



Call for the Establishment of Rules for Punitive Damages and Determination of Minimum Compensation Standard: in response to costly protection of consumer's rights and interests in food-related product liability claims

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With the recent steep increase in complaints related to food and beverages, coupled with the fact that resolutions provided by manufacturers had always failed consumer's expectations, legal experts pointed out the need and urgency to establish a system or rules to impose minimum standard of compensation.

Soaring Number of Tea Beverage-Related Complaints

According to a reliable source from the "12365 call center" of Beijing Bureau of Quality and Technical Supervision, our Reporter was informed that beverage-related complaints topped the list of all food-related complaints received by the center during the first half of this year, with an increase of 72.6% compared with the same period of last year.

Further, the July 26 print edition of the *Southeastern Express* exposed the discovery of ants in the "Huierkang" chrysanthemum herbal tea in an unopened bottle. "There was only three-fifths of liquid left in the bottle and you could see masses of dark-colored substance with floating ants", said Lin Guihui, consumer in Fuqin, Fujian Province.

Last month, a similar incident occurred, according to an article titled "What's this in the Dragon Well Green Tea?" in *Jiangnan Times* described the presence of some foreign-substance found in 'Wahaha' brand organic green tea. Ironically, Wahaha explained that this was not a rare phenomenon as they received such complaint every year and many other manufacturers had similar experiences. With respect to the compensation claim, "it will be settled if we send them more green tea for free," Wahaha responded.

After a search from the "315 Complaint Website", we (contributor of this report) found that during summer of this year alone, there were more than ten complaints against Master Kong tea beverage. When contacted, director Lin of the Website Complaint Center told us that many of these complaints had not yet been resolved



simply because consumers and the sellers could not achieve any consensus pertaining to the amount of compensation. We then proceed to contact Ms. Hao, manager of the public relations department of Master Kong Co., Ltd. who had confirmed receipt of the said complaints went on to reveal, among these complaints, only one was successfully settled and at least four cases could not be resolved due to a massive gap between the claim and the company's settlement decision. Specifically, the company believed that "the claim for compensation shall be handled in accordance with the Law of the People's Republic of China on the Protection of Consumers' Rights and Interests based on actual conditions". The company "could not satisfy the consumer's claim for compensation of mental injury", the amount of which ranged from hundreds to thousands of yuan – the legal tender of PRC.

We noted that the consumer involved in the one and only "successfully resolved case" was actually dissatisfied at the result. "I was unhappy with the amount of compensation," said Ms. Liu, the complainant in this case from Shenyang, Liaoning Province, "the truth was, when my husband and I were not at home, they replaced the deteriorated green tea with a box of drinks and my mother-in-law was not aware of the whole thing".

Other complainants also expressed their dissatisfaction over the approach taken by the manufacturers. Mr. Jiang, a consumer in Panjin, Liaoning Province, felt uncomfortable and vomited for three consecutive days after drinking the Master Kong iced black tea. However, when contacted, the person in-charge from Master Kong was reluctant to touch on the topic of mental damage compensation. "Even though I had made several long-distance calls, more than ten times in fact which had taken up much of my time and energy, they just wanted to put an end to this matter by giving me a few more bottles of drinks for free", complained Mr. Jiang. "Undoubtedly, it was their product that caused my suffering but I could find no other means to hold them accountable and receive reasonable compensation".

Urgency and the Need to Establish Rules for Punitive Damages

Junbo Hao, attorney at **Lehman, Lee & Xu**, Beijing office, when interviewed, explained that with regard to similar product quality problems, pursuant to the "PRC Law on the Protection of Consumers' Rights and Interests", where business operators were not involved in fraud, consumers could not request compensation twice the amount of the damage occurred, instead, they could only request return or replacement of the defective commodities. The phenomenon that consumers vomit or suffer from diarrhea after use of defective beverages do not fall into the coverage of the "serious consequences" stipulated in Article 8 of the Interpretation of the Supreme People's Court on Relevant Issues of Determining Liability for Mental Suffering Caused by Tortuous Act. Hence, the courts usually will not entertain such claims like the one being filed by Mr. Jiang for compensation of mental distress.

Further, Hao believed that it would be inappropriate for consumers to claim for compensation if the cost (including actual economic losses and the consumption of time and energy) proved to be much higher than compensation, if any. Therefore, the law should be re-looked into to achieve the goals that consumers would not suffer losses in order to protect their legitimate rights and interests. The established principle of actual losses compensation is actually unfair to consumers. The rules for punitive damages and the standard of minimum compensation must be established as quickly as possible so as to promote and encourage the enthusiasm of consumers to better protect their rights and interests. Entitlement of consumers to punitive damages according to law would pose a great challenge to business operators that are pressured to handle each complaint and



request carefully and exert strict control over product quality. Administrative supervision could never parallel the deterrence of such punishment.

Mr. Wu Gaohan, Deputy Secretary General of China Consumer's Association, proposed to set up the standard of minimum compensation during the Food Safety Summit 2005. Based on his analysis, at present, the cost of entertaining small claims cases had far exceeded the actual compensation sum achieved. Consumers would feel it unworthy compared with the large amount of their investment of manpower, money and materials. "As there is the principle of minimum compensation in the legal system of Western countries, a consumer can receive high amount in compensation regardless of the value of the defective product. For example, the minimum standard of compensation is US\$1000 in Hawaii, US. In some other less-developed states, the standard could also be as high as US\$25. Consumers are thus encouraged to file complaints to protect their rights and interests". Wu further believed that, "to change our current situation, the government should launch positive policies concerning the system of minimum compensation."

Current Legal System is Unfavorable to the Protection of Consumer's Rights and Interests

As indicated by **Junbo Hao, attorney at Lehman, Lee & Xu**, the PRC Law on the Protection of Consumers' Rights and Interests was promulgated in 1993 with the aim of protecting the basic legitimate rights and interests of consumers based on the principle of actual loss compensation. The intention of the legislation per se is proper, however, from a practical perspective, it would be unfair to consumers due to the lack of balance in terms of financial strengths and information resources between consumers and manufacturers. From the viewpoint of consumers, filing a claim will not be a worthy act given the limited amount of potential compensation. Further, it would also be embarrassing to legal fraternity if professional legal support is available in such cases and yet the compensation is insufficient to cover the fees that may be incurred by lawyers. From the standpoint of manufacturers, they would not mind making compensation since the law as it is now provides for limited compensation, thus, they will not take the initiative to improve on their product quality that will definitely lead to an increase in production cost. Thus the law that was supposed to protect the consumers, like a boomerang, actually "boomeranged around" ended up in protecting the manufacturers.

Looking back, in the past century, as Hao expressed, laws and administrative regulations with much more tolerance given to businesses and enterprises were formulated in an attempt to stimulate economic development and promote business prosperity in China. Nowadays, as China continues its fast and vigorous growth even to the extent that macro-control must be used to prevent an overheated economy, the law shall be directed to "focus on people". The principal goal of economic development is to improve the quality of life of the people, and hence that should also be the starting point of all legislation activities.

(Translated by LLX Translation Department)

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