

## 侵害消费者权益行为处罚办法 Measures for Penalties for Infringing Upon the Rights and Interests of Consumers

国家工商行政管理总局  
State Administration for Industry and Commerce

国家工商行政管理总局令第 73 号  
SAIC Order No. 73

2015 年 1 月 5 日  
[Issued] January 5, 2015

第一条 为依法制止侵害消费者权益行为,保护消费者的合法权益,维护社会经济秩序,根据《消费者权益保护法》等法律法规,制定本办法。

Article 1. To prevent infringement upon consumer rights and interests in accordance with law, protect the lawful rights and interests of consumers, and maintain the socialist economic order, these *Measures for Penalties for Infringing Upon the Rights and Interests of Consumers* are hereby formulated in accordance with the *Law of the PRC on the Protection of the Rights and Interests of Consumers* and other laws and regulations.

第二条 工商行政管理部门依照《消费者权益保护法》等法律法规和本办法的规定,保护消费者为生活消费需要购买、使用商品或者接受服务的权益,对经营者侵害消费者权益的行为实施行政处罚。

Article 2. The administrative departments for industry and commerce shall protect the rights and interests of consumers to purchase or use goods or receive services for daily needs, and impose an administrative penalty on any infringement upon consumer rights and interests by business operators in accordance with the *Law of the PRC on the Protection of the Rights and Interests of Consumers*, other laws and regulations and these Measures.

第三条 工商行政管理部门依法对侵害消费者权益行为实施行政处罚,应当依照公正、公开、及时的原则,坚持处罚与教育相结合,综合运用建议、约谈、示范等方式实施行政指导,督促和指导经营者履行法定义务。

Article 3. When administrative departments for industry and commerce enforce against infringements upon consumer rights and interests in accordance with law, they shall follow the principles of fairness, openness and timeliness, mix punishment with education, and combine advice, meetings, demonstrations and other means to give administrative guidance, so as to direct and guide business operators to perform their legal obligations.

第四条 经营者为消费者提供商品或者服务,应当遵循自愿、平等、公平、诚实信用的原则,依照《消费者权益保护法》等法律法规的规定和与消费者的约定履行义务,不得侵害消费者合法权益。

Article 4. When business operators provide goods or services for consumers, they shall follow the principles of voluntary participation, equality, fairness, honesty and trustworthiness, perform their obligations in accordance with the provisions of the *Law of the PRC on the Protection of the Rights and Interests of Consumers*, other laws and regulations and their covenants with consumers, and shall not infringe upon lawful consumer rights and interests.

第五条 经营者提供商品或者服务不得有下列行为:

Article 5. Business operators shall not do the following acts when providing goods or services:

(一)销售的商品或者提供的服务不符合保障人身、财产安全要求;

(1) providing goods or services that do not comply with the requirements for ensuring personal safety or the safety of property;

(二)销售失效、变质的商品;

(2) selling goods that have expired or deteriorated;

(三)销售伪造产地、伪造或者冒用他人的厂名、厂址、篡改生产日期的商品;

(3) selling goods that have fabricated places of origin, fabricated or unauthorized factory names or addresses, or production dates that have been tampered with;

(四)销售伪造或者冒用认证标志等质量标志的商品;

(4) selling goods the quality marks of which, such as certification marks, are fabricated or used without authorization;

(五)销售的商品或者提供的服务侵犯他人注册商标专用权;

(5) providing goods or services that infringe upon rights of others to the exclusive use of a registered trademark;

(六)销售伪造或者冒用知名商品特有的名称、包装、装潢的商品;

(6) selling goods with forged or unauthorized names, packaging or decoration unique to famous brands;

(七)在销售的商品中掺杂、掺假,以假充真,以次充好,以不合格商品冒充合格商品;

(7) selling goods that are adulterated or mixed with improper elements, selling fake goods that imitate genuine goods or goods of poor quality as quality goods, or selling sub-standard goods that imitate standard goods;

(八)销售国家明令淘汰并停止销售的商品;

(8) selling goods pronounced obsolete and prohibited from sale by formal national decrees;

(九)提供商品或者服务中故意使用不合格的计量器具或者破坏计量器具准确度;  
(9) when providing goods or services, intentionally using sub-standard measuring instruments or inaccurate measuring instruments;

(十)骗取消费者价款或者费用而不提供或者不按照约定提供商品或者服务。  
(10) cheating consumers to pay for goods or services or to pay other fees and not providing the goods or services or not providing the goods or services in accordance to agreement.

第六条 经营者向消费者提供有关商品或者服务的信息应当真实、全面、准确,不得有下列虚假或者引人误解的宣传行为:

Article 6. business operators shall provide true, complete and accurate information about goods or services to consumers, and shall not engage in the following false or misleading promotional behaviors:

(一)不以真实名称和标记提供商品或者服务;  
(1) providing goods or services with false names or marks;

(二)以虚假或者引人误解的商品说明、商品标准、实物样品等方式销售商品或者服务;  
(2) selling goods or services with false or misleading product instructions, product standards or samples;

(三)作虚假或者引人误解的现场说明和演示;  
(3) giving false or misleading on-site instructions or presentations;

(四)采用虚构交易、虚标成交量、虚假评论或者雇佣他人等方式进行欺骗性销售诱导;  
(4) deceptively inducing sale through fabricated deals, fabricated deal volumes, or false statements or hiring;

(五)以虚假的“清仓价”、“甩卖价”、“最低价”、“优惠价”或者其他欺骗性价格表示销售商品或者服务;  
(5) selling goods or services at false “clearance prices”, “bargain prices”, “lowest prices”, “preferential prices” or other deceptive prices;

(六)以虚假的“有奖销售”、“还本销售”、“体验销售”等方式销售商品或者服务;  
(6) selling goods or services through false “prize included with sale”, “sale that returns money to consumers”, “consumer experience sale” etc.;

(七)谎称正品销售“处理品”、“残次品”、“等外品”等商品;  
(7) selling “sub-standard products”, “defective products”, “below-grade products” by fraudulently claiming that they are quality goods;

(八)夸大或隐瞒所提供的商品或者服务的数量、质量、性能等与消费者有重大利害关系的信息误导消费者;  
(8) exaggerating or concealing the quantity, quality or performance of the offered goods or

services or other information important to the consumer to mislead the consumer;

(九)以其他虚假或者引人误解的宣传方式误导消费者。

(9) using other false or misleading marketing methods to mislead consumers.

第七条 经营者对工商行政管理部门责令其对提供的缺陷商品或者服务采取停止销售或者服务等措施,不得拒绝或者拖延。经营者未按照责令停止销售或者服务通知、公告要求采取措施的,视为拒绝或者拖延。

Article 7. Where the administrative departments for industry and commerce order business operators to stop selling or providing defective products or services, the operators shall not refuse or delay. If business operators fail to stop the sale or service in accordance with the requirements in the relevant notice or announcement, they shall be deemed to have refused or delayed.

第八条 经营者提供商品或者服务,应当依照法律规定或者当事人约定承担修理、重作、更换、退货、补足商品数量、退还货款和服务费用或者赔偿损失等民事责任,不得故意拖延或者无理拒绝消费者的合法要求。经营者有下列情形之一并超过十五日的,视为故意拖延或者无理拒绝:

Article 8. When business operators provide goods or services, they shall follow relevant laws or covenants between the parties concerned and bear such civil liabilities as repair, remanufacture, replacement, return of goods, making whole for quantity shortages, refund of payment for goods and services and compensation of losses, and shall not intentionally delay or refuse without a justified reason legal demands of consumers. Under any of the following circumstances and where the situation lasts for more than 15 days, the business operators shall be deemed to be intentionally delaying or refusing without a justified reason the legal demands of consumers:

(一)经有关行政部门依法认定为不合格商品,自消费者提出退货要求之日起未退货的;

(1) the goods are determined to be sub-standard by the relevant administrative department in accordance with law, and the business operator fails to process the return of the goods as of the date of the request by the consumer;

(二)自国家规定、当事人约定期满之日起或者不符合质量要求的自消费者提出要求之日起,无正当理由拒不履行修理、重作、更换、退货、补足商品数量、退还货款和服务费用或者赔偿损失等义务的。

(2) the business operator refuses, without a justified reason, to perform its obligations of repair, remanufacture, replacement, return of goods, making whole for quantity shortages, refund of payment for goods and services or compensation of losses as of the date stipulated by the State, or as of the date agreed to by the parties concerned, or as of the date requested by the consumer in cases where the product is not up to standard.

第九条 经营者采用网络、电视、电话、邮购等方式销售商品,应当依照法律规定承担无理由退货义务,不得故意拖延或者无理拒绝。经营者有下列情形之一并超过十五日的,视为故

意拖延或者无理拒绝:

Article 9. Where the business operators use the internet, television, telephone, mail order or other ways to sell goods, they shall undertake the obligation to accept return of goods without reason pursuant to law, and shall not intentionally delay or refuse without a justified reason. Under any of the following circumstances and where the situation lasts for more than 15 days, the business operators shall be deemed to have intentionally delayed or refused without a justified reason:

(一)对于适用无理由退货的商品,自收到消费者退货要求之日起未办理退货手续;

(1) for goods returned without reason, the business operator fails to process the return as of the date of receipt of the request from the consumer;

(二)未经消费者确认,以自行规定该商品不适用无理由退货为由拒绝退货;

(2) without confirmation from the consumer, the business operator refuses to process a return based on its own rule that the product is not included in goods allowed to be returned without reason;

(三)以消费者已拆封、查验影响商品完好为由拒绝退货;

(3) the business operator refuses to allow a return based on the reason that the consumer has opened the package and inspected the goods, and affected the condition of the goods;

(四)自收到退回商品之日起无正当理由未退还消费者支付的商品价款。

(4) the business operator fails to return, without a justified reason, the price paid by the consumer as of the date of receipt of the returned goods.

第十条 经营者以预收款方式提供商品或者服务,应当与消费者明确约定商品或者服务的数量和质量、价款或者费用、履行期限和方式、安全注意事项和风险警示、售后服务、民事责任等内容。未按约定提供商品或者服务的,应当按照消费者的要求履行约定或者退回预付款,并应当承担预付款的利息、消费者必须支付的合理费用。对退款无约定的,按照有利于消费者的计算方式折算退款金额。

Article 10. Where business operators provide goods or services by way of advanced payment, the operator and consumer shall clearly agree on the following content: the quantity and quality, prices or expenses, term and manner of performance, safety issues to be noted and risks and warnings, after-sale services, and civil liabilities. Where the business operators fail to provide goods or services as agreed upon, they shall perform as agreed upon based on the requirements of the consumers or return the advance payments, and shall bear the interest on the advance payments and reasonable expenses payable by the consumer. Where there is no agreement on the refund of payment, the payment refunded to consumers shall be calculated in a way favorable to consumers.

经营者对消费者提出的合理退款要求,明确表示不予退款,或者自约定期满之日起、无约定期限的自消费者提出退款要求之日起超过十五日未退款的,视为故意拖延或者无理拒绝。

Where the business operators clearly state that they will not refund a payment in response to a consumer's reasonable request for refund, or fail to refund the payment for more than 15 days after the agreed upon date or the date of submitting the request by the consumer where there is

no agreed upon date, the business operators shall be deemed to be intentionally delaying the refund of payment or refusing the refund of payment without a justified reason.

第十一条 经营者收集、使用消费者个人信息,应当遵循合法、正当、必要的原则,明示收集、使用信息的目的、方式和范围,并经消费者同意。经营者不得有下列行为:

Article 11. When business operators collect or use personal information of consumers, they shall follow the principles of legality, appropriateness, and necessity, clearly state the purpose, manner, and scope for collecting and using the information, and obtain consent from the consumer.

Business operators shall not do the following acts:

(一)未经消费者同意,收集、使用消费者个人信息;

(1) collect and use personal information of consumers without their consent;

(二)泄露、出售或者非法向他人提供所收集的消费者个人信息;

(2) leak, sell, or illegally provide to others collected personal information of consumers;

(三)未经消费者同意或者请求,或者消费者明确表示拒绝,向其发送商业性信息。

(3) sending commercial information to a customer without consent or request from the consumer, or after explicit objection by the consumer.

前款中的消费者个人信息是指经营者在提供商品或者服务活动中收集的消费者姓名、性别、职业、出生日期、身份证件号码、住址、联系方式、收入和财产状况、健康状况、消费情况等能够单独或者与其他信息结合识别消费者的信息。

The “personal information of consumers” mentioned in the previous clause refers to a consumer’s name, gender, occupation, date of birth, identification document number, residential address, contact information, status of income and assets, health status, consumption habits, and other information collected by business operators during their provision of goods or services that may independently or in combination with other information identify the consumers.

第十二条 经营者向消费者提供商品或者服务使用格式条款、通知、声明、店堂告示等的,应当以显著方式提请消费者注意与消费者有重大利害关系的内容,并按照消费者的要求予以说明,不得作出含有下列内容的规定:

Article 12. Where the business operators use standard-form terms, notices, announcements, shop bulletins, etc. in providing goods or services for consumers, the business operators shall use conspicuous means to draw attention to information that has a material impact on consumers, explain relevant information to consumers as per their request, and shall not use provisions that contain any of the following content:

(一)免除或者部分免除经营者对其所提供的商品或者服务应当承担的修理、重作、更换、退货、补足商品数量、退还货款和服务费用、赔偿损失等责任;

(1) content that fully or partially exempts the business operator from liabilities owed for the goods or services provided thereby, such as repair, remanufacture, replacement, return of goods,

making whole for quantity shortage, refund of payment for goods and services, and compensation for losses;

(二)排除或者限制消费者提出修理、更换、退货、赔偿损失以及获得违约金和其他合理赔偿的权利;

(2) content that eliminates or restricts the rights of consumers to request repair, replacement, return of goods or compensation for losses, and to obtain damages for breach of contract and other reasonable compensation;

(三)排除或者限制消费者依法投诉、举报、提起诉讼的权利;

(3) content that eliminates or restricts the rights of consumers to bring complaints, reports or lawsuits pursuant to law;

(四)强制或者变相强制消费者购买和使用其提供的或者其指定的经营者提供的商品或者服务,对不接受其不合理条件的消费者拒绝提供相应商品或者服务,或者提高收费标准;

(4) content that forces, directly or covertly, consumers to purchase and use the goods or services provided by the business operator or by other designated business operators by refusing to provide goods or services, or raising rates, for consumers who do not accept unreasonable conditions;

(五)规定经营者有权任意变更或者解除合同,限制消费者依法变更或者解除合同权利;

(5) content that entitles the business operator to modify or terminate contracts at will, but restricts the right of consumers to modify or terminate contracts in accordance with law;

(六)规定经营者单方享有解释权或者最终解释权;

(6) content that entitles the business operator to unilateral interpretation or final interpretation; or

(七)其他对消费者不公平、不合理的规定。

(7) other provisions that are unfair and unreasonable to consumers.

第十三条 从事服务业的经营者不得有下列行为:

Article 13. A business operator providing services shall not do any of the following acts:

(一)从事为消费者提供修理、加工、安装、装饰装修等服务的经营者谎报用工用料,故意损坏、偷换零部件或材料,使用不符合国家质量标准或者与约定不相符的零部件或材料,更换不需要更换的零部件,或者偷工减料、加收费用,损害消费者权益的;

(1) In providing consumers with repair, processing, installation, renovations, and other similar services, the business operator infringes upon consumer rights and interests by making false declarations of the manpower and materials used, deliberately damaging or secretly substituting parts and components or materials, using parts and components or materials that fail to meet national quality standards or that are inconsistent with relevant agreements, replacing parts and components that do not need to be replaced, engaging in shoddy work, charging additional fees, etc.;

(二)从事房屋租赁、家政服务等中介服务的经营者提供虚假信息或者采取欺骗、恶意串通等手段损害消费者权益的。

(2) In engaging in property leasing, domestic services or other intermediary services, the business operator infringes upon consumer rights and interests by providing false information, deception, malicious collusion or other means.

第十四条 经营者有本办法第五条至第十一条规定的情形之一,其他法律、法规有规定的,依照法律、法规的规定执行;法律、法规未作规定的,由工商行政管理部门依照《消费者权益保护法》第五十六条予以处罚。

Article 14. Where a business operator violates Articles 5 to 11 herein, the provisions under relevant laws and regulations shall prevail; and, in the absence of pertinent provisions under laws and regulations, the relevant administration for industry and commerce shall impose penalties pursuant to Article 56 of the *Law of the PRC on the Protection of the Rights and Interests of Consumers*.

第十五条 经营者违反本办法第十二条、第十三条规定,其他法律、法规有规定的,依照法律、法规的规定执行;法律、法规未作规定的,由工商行政管理部门责令改正,可以单处或者并处警告,违法所得三倍以下、但最高不超过三万元的罚款,没有违法所得的,处以下一万元的罚款。

Article 15. Where a business operator violates Articles 12 and 13 herein, the provisions under relevant laws and regulations shall prevail; and, in the absence of pertinent provisions under laws and regulations, the relevant administration for industry and commerce shall order a correction, and may separately or jointly give warnings, or impose a fine of less than three times of the illegal gains, but no more than RMB 30,000, and in the absence of illegal gains, impose a fine of less than RMB 10,000.

第十六条 经营者有本办法第五条第(一)项至第(六)项规定行为之一且不能证明自己并非欺骗、误导消费者而实施此种行为的,属于欺诈行为。

Article 16. A business operator shall be deemed to have practiced fraud if it commits any of the acts listed in items (1) to (6) of Article 5 herein, and is unable to prove that such acts are not committed for the purpose of deceiving or misleading consumers.

经营者有本办法第五条第(七)项至第(十)项、第六条和第十三条规定行为之一的,属于欺诈行为。

A business operator shall be deemed to have practiced fraud if it commits any of the acts listed in items (7) to (10) of Article 5, Article 6 and Article 13 herein.

第十七条 经营者对工商行政管理部门作出的行政处罚决定不服的,可以依法申请行政复议或者提起行政诉讼。

Article 17. A business operator may apply for administrative reconsideration or bring an administrative lawsuit pursuant to the law if it has objections to the administrative penalties



imposed by the administrative departments for industry and commerce.

第十八条 侵害消费者权益违法行为涉嫌犯罪的,工商行政管理部门应当按照有关规定,移送司法机关追究其刑事责任。

Article 18. Where the illegal acts that infringe upon consumer rights and interests are suspected to be criminal offenses, the administrative departments for industry and commerce shall, in accordance with relevant provisions, refer the cases to judicial organs for criminal investigation.

第十九条 工商行政管理部门依照法律法规及本办法规定对经营者予以行政处罚的,应当记入经营者的信用档案,并通过企业信用信息公示系统等及时向社会公布。

Article 19. Where administrative departments for industry and commerce impose administrative penalties on business operators in accordance with laws, regulations and these Measures, such penalties shall be recorded in the credit files of the business operators, and shall be promptly made public via the enterprise credit information disclosure system and other channels.

企业应当依据《企业信息公示暂行条例》的规定,通过企业信用信息公示系统及时向社会公布相关行政处罚信息。

The enterprises shall promptly disclose relevant information about administrative penalties to the public through the enterprise credit information disclosure system pursuant to the provisions of the *Interim Provisions for Enterprise Information Disclosure*.

第二十条 工商行政管理执法人员玩忽职守或者包庇经营者侵害消费者合法权益的行为的,应当依法给予行政处分;涉嫌犯罪的,依法移送司法机关。

Article 20. The law enforcement officers of the administrations for industry and commerce shall be subject to disciplinary sanction under the law if they neglect duties or cover up business operators that infringe upon the lawful rights and interests of consumers, and shall be referred to judicial organs for investigation pursuant to the law if their acts constitute criminal offenses.

第二十一条 本办法由国家工商行政管理总局负责解释。

Article 21. These Measures shall be interpreted by the State Administration for Industry and Commerce (“SAIC”).

第二十二条 本办法自2015年3月15日起施行。1996年3月15日国家工商行政管理局发布的《欺诈消费者行为处罚办法》(国家工商行政管理局令第50号)同时废止。

Article 22. These Measures shall take effect on March 15, 2015. The *Measures for Penalties Against Conduct Defrauding Consumers* promulgated by the SAIC on March 15, 1996 (SAIC Order No. 50) shall be simultaneously repealed.