serve as bases for fraud determinations.

Article 114 of the Judicial Interpretations of the Civil Procedure Law presumes the truth of matters recorded in documents produced by state organs or other authorized organizations within their authority, absent sufficient contrary evidence. Courts may require these entities to verify document authenticity when necessary. Article 92 of the Civil Evidence Rules assigns to parties relying on private documents the burden of proving their authenticity (Li, 2016).

This contrast shows parties challenging official documents bear heavier proof burdens than those challenging private documents, where creating doubt about authenticity suffices (Liang, 2000). Thus, administrative penalty decisions finding merchant fraud under the Measures, as official documents, carry greater evidentiary weight. Therefore, claims that departmental rules' lower effect limits their applicability as legal sources or diminishes evidentiary value are mistaken.

5.4 Relationship Between Violating Disclosure Obligations and Constituting Consumer Law Fraud

A scholarly and practical debate concerns whether violating disclosure obligations automatically constitutes fraud. Some scholars suggest defining disclosure obligations by whether they influence consumer decision-making before determining fraud (Li, 1996).

The author identifies this view's fundamental flaw: erroneously incorporating the "causation" element (impact on decision-making) into the "legal scope of disclosure obligations" itself, confusing obligation scope with fraud determination elements and reversing their logical order. As discussed, disclosure obligations should derive from Article 8's right to know rather than letting fraud elements define obligation scope - putting the cart before the horse.

Thus, violating disclosure obligations merely constitutes a prerequisite for Consumer Law fraud - one form of "fraudulent act" - requiring combination with other elements for full determination (Jiang, 2017b).

Separating disclosure obligation violations from fraud recognizes that besides Article 8's right to know, Article 9 establishes consumers' autonomous choice rights. The punitive damages in Article 55 aim to protect both rights simultaneously. Fraud requires infringing both rights because autonomous choice depends on properly exercised right to know - only when unmet disclosure obligations prevent informed choices can choice rights be violated (Huo, 2016). Mere disclosure violations infringing the right to know don't automatically constitute fraud; they must additionally satisfy other elements - choice-right-

infringing “misconception” and “causation,” plus culpable “intent” - to qualify for punitive damages.

Therefore, violating disclosure obligations doesn’t necessarily equal fraud. Obligation scope and fraud elements must not be conflated; they share an inclusive relationship where fraud represents a special subset of disclosure violations requiring additional intent, misconception, and causation elements, with significantly narrower coverage than general right-to-know infringements(Hu, 2013).

Based on this reconstructed framework for fraud elements and disclosure obligations, the next section will explore redistributing evidentiary burdens between consumers and merchants from an evidentiary law perspective.

6. Mitigation of Burden of Proof Based on Economic Legal Relationships and Evidence Law Perspectives

6.1 Current General Burden of Proof Allocation System in China

The “burden of proof” referred to in this paper means “when the legally relevant facts serving as the basis for judgment remain unproven during litigation, the adverse procedural consequence borne by a party.” It constitutes the objective, substantive, and consequential burden of proof (Jiang, 2017a).

As the legal maxim states, “Where the burden of proof lies, there lies the risk of losing the case.” In civil procedure, German and Japanese scholars regard burden of proof theory as “the backbone of civil litigation.” Since its proposal, Rosenberg’s burden of proof allocation theory based on objective burden of proof—the “norm theory”—has become the fundamental principle for burden of proof allocation in major civil law jurisdictions due to its logical rigor, systematic strength, and operational convenience. Article 91 of China’s 2015 *Judicial Interpretations of the Civil Procedure Law* also established the “classification of legal elements” theory as the general rule for burden of proof allocation in civil litigation (Hu, 2023).

Rosenberg’s principle for burden of proof allocation holds that “the party whose claim cannot succeed without application of a specific legal norm must bear the burden of pleading and proving that the characteristics of this legal norm are satisfied in the actual case.” Rosenberg’s “norm theory” allocates the burden of proof through standards determined by legal provisions, essentially reflecting the standardized value orientation of modern civil law based on the assumption of equality and interchangeability between civil subjects, emphasizing formal justice while considering systematic completeness and logical rigor (Rosenberg, 2018).

However, with technological and societal developments, modern society has generated numerous cases termed “modern litigation,” such as environmental pollution, food safety, and consumer rights protection disputes (Han, 2015). In these cases, the roles of injurer and victim become fixed within social structures, with virtually no possibility of role interchangeability between plaintiff and defendant. Consequently, severe power imbalances emerge alongside unilateral concentration of crucial evidence and specialized knowledge in one party. Plaintiff-victims often face extreme difficulties in adducing evidence (Gao, 2021). In such contexts, strictly requiring plaintiffs bearing the burden of proof to suffer adverse consequences would clearly create substantive unfairness. The most distinctive feature of modern litigation in proof systems is that the party in the dominant position controls the evidence and factual information (Feihu, 2004).

Current determinations of fraud under the Consumer Law follow the prevailing four-element theory, while the standard of proof must meet the “beyond reasonable doubt” threshold(Du, 2006). China’s elevation of civil proof standards draws from comparative evidence grading systems. For instance, the U.S.

raises the standard of proof for fraud to “clear and convincing evidence,” higher than the ordinary civil “preponderance of evidence” standard, yet lower than the criminal “beyond reasonable doubt” standard. However, China directly elevates the fraud proof standard to “beyond reasonable doubt,” conflating it with criminal standards(Dong, 2006). As previously discussed, the author argues that “beyond reasonable doubt” was established to protect civil transaction security, regulating relationships between equal civil subjects, and should not apply to economic legal relationships between consumers and merchants. Therefore, given the inherent inequality between consumers and merchants and their unequal access to evidence, excessively raising consumers’ proof standard “undoubtedly increases consumers’ burden of proof and may likely render the punitive damage system for consumer fraud ineffective.”

6.2 Current Explorations of Proof Burden Mitigation in Consumer Protection

The modern civil law paradigm has shifted from emphasizing formal justice to substantive justice, prompting adjustments in burden of proof allocation theories. Prütting also notes that given the complexity of facts and legal relationships, the basic rules established by the “norm theory” only provide general principles for proof allocation, which alone cannot address complex situations. Therefore, proof allocation should continuously evolve like substantive law. Germany and Japan have developed the “proof burden mitigation” theory to compensate for deficiencies in traditional allocation theories. With the emergence of modern litigation principles like party equality, equal access to justice, and good faith, contemporary litigation increasingly emphasizes evidence discovery, truth approximation, and justice accessibility, further solidifying the jurisprudential basis for proof burden mitigation(Cui, 2003).

Taiwanese scholar (Jiang) argues that when proof allocation under general rules would lead to unreasonable or unfair outcomes due to factors like evidence imbalance, unequal litigation resources, or risk domains, proof burden mitigation becomes necessary. Mitigation methods include burden shifting, standard reduction, prima facie evidence, and proof necessity elimination.

In consumer protection, consumers’ disadvantaged informational position and weak litigation capacity create widespread difficulties in evidence collection and authentication expenses. Particularly, “requiring consumers to prove merchants’ ‘intent to induce erroneous declarations’ is nearly impossible and unfair.” Therefore, scholars propose reducing consumers’ proof burdens through three main approaches: (1) reversing the burden of proof for fraudulent intent, requiring merchants to prove absence of intent; (2) presumption of fault—when consumers prove fraudulent acts, intent is presumed; (3) requiring consumers only to provide prima facie evidence(Zhan & Liu, 2023).

However, the author finds current scholarly proposals lack conceptual clarity regarding proof burden mitigation, fail to delineate the relationship between consumers’ and merchants’ respective burdens, and offer no guidance for situations where facts remain unproven, thus providing little practical reference.

Regarding the first approach (burden reversal), it means “one party’s proof burden is exempted, while the other party assumes the burden from the opposite direction.” The burden-bearing party must establish the court’s firm conviction of the fact’s existence (full proof), while the non-bearing party only needs to cast sufficient doubt to create uncertainty (rebuttal evidence). Thus, for fraudulent intent reversal, merchants must provide full proof of intent absence. If they cannot convince the court and facts remain unproven, merchants bear adverse consequences.

The second approach (fault presumption) constitutes “presumption” in evidence law, divided into factual and legal presumptions. Factual presumption means “courts infer the truth of facts to be proven from known facts based on empirical rules,” requiring logical necessity between basic and presumed facts.

Parties invoking factual presumption must provide full proof of basic facts. Legal presumption occurs when laws stipulate that one fact's existence presumes another's existence. While exempting proof of presumed facts, it retains the burden for basic facts. Thus, parties invoking legal presumption must fully prove basic facts, after which courts must recognize presumed facts unless opponents either fully disprove presumed facts or sufficiently rebut basic facts. Therefore, the aforementioned fault presumption actually constitutes legal presumption. For fraudulent intent presumption, consumers must first fully prove fraudulent acts before courts presume intent, unless merchants fully prove intent absence.

Both first and second approaches effectively shift the proof burden to merchants regarding intent absence. Their difference lies in timing: the first imposes this burden regardless of consumers' proof of fraudulent acts, while the second requires consumers to first fully prove fraudulent acts. However, this distinction lacks practical significance since consumers must always prove fraudulent acts in litigation.

The third approach (prima facie evidence) means "courts utilize general life experience to infer evidentiary processes for recurring typical events from objective facts." Based on high-probability empirical rules, it analogically reconstructs facts through experience rather than logical necessity. Prima facie evidence requires "typical event sequences"—experiences where typical causes reliably produce certain effects, enabling inferences from initial appearances without further evidence. As an evidentiary evaluation method easing proof burdens without altering allocation frameworks, prima facie evidence constitutes a special factual presumption type. Unlike regular factual presumption requiring necessary connections, prima facie evidence relies on probabilistic empirical rules, allowing opponents to rebut it by presenting alternative plausible scenarios.

6.3 Specific Path for Proof Burden Mitigation: Prima Facie Evidence

Fundamental legal relationships determine proof allocation. As discussed, current Consumer Law fraud determinations requiring four elements with "beyond reasonable doubt" standard essentially treat consumer-merchant relationships as civil legal relationships, applying proof allocation based on civil parties' equality and interchangeability. However, the author argues Consumer Law relationships combine civil and economic dimensions, necessitating distinct proof allocation for economic relationships. Therefore, when consumers claim punitive damages under Article 55, their proof burdens should be mitigated differently from civil cases.

Requiring consumers to prove merchants' intent is extremely difficult. Regarding the first two approaches (burden reversal and presumption), the author considers requiring merchants to fully prove intent absence excessively burdens merchants and unreasonable.

The most reasonable mitigation approach adopts prima facie evidence. According to German-Japanese theories, prima facie evidence mainly applies to fault determinations in specific tort cases—subjective states as internal mental processes lack objective evidentiary manifestations, but general life experiences permit fault inferences absent special circumstances. Thus, consumers only need initially prove fraudulent acts, then await merchants' rebuttal. If merchants truly lack intent, they need only cast sufficient doubt to create uncertainty. "Practically, merchants face considerable difficulty proving non-intent, eliminating concerns about fraudulent merchants easily evading liability."

Prima facie evidence preserves basic proof frameworks while optimizing evidentiary evaluation rules, genuinely resolving consumers' proof difficulties under "beyond reasonable doubt" standards.

7. Conclusion

In summary, through dual-attribute analysis of Consumer Law relationships, this study reconstructs substantive and procedural rules for fraud determination, yielding these conclusions:

(1) Dual Characterization of Fundamental Legal Relationships: Consumer Law governs relationships with both civil and economic attributes. Traditional civil-only approaches caused determination difficulties. Clarifying this duality is prerequisite for proper rule application.

(2) Reconstruction of Fraud Elements and Legal Sources: Maintaining the four-element framework but redefining them: emphasizing merchants' culpable intent; limiting misconception and causation elements through consumers' right to know and good faith principles; excluding "bad-faith counterfeit purchases"; incorporating departmental rules like the *Measures* as adjudicative sources; combining with official document evidentiary rules to unify fraud determination standards.

(3) Unified Disclosure Obligation System: Centering on Article 8's right to know to clarify merchants' disclosure scopes, aligning them with consumers' information rights. Disclosure violations only constitute fraud prerequisites—subjective intent and consumer misconception remain necessary, avoiding equating general right-to-know violations with fraud.

(4) Proof Burden Mitigation: Addressing consumers' evidentiary difficulties through prima facie evidence's "initial proof + rebuttal" model. Without altering basic allocation, it presumes merchants' intent through empirical inference, lowering consumers' proof thresholds while avoiding excessive merchant burdens, achieving litigation fairness.

This study's theoretical significance lies in systematically revealing current system chaos's roots through fundamental legal relationship analysis, providing solutions that enrich punitive damage theories in consumer law. Practically, the reconstruction scheme offers operable, clear judicial guidance for consumer fraud determinations, potentially reducing inconsistent rulings and enhancing legal uniformity and predictability. In the digital economy era facing new challenges like AI algorithm fraud and data misrepresentation, this dual-relationship framework and proof mitigation approach remain applicable for resolving novel consumer disputes. The author hopes this research provides valuable references for improving consumer fraud determination practices, enabling the Consumer Law to better fulfill its legislative purposes of protecting consumers and regulating market conduct.

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