

# Research on the Pricing Wrong of Electronic Commerce Contract

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**Abstract:** *With the emergence and development of e-commerce, people are not limited to the traditional offline purchase of goods. Online shopping has become one of the ways of shopping, and the proportion is gradually increasing. Because of the high efficiency and convenience of network, electronic contract has become a more common form of contract. While online shopping brings us convenience, it also causes a lot of transaction disputes. Among them, the online shopping contract disputes caused by the pricing wrong are common, which not only infringes the legitimate rights and interests of consumers, but restricts the development of e-commerce. The problem of wrong price of online shopping is essentially the dispute of online shopping contract.*

**Keywords:** *Electronic commerce; The pricing wrong; Material misunderstanding; Rights of rescission*

## 1. Overview of the pricing error of electronic contract

### 1.1 The concept of an electronic contract and its characteristics

Electronic contract, also known as the e-commerce contract, refers to an agreement signed by two or more parties through the information network in the form of data messages. There are formal differences between the electronic contract and the traditional contract. Online shopping contract has its own characteristics. Firstly, because the contract is not concluded face to face, it is difficult for merchants to accurately judge the subjective intentions of consumers and prevent consumers from pulling wool. Secondly, the transaction information based on the agreement reached in the online shopping contract has a more distinct asymmetry compared with the traditional contract.[1] Thirdly, online information spreads widely and quickly. If merchants set prices much lower than the daily prices and non-promotional prices, abnormal consumers will rush into stores to buy through channels such as wool groups. And it leads to a lot of losses for businesses.

### 1.2 The nature of the wrong price

In online shopping, the merchant's wrong pricing is essentially a mistake of meaning, involving the wrong system of traditional civil law, which is called the major misunderstanding system in China. The expression of intention refers to the behavior that indicates the intention to produce a certain private legal effect to the outside world. Merchants publish their products on the e-commerce platform and mark the prices. The price error means that the price actually marked is different from the price they want to mark in their hearts.

### 1.3 The legal attributes of web pages

There is a dispute that a web page containing goods is an invitation to offer or an offer. An offer is an expression of intention to enter into a contract with another person. It needs to have the following two elements at the same time. The first point is to be specific in its content, and the second point is to show that the offeror is bound by the expression of intention with the consent of the offeree. The commodity page of the e-commerce platform contains specific commodity information such as the name, price, style and color of the commodity, which meets the condition of "the specific content". The meaning of "bound by the representation" can be expressed or implied. If the merchant does not explicitly state that its behavior is an offer, according to the general concept of society, based on the representationalism interpretation model, the information sent by the party is understood as an offer. This understanding is reasonable and can be expected.[2]

### ***1.4 Validity of Standard Terms***

Article 49 (2) of the Electronic Commerce Law is that: "E-commerce operators shall not agree by standard terms or other means that the contract shall not be established after the payment of the consumer; If the standard terms and conditions contain such content, the content shall be invalid." Article 491 (2) of the Civil Code on the formation of electronic contracts does not absorb Article 49 (2) of the Electronic Commerce Law. There are views that there are obvious problems with Article 49, paragraph 2, of the Electronic Commerce Law, and that paragraph 2 has been repealed by default through the provisions of the Civil Code. There are also views that if the standard terms concerning the time of formation of the contract does not violate the requirement of the content control, and it should be recognized as valid after the operator has fulfilled their obligation of giving a reasonable alert and explanation.[3] The author believes that the standard clause is the embodiment of the autonomy of the parties' will as long as the legal provisions on standard clause are not violated. If the obligation of an alert and explanation is fulfilled, the standard terms shall be deemed valid.

## **2. The different views of the judicial decision**

### ***2.1 The contract is not established***

The court holding this view determines whether a contract is established based on the distinction between an offer and an invitation to offer.[4] E-commerce platform operators draw up a user agreement in advance, using the form of standard terms, agreeing that consumers' ordering behavior to be an offer, and operators' behavior of shipping goods is a commitment. The nature of the product information page is an invitation to offer. The behavior of the consumer paying the price is an offer, and the merchant's delivery behavior is a commitment. When a pricing error occurs, the behavior of paying the does not result in the formation of the contract, and the merchant does not need to perform the contract. If there is no a user agreement, the contract is usually formed after the average consumer orders and pays the price. There is doubt whether the user agreement provided by the platform conforms to the requirements of the standard terms and whether the obligation calling attention or giving explanations has been fulfilled. If the above obligations are not fulfilled, the consumer may claim that the clause shall not be regarded as a contract content.

### ***2.2 The contract is established but it can be revoked***

Most courts, based on the basic principles of civil law, deny the validity of a contract by examining whether there is a revocable matter. Based on the facts of the case, it is believed that the merchant's pricing error leads to the product price being significantly lower than the actual price. The merchant's expression of intention cannot be considered as the true expression of intention, which should be a major misunderstanding and he has the right to cancel the contract.[5] This approach may have some problems. The Civil Code does not clearly stipulate the constituent elements of the major misunderstanding, and the exercise of the right to revoke a major misunderstanding requires litigation or arbitration. Consumers may be located in different parts of the country, which will increase the cost of merchants exercising the right to revoke, and if they do not revoke it, they will suffer heavy losses. In practice, it is common to deny the validity of a contract by exercising the right of revocation due to significant misunderstanding, which appears to have sufficient basis, but does not take into account the particularity of online shopping, the cost of exercising the right and the difficult problem of fact finding.

### ***2.3 The contract is established and effective***

In practice, some courts hold that if a contract with a wrong price is established, effective and irrevocable, and should be actually performed, and the seller should bear its own losses caused by the wrong price.[6] Such arguments are based on protecting consumers' trust interests and the merchant's failure to comply with the duty of care. Many merchants have rich experience, and the operation of the commodity price is not due to the lack of necessary knowledge, information, skills or trading experience, and there is no misunderstanding of the transaction content, so the merchants have no right to claim a major misunderstanding of the price error and cancel. It is also worth questioning that denying the relief of merchants may violate the principle of voluntariness and fairness. If we blindly insist on the responsibility and risk of the business, it will lead to the imbalance of rights and obligations of both sides. China's laws usually reflect the principle of consumer protection to a certain extent, but there are such a

group of "consumers" on the network, that is, "wool party", using the wrong price of the business, making the merchants difficult to perform the contract, making the merchants suffer heavy losses.

### **3. Problems and analysis of price errors in electronic contracts**

#### ***3.1 Unclear definition of the nature of the commodity information page***

The whole process of online shopping mainly consists of four parts: operators publish commodity information on the e-commerce platform, consumers submit orders and pay after browsing the commodity information pages, operators deliver goods according to consumer orders, and consumers receive goods.[7] It can be seen from this that the legal attribute of the product information page published by the operator is the first step to judge the establishment time of the contract. If the operator does not make a special agreement on the product page, the commodity information is an offer or an invitation to offer, which is a dispute in practice.

Most people believe that the product information page contains the name, price, color, style and other specific information of the product, which has met the requirement of specific and definite content. However, a few people believe that the product information page is similar to the price list of the product, which does not mean that the merchant has the willingness to enter into an online shopping contract with consumers. In other words, the product information displayed on the product detail page, including the name and price, is considered as part of the "distribution of price lists", which is essentially an expression of the intention of the e-commerce platform or the operator on the platform to the unspecified object to conclude a contract. The "price list" is generally regarded as an invitation to offer in law.

The Civil Code has clear provisions on offers and invitations to offer. However, the network transaction is different from the traditional transaction. It is based on the Internet and electronic data, and the negotiation between the two parties is also carried out in the form of data messages. Therefore, the legal provisions on offer and offer invitation do not clarify the legal nature of the product page. According to the provisions of Article 49 (1) of the E-commerce Law, we can see that the E-commerce Law, which deals with the legal relationship of e-commerce, does not make special provisions on offer or offer invitation in online shopping contracts. In judicial practice, it is still necessary to judge the nature of the commodity information page according to the general nature of offer or offer invitation.

After the implementation of the E-commerce Law, because its Article 49 stipulates that the establishment time of online shopping contract is when the user submits the order successfully, most platforms have modified the corresponding clauses. For example, Pinduoduo stipulates that as long as you pay the price, the sale contract between you and the seller is established. From the perspective of the amendment behavior of the e-commerce platform, the platform believes that its product information page is an offer, and the buyer's payment behavior constitutes a commitment. It should be noticed that after the implementation of the E-commerce Law, Jingdong has modified some of the provisions of the user registration agreement, but the provisions on the nature of the product information page have not been adjusted. It is still stipulated in the user registration agreement that the goods and prices on this website are only invitations to offer. Therefore, the different provisions of the e-commerce platform are also one of the reasons for the unclear definition of the nature of the product information page in the judicial judgment.

#### ***3.2 Validity Analysis of Standard Terms***

In cases of the pricing error, operators often use the standard terms of e-commerce platforms as a defense to argue that the online shopping contract is not established. If the merchants or platforms stipulate that the legal nature of the page is an offer or an invitation to offer, it should be judged whether the standard terms meet the requirements of the standard terms.

Whether the merchants or platforms identify the commodity page as an invitation to offer meets the requirements of the standard terms, the main disputes on this issue are as follows: firstly, whether the definition of the nature of product pages belongs to terms that have significant interests with consumers; Secondly, whether the merchants or platforms have fulfilled its obligation to provide sufficient prompts and explanations.

The author believes that the determination of the validity of the standard terms affects the distribution of the rights and obligations of the two parties, so it certainly belongs to the clause with significant interests to the other party. Merchants and shopping platforms need to fulfill the obligation of sufficient

reminder and explanation and explain it according to the requirements of consumers. The relationship between Article 49 of the Electronic Commerce Law and Article 491 of the Civil Code can reflect the legislative tendency of our country on this issue. Article 49 (1) of the Electronic Commerce Law has played a great role in regulating the process of signing electronic commerce contracts, so it has been used for reference in the compilation process of the Civil Code. But Article 49 (2) has been abandoned by the Civil Code, which is certainly not the negligence of the authors. The substantive reason is that paragraph 2 has obvious defects in jurisprudence, specific application effect and value balance.

### ***3.3 Application of pricing error and material misunderstanding system***

The case of the pricing error is canceled through the system of major misunderstanding, or the contract is not established by taking the product page as an offer invitation, which is two completely different remedy paths.

The establishment of the system of major misunderstanding is to ensure the true freedom of expression of the parties' will and to maintain the security of the transaction. The application of major misunderstanding in the field of online shopping can give the parties a choose. If one party chooses to exercise the right of revocation, the other party has an equal right to claim damages.

It is difficult to exercise the right of revocation on the grounds of major misunderstanding. First of all, there is a theoretical dispute over whether major misunderstanding can be applied in the case of pricing error. Secondly, even if it can be solved by the system of major misunderstanding, there is no uniform and clear constituent elements of the system of major misunderstanding in our country.

## **4. Improve the rules of the wrong price of online shopping contracts**

### ***4.1 Reasonable Definition of the nature of commodity information page***

Although Article 49 (1) of the Electronic Commerce Law provides for the establishment of e-commerce contracts, it does not provide for the nature of commodity pages. The objective criteria for judging the product page that meets the offer conditions include the appearance display and price of the product, Inventory of goods, and the links to order. If the merchants hope that the product pages only have the significance of an offer invitation, it needs to let the consumer know by means of significant reminder or prior declaration, and the two sides can reach a personalized agreement.

### ***4.2 Clarify the criteria for determining the validity of standard terms***

After the promulgation of the E-commerce Law, in view of the provisions of Article 49, paragraph 2, most mainstream e-commerce platforms have adjusted the service agreements of their platforms. Some e-commerce platforms, such as Jingdong's provisions on physical goods, which have not been modified, and the contract is still established after the merchant has shipped the goods. When such standard clauses are subject to litigation, their validity still needs to be judged.

First, Article 491 of the Civil Code and Article 49, paragraph 1, of the Electronic Commerce Law leave room for party autonomy. Article 491 of the Civil Code absorbs and learns from the provisions of Article 49, paragraph 1, of the Electronic Commerce Law. It means that in the field of e-commerce transactions, as long as the operator and the consumer reach an agreement, the nature of the product page and the time of the establishment of the contract can be freely identified.

Secondly, the platform or the merchant adopts the form of standard terms to agree that the contract is not established after the consumer pays the price, and the content of the standard terms can only take effect if the subscription control of the standard terms is satisfied and the obligation of prompt and explanation is fulfilled. Otherwise, the consumer can claim that the merchant or the platform has not fulfilled the obligation of prompt and explanation. If you do not pay attention to or understand the vital interests related to yourself, you may claim that the terms do not form part of the contract. When users register, the platform only provides the option to tick it. Usually, users do not have the patience to read these contents when registering, or simply browse without seeing these important terms, if not ticked, they cannot use the software. This is often considered a failure to comply with the reminder obligation, and to solve this problem, the platform can force users to browse for a period of time instead of just ticking the relevant terms.

Finally, operators can set standard clauses for specific situations such as price errors. For example, it

can be stipulated that the price error caused by the staff due to personal negligence or system failure is a major misunderstanding, and the operator has the right to cancel the order, and the seller will return the payment already paid after the cancellation of the order.

#### **4.3 Determine the reference factors of the merchant's misperception**

Merchants' misunderstanding of price belongs to the provisions of the Judicial Interpretation of the General Provisions of the Civil Code on major misunderstandings, that is, the actor has a wrong understanding of the nature of the act, the other party or the variety, quality, specification, price, quantity of the subject matter and so on, and according to the general understanding, if the wrong understanding does not occur, the actor will not make the corresponding intention. In addition, a series of judgment criteria can be used to determine whether the merchant has misunderstood his own behavior in the case of pricing errors. In judicial practice, the judge can flexibly use the major misunderstanding system to solve the problem of pricing errors. First, the fault degree of the operators. If the operator fails to fulfill the duty of reasonable care that is highly related to the normal manager's ability, occupation, trading habits and the purpose of the contract, causing loss to the well-meaning counterpart, it is not allowed to revoke the expression of intention. Second, the operator's remedial behavior after the event. Operators should take reasonable and effective remedial measures in a timely manner to recover losses after the occurrence of price errors, such as timely changing the wrong price of goods, timely removing disputed goods, timely contacting consumers to negotiate or give consumers compensation and so on. Third, the trading habits of operators. A practical trial can also determine the true intention of a merchant by comparing the mispriced goods with the daily price without promotion. Fourth, objectivity criteria. Whether a reasonable third person will make such a wrong expression of intention, if not, it can be determined that the inner meaning of the operator is not consistent with the external expression, so the major misunderstanding system can be applied.

#### **5. Conclusion**

At present, whether in practice or in theory, there is a lot of controversy about the price error in online transactions. Electronic errors in e-commerce contracts are related to and different from traditional error of intention. The existing traditional error of intention rules cannot properly deal with electronic errors in e-commerce contracts, resulting in the chaos of electronic error disputes in the application of law and the situation that the interests between e-commerce operators and consumers cannot be balanced. This paper sorts out and analyzes the adjudication disputes related to the establishment and validity of the online shopping contract with the wrong price, and it analyzes the problems existing in the adjudication, balances the interests between the parties, builds a fair and stable online trading environment, and promotes the orderly development of the online shopping market.

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