

Bond University

MASTER'S THESIS

Consumer Protection in China: Product Liability of E-commerce Platform Operators.

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Award date:
2022

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Consumer Protection in China: Product Liability of E-commerce Platform Operators

Ying Zhao

Submitted in total fulfilment of the requirements of the degree
of Master of Law (by Research)

Faculty of Law

Professor Vai Io Lo and Associate Professor Umair Ghori

*This research was supported by
an Australian Government Research Training Program Scholarship.*

Abstract

Although most B2C (business-to-consumer) transactions are completed through online platforms, consumers do not know that the platform operators will not be liable for defective products. If the sellers disappeared, the consumers would not get compensation for their damage. Platform operators usually could dodge liability by neatly tucking themselves between virtual space and laws governing the physical world. This situation is changing because consumer–seller interactions on a platform are influenced by, supervised by, and contribute to the platform operator's profit. The involvement of platform operators in transactions between sellers and consumers already goes beyond what intermediaries should do. Many scholars and regulators have called for more evaluation of the issue of consumer protection in relation to platform operators' product liability.

The *E-commerce Law of the People's Republic of China (E-commerce Law)* was enforced on 1 January 2019. Article 38 of the *E-commerce Law* regulates the platform operators' obligations and liabilities regarding product safety. Article 38 introduced two categories of obligations, namely the verification obligations and safety obligations. Consumers who suffered damage from the product purchased on the platform can seek compensation from the platform operator who breached one of its obligations under Article 38. This research aims to examine whether Article 38 is adequate to protect consumers.

The debate over Article 38 issues has not ended. Arguments centre primarily on the application of the corresponding liability stipulated in Article 38(2). Based on the literature review, 88 platform operators' product liability cases trialled from 1 January 2019 to 31 December 2021 were collected and examined by this research. Through exploring the courts' application of Article 38, it was found that Article 38 has uncertainty problems regarding what constitutes the two obligations of the platform operators and how they should perform the obligations

properly. The uncertainty of the obligations results in the difficulty of determining platform operators' product liability. This research argues that the present provision of Article 38 of the *E-commerce Law*, without clarifying the content of the obligations and how the platform operators fulfil their obligations, would not adequately protect consumers. This research concludes with recommendations to improve existing issues for improving consumer protection.

Key Words

e-commerce, platform operator, product liability, consumer protection, China

Declaration by Author

This thesis is submitted to Bond University in fulfilment of the requirements of the degree of Master of Law (by Research).

This thesis represents my own original work towards this research degree and contains no material that has previously been submitted for a degree or diploma at this University or any other institution, except where due acknowledgement is made.

Full name: Ying Zhao

Date: 09 August 2022

Copyright Declaration

No Copyright Declaration

No published manuscripts were included for publication within this thesis.

Acknowledgements

I was able to finish this study program with the help of many people. I owe my debt to and would like to express deep appreciation and gratitude to my thesis supervisor, Professor Vai lo Lo, Faculty of Law, Bond University, for her valuable guidance at different stages of this research. I thank Professor Lo for her thorough direction in writing this paper. Even though I struggled mightily at first, I managed to do my assignment without incident. She has considerably enlightened me on the academic quest and the ethics of being a researcher through her critical remarks, ongoing support, and mentoring. This thesis would not have been in its current state without her constant and clear guidance.

My associate supervisor, Dr Umair Ghori, Associate Professor, Faculty of Law, Bond University, has been a tremendous help to me in completing this work. I am also grateful for his comments on the thesis draft that he provided. During the two years of writing the thesis, he encouraged me to improve my research with patience and the greatest care to supervise my work, which has greatly benefited me. I appreciate his never-ending support.

I want to thank my family, my husband Zhengyao Chen, and my three lovely kids, Steven, Grace and William. Thanks for every hug and smile they gave to me whenever I felt exhausted and struggled with the endless literature and data. I am deeply indebted to my beloved parents. Their help and support have accompanied me through the challenging course of the thesis and moments of my life.

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Chapter 1 Introduction

1.1 Research Background

1.1.1 The Issue of the Intermediary

The electronic commerce (e-commerce) platform economy is a new commercial transaction model undertaken or facilitated through the internet platform.¹ The dramatic growth of e-commerce due to the 2019 coronavirus disease-triggered blockade has increased online retail's share of all retail from 16 per cent to 19 per cent in 2020, according to a report released by the United Nations Conference on Trade and Development.² In 2019, worldwide online transactions amounted to US\$3.53 trillion and were projected to reach 6.54 trillion by 2022.³ The e-commerce of China has developed significantly since the internet came to China in 1994. Today China has become the world's largest e-commerce market by transaction value, exceeding US\$1.15 trillion.⁴ The Singles Day festival has become the Chinese annual online retail frenzy since Alibaba launched the first Singles Day discounts on 11 November 1999. During the 2020 Singles Day festival, Chinese e-commerce business sales approached about US\$140 billion.⁵ The e-commerce platform economy is fundamentally changing the traditional relationship between supply and demand, blurring the lines between owners and users, producers and consumers, and crossing spatial divides between personal

¹ 'What is Ecommerce?' (Web Page) <<https://www.shopify.com/encyclopedia/what-is-ecommerce>>.

² UNCTAD, *Estimates Of Global E-Commerce 2019 And Preliminary Assessment Of Covid-19 Impact On Online Retail 2020*, UNCTAD Technical Notes on ICT for Development No18) (*Estimates Of Global E-Commerce 2019 And Preliminary Assessment Of Covid-19 Impact On Online Retail 2020*).

³ 'Retail e-commerce sales worldwide from 2014 to 2023', *Statista* (Statistics) <<https://www.statista.com/statistics/379046/worldwide-retail-e-commerce-sales/#statisticContainer>>.

⁴ 'China upgrades trade with 22 new comprehensive cross-border e-commerce zones', (Web Page) <<https://www.acolink.com/news/2018/china-new-crossborder-ecommerce-zones-followup>>.

⁵ Sherisse Pham, 'Singles Day: Alibaba sales blitz rakes in \$75 billion as Chinese shake off Covid-19', (*CNN Business*, 12 Nov 2020) <<https://edition.cnn.com/2020/11/10/tech/singles-day-2020-alibaba-intl-hnk/index.html>>.

and professional, business and home, market and leisure, acquaintance and stranger, public and private.⁶

Although e-commerce network channels can efficiently provide the benefit of convenient and economical services to consumers, such as decreasing costs by disintermediation, which is a strategy of reducing purchasing prices by removing the intermediaries from the supply chain,⁷ consumers may have problems regarding product safety and seeking redress. For example, consider if a consumer purchased a laptop battery from a seller in Hong Kong on an e-commerce platform Amazon Marketplace, and the battery exploded and the consumer was hurt severely. When the consumer tried to seek compensation from the seller, the seller could not be found. In that case, should the operator of Amazon Marketplace be liable for the consumer's damage caused by the defective product?⁸ The platform operators may avoid assuming responsibilities by claiming they are mere intermediaries.

Even though the issue of platform operators' product liability has grabbed the interest of regulators and scholars, the literature on the law regarding the platform operators' product liability is still lacking. Existing consumer protection laws, with loopholes and oversights, cannot sustain a jurisprudence suited for dealing with issues that arise from the unique characteristics of e-commerce transactions because the applicable assumptions, techniques, and tactics do not represent the fundamental differences between digital networking and commerce channels.⁹ Most platform businesses have acted far beyond the initial role of third-party intermediaries in e-commerce activities. In other words, the question

⁶ Orly Lobel, 'The law of the platform' (2016) 101 *Minn. L. Rev.* 87, 90.

⁷ 'Disintermediation (Strategy) - Explained', *The Business Professor* (Web Page, 07 April 2022) <https://thebusinessprofessor.com/en_US/business-management-amp-operations-strategy-entrepreneurship-amp-innovation/disintermediation-strategy-explained>.

⁸ See the case *Bolger v Amazon.com Inc, LLC* - 53 Cal. App. 5th 431, 267 Cal. Rptr. 3d 601 (2020) ('*Bolger v Amazon*').

⁹ Rob Frieden, 'The Internet of Platforms and Two-Sided Markets: Implications for Competition and Consumers' (2018) 63 *Vill. L. Rev.* 269, 285.

is how to regulate the product liability of e-commerce platform operators for consumer protection.¹⁰

Anti-circumvention advocates have claimed that extending current safeguards to new digital consumption patterns is essential.¹¹ When assessing whether an online platform operator such as Amazon would be able to raise a defence against product liability claims, the legal status of e-commerce platforms is one of the issues to be resolved before determining their product liability. Current scholarly views include platform operators acting as sellers, collaborative parties,¹² online market counter lessors, or intermediaries in modern e-commerce transactions.¹³

More and more scholars have advocated that the platform operators play a role far more than a mere intermediary. According to Ullrich,¹⁴ e-commerce platform operators might be involved in supplying a product and thus should be seen as a distributor, as the platform operators occupy a critical position between the seller and consumer. Busch¹⁵ held a similar position in cases where a platform operator is not only involved in providing an online transaction space but also takes care of the delivery of the goods (for example, the 'Fulfilled by Amazon Program'); thus, the platform operator plays a very 'active role'. Although some platform operators present themselves as mere intermediaries between the parties, Carvalho

¹⁰ For example, Busch was appealing for new policies to constrain the platforms in his recent research. Christoph Busch, 'Rethinking Product Liability Rules for Online Marketplaces: A Comparative Perspective' (Research Paper, European Legal Studies Institute Osnabrück, February 2021) 33-36. See also Joana Campos Carvalho, 'Online Platforms: Concept, Role in the Conclusion of Contracts and Current Legal Framework in Europe' (2020) 12 *Cuadernos Derecho Transnacional* 863.

¹¹ Lobel (n 6) 159.

¹² 郭静静 [Guo Jingjing], '电子商务平台的法律地位研究 - 以消费者保护为中心 [A Study of the Legal Status of E-commerce Platforms - with a Focus on Consumer Protection]' (Doctor Thesis, University of International Business and Economics, 2018).

¹³ 杨立新 [Yang Lixin], '《电子商务法规定的电子商务交易法律关系主体及类型》 [Subjects and types of legal relations of e-commerce transactions under the E-commerce Law]' (2019) 2 *山东大学学报 Journal of Shandong University* 110.

¹⁴ Carsten Ullrich, 'New Approach meets new economy: Enforcing EU product safety in e-commerce' (2019) 26(4) *Maastricht Journal of European and Comparative Law* 558-584, 575.

¹⁵ Busch (n 10).

analysed the platform operators' legal position based on the Portuguese legal system and concluded that they behave as the contractual party to the contract.¹⁶

The point of this part is to show that regulating the product liability of the platform operators is becoming an issue that governments cannot ignore. The way to resolve this issue could vary based on the legal system. For example, the courts of the USA are trying to interpret the existing legislation in a modern way so that the platform operators can be regulated by the regulations.¹⁷

Chinese regulators were aware of the issue and unique characteristics of e-commerce and decided to issue a specific law regulating every single issue related to e-commerce. After a long period of consultation and discussion, the *E-commerce Law of the People's Republic of China (E-commerce Law)*¹⁸ was approved on 31 August 2018. It came into force on 1 January 2019. The structure of the *E-commerce Law* shows the awareness of the Chinese government in regulating the operation of the e-commerce market.¹⁹

1.1.2 Framework of *E-commerce Law*

The *E-commerce Law* contains 89 articles, divided into seven chapters. Specifically it includes General Provisions (Chapter I, Articles 1 to 8, dealing with the purpose of the law, the scope, and basic principles), E-commerce Operators (Chapter II, Articles 9 to 46, including two subsections on the liabilities and obligations of e-commerce platform operators and sellers), Formation and Performance of E-commerce Contracts (Chapter III, Articles 47 to 57), E-commerce Dispute Resolution (Chapter IV, Articles 58 to 63), Promotion of E-commerce (Chapter V, Articles 64 to 72, on the support and promotion of e-

¹⁶ Campos Carvalho (n 10).

¹⁷ See the case *Oberdorf v Amazon.com Inc.* 930 F.3d 136 (3d Cir, 2019) ('*Oberdorf v Amazon*').

¹⁸ 《中华人民共和国电子商务法》 [*E-Commerce Law of the People's Republic of China*] (People's Republic of China) National People's Congress, Standing Committee of the National People's Congress, Order No 7, 31 August 2018, ('*E-commerce Law*').

¹⁹ Gal Forer, 'China's Online Retail Market in an Era of Technological Innovations' (2019) 10 *Beijing L. Rev.* 698, 709.

commerce development by the State and relevant departments), Legal Liability (Chapter VI, Articles 74 to 87, on the liability of e-commerce operators, in particular e-commerce platform operators, in case of non-performance or failure to perform their obligations under the provisions), By-laws (Chapter 7, concerning the time of implementation of the law: 1 September 2019).

The *E-commerce Law* is the first national law stipulating the obligations and liabilities of platform operators thoroughly and transparently. There are 37 articles in Chapters II and III concerning platform operators' obligations and liabilities. Article 38 of the *E-commerce Law* is this thesis's primary research object, which provides platform operators' obligations to prevent consumers from harm by a defective product and different liabilities for the breach in two paragraphs.²⁰ With the enforcement of the *E-commerce Law*, consumers injured by defective products or services will be able to get compensation from the platform operators liable for product liability together with the sellers who provide the products or services.

1.1.3 E-commerce Transaction Relationships

Although the relationship between platforms and sellers in e-commerce transactions is similar to that in the traditional marketplace (shopping malls) – for example, both provide rental services – the relationship between online platforms and sellers is more complex due to the emerging model of e-commerce transactions.²¹ To better understand the product liability of the platform operators, the relationship between the platform and the seller will also need to be sorted out more accurately.

Article 9(3) of the *E-commerce Law* defines the concept of the product provider as 'operators on a platform' (in this thesis, uniformly referred to as sellers)

²⁰ Under Article 38, the platform operators have verification obligations to the sellers with product information and an obligation to safeguard consumers' safety. Article 38 also provides liabilities for the breach of these obligations. This thesis will discuss whether the consumer can be adequately protected by Article 38.

²¹ See discussion in Chapter 2 of this research.

engaging in e-commerce to sell commodities or offer services on e-commerce platforms. E-commerce consumers conclude a contractual relationship with the seller to purchase goods. The contractual relationship between the online seller and the consumer and the liability to be borne in product liability disputes is no different from offline transactions. There is no question that online sellers have direct control over the quality of their products and the power to do so. On the other hand, the platform operator does not directly supply the product and has no access to it. Therefore, the seller's and e-commerce platform operators' product liability are two entirely different issues. As a result, the product liability of the seller will not be explored in this study.

According to Article 9(2) of the *E-commerce Law*, an 'e-commerce platform operator' is 'a legal organisation that provides online business premises, transaction aggregation, information dissemination, and other services for two or more parties to carry out trading activities independently'. For this research, this concept covers three fundamental criteria for defining a platform operator who will take product liability together with the seller: (1) a platform operator owns the platform and has the authority to administer it; (2) a platform operator is acting as a market organiser and manager; and (3) a platform operator does not directly sell items to consumers.

E-commerce consumers and platform operators also have a legal relationship, which is of mainly two kinds. Firstly, when the platform operator acts as an intermediary service provider, there is a service contract relationship with consumers. This relationship is established by the consumers signing a service agreement at the registration to purchase goods or receive services through the platform. When consumers search for goods or services on the platform, the search results on the page should be considered as the platform's recommendation in fulfilling its service obligations. E-commerce consumers should comply with the trading rules and user agreements. If the consumer violates the trading rules and user agreements, the platform operator has the right to cancel their right to trade in accordance with the agreements.

Secondly, when a platform operator sells goods or provides services directly to consumers, it has a contractual relationship with them concerning the transaction. The platform operator in this relationship is treated as a seller. In addition to assuming the same obligations and liabilities as sellers, the *E-commerce Law* also requires platform operators to make clear notifications to consumers about their self-operated business.²²

This thesis focuses on the platform operators' product liability when they do not sell products to consumers but act as transaction platform providers and, therefore, does not discuss the liabilities and obligations of the platform operator as a seller.

1.2 Research Problem and Questions of the Thesis

The majority of B2C e-commerce transactions include three parties: buyers, sellers, and platform operators. Although the platform operators are not parties to the transaction contracts, the traditional alleged belief that they do not need to take any responsibility for defective products sold on their platform has begun to be called into question due to the undeniable fact that they are involved in substantial transactions. The relationship between the three parties is becoming more complicated and subtle. Amazon, for example, does not only connect buyers to sellers or operates as a seller itself but also controls the transaction process. Consumers will need to identify who will be liable if they want to seek compensation for defective goods. The question of whether the platform operators need to be regulated in relation to the product liability is the subject of much debate.²³ Questions are primarily discussed on whether platform operators have an obligation to look after the consumers and assume liability for their losses caused by a faulty product. If yes, to what extent should a platform operator be

²² *E-commerce Law* (n 18).

²³ For example, see Joseph J Penbera, 'E-commerce: Economics and Regulation' (1999) 64(4) *SAM Advanced Management Journal* 39; Frieden (n 9); Ullrich (n 14); Busch (n 10). Further discussion about the necessity of regulating the platform operators' product liability is in Chapter 2 of this research.

liable? These questions have been a topic of debate in the legal community.²⁴ Scholars and regulators began considering modifying the regulatory framework to protect consumers. For example, to clarify the platform operators' liabilities and obligations concerning product quality.

The *E-commerce Law* was adopted by the Chinese government after years of accumulated experience in fast-growing e-commerce. It is novel and reflects the necessity of mandatory protection in e-commerce. One of the most significant features is that it sets up a particular chapter to govern the obligations and liabilities of e-commerce platform operators, including obligations to prevent consumers from being harmed by a defective product and corresponding product liability. The problem is, however, that Article 38 is the only provision in the *E-commerce Law* that addresses the product obligations and liabilities of the platform operators.

The core of this thesis is an examination of the platform operators' product liability provisions under the *E-commerce Law*. This research will examine the *E-commerce Law* application in product liability disputes and subsequently review whether the present law provisions are enough to protect cyberspace consumers who suffered damage from the defective product purchased on the platform and assesses whether any concerns need to be solved to protect consumers better.

Taking into account the aims mentioned above, this thesis is an attempt to seek answers to a number of questions, which include:

²⁴ For example, Busch et al. observed the current EU legislative instruments are not enough to protect consumer for they are facing a 'triangular' relationship not a 'bipolar' relationship in the traditional offline business. They suggested that the platform should be regulated by law regarding their responsibilities. Christoph Busch et al, 'Rise of the Platform Economy: A New Challenge for EU Consumer Law?' (2016) 5 *J. Eur. Consumer & Mkt. L.* 3. See also Julie E. Cohen who discussed the platforms' liability in relation to privacy; she argued that the powerful platform corporations have always tried to change the jurisdictional rules to their benefit. Julie E. Cohen, 'Law for the platform economy' (2017) 51 *UCDL Rev.* 133, 176.

The primary research question:

- To what extent has China's *E-commerce Law* proven effective in protecting consumers' right to be free of a defective product?

Based on this primary question, the following three sub-questions will be examined:

1. Why should platform operators be regulated regarding product liability in e-commerce? This thesis will clarify the necessity of government regulation of the platform operators, especially regarding defective product liability.
2. What obligations do platform operators bear concerning product safety? Moreover, what product liability will the platform operators assume if they breach the obligations?

Defective products will cause damage to users or their property. Consumers will suffer consequences and therefore need to seek redress or compensation from the sellers or the platform operators. The platform operators have obligations to protect consumers from harm by defective products under the *E-commerce Law*. After demonstrating that the platform operators need to be regulated in terms of defective products, further research will be done about what kind of product liability the platform operators should assume if they fail to fulfil the legal obligations.

3. How do Chinese courts apply the *E-commerce Law* if the platform operators are found to be liable for the defective products?

The *E-commerce Law* has been enforced for over two years. This research collected product liability cases concerning online platform operators and the application of Article 38 in the last two years. The purpose of doing the case study is to analyse how the courts determined the platform operators' performance of

their obligations and what liabilities were imposed on the platform operators who were found to breach their obligations by the courts.

4. Does the *E-commerce Law* protect consumers adequately in relation to a defective product, and, if not, what are the existing problems and how can they be resolved?

Before the *E-commerce Law* was issued, it was difficult to regulate the product liability of e-commerce platform operators. The *E-commerce Law* solves this problem by stipulating that an e-commerce platform operator is a legal product liability bearer in certain circumstances. However, there is currently difficulty in the identification of product liability of e-commerce platform operators (see discussion in Chapter 3 and Chapter 4 of this thesis).

According to Article 44 of the *Consumer Law of China*,²⁵ consumers whose lawful rights and interests are infringed upon in purchasing goods or services through online trading platforms may claim compensation from the sellers or service providers. If the platform operators cannot provide the sellers' names, addresses, and valid contact information, consumers may claim damages from the platform operators. After compensation, the providers of online trading platforms shall have the right to be reimbursed by the sellers or service providers.

After the enforcement of the *E-commerce Law*, from January 2019 to December 2022, there were 88 cases where consumers claimed compensation from platform operators under Article 38 of the *E-commerce Law* (see the analysis in this research for details), while there were 277 cases in which consumers relied on Article 44 of the *Consumer Law of China* to hold platforms liable for their products in the same period. This discrepancy in the case number indicates the deficiency regarding consumer protection under the *E-commerce Law*, which leads to consumers being reluctant to seek remedy under the *E-commerce Law*.

²⁵ *Consumer Law of China* (n 115).

Article 1 of the *E-commerce Law* states the purpose of establishing the law. It is to safeguard the legitimate rights and interests of all subjects involved in electronic commerce, regulate e-commerce practices, maintain the proper market order and foster the development of the e-commerce industry sustainably and healthily. Based on the research of this thesis, it is arguable to conclude that Article 38 does not sufficiently fulfil the purpose of the *E-commerce Law* and does not provide sufficient protection for online consumers.

1.3 Methodology and Materials

To effectively answer the research questions as asked, there was a need to ensure that the research design was sufficiently appropriate and functional to draw out the evidence from the practice. This research primarily adopted a doctrinal methodology to analyse, evaluate, and investigate the concerns surrounding platform operators' product liability in e-commerce. This study aims to investigate how the Chinese *E-commerce Law* regulates the e-commerce platform operators' product liability. The research focused on the legislative effectiveness of the *E-commerce Law* concerning consumer protection when a seller provides defective products on the platform.

The doctrinal research methodology includes literature review but is much more than scholarship. It is necessary to look at the legislation's location and original texts in order to identify its nature and bounds.²⁶ Ensuring the appropriate choice of research methodology will provide greater confidence that the research findings are as clear as possible.²⁷ Specifically, the methodology represents the research rationale or the general logic²⁸ adopted to acquire the required knowledge. The doctrinal approach employed in this thesis comprises many legal analyses, such as the development of liability law in China (i.e., the obligation to

²⁶ Terry Hutchinson, *Researching and writing in law* (Thomas Lawbook Co., 4th ed, 2018) 51.

²⁷ Charles Kivunja and Ahmed Bawa Kuyini, 'Understanding and applying research paradigms in educational contexts' (2017) 6(5) *International Journal of higher education* 26.

²⁸ Haiying Long, 'An empirical review of research methodologies and methods in creativity studies (2003–2012)' (2014) 26(4) *Creativity Research Journal* 427.

safeguard consumers' safety) and how it came to be included in the *E-commerce Law*. Then it examines in detail the platform operators' product liability provisions under the *E-commerce Law* and whether there are indications that the law may evolve or develop.

Doctrinal methodology refers to conducting research that is usually thought of as 'typical legal research'.²⁹ Doctrinal legal research is about thorough enquiry into legal concepts, values, principles and existing legal texts such as statutes, case laws etc.³⁰ In other words, 'the essential features of doctrinal scholarship involve a critical conceptual analysis of all relevant legislation and case law to reveal a statement of the law relevant to the matter under investigation'.³¹ This research adopted a doctrinal methodology to answer the research questions. The primary and secondary materials on Chinese law, including basic laws, administrative regulations, government policies, and cases related to this research, were located, and interpreted. Secondary materials include official documents published by the Chinese government; books, articles, and research reports were referred to as the primary literature review of this research.

This paper also analysed the language of regulations as the basis for the literature review of this study. Many aspects of the law are contingent on context and need to be interpreted and analysed for meaning. Doctrinal research focuses on legal principles generated by the courts and the legislature.³² A doctrinal approach has been applied to Chapters 3 and 4, analysing the results of different cases by applying the exact provisions of the *E-commerce Law*.

It is relevant to consider that the study draws references from primary sources involving statutes, cases, legislation and reports from other legal authorities

²⁹ 'Research Methods: Doctrinal Methodology', *ASC LLM Support – UWE* (Blog Post, 18 January 2017) <<https://uweascllmsupport.wordpress.com/2017/01/18/research-methods-doctrinal-methodology/>>.

³⁰ Amrit Kharel, 'Doctrinal legal research' (2018) *Available at SSRN 3130525*.

³¹ Terry Hutchinson, 'Vale Bunny Watson: Law Librarians, Law Libraries, and Legal Research in the Post-Internet Era' (2014) 106 *Law Libr. J.* 579, 584.

³² Terry Hutchinson and Nigel Duncan, 'Defining and describing what we do: Doctrinal legal research' (2012) 17 *Deakin L. Rev.* 83.

applied in the jurisdiction selected for investigation. In addition, a secondary range of resources has also been considered to elucidate the findings of the primary studies. Literature to be analysed includes journal articles and books that will prove significant in the discussion. E-commerce platform operators' product liability is concerned with consumer protection globally. Although this research studies the Chinese *E-commerce Law* and consumer protection, the other scholars from other jurisdictions (US and EU) research and points of view on the regulation of platform operators' product liability inspire this research to explore deeper.

This thesis fully explores the existing legal authority texts. It focuses on explaining and discussing the obligations and liabilities of platform operators under the *E-commerce Law*. The research searched the China Judgements Online website, an official public website established and managed by the Supreme People's Court of China. More than one hundred cases were found. There were some cases that were transferred to other jurisdictions by the courts. The plaintiffs withdrew their cases after transfer without stating any further reasons. Excluding these cases, it was finally decided to use 88 cases³³ for this study. The data obtained were from China Judgment Online.

The study aims to identify the vagueness of the legislative language and the difficulties caused. Between 2019 and 2021, the courts found in 88 cases³⁴ that sellers operated illegally and sold defective products to consumers. In 11 cases, the platform operators were held jointly and severally liable at first instance. In four of the cases, the defendant platform operators appealed. In two cases, the second-instance judges overturned the first-instance decisions and ruled that the platform operators were not liable. Chapters 3 and 4 discuss how the courts apply the law and the problems of the legislation. Existing problems regarding the regulation of the platform operators' product liability are derived from the study of

³³ See Appendix 1 Table 1: Platform operators' product liability cases (January 2019 – December 2020).

³⁴ Ibid.

the cases, preparing for making recommendations to resolve the problems in Chapter 5.

1.4 Significance and Limitations of the Research

1.4.1 Significance of the Research

The thesis establishes two significant levels in relation to China: e-commerce and consumer protection. The rise of the e-commerce economy has increased consumer protection concerns.³⁵ Various factors impact this problem, the most significant of which are legislative frameworks, which serve as critical instruments for expanding e-commerce regimes.

This paper adopted a doctrinal methodology to study and analyse the obligations and liability of e-commerce platform operators. By analysing the theoretical issues underlying the obligations of platform operators to safeguard e-commerce consumers, this research examined the product liabilities of platform operators under the *E-commerce Law*. It explored the relationship between the configuration of tort liability and the tort behaviour of platform operators to expand the research perspective to a certain extent and provide some desirable suggestions for improving the tort system of e-commerce platform operators.

Article 38 of the *E-commerce Law* is the only provision in the law that proposes providing for the product liability of e-commerce platform operators. The

³⁵ For example, Goyens investigated the consumer protection issue in the EU, where the consumer bought products from an abroad seller through the online platform and suffered damage from the purchased product, in which the consumer could be in a situation without any protection if the platform were considered as a mere intermediary. In his research, he suggested taking the policy as one of the considerations to resolve this issue. M. Goyens, 'Effective Consumer Protection Frameworks in a Global and Digital World' [195] (2019) 43(1) *Journal of Consumer Policy* 195-207. Another scholar, Pappas, analysed and compared the EU and the US approaches to regulating e-commerce, which he considered would benefit legal workers in the booming development of e-commerce. In relation to consumer protection, Pappas predicted that the 'governments will likely recognize their inability to use domestic courts to effectively resolve all e-commerce disputes' and thus assent to an international forum to resolve this issue; see Christopher William Pappas, 'Comparative US & (and) EU Approaches to E-Commerce Regulation: Jurisdiction, Electronic Contracts, Electronic Signatures and Taxation' (2002) 31(2) *Denver Journal of International Law & Policy* 8, 336.

determination of product liability of the platform operators is a novel subject. The study is substantial in practice, as the question of balancing the protection of consumer rights and the steady development of the platform economy through legislation at the same time is a matter of close attention for legislators in various countries. China's e-commerce economy is among the most developed in the world, and the problems in e-commerce transactions are typical and valuable to study. The study of China's latest *E-commerce Law* and its application in relevant cases can identify the problems faced by consumer protection in developing product liability for platform operators and, at the same time, contribute to the study of relevant laws worldwide.

1.4.2 Limitations of the Research: Issues with the Platform Operators' Contract Liability

In B2C e-commerce transactions, the product liability of platform operators is difficult to define through contractual relationships. That is because the e-commerce platform always puts them in a position of mere intermediaries by signing a standard service contract. It expressly states the platform's agent position. Furthermore, the platform operators do not participate but communicate with the buyer and the seller through the virtual network. Therefore, the platform can rely on the traditional contract principle that they are not the contract parties, to avoid assuming any contractual liabilities for the defective products. This is a widespread problem in the field of e-commerce because the platform operators' involvement in the transaction is increasingly substantial and even controlling the terms of the transaction contract.

In addition, the prosperous development of the Chinese e-commerce market brought about fierce competition. To boost demand, e-commerce platforms often organise promotional activities and publish various advertisements on behalf of the sellers. The B2C electronic platforms make business reputation declarations on platforms like 'Genuine Guarantee', 'Quick Refund' and so on.³⁶ Moreover,

³⁶ See the Chinese e-commerce platform VIP at <https://www.vip.com/>, Tmall.com at <https://www.tmall.com/>, JD.Com at <https://www.jd.com/>.

the platforms often organise various promotional activities to attract consumers. For example, the promotion about deducting 20 CNY (the Chinese Yuan) from the payment over 100 CNY is usually used in Tmall's annual promotion activity, the Double Eleven Festival. This kind of business reputation policy and promotion information is posted by the e-commerce platform operators specifically and clearly on the website. Whether this information can be formed as an offer and a contract might be constructed on consumers placing an order. It is an unclear issue in China, although a court has already touched on this issue in the case *Zheng v Tmall*.³⁷

In the case of *Zheng v Tmall*,³⁸ the e-commerce platform Tmall withdrew a piece of promotion information before the beginning of the advertised promotion time after 33 hours of posting the information. The plaintiff added the goods to his electronic trolley after noticing the promotion information but failed to complete the transaction at the advertised price due to the platform's cancellation of the promotion. The Internet Court of Guangzhou City also held that the promotional information released by the Tmall platform conveys a strong and definite willingness to sell and that it will ship the goods as long as the buyer placed an order following the promotion rules. The court pointed out that in the network environment where a large number of users and promotional information is spreading rapidly, the advertised promotional information may impact many consumers. It is reasonable for the plaintiff to believe that Tmall, as a professional e-commerce platform operator, has a complete understanding of the characteristics of online sales promotion and will publish promotional information professionally and prudently. Therefore, the promotional information should be an irrevocable offer.

³⁷ 《郑飞与被告浙江天猫供应链管理有限公司网络购物合同纠纷民事判决书》 [*Zheng Fei and Defendant Zhejiang Tmall Supply Chain Management Co., Ltd. Civil Judgment on Online Shopping Contract Dispute*] [2018] 广州互联网法院 [Guangzhou Internet Court], (2018)粤 0192 民初 106 号 [Economic First Trial No 106], 25 October 2018 ('*Zheng Fei v Tmall.com*').

³⁸ *Ibid.*

The 88 sample cases researched for this thesis revealed that although the e-commerce platform operators may also be part of the contract because they made promises about the transaction, the courts did not consider the contractual liability of the platform operators in the product liability dispute. Consequently, only the platform operators' statutory obligations and liabilities issues have been included in this study to keep the study within manageable proportions for a thorough examination and to maintain parsimony. Due to time and resource restrictions, this thesis does not investigate whether platform operators take product liability under contract law theory. This could potentially be taken into account in future studies.

1.5 Structure of the Thesis

This thesis focuses on the product liability of the platform operators under the *E-commerce Law* of China. Chapter 1 is an introductory chapter that firstly proposes the issue of intermediary and special legal status of the platform operators. This chapter delivers a general view of this research aims and questions and the rationale for choosing the topic. Further, this chapter sheds light on the methodology used and addresses the study's scope and limitations.

Chapter 2 explores the rationale for the need for product liability for platform operators through legal research and analysis of the relevant substantive issues, focusing on the logical derivation and further doctrinal analysis and the core issues touched upon by the study of the definition of legal terms. In outlining the regulatory framework for product liability in China, the thesis explores the legislative definition of 'defective products' and the laws regulating product liability in China. The e-commerce platform is a complex ecosystem, performing a bilateral market matching function, digital application, and effectively linking multiple subjects or industries. It brings a vague definition of the obligations and liability of the platform operators, which leads to more extensive consumer protection challenges than in the traditional market.

Chapter 3 discusses the verification obligations, including the content of the verification obligations and the manner of performance. Article 38 is the sole provision about the platform operators' product liability under the *E-commerce Law*, which established two statutory obligations for the platform operators: the verification obligations and the obligation to safeguard consumers' safety. However, these obligations were stipulated in a very general manner because it tries to regulate the issue of platform operators' product liability in a single Article. This leads to uncertainty about the platform operators' performance of these obligations and the determination of the liabilities to be imposed on the platform operators. This research proposes three verification obligations the platform operators should bear and the corresponding liabilities for breach of each verification obligation. Chapter 3 also analyses the existing issues with the law as applied and the reasons for such problems.

Chapter 4 further explores and elaborates on the obligation to safeguard consumers' safety and liabilities for breach of this obligation of the platform operators under the *E-commerce Law*. Although the safeguard obligation was established in Article 38(2) of the *E-commerce Law*, it is a controversial issue in relation to what constitutes the platform operators' safeguard consumers' safety obligation. There are two reasons for this. Firstly, there was no concept of safeguard obligation in the legal system of China until the Supreme People's Court issued *the Interpretation of the Supreme People's Court of Some Issues Concerning the Application of Law for the Trial of Cases on Compensation for Personal Injury ('Interpretation 2003')*.³⁹ Secondly, although the safeguard obligation about the operator of the public business premises has been developed in the *Civil Code of the People's Republic of China ('Civil Code')*,⁴⁰ it is under debate whether the provisions apply to an online platform operator.

³⁹ 《最高人民法院关于审理人身损害赔偿案件适用法律若干问题的解释》 [Interpretation of the Supreme People's Court of Some Issues concerning the Application of Law for the Trial of Cases on Compensation for Personal Injury] (People's Republic of China) (最高人民法院 [Supreme People's Court] 法释 [2003] 20号 [Judicial Interpretation No 20] 26 December 2003, ('Interpretation 2003')).

⁴⁰ 《中华人民共和国民法典》 [Civil Code of the People's Republic of China] (People's Republic of China) National People's Congress, Order No 45, 01 January 2021, ('Civil Code').

Chapter 4 reviews these literature debates and then proposes what should constitute the platform operators' safeguard obligation. The liability for breach of safeguard obligation is also an issue of uncertainty. The legislators adopted corresponding liability in Article 38(2) for the breach of safeguard obligation. Under the *Civil Code*, a liability can be joint and several liability,⁴¹ supplementary liability⁴² and contributory liability.⁴³ To which liability applies to what breach has been implemented uncertainly. At the end of Chapter 4, the existing problems about the platform operators' product liability concerning breach of safeguard obligation are summarised.

After enacting the *E-commerce Law*, the relevant judicial application and practice have yet to clarify the relevant operational rules further. The final chapter of this study, Chapter 5, is based on the analysis in the previous chapters and the problems with the product liability of e-commerce platform operators under the existing *E-commerce Law* and makes further recommendations, including further clarification of the relevant provisions of the *E-commerce Law* and possible future legal amendments.

⁴¹ Ibid arts 1170, 1171.

⁴² Ibid art 1198.

⁴³ Ibid art 1172.

Chapter 2 Exploring Rationales Underlying the Need for Platform Operators to Assume Product Liability

2.1 Introduction

Many observe that regulatory mechanisms have been failing to keep up with the platform economy⁴⁴ and that consumers have suffered due to platform operators evading responsibility and acting against existing norms.⁴⁵ Others claim that platform expansion directly benefits companies' intention to circumvent laws such as those aimed at improving labour welfare and product quality.⁴⁶ According to economist Dean Baker, the platform and its operators are broadly focused on evading rules and laws. As a result, clients are exposed to substandard and frequently harmful products and services.⁴⁷ Anthony Kalamar coined the term 'sharewashing' to describe how platform operators shift responsibility and risk onto product providers and customers under the guise of the 'sharing economy'.⁴⁸ Due to the rapid growth of the platform economy, many e-commerce platforms, such as Amazon.com, have grown to become corporate giants. When illegal or dangerous products are placed on the platform, it can have negative repercussions on a very large scale.⁴⁹ The regulators are suggested to consider extending the product liability to online marketplaces.⁵⁰

⁴⁴ Molly Cohen and Corey Zehngebot, 'What's old becomes new: Regulating the sharing economy' (2014) 58(2) *Boston Bar Journal* 6.

⁴⁵ 'Regulation Won't Kill The Sharing Economy. We Just Need New Rules.', *Popular Science*, (JUL 8, 2014, 8:08 PM) <<https://www.popsci.com/article/technology/regulation-wont-kill-sharing-economy-we-just-need-new-rules/>>.

⁴⁶ See Dean Baker, 'Don't buy the 'sharing economy' hype: Airbnb and Uber are facilitating rip-offs', (Opinion, 27 May 2014) <<http://www.theguardian.com/commentisfree/2014/may/27/airbnb-uber-taxes-regulation>>. Also see Anthony Kalamar, 'Sharewashing is the New Greenwashing', *Open News* (Internet article, 13 May 2013) <<http://www.opednews.com/articles/Sharewashing-is-the-New-Gr-by-Anthony-Kalamar-130513-834.html>>.

⁴⁷ Baker (n 46).

⁴⁸ Kalamar (n 46).

⁴⁹ Miriam C Buiten et al, 'Rethinking liability rules for online hosting platforms' (2020) 28(2) *International Journal of Law and Information Technology* 139.

⁵⁰ Ibid.

Online platforms are digital markets, and the law should respond by adopting regulations that clarify the legal obligations that come with the development and control of online marketplaces.⁵¹ Although the *E-commerce Law* has stipulated that platform operators should be liable for defective products sold by sellers in certain situations, judges rarely recognise platform operators as assuming product liability. The reason is that most courts still define platform operators as mere intermediaries and should only take the most basic responsibility as an online market organiser.⁵² The *E-commerce Law* recognises the platform operators' product liability in certain circumstances, which creates a new category of legal liability in which the platform operators will be liable although they are mere intermediaries.

However, the obligations and liabilities of platform operators are not explicitly outlined by the law, making it difficult for the courts to decide whether the platform operator must accept product liability. Consumers find it challenging to rely on the *E-commerce Law* to safeguard their interests as a result. As will be explored in this chapter, there are some reasons why platform operators should assume liability, and this may reveal that platform operators' assumption of product liability may be more necessary than what is currently being acknowledged.

This chapter seeks to demonstrate the need for product liability to be placed on platform operators from different perspectives, explaining the in-depth involvement of platforms and their operators in business activities in terms of their

⁵¹ Shelly Kreiczler-Levy, 'The Duties of Online Marketplaces' (2021) 58 *San Diego L. Rev.* 269, 271.

⁵² For example, see the case 《汪鑫与上海寻梦信息技术有限公司贾凡等信息网络买卖合同纠纷一审民事判决书》[*Wang Xin and Shanghai Xunmeng Information Technology Co., Ltd. Jia Fan and other information network sales contract disputes first trial civil judgment*] [2021] 上海市长宁区人民法院 [Shanghai ChangNing District People's Court], (2020) 沪 0105 民初 22886 号, [Economic First Trial No 22886], 7 April 2021 ('*Wang Xin v Xunmeng Co., Ltd.*'). See also 《刘冲与义乌市钟达贸易有限公司浙江淘宝网络有限公司产品责任纠纷一审民事判决书》[*Liu Chong and Yiwu Zhongda Trading Co., Ltd. Zhejiang Taobao Network Co., Ltd. product liability dispute first trial civil judgment*] [2020] 重庆市渝北区人民法院 [People's Court of Yubei District, Chongqing City], (2020)渝 0112 民初 8610 号 [Economic First Trial No 8610], 23 June 2020 ('*Liu v Zhongda & Taobao*').

profitability model and discussing platform operators' rights considering Chinese laws and industry practices. To achieve the primary research purpose, this chapter investigates why the platform should take the obligation to protect consumers and how they perform these obligations. Section 2 aims to discuss the platform operators' rights, including the right to manage platforms' operation and administration, set up service and transaction rules, and collect and manage users' and transaction-related information. Section 3 begins with two recent US cases related to platform operators' product liability and then reviews the latest literature research and points concerning the platform operators' product liability regulation. Section 4 introduces the legal framework of China's product liability laws regarding platform operators. Section 5 explores the e-commerce platform's profit-generating measures by outlining the business model of e-commerce platforms and the monetisation of traffic control. The business model of online platforms is so different from physical stores, like supermarkets or shopping malls, although they both conduct business in the form of intermediaries by providing a service or a venue for the transaction between the sellers and the consumers. Although a supermarket chain can sell preferred shelf place placement to its suppliers for an extra fee like online platform operators selling the bid ranking, the physical intermediaries cannot or do not purport to exert as much control over other aspects of the products as do the online platform as illustrated in chapter 2. On the other hand, online platform operators are involved in the transactions by not only charging service fees from sellers but also benefitting through the transaction profit. In this regard, understanding the partnership model between e-commerce platform operators and sellers can help discern if the platform operators are no longer mere intermediaries but participants in the transaction. Investigating how the platform benefits from its control of internet traffic helps better understand how platform operators relinquish their title as 'intermediaries'. Section 6 explores the exceptional legal status of e-commerce platform operators under which the platform operators will assume the responsibility of a non-intermediary.

2.2 Platform Operator's Rights

As a party to a civil matter, e-commerce platform operators enjoy the rights and bear certain obligations. Chapter 1 has outlined the main parties involved in the e-commerce transactions, the consumers, the sellers, and the platform operators, and the relationship between them during the online transactions. In summary, a contractual sales relationship between the seller and the consumer, and the platform service contractual relationship, respectively, between the sellers, platform operators, and consumers. In different legal relationships, the role of the platform operator is different, and the corresponding rights and obligations will also be different.

Concerning product safety, the platform operators have obligations to prevent consumers from harm by defective products, which derive from the rights and power of e-commerce platform operators. The platform handles many aspects of product sales, including transaction rules and the search algorithm that links buyers and sellers.⁵³ By combing through the laws, regulations, and service contract agreements, this section provides an overview of the rights and obligations of the platform operators. One of the central characteristics of the platforms is to dictate the rules of transactions, and handle services,⁵⁴ specifically the right to manage the operation of the online trading platform, the right to establish terms of service and transactions, and the right to collect and manage information.

2.2.1 Right to Manage the Online Trading Platform Operations

The e-commerce platform operator has the right to operate and manage the trading platform according to the service contract and its ownership of the trading platform.⁵⁵ In general, operation and management rights allow for day-to-day technology upgrades and maintenance and platform administration. For example,

⁵³ Kreiczler-Levy (n 51).

⁵⁴ Nick Srnicek, *Platform capitalism* (John Wiley & Sons, 2017) 46.

⁵⁵ *E-commerce Law* (n 18) art 9(2) confirms that the e-commerce platform operator is an owner of an e-commerce platform before using the e-commerce platform for e-commerce activities.

to uphold a mercantile order, the online trading platform is entitled to combat illegal acts such as the act of selling counterfeit goods on the platform.⁵⁶ In the case of *Zhejiang Taobao Network Co., Ltd. v Yao Ying Service Contract Dispute (Taobao v Yao)*,⁵⁷ the defendant conducted a cat food business on Taobao. As one of its management processes, the platform operator had made an anonymous purchase of cat food from the defendant's store to randomly check the product. The cat food was later identified as counterfeit. The platform operator sued Yao for 265,000 CNY damages for breach of contract and infringement of goodwill on the Taobao platform. The court affirmed the platform operator's management rights and ordered the defendant Yao to pay the operator 100,000 CNY in damages. In addition, the *E-commerce Law* also grants certain autonomy to e-commerce platform operators. Under Article 58 of the *E-commerce Law*, the government encourages e-commerce platform operators to set up a system for ensuring commodity or service quality that is conducive to the growth of e-commerce and the protection of consumers' rights and interests.⁵⁸

Since the platform operator already has the right to manage the online trading operations, it has an obligation to reduce low-quality or unsafe products. However, when a platform derives most of its revenue from selling low-quality products, the platform operator may be concerned that its profits will be reduced by removing product listings or even expelling suspicious sellers.⁵⁹ In this case, imposing product liability on the platform operators could force them to reduce the defective product by exercising management powers, thus aligning their private incentives with what is publicly desirable.⁶⁰

⁵⁶ Ibid art 29.

⁵⁷ 《浙江淘宝网络有限公司诉姚莺服务合同纠纷案》 [*Zhejiang Taobao Network Co., Ltd. v Yao Ying Service Contract Dispute case*] (上海市奉贤区(县)人民法院 [Fengxian District (County) People's Court, Shanghai, People's Republic of China], 沪 0120 民初 6274 号 [0120 Economic First Trial No 6274], 20 July 2017, 2017) ('*Taobao v Yao*').

⁵⁸ *E-commerce Law* (n 18) art 58. See also art 63 of the *E-commerce Law*: an operator of an e-commerce platform may establish a mechanism to settle disputes online, formulate and make rules for dispute resolution public, and settle disputes confronting the parties concerned in a fair and impartial manner under the principle of free will.

⁵⁹ Yassine Lefouili and Leonardo Madio, 'The economics of platform liability' (2022) *European Journal of Law and Economics* 1, 9.

⁶⁰ Ibid.

2.2.2 Right to Establish Terms of Service and Regulate Transactions⁶¹

E-commerce platform operators are not only service providers of e-commerce trading venues but also regulate users and their interactions on the platform. Even though they are not involved in transactions, e-commerce platform operators have the right to define the set of rules governing transactions on the platform, exercising remote control over the contractual relationship between the client and the supplier.⁶² Consumers and sellers wishing to use the platform must first sign a service contract during registration.⁶³ The platform service agreement specifies the rules for all transactions within the platform. For example, the Taobao platform details its various rules in the Taobao Platform Rules Centre, including the Taobao Shop Opening Rules, Taobao Platform Dispute Rules, and Taobao Commodity Advertisement and Taobao Marketplace Management Rules.⁶⁴

Sellers and consumers have to agree to the terms and conditions, which include the platform's regulations and policies when, and often prior to, accessing the services offered by an e-commerce site. These rules are not only mandatory, but they are also non-negotiable. E-commerce platform operators have the right to constantly update transaction rules without user confirmation or consent. Users are obliged to comply with these rules for as long as they may wish to enjoy the services offered on the platform by the platform and its operator.⁶⁵ The *E-*

⁶¹ According to art 32 of the *E-commerce Law*, an operator of an e-commerce platform shall conform to the principles of openness, fairness and justice, draw up a platform service agreement and design transaction rules, in order to specify rights and obligations with respect to the entry into and exit from the platform, and guarantee the quality of commodities and services, protection of consumers' rights and interests, protection of personal data, etc.

⁶² Busch et al (n 24).

⁶³ For example, see '《淘宝平台服务协议》 [Taobao Platform Service Agreement]', (Business Agreement) <<https://www.taobao.com/go/chn/member/agreement.php>>.

⁶⁴ Taobao.com, '《淘宝平台规则总则》 Taobao platform rules general rules', (Business Agreement, 06 May 2019) <<https://rulechannel.taobao.com/?type=detail&ruleId=10000210&cId=719#/rule/detail?ruleId=10000210&cId=719>>.

⁶⁵ For example, '《拼多多用户服务协议 (V3.4 版本)》 [Pinduoduo User Service Agreement (Version 3.4)]', (Agreement) <https://www.pinduoduo.com/pdd_user_services_agreement.pdf>.

commerce Law encourages platform operators to set up transaction rules and ensure users acknowledge the obligations to be fulfilled to maintain the order of the e-commerce market, thus providing better protection for consumer rights.⁶⁶ The platform operator must adhere to the principle of fairness while exercising its right to guarantee that both parties to the contract have equal rights and obligations.⁶⁷

The platform operators' right to control the terms of the transaction contract gave rise to an issue that might affect the product liability of the platform operators. The platform operators present themselves as mere intermediaries to the transactions and always set up exclusion terms in the service contract regarding their liabilities.⁶⁸ However, the mere statement by the platform operator that it works only as an intermediary is insufficient to demonstrate that this is the case.⁶⁹ Therefore, although the platform has the right to set the terms of the contract and the rules of the transaction, it is a case-by-case issue as to whether the contract terms can exclude the platform's product liability. On the other hand, even if the platform operator succeeds in limiting its function to facilitating the transaction contract, the platform operator may still be subject to a variety of responsibilities and obligations stemming from its status as an intermediary.⁷⁰ For example, under Article 38 of the *E-commerce Law*, the platform operator may assume product liability for breach of the verification obligations and the obligation to protect consumers' safety.

term 2.4 provides that the Pinduoduo rules are an integral part of this agreement and have the same legal effect as the body of the agreement.

⁶⁶ *E-commerce Law* (n 18), art 32: an operator of an e-commerce platform shall conform to the principles of openness, fairness and justice, draw up a platform service agreement and design transaction rules, in order to specify rights and obligations with respect to the entry into and exit from the platform, and guarantee the quality of commodities and services, protection of consumers' rights and interests, protection of personal data, etc.

⁶⁷ *Civil Code* (n 40) art 496.

⁶⁸ Busch et al (n 24), 5.

⁶⁹ Campos Carvalho (n 10), 866. See also Busch et al (n 24), 5.

⁷⁰ Busch et al (n 24), 5.

2.2.3 Right to Collect and Manage Information

E-commerce platform operators have a right to collect and manage personal identification information and transaction data and are thus uniquely positioned to gather, record and retain data.⁷¹ Identification information of sellers and buyers is collected at the end of the registration process.⁷² The e-commerce platform itself collects and stores transaction information and consumers' browsing history, creating large-scale databanks and meta-databanks that are subsequently reconstructed into the consumer's online shopping experience. For example, when consumers log in to an online trading platform to search for, browse, and bookmark items that pique their interest, or those that they may intend to purchase, they are leaving behind them a trail of valuable data, and this data will be collected and analysed through a back-end processing system to determine the consumers' demands and needs. The consumer will then be sent information relevant to the items that best fit their desires. Sellers can bid for the prioritisation of their product listings on this information. Throughout this process, the e-commerce platform operator exercises its right (and obligation) to acquire and control information.⁷³ Ullrich⁷⁴ pointed out that platforms are intrinsically interested in collecting product, sales and traffic data. It would be reasonable to require them to utilise this data for consumer protection by assisting in preventing the sale of harmful and defective products.⁷⁵

2.3 Trends in Regulating the Platform Operators' Product Liability

Third-party e-commerce platforms, like Amazon and Taobao, connect the providers of goods (sellers) to their clients but often deny that their business can be governed by the same rules that apply to traditional business

⁷¹ Srnicek (n 54).

⁷² *E-commerce Law* (n 18), art 23.

⁷³ Art 31 of the *E-commerce Law* provides that e-commerce platform operators shall record and preserve goods and transaction information published on the platform and ensure the information's integrity, confidentiality, and availability. Art 31 also requires the information shall be kept for not less than three years from the date of completion of the transaction.

⁷⁴ Ullrich (n 14), 576.

⁷⁵ *Ibid.*

participators.⁷⁶This behaviour contradicts the alleged reliability and dependability claimed by the platforms. As a result, consumers are often met with an unpleasant surprise when they suddenly find that they cannot rely on the platforms when seeking redress as they were led to believe. Due to the virtual and trans-regional nature of online shopping, the issue of product liability for platforms taking part in the booming online shopping economy has become an unavoidable topic in consumer protection law.

In recent years, the neutrality of e-commerce platforms has also been questioned in jurisdictions outside China. Scholars are beginning to debate the need for a shift in the legal paradigm and the regulation of platform liability.⁷⁷ As an e-commerce platform operator in the US, Amazon has faced many product liability lawsuits concerning its online platform, Amazon Marketplace. After purchasing a defective product from a third party on Amazon Marketplace, consumers who were harmed might face difficulties in seeking compensation from the seller because they might not be able to contact the seller using the provided contact information, or the seller may no longer exist on the platform.

In such cases, the American consumers might have a right to claim compensation from Amazon for breach of product liability under section 402A of the *Restatement (Second) of Torts*.⁷⁸ The product liability is a strict liability under section 402A of the *Restatement (Second) of Torts*⁷⁹ which means that every party in a product distribution chain is theoretically liable for injuries caused by the product if the product is defective. The *Restatement (Second) of Torts* was the first Torts Restatement to incorporate the concept of strict product liability by incorporating section 402A. Although the *Restatement of the Law Third of Torts: Products Liability* ("Restatement (Third)") was published in 1998, section 402A of

⁷⁶ Lobel (n 6).

⁷⁷ See Edward J Janger and Aaron D Twerski, 'The Heavy Hand of Amazon: A Seller Not a Neutral Platform' (2019) 14 *Brook. J. Corp. Fin. & Com. L.* 259. See Also Busch, 'Rethinking Product Liability Rules for Online Marketplaces: A Comparative Perspective' (n 10). See also Buiten et al (n 49).

⁷⁸ *Restatement (Second) of Torts*, ch American Law Institute, (1965) ('*Restatement (Second) of Torts*').

⁷⁹ *Ibid.*

the *Restatement (Second) of Torts* was widespread acceptance and assumed the central role in the development and understanding of products liability law.⁸⁰ The issue in cases where platform operators' product liability involved was to determine whether the platform operator was a seller and thus to take the liability of a seller. Neither the *Restatement (Second) of Torts* nor *Restatement (Third)* indicates this issue. However, based on the case law, the Courts of the USA examined Amazon's liability under section 402A of the *Restatement (Second) of Torts*.

Amazon usually contended that it is not the seller and thus should not hold the same liability as the seller for strict liability purposes. There are several recent US cases where courts investigated the liability issue regarding whether Amazon should be considered to be a seller of products offered by a third party. One of these cases, *Oberdorf v Amazon.com Inc ('Oberdorf v Amazon')*,⁸¹ has received much attention because the courts held that Amazon is a seller with strict product liability.

2.3.1 Courts' Views

Oberdorf v Amazon

In the US case *Oberdorf v Amazon*,⁸² the plaintiff was significantly injured by a product sold on Amazon, and both Amazon and the plaintiff could not locate the seller. The plaintiff then sued Amazon for product liability. The Pennsylvania District Court found that Amazon was not a 'seller' under Pennsylvania law and therefore was not subject to strict product liability claims.⁸³ However, the United States Court of Appeals for the Third Circuit dismissed the orders from the Pennsylvania District Court and certified a rehearing by the Pennsylvania

⁸⁰ David W Lannetti, 'Toward a Revised Definition of Product under the Restatement (Third) of Torts: Products Liability' (1999) 35 *Tort & Ins. LJ* 845, 804.

⁸¹ *Oberdorf v Amazon* (n 17).

⁸² *Ibid.*

⁸³ *Ibid* 3.

Supreme Court. Afterwards, Amazon and Oberdorf agreed without litigating before the Pennsylvania Supreme Court.⁸⁴

In determining whether Amazon was a seller, the Third Circuit Court considered four factors:

- (1) Amazon was the only party of the liability chain not because the seller was unavailable but because Amazon did not take any measure to ensure a seller was amenable to a legal dispute.⁸⁵
- (2) Although Amazon had no direct control over the design and production of third-party goods, it had significant power over third-party sellers. Amazon had the authority to cancel or restrict product listings, payments, and transactions at any time. As a result, the court held that Amazon was entirely capable of removing defective products from its website. Imposing strict liability on Amazon would be a strong incentive for them to comply with the safety policies.⁸⁶
- (3) Amazon was in a unique position to receive reports of faulty products, and Amazon might have a right to remove such products from the market. As a result, the court held that Amazon was in a better position than consumers concerning stopping the spreading of defective products.⁸⁷
- (4) Amazon had an opportunity to adjust the commission-based fees it charged to sellers based on the seller's risk. As a result, Amazon could

⁸⁴ Oberdorf bought a dog collar from a third-party dealer known as 'The Furry Gang' on Amazon.com. The dog collar was not designed, manufactured, or owned by Amazon. Oberdorf was walking her dog on the leash when the D-ring on the collar snapped, causing the leash to recoil and smack her in the eye, blinding her. Because neither Amazon nor Oberdorf could find The Furry Gang, Oberdorf filed a lawsuit against Amazon, alleging strict responsibility under section 402A because Amazon 'facilitated and participated in the sale and distribution of the relevant dog collar.'

⁸⁵ *Oberdorf v Amazon* (n 17) 15.

⁸⁶ *Ibid* 16.

⁸⁷ *Ibid* 18.

divide the expense of paying for injuries caused by product flaws.⁸⁸

It should be noted that the judges in *Oberdorf*⁸⁹ did not extensively hold that Amazon was liable for all third-party products sold on its website. On the contrary, the courts explicitly pointed out that the decisions were made on the particular facts before the courts. In a different case, a court could hold that Amazon was not strictly liable for defective products sold on its online market. Therefore, it is a case-by-case issue whether the platform operator is liable to assume a product liability under American law. The court might need to examine the platform operator's degree of control over third-party sellers and the specific relationship with the particular seller in the case.

Bolger v Amazon⁹⁰

In another case, *Bolger v Amazon*,⁹¹ the Court of Appeal of California determined that Amazon was an 'integral part of the overall producing and marketing enterprise that should bear the cost of injuries resulting from defective products'. Plaintiff Bolger bought a laptop battery on Amazon.com from a seller identified as 'E-Life', a name used on Amazon by Lenoge Technology (HK) Ltd. The battery exploded several months later, and Bolger suffered severe burns as a result. The Court of Appeal of California held that Amazon was liable for the consumer's damages. The court concluded that even if Amazon was not commonly understood as a seller, it was undoubtedly an intermediary between the supplier and consumer and a critical link in the distribution chain.

The court applied policy considerations to determine whether Amazon is subject to strict liability.

⁸⁸ Ibid 20.

⁸⁹ The Third Circuit Court indicated in footnote 11 that the decision, guided by Pennsylvania law, was limited to whether Amazon was a 'seller' based on its role in effectuating sales of physical products offered by third-party sellers. The court expressed no view, for example, on whether other companies providing online marketplaces are considered 'sellers'.

⁹⁰ *Bolger v Amazon* (n 8).

⁹¹ Ibid.

(1) The court held that Amazon was the only member of the transaction chain to an injured complainant. The principle of compensating aggrieved plaintiffs is retained by extending liability to Amazon which is still allowed to seek recompense from the faulty product's manufacturer.⁹²

(2) The court held that Amazon played a substantial role in ensuring product safety. The court reasoned that making Amazon accountable for product liability would provide it with a stronger incentive to worry about the safety of the items sold on its online market than it would otherwise.⁹³

(3) The court held that Amazon had the capacity to adjust the cost of compensating injured plaintiffs during their ongoing relationship.⁹⁴

In applying principles of strict liability, the Court of Appeal of California found Amazon should be an 'integral part of the overall producing and marketing enterprise that should bear the cost of injuries resulting from defective products.'⁹⁵

2.3.2 Scholars' Views

The case *Oberdorf v Amazon*⁹⁶ has sparked a heated discussion over product liability legislation on e-commerce platforms among European and US academics

The US academics Janger and Twerski⁹⁷ argued that it is a fallacy that Amazon can be considered a neutral platform that only facilitates commerce between sellers and purchasers. They examined the policies of Amazon and concluded that while the transaction types in which consumers acquire products on Amazon differ, it does not only play the role of the neutral platform in almost all of the

⁹² Ibid 26.

⁹³ Ibid 28.

⁹⁴ Ibid 29.

⁹⁵ Ibid 25.

⁹⁶ *Oberdorf v Amazon* (n 17).

⁹⁷ Janger and Twerski (n 77).

transactions. Instead, Amazon exercises considerable control over transactions. They argue that Amazon controls the likelihood of a product being seen by potential buyers by selling priority space to the highest bidder. Also, selling keywords to the highest bidder increases the chances of buyers being directed to the bidder's products.⁹⁸ Therefore, Janger and Twerski suggested that Amazon and the seller bear the same strict product liability to protect consumers' interests.⁹⁹

Based on the *Oberdorf* case, the European scholar Busch¹⁰⁰ compared the regulatory regimes in the EU and US and proposed a reform of the EU Product Liability Directive. Busch predicted that the platform operators' product liability issue is yet to be settled and would be discussed further in the EU.¹⁰¹ In another research,¹⁰² Busch stated three advantages of imposing product liability on the platform: inducing platform operators to monitor and improve the product safety, rising prices of goods to reflect its risks, and compensating consumer damages.

In their research, other European experts, Buiten et al., pointed out that some legislation no longer applies to today's platforms.¹⁰³ While liability rules should be assigned to govern direct infringers, this does not mean platform operators are exempted from liability.¹⁰⁴ Due to the rapid growth of the platform economy, many e-commerce platforms, such as Amazon.com, have become huge. When illegal or dangerous products are placed on the platform, the impact and harm can be very large.¹⁰⁵ Buiten et al. believed that online platforms could afford to invest in technology and human resources to prevent dangerous products.¹⁰⁶

⁹⁸ Ibid 266.

⁹⁹ Ibid 272.

¹⁰⁰ Busch (n 10); see also another research from Busch: Christoph Busch, 'When product liability meets the platform economy: A European perspective on *Oberdorf v Amazon*' (2019) 173.

¹⁰¹ Busch, 'When product liability meets the platform economy: A European perspective on *Oberdorf v Amazon*' (n 100).

¹⁰² Busch, 'Rethinking Product Liability Rules for Online Marketplaces: A Comparative Perspective' (n 10).

¹⁰³ Buiten et al (n 49).

¹⁰⁴ Ibid 142.

¹⁰⁵ Ibid 147.

¹⁰⁶ Ibid 156.

2.3.3 Platform Operators' Product Liability in Australia

Australia does not currently have a regulatory regime specifically aimed at e-commerce platform operators. *Competition and Consumer Law Act 2010* (Cth) Sch 2 ('ACL')¹⁰⁷ is the existing regulation to help promote fairness, transparency, and disclosure of the online marketplace.

In Australia, if a seller supplies goods to consumers, the *ACL* provides that goods supplied to consumers in trade or commerce need to be of 'acceptable quality'.¹⁰⁸ There is also a guarantee that goods supplied will be 'fit for any disclosed purpose.'¹⁰⁹ The *ACL* prohibits businesses from engaging in misleading or deceptive conduct toward consumers.¹¹⁰ The *ACL* forbids enterprises from making false or misleading promises about products or services, in addition to the restriction against misleading or deceptive behaviour.¹¹¹

The Australian Competition and Consumer Commission (ACCC) issued the 2019 Digital Platforms Inquiry, which suggests that digital markets should be proactively investigated and monitored to achieve better outcomes for Australian businesses and consumers. In April 2022, the ACCC released its fourth interim report as part of its inquiry into the digital platform market. The report investigates potential competition and consumer protection issues in the Australian e-commerce market, including product safety.¹¹²

Despite the measures taken by online marketplaces, product safety, quality, compliance and authenticity issues continue to affect online marketplaces and consumers. The ACCC believes that "online marketplaces could and should do more to protect consumers who use their online marketplaces"¹¹³.

¹⁰⁷ *Competition and Consumer Law Act 2010* (Cth) sch 2 ('ACL').

¹⁰⁸ *Ibid*, s 54.

¹⁰⁹ *Ibid*, s 55

¹¹⁰ *Ibid*, s 18

¹¹¹ *Ibid*, s 29

¹¹² ACCC, *Digital platform services inquiry* (Interim report No 4), Section 2.4.1.

¹¹³ *Ibid* 49

2.4 Regulatory Framework of Product Liability in China

Under Chinese legislation, an online trading platform operator has an obligation to protect consumers from harm by defective products purchased from a third-party seller through the platform. Consumers who have suffered personal or property injury as a result of the defective products may have a right to compensation from parties who hold statutory product liability. The main provisions can be found in Chapter 4 of the *Civil Code of the People's Republic of China* ('Civil Code');¹¹⁴ Article 44 of the *Law of the People's Republic of China on the Protection of Consumer Rights and Interests* ('Consumer Law of China');¹¹⁵ Article 131 of the *Food Safety Law of the People's Republic of China* ('Food Safety Law')¹¹⁶ and Article 38 of the *E-commerce Law*.¹¹⁷

2.4.1 Definition of 'Defective Product'

Article 46 of the *Product Quality Law of the People's Republic of China* ('Product Quality Law') stipulates that product defects refer to a product carrying unreasonable risks to the safety of persons and property or the product's failure to meet national and industry standards.¹¹⁸ National and industry standards should be used as the minimum standard in the identification of product defects – products that violate the standards are automatically considered defective, but meeting these standards doesn't necessarily mean that the products in question are not defective.¹¹⁹ If a product conforms with a national statutory standard, but

¹¹⁴ *Civil Code* (n 40).

¹¹⁵ 《中华人民共和国消费者权益保护法》 [Law of the People's Republic of China on the Protection of Consumer Rights and Interests] (People's Republic of China) National People's Congress Standing Committee, Order No 7, 25 October 2013, ('Consumer Law of China').

¹¹⁶ 《中华人民共和国食品安全法》 [Food Safety Law of the People's Republic of China] (People's Republic of China) National People's Congress Standing Committee, Order No 81, 29 April 2021, 29 December 2018) ('Food Safety Law').

¹¹⁷ *E-commerce Law* (n 18).

¹¹⁸ 《中华人民共和国产品质量法》 [Product Quality Law of the People's Republic of China] (People's Republic of China) National People's Congress Standing Committee, Order No 22, 29 December 2018, ('Product Quality Law').

¹¹⁹ 《王某、黎某诉昆明金星啤酒有限公司产品责任纠纷案》 [Wang and Li v Kunming Golden Star Brewery Co. Ltd.] 云南省昆明市中级人民法院 [Kunming Intermediate People's Court, Yunnan Province], 昆民三终字第 195 号判决 [Economic Appeal No 195], 2008 ('Wang & Li v Jingxing Beer').

one of its performance indicators is not regulated, without fulfilling the criteria for personal and property safety and may cause harm. In this instance, the product can still be identified as a defective product.¹²⁰ Furthermore, Article 3(2) of the *Interim Provisions on the Administration of Recall of Consumer Goods* ('*Administration of Recall of Consumer Goods*') defines a defect as an unreasonable risk to personal or property harm.¹²¹

2.4.2 Civil Code of China ('Civil Code')

Chapter 4 of the *Civil Code* is titled 'Product Liability', including six articles from Article 1202 to Article 1207. According to Articles 1202 and 1203 of the *Civil Code*, a consumer harmed by a defective product may seek compensation from the product manufacturer or seller. Concerning a third party, Article 1204 defines it as a carrier or warehouseman. Under Article 1204, the seller or the manufacturer that has paid the compensation shall be entitled to be reimbursed by the third party in the case where the product's defect is caused by a fault of a third party such as a carrier or warehouseman. Articles 1205, 1206 and 1207 stipulate further the product liability of the manufacturer and seller. The victim has a right to require the manufacturer, or the seller, stop the infringement under Article 1205. The manufacturer or the seller will take liability and bear reasonable expenses of the victim under Article 1206. Under Article 1207, a product's flaw results in another person's death or significant harm to their health when a manufacturer or seller knows about it but nonetheless manufactures or sells the product in question or fails to take appropriate corrective action. The victim has the right to ask for the appropriate punitive damages.

¹²⁰ Jin Jing, 'China' in H. Micklitz G. Howells, M. Durovic & A. Janssen (ed), *Consumer Protection in Asia* (Oxford: Hart Publishing, 2022) 19, 35. In the just-published chapter by Jin Jing in Geraint Howells et al, *Consumer Protection in Asia* (Bloomsbury Publishing Plc, 2022), Jin examines essential consumer protection topics in China, including consumer sales legislation, unfair terms, product liability, and unfair business practices. The study takes the form of national reports describing Chinese legislation's evolution and how it functions in practice. This paper is the foundation for future research on Chinese consumer protection.

¹²¹ 《消费品召回管理暂行规定》 [*Interim Provisions on the Administration of Recall of Consumer Goods*] ((People's Republic of China) State Administration for Market Regulation, Order No 19, 21 November 2019, ('*Administration of Recall of Consumer Goods*').

Chapter 4 of the *Civil Code* does not mention the case of e-commerce platform operators. A consumer seeking compensation from the platform operator based on Chapter 4 provisions of the *Civil Code* may not be able to successfully do so because it is neither a seller nor a carrier or warehouseman.

However, Article 1198 of the *Civil Code* is arguably connected to the platform operators' product liability where consumers' safety is concerned. Under Article 1198, the operator or manager of a brick-and-mortar store will assume corresponding complementary liability if a consumer is harmed due to the operator or manager failing to fulfil the duty to protect consumers' safety. It is controversial whether Article 1198 should also be applied to the online platform operators. Lu¹²² believes that, although the content of safety protection of the platform operators differs from the manager of the physical stores, the nature of the liability is the same. Accordingly, Article 1198 of the *Civil Code* is applied to the e-commerce platform operators.¹²³ On the other hand, Wang¹²⁴ argues that the offline market product liability provision does not apply to e-commerce because the nature and content of the obligation to protect a consumer's safety is different. At present, the Chinese courts do not consider the *Civil Code* in the case of platform operators' product liability.

2.4.3 Consumer Law of China

According to the *Consumer Law of China*, consumers have the right to be free from physical injury and property damage by using the goods they purchased.¹²⁵ Prior to the introduction of the *E-commerce Law*,¹²⁶ the product liability of e-commerce platform operators was mainly stipulated in the *Consumer Law of*

¹²² 陆慧敏 [Lu Huimin], 'A Study of Online Trading Platforms' Duty of Care - Focusing on Consumer Rights Protection' (Doctor Thesis, 吉林大学 JiLin University, 2021).

¹²³ Ibid 87.

¹²⁴ 王道发 [Wang Daofa], '《电子商务平台经营者安保责任研究》 [Study on security responsibilities of e-commerce platform operators]' (2019) 6 *中国法学 China Legal Science* 285, 288.

¹²⁵ *Consumer Law of China* (n 115) art 7.

¹²⁶ *E-commerce Law* (n 18).

China.¹²⁷ Where a consumer's legal rights have been infringed, the e-commerce platform operator will be liable for the consumer's damages if it cannot provide the consumer with the seller's name, address and valid contact details.¹²⁸ Where platform operators know or should have known that the sellers infringe upon the lawful rights and interests of consumers through the platforms but fail to take necessary measures, they shall be jointly and severally liable with the sellers.¹²⁹

2.4.4 Food Safety Law

Under Article 131 of the *Food Safety Law*,¹³⁰ consumers purchasing food through an online food trading platform may claim damages against the food trader or the food producer if any damage is caused to their lawful rights and interests. If the food trading platform provider cannot provide the legal name, address and contact methods of the food traders, it shall compensate consumers.

2.4.5 E-commerce Law

The *E-commerce Law* strengthens consumer protection by imposing further obligations and liabilities on e-commerce platform operators regarding product safety. Article 5 of the *E-commerce Law* stipulates that the e-commerce operators, including the e-commerce platform operators and e-commerce sellers,¹³¹ should take responsibility for product quality.¹³²

The *E-commerce Law* specifies that an e-commerce platform operator should promote self-regulation measures by developing 'a platform service agreement

¹²⁷ *Consumer Law of China* (n 115).

¹²⁸ *Ibid* Art 44(1).

¹²⁹ *Ibid* Art 44(2).

¹³⁰ *Food Safety Law* (n 116).

¹³¹ *E-commerce Law* (n 18).

¹³² According to Art 5 of the *E-commerce Law*, in carrying out business activities, the e-commerce operators shall comply with the principles of voluntariness, equality, fairness, and good faith, abide by laws, observe business ethics, equally participate in market competition, perform obligations regarding the protection of consumers' rights and interests, environmental protection, intellectual property protection, and the protection of cyberspace safety and personal information, take charge of the quality of products and services, and receive the supervision of the government and the general public.

and transaction rules, including assurance of the quality of commodities... and protection of consumer rights and interests...'.¹³³

The platform operator is obliged to follow statutory obligations in relation to third-party transactions, such as the obligation to record and preserve information (Article 31), the obligation to verify and record merchant qualifications and regularly review and update them (Articles 27, 38), and the obligation to take necessary measures to protect consumers' legitimate rights and interests (Article 38). The platform operator that breaches its obligations will be held legally accountable and may face penalties from administrative and enforcement departments.¹³⁴

Article 38 is the most significant provision concerning the platform operator's product liability under the *E-commerce Law*. The *E-commerce Law* legislates the obligations of an e-commerce platform operator to ensure consumer safety under Article 38 which includes two paragraphs providing different obligations and product liabilities of the platform operators. Article 38(1) provides that an e-commerce platform operator will be jointly and severally held liable with the violating sellers on its platform if it knows or should know about the infringement and fails to take necessary measures to safeguard personal or property safety. Article 38(2) stipulates that an e-commerce platform operator that fails to fulfil its obligations, such as failing to examine the administrative licensing certificate of sellers or failing to protect customers' safety, resulting in consumer damage, will carry the corresponding liability. The court decides the platform operators' product liability under either Article 38(1) or Article 38(2) based on its breach of the obligations.

¹³³ *E-commerce Law* (n 18).

¹³⁴ *Ibid* arts 80, 83.

2.4.6 Implementing Regulations and Other Administrative Regimes

On 13 April 2021, China's State Administration for Market Regulation (SAMR) held an administrative guidance meeting for e-commerce platform enterprises. After the meeting, the SAMR published the 'Pledge to Operate in Compliance with the Law' signed by 34 e-commerce platform enterprises.¹³⁵ The Pledge consists of 9 commitments that aim to regulate the e-commerce market, create a good competitive market environment and ensure that the rights and interests of all parties are not infringed:

1. Strengthen compliance management, conscientiously implement national macroeconomic policies and strictly comply with all laws and regulations relating to the compliance operation of the platform.
2. Treat all operators in the platform equally, do not use service agreements, technology and other means to restrict operations, strictly prohibit the abuse of dominant market position and eliminate unfair competition practices.
3. Continuously improve the advertising audit system, refrain from publishing illegal advertisements and consciously maintain the order of the Internet advertising market.
4. Not sell defective products, urge sellers to provide products and services that meet the requirements of safeguarding personal and property safety, and strengthen consumer warning obligations.

¹³⁵ See Internet platform enterprises to make public 'The Commitment to Operate in Compliance with the Law' (First Batch) <<http://news.cnnb.com.cn/system/2021/04/14/030244348.shtml>>. See State Administration for Market Regulation, 'Internet platform enterprises to make public 'The Commitment to Operate in Compliance with the Law' (Second Batch) <https://www.samr.gov.cn/xw/zj/202104/t20210414_327847.html>. See also State Administration for Market Regulation, 'Internet platform enterprises to make public 'The Commitment to Operate in Compliance with the Law' (Third Batch) <https://www.samr.gov.cn/xw/zj/202104/t20210415_327862.html>.

5. Strictly control the quality of products and conduct regular inspections of products sold on the platform.
6. Fulfil the obligation to ensure food safety, strictly fulfil the qualification examination and food safety management responsibilities, and not sell food products with potential safety hazards.
7. Strictly fulfil the obligation to protect intellectual property rights.
8. Fully protect consumers' rights to information, fair trade and freedom of choice from infringement, and deal with consumer complaints promptly and effectively.
9. Protect consumers' privacy and legally collect consumers' data.

The above Pledge scheme could be a complementary regulatory measure for consumer protection. In China, the SAMR has the regulatory power to regulate the marketing behaviours of e-commerce platform operators. In addition, a consumer who, having purchased or used goods or received services for the purpose of living and consuming, requests the mediation of a consumer rights protection organisation to protect their lawful rights and interests after a consumer rights dispute has arisen. The *Consumer Law of China* provides that consumer disputes can be resolved through mediation by the Chinese Consumer Association (CCA). Both the SAMR and CCA have the power to monitor the activities of the platform operators and bring administrative actions against them if the platform operators infringe on consumers' interests, for example, by breaching the Pledge they signed.

2.5 E-commerce Platforms' Approaches to Generating Revenue

This section explores the role of e-commerce platform operators in seller–consumer transactions by examining the platform's approaches to generating revenue, including business models and monetisation of traffic control. Indeed,

an intermediary who impartially offers services of facilitation and connection to all sellers and consumers should not have to carry liability for the transactions. However, this section aims to challenge if the position of the platform operators fits this description by examining the control, they exert over the transaction process and the profits they achieve.

Observing the degree of engagement and role of e-commerce platform operators in transactions between sellers and consumers may assist in outlining their legal status and laying the groundwork for defining their legal responsibilities and liabilities. E-commerce transactions are unique and distinct from those that occur during transactions within typical business premises. Therefore, it is essential first to discuss the profit models of e-commerce platform operators, including their partnership structures with sellers. It is found that, typically, e-commerce platform operator–seller partnerships can be classified as standard or promotional.

2.5.1 Standard Platform Operator–Seller Partnerships

A standard platform operator–seller partnership is a long-term partnership in which platform operators and sellers are bound by the platform service agreements they sign. The e-commerce platform operator offers virtual business premises, transaction facilitation, product information publication, and other services to sellers on the platform and charges a deposit, a sales commission, and a platform usage/access fee in return.¹³⁶ In some instances, a platform usage/access fee is not required.

For example, Amazon.com, Inc., owning company and operator of the online platform Amazon Marketplace, offers two options to people looking to become sellers on its online trading platform, both of which can be considered standard partnerships.

¹³⁶ See Appendix: 2021 China E-Commerce Platform Entry Fees – Tmall, Jingdong, Amazon as examples.

- A. Autonomous Operation – Sellers must organise the delivery and storage of the products on their own and are responsible for customer service of their products.¹³⁷ Amazon.com, Inc. charges a commission for every product sold in this service model.¹³⁸ Amazon.com, Inc. requires third-party products to undergo an approval procedure, with specific standards for each category that items must meet.¹³⁹
- B. Fulfilment by Amazon (FBA)¹⁴⁰ – A program organised by Amazon.com, Inc. where sellers send their products to Amazon fulfilment centres and the logistics, warehousing, delivery, and customer service will then be provided by Amazon Marketplace. Opting for this service will incur a logistics fee and a storage fee on top of the usual commission rate, which is the same for both service models.¹⁴¹ Amazon.com, Inc. oversees packing and shipping FBA products using Amazon labelled boxes. Amazon.com, Inc. takes responsibility for returns and offers customer service for FBA products.

In either case, Amazon.com, Inc.'s involvement in the transaction process is far beyond what is customary of an 'intermediary'. It manages site access, product display, and payment processing for the products available on the platform and, as a result, makes a profit. From this position, Amazon.com, Inc. is, to an extent, unavoidably the genuine provider of the product purchased on their website.¹⁴²

¹³⁷ Amazon.com, 'Fulfilling international orders on your own', *Amazon seller central* (Business agreement)
<https://sellercentral.amazon.com.au/gp/help/external/help.html?itemID=201468500&language=en_AU&ref=efph_201468500_cont_201468490>.

¹³⁸ Amazon.com, 'Selling on Amazon fee schedule', (Business agreement)
<https://sellercentral.amazon.com/gp/help/external/G200336920?language=en_US>.

¹³⁹ Amazon.com, 'How to start selling on Amazon', (Business agreement)
<https://sell.amazon.com/sell?ref_=asus_soa_rd&#adding-your-products>.

¹⁴⁰ Amazon.com, 'Fulfilment by Amazon (FBA)', *Amazon seller central* (Business agreement)
<https://sellercentral.amazon.com.au/gp/help/external/help.html?itemID=53921&language=en_AU&ref=efph_53921_relt_201062890>.

¹⁴¹ Amazon.com, 'FBA features, services, and fees', (Business agreement)
<https://sellercentral.amazon.com/gp/help/external/201074400?language=en_US&ref=efph_201074400_cont_G200336920>.

¹⁴² Janger and Twerski (n 77) 272.

As a result, it can competently protect consumers against defective products entering the marketplace and has ample opportunities to do so.¹⁴³

2.5.2 Promotional Platform Operator–Seller Partnerships

A promotional platform operator–seller partnership is a marketing and promotion service agreement formed between a platform operator and the sellers on its platform. Sellers are given opportunities to participate by signing up to various special promotional activities that are initiated or organised by the e-commerce platform operator. The seller then supplies items to consumers in accordance with the platform's promotion rules as authorised by the e-commerce platform operator. Under this partnership model, the e-commerce platform operator and the on-platform sellers can be considered joint sellers for the purposes of the transaction. Generally, there are two sorts of promotions: day-to-day, and seasonal.

Day-to-Day Promotions

Day-to-day promotions are small-scale, year-round discounts on certain goods introduced and organised by the e-commerce platform operator. To participate in Taobao and Tmall.com's (Alibaba Group operates both platforms) JuBuy sales activity, sellers must pay a deposit, a standard fee and a technical service fee. Of these, the technical service fee is charged as a percentage of the transactional value. The rates for different product categories range from 0.5 to 5.0 per cent.¹⁴⁴

Seasonal Promotions

Seasonal promotions refer to large-scale discount activities that are publicly launched and organised by e-commerce platform operators once a year, throughout the same time period every year. For example, Taobao and

¹⁴³ Ibid.

¹⁴⁴ Tmall, 'Fee Implementation Rules', (Business Report)
<<https://www.taobao.com/go/act/juhuasuan/shoufei.php#rule>>.

Tmall.com's Double 11 (held on November 11 each year) and JD.com's 618 (June 18 every year) are two large annual sales events in China. Double 11 is often recognised to be the most important event officially held on the Tmall.com platform. Since its inception in 2009, it has become the world's largest shopping event, comparable to but much outstripping Black Friday in the United States and Boxing Day and January sales in the United Kingdom.¹⁴⁵ Every August, sellers that express their interest can register to be assessed by the e-commerce platform operator.

The audition process usually looks at the average of scores achieved by the seller in various categories, including whether their products match descriptions, their service attitude, and general logistical service, amongst other factors.¹⁴⁶ Sellers who pass the audition must sign a contract and pay a deposit to participate. The Alibaba Group have designated a set of requirements for sellers on its platforms (Taobao and Tmall.com), which outlines expectations and regulates the pricing of products and shipping procedures during the Double 11 promotion period. The platform operator issues Double 11 shopping coupons to consumers in its capacity as a platform operator, which consumers can redeem at any of the participating stores.¹⁴⁷

2.5.3 E-commerce Platform Operators' Monetisation of Traffic Control

Just as a market or shopping centre would have foot or vehicular traffic controlled and managed by infrastructure (escalators, walkways, signage etc.), an e-commerce platform would generate online traffic digitally modulated by the platform's algorithms and traffic control software. The 'traffic' of an e-commerce

¹⁴⁵ GT staff reporters, 'Black Friday defeated by Double 11, US may lose title of biggest consumer market to China', *Globe Times* (Internet article, 28 Nov 2021) <<https://www.globaltimes.cn/page/202111/1240133.shtml>>.

¹⁴⁶ '天猫双十一报名规则详细解读 [Tmall double eleven registration rules detailed explanation]', (Internet article, 10 September 2021) <<https://m.maijia.com/article/496524>>.

¹⁴⁷ '2020 淘宝双十一活动规则介绍 [2020 Taobao double 11 activity rules introduction]', (Internet article, 21 October 2020) <<https://www.qq241.com/news/22101.html>>.

platform is the number of customers who visit it per unit of time.¹⁴⁸ Users of the e-commerce platform contribute to its traffic upon their visit, connecting to other users who are also part of the platform's traffic.¹⁴⁹ For the original purpose of providing a virtual transaction space, e-commerce platform operators would, in their capacity as neutral intermediaries, provide service without causing disruption in traffic flow or affecting transactions in any way and, therefore, would not be one of the parties that should bear product liability. However, platform operators profit from their deliberate manipulation of online traffic and this process is termed Data Monetisation.¹⁵⁰

The control of e-commerce platform operators over traffic is mainly reflected in the in-site search engine consumers use to look for listings and available products for purchase. A search engine is an algorithm that accesses a databank of information based on user input and can determine the way that information is delivered back to the user.¹⁵¹ The search results are often split into 'organic ranking' and 'bid ranking', also called 'paid' sections.¹⁵² The natural ranking is the sort of information presentation commonly used by search engines where it's usually based on the user's best interests. The bid ranking is essentially an advertisement since the sellers have paid for their products to appear for specific keywords, which causes these listings to show up when a user types in those terms into a search engine. Most of the time, the platform operator can change their preferences of this ranking to prioritise the search items by relevance, price, date etc.¹⁵³

¹⁴⁸ 'What is Traffic?', *Ecommerce Platforms* (Glossary) <<https://ecommerce-platforms.com/glossary/traffic>>.

¹⁴⁹ Ibid.

¹⁵⁰ 'Data Monetization', *Gartner* (Gartner Glossary) <<https://www.gartner.com/en/information-technology/glossary/data-monetization>>.

¹⁵¹ Jessica Teran, 'What is a Search Algorithm?', (Blog) <<https://www.volusion.com/blog/search-algorithms/>>. See also 'How Search algorithms work', *Google Search* (Business introduction) <<https://www.google.com/search/howsearchworks/algorithms/>>.

¹⁵² 'The Difference between Organic and Paid Search Engine Results', (Web Page, 03 July 2016) <<https://www.dummies.com/article/technology/information-technology/data-science/web-analytics/the-difference-between-organic-and-paid-search-engine-results-189786/>>.

¹⁵³ Ibid.

Bid ranking is a section of the search results that are often the most eye-catching and highly likely to get users' attention, and e-commerce platform operators monetise it via an auction process. For example, Amazon refers to this as 'cost per click',¹⁵⁴ which works at the keyword level. Sellers can bid for the best positions on the product search results so that their product has the best chance of being seen by consumers. The highest bidders in each specific item category then have their products labelled as 'sponsored' in the search results and appear higher on the search list. If a toothpaste distributor wins the keywords 'dental' and 'hygiene', searches for those vocabularies will put that product towards the top of the results. The price of sponsorship is determined by the winning bid offer. Sellers of sponsored products can use a list of keywords relevant to that product so that the advertising appears in the search results when sellers deem it most appropriate. Further charges can be incurred based on the number of clicks from the searches made by the consumer to view the bidder's inventory.

Platform operators do not go out of their way to ensure that consumers are thoroughly informed of this monetisation process. Commission and advertising are the primary sources of revenue for the Alibaba Group, owner, and operator of the Taobao and Tmall platforms.¹⁵⁵ E-commerce platform operators interfere with traffic flow and profitably manipulate the transaction process via bid rankings.

2.6 Special Legal Status of the Platform Operators

An e-commerce platform operator's special legal status refers to the circumstance in which the platform operator assumes the responsibility of a non-intermediary in the role of an intermediary.¹⁵⁶ In certain specific transaction situations, based on the e-commerce platform's explicit intention, the degree of

¹⁵⁴ 'Cost-per-click bids', *Amazon Advertising Console* (Business information) <<https://advertising.amazon.com/help#GTX8JYBTJX5EUCZW>>.

¹⁵⁵ Alibaba Group Holding Limited, 'Alibaba Group Fiscal Year 2021 Annual Report. Report no. HKEX: 9988', (Web Page) <<https://doc.irasia.com/listco/hk/alibabagroup/annual/2021/ar2021.pdf>>.

¹⁵⁶ 孙颖 & 袁也然 [Sun Ying & Yuan Yeran], '《电子商务平台经营者特殊法律地位及其义务性质再界定》 [Redefining the special legal status of e-commerce platform operators and the nature of their obligations]' (2019)(7) *中国市场监管研究 China Market Regulation Study* 26, 29-32.

participation in the e-commerce transaction, and so on, the e-commerce platform operator is considered to have a status similar to that of sellers in terms of liability.¹⁵⁷ Suppose the actions of e-commerce platform operators (their participation and control over online transactions on the platform) are not becoming what is appropriate for intermediaries. In that case, legally, they cannot carry the status of an intermediary. The platform operators no longer function as pure space providers, giving buyers and sellers a venue for transactions. Due to their managerial position and ability to influence the contract conditions, they have increased their level of engagement in the transactions.¹⁵⁸ Still, they are not the 'sellers' either. Therefore, their unique role and position can only be best described as what will be called an exceptional legal status.¹⁵⁹ Deriving from the platform operators' role and the relationship with the parties in the online transactions, the platform operators' special legal status includes two types:

- (1) In some specific e-commerce transactions, the platform operator acts as a co-seller with sellers, thus becoming a party to the e-commerce transaction contract; and
- (2) during e-commerce transactions, the platform operator is liable to consumers for breach of statutory obligations. For example, Article 27 of the *E-Commerce Law* provides for the obligation of e-commerce platform operators to verify and register all operators who apply to enter the platform, so the obligations agreed in the service contract can no longer carry such mandatory legal obligations.¹⁶⁰

The court in *Taobao v Cai*¹⁶¹ held that an e-commerce platform operator was not a contractual party in the seller–consumer transactions because its role is to

¹⁵⁷ 郭静静 [Guo Jingjing] (n 12) 17.

¹⁵⁸ See Chapter 2 for further discussion about the platform operators' rights and obligations, and their involvement in the transactions.

¹⁵⁹ 郭静静 [Guo Jingjing] (n 12) 93.

¹⁶⁰ 孙颖 & 袁也然 [Sun Ying & Yuan Yeran] (n 156), 28.

¹⁶¹ 《浙江淘宝网络有限公司与蔡振文服务合同纠纷上诉案》 [*Zhejiang Taobao Network Co., Ltd. and Cai Zhenwen Service Contract Dispute Appeal*] (广东省佛山市中级人民法院 [Foshan Intermediate People's Court, Guangdong Province, People's Republic of China], 粤 06 民终 3872 号 [Economic Appeal No 3872], 2016, 2016) ('*Taobao v Cai*').

connect sellers and consumers via the internet and to coordinate trading activities, rather than sell goods directly or to be a party to a contract for goods trading. Although the *E-commerce Law* provides some aspects of e-commerce platform liability, the view that e-commerce platforms are not parties to the transaction contracts remains unchanged.¹⁶² However, the sole fact that platform operators are not parties to seller–consumer contracts does not indicate that they also do not need to assume product liability where they bear an exceptional legal status.

In B2C e-commerce transactions, the e-commerce platform operator is deeply involved in the transaction process between the seller and the consumer. In online transactions, there are three contractual relationships: the service contracts between platform operator and sellers; the service contract between platform operator and consumers; and the transaction agreement between the sellers and consumers. The e-commerce platform operators are essentially the controllers of the three types of the e-commerce contracts and their terms. The e-commerce platform operator usually provides e-commerce contracts between e-commerce sellers and consumers. For example, in the Jing Dong Consumer Service Agreement, JD.com stipulates when and how a transaction contract concludes and the terms for payment and delivery.¹⁶³

The substantive terms of the contract are subject to mandatory intervention, such as controlling the price of goods (e.g., Taobao's mandatory 50% discount on participating goods during the 'Double 11' period), the method and mode of payment (e.g., the 'Double 11' Good Deal must be paid in accordance with the first deposit and then the final payment), the time of contract performance (e.g., consumers must pay the deposit and final payment within a specific period; the time of delivery), and the method of performance of ancillary provisions (e.g.,

¹⁶² 《田军伟，浙江天猫网络有限公司网络服务合同纠纷一审民事判决书》[*Tian Junwei v Zhejiang Tmall Network Co., Ltd. First Trial Civil Judgment on Network Service Contract Dispute*] [2020] 杭州互联网法院 [Hangzhou Internet Court], 浙 0192 民初 10617 号 [Economic First Trial No 10617], 04 March 2020 ('*Tian v Tmall*).

¹⁶³ See Terms 3 & 4 of the '《京东用户注册协议》[*Jing Dong Consumer Service Agreement*]', (Business agreement) <https://in.m.jd.com/help/app/register_info.html>.

shipping costs must be borne by the seller and the shipping must be insured).¹⁶⁴ Thus, the platform operator holds substantial control over the terms of the e-commerce contract between the operator and the consumer.

Furthermore, e-commerce platform operators profit from the sales of products in the form of percentage-based commissions during promotional activities, which occur during both day-to-day and seasonal promotions. Regardless of the partnership between the operator and the seller, the e-commerce platform operator provides fundamental services such as a trading venue, transactional rules, and transaction dispute resolution between sellers and consumers. The sellers and the consumers use the services on the platform to create an e-commerce contract and execute the transaction. The sellers are then charged according to the fees agreed.¹⁶⁵

The e-commerce platform charges commissions based on the sellers' prices and not the profit they have made, so the platform can profit regardless of whether the transactions are profitable for the sellers – the e-commerce platform can earn a piece of the pie if the seller generates sales. Therefore, its activities and channel of income suggest it may play or be financially motivated to play a more significant role than what can be defined as an intermediary, in which case the platform should share liability with the seller for consumer damage caused by the defective product.

When determining the product liability of platform operators, it is critical to consider the roles played by platform operators in the e-commerce transaction. Consumers in the offline marketplace complete the transaction at the same place and time from item selection to the product obtained, in which the market organiser has little involvement. In e-commerce transactions, particularly B2C e-commerce transactions, buyers, and sellers trade through online communication, with the platform operator deeply involved. The platform operator's engagement

¹⁶⁴ '2020 淘宝双十一活动规则介绍 [2020 Taobao double 11 activity rules introduction]' (n 147).

¹⁶⁵ See Appendix 2 Table 9: 2021–2022 E-commerce platform entry fees detail – sampled by Tmall.com, JD.com and Amazon Marketplace.

in the transaction may be seen in everything from presenting items on the platform to regulating the evaluation process after the transaction. As a result, it is inconsistent with the characteristics of online trading for the platform operator to remain entirely out of the picture regarding product liability. The purpose and scope of this paper's research are to determine when and how the platform bears product liability.

2.7 Conclusion

This chapter discussed some of the rationales underlying the need for platform operators to assume product liability. E-commerce platforms benefit from their collaboration with the sellers and profit from their sales and, therefore, should bear product liability. The e-commerce platform profits from the absolute power it holds over its operation and management, setup of trading conventions, and the influential control of all the platform's users and transaction information. Thus, e-commerce platforms have overstepped as intermediaries and become intimately involved in commodities trading. Therefore, if e-commerce platforms wish to enjoy these non-intermediary privileges, they should also assume non-intermediary obligations to protect consumers and be held liable accordingly.

Online platforms provide services that facilitate, document, enable, and protect healthy online trading. As a result, the hosting platform cannot be freed of all responsibility as it differs significantly from traditional malls, markets, and shopping centres, in terms of its transaction and management models. In an online 'triangular' interaction, legal relationships exist between the sellers and consumers, the platform operator and the consumer and the platform operator and the sellers.¹⁶⁶ The platform operators' power is more substantial than acting as operators of the offline shopping mall.

Although requiring e-commerce platform operators to assume product liability will increase their burden, it is conducive to sustaining a healthy e-commerce

¹⁶⁶ Busch et al (n 24).

environment. It can even benefit platforms and the operators in the long run. It can potentially raise e-commerce platform operators' awareness of their responsibilities to establish a fair and secure trading environment for e-commerce transactions. The growing reach and influence of the e-commerce economy mean that there is a greater need to protect the millions of daily e-commerce consumers. Consumers will continue to be at risk of injury from defective third-party products until steps are taken to hold platform operators accountable to a degree. As noted by Buiten et al., online platform operators can afford to invest in technology and human resources to prevent the circulation of dangerous products.¹⁶⁷ When platform operators are required to bear the cost imposed on society by the circulation of a hazardous product on its platform, they will be motivated to invest resources to optimise the diminution of the presence of these products to reduce that cost that it is required to bear.¹⁶⁸

In addition, having e-commerce platform operators assume product liability can compel platform operators to detect and address any infractions promptly and to take preventive measures to monitor and improve product safety.¹⁶⁹ The platform operator is more than capable of carrying the weight of this task, as opposed to the consumers.¹⁷⁰ On the other hand, legal regulation of product liability on platforms may encourage platforms' positive action, including strengthening the platform regulation with sellers and product requirements to prevent poor quality products from entering the market.¹⁷¹

E-commerce platform operators do more than just provide an e-commerce platform for users to trade on – they take part in the transaction process in many facets. In theory, they are not liable for seller–consumer transactions because they are not directly involved in them and are not parties to the e-commerce contract. However, many of China's prominent e-commerce platforms, such as Taobao, Pinduoduo, and JD.com, charge suppliers fees for allowing them to

¹⁶⁷ Buiten et al (n 49).

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ Lefouili and Madio (n 59).

¹⁷¹ Ibid.

operate and put listings on their platforms.¹⁷² Service agreements for sellers on the platform usually include terms that reinforce a partnership between the platform operator and the seller.¹⁷³ The various forms of partnerships between the e-commerce platform operator and the sellers result in varying degrees of e-commerce platform operator involvement in online transactions, which results in the exceptional legal status that is often held by e-commerce platforms. That is why the *E-commerce Law* has specific product liability provisions for e-commerce platform operators.

¹⁷² See this chapter section 5, 'The Power of E-Commerce Platform Operators to Control Traffic'.

¹⁷³ See 'Tmall Merchant Service Agreement', (Business Agreement, November 19, 2021) <https://terms.alicdn.com/legal-agreement/terms/TD/TD201609271722_89275.html?acm=lb-zebra-139006-469280.1003.4.568044&scm=1003.4.lb-zebra-139006-469280.OTHER_14478054832090_568044>. See also term 5.19 《京东 JD.COM'开放平台店铺服务协议》, 'Jingdong JD.COM Open Platform Store Service Agreement', <<https://helpcenter.jd.com/vender/issue/1063-6416.html>>.

Chapter 3 Platform Operators' Verification Obligations in China

3.1 Introduction

According to the *E-commerce Law*, the obligations of e-commerce platform operators to protect consumers from defective products are mainly reflected in their obligations to examine the identity of sellers,¹⁷⁴ review product information,¹⁷⁵ and protect consumers' personal and life safety¹⁷⁶.

Online trading platform operators should take reasonable measures to ensure the legitimacy of the products provided by sellers and check the authenticity of sellers' registration information. The number of infringement cases could rise with the increasing number of online transactions. Thus, the filing of the information of merchants can maximise the protection of consumers' rights to claim compensation. Furthermore, the platform operators should review product quality certificates, certificates of manufacture and production dates to ensure that the goods described on the online trading platform are the same as those provided to consumers.

The platform operators' obligation to ensure the security of online consumers means that the platform operators take appropriate measures to ensure the safety of consumers' personal and life. Article 1198 of the Civil Code stipulates the security obligations of business operators and civil liability in case of breach of security obligations. Article 38 of the *E-commerce Law* specifically stipulates the safety obligation of e-commerce platform operators.

¹⁷⁴ *E-commerce Law* (n 18) arts 27, 38(2).

¹⁷⁵ *Ibid* arts 29, 38(1).

¹⁷⁶ *Ibid* art 38(2).

In order to prevent consumers from being harmed by defective products, the platform operator's fulfilment of its review obligations is a prerequisite for the implementation of its security obligation to safeguard consumers' personal and life safety. If the platform operator does not fulfil its vetting obligations, it is impossible to discuss its security obligations. On the other hand, completing the review obligations is not the only way for the platform operator to fulfilling their security obligations. The platform operator's security obligations aim to safeguard consumers' personal and life safety from damage caused by defective products. Therefore, on top of the completion of the review obligations, the platform operator should also fulfil other obligations, like the obligation to alert consumers (Section 4.2.4 of Chapter 4), obligations to establish a credit evaluation and complaint reporting system (Section 4.2.5 of Chapter 4), and the obligation to provide timely assistance (Section 4.2.6 of Chapter 4). Together, these obligations constitute the platform operator's security obligations to safeguard consumers' personal and life safety. Chapter 3 analyses all the review obligations that e-commerce platforms must fulfil, while Chapter 4 focuses on how e-commerce platforms can protect consumers' safety and lives.

3.2 Legal Framework of Platform Operators' Verification Obligations

In order to protect consumers' interests, platform operators must verify sellers' and product information, monitor any infringement activities from the seller, and eliminate any defective products. These requirements can be summarised as e-commerce platform operators' statutory verification obligations under the *E-commerce Law*. Three Articles provide platform operators' verification obligations, and two stipulate the liabilities for the breach.

Article 27 states that an e-commerce platform operator shall require sellers to submit their identification information, address and other contact information, and administrative license. The e-commerce platform operator shall also verify the provided information and establish a registration system where they are verified and updated regularly. Article 29 provides that the platform operator should

monitor the product information and have an obligation to take necessary measures if it finds the product is illegal or endangers consumers. Breach of Articles 27 and 29 will result in administrative punishment under Article 80.

Article 38(1) states that a platform operator will bear a joint and several liability if it knows or should know about the defective product or any illegal activities but fails to take necessary measures to protect consumers from the harm caused by the defective product. This provision established platform operators' obligations concerning sellers and product information. Article 38(2) provides that a platform operator will bear the corresponding liabilities if it fails to fulfil its obligations to examine the administrative licensing certificates of the sellers and causes harm to consumers' health or lives.

Article 38 not only sets out the platform operators' verification obligations but also provides liabilities for breach of those obligations. Unlike Articles 27 and 29, platform operators may face two consequences for breaching Article 38: an administrative punishment under Article 83 and statutory liability under Article 38. An administrative penalty is a punishment imposed by an administrative authority on a citizen, legal person, or other organisation for violating the administrative order.¹⁷⁷ Consumers' damages cannot be compensated from the administrative penalty. Therefore, Article 38 of the *E-commerce Law* is the starting point for consumers who seek compensation from the platform operator in product liability disputes.

In summary, the *E-commerce Law* identifies three features of the platform operator's review obligations. Firstly, the e-commerce platform operator should complete its verification obligations to protect consumers' interests. Secondly, the platform operator is liable for administrative penalties if it violates its obligations to verify and review the information of sellers or products. Thirdly, consumers

¹⁷⁷ See 《中华人民共和国行政处罚法》 [Law of The People's Republic Of China on Administrative Penalty] (People's Republic of China) National People's Congress, Standing Committee of the National People's Congress, Order No. 70, 22 January 2021, 15 July 2021) ('Administrative Penalty Law').art 2.

who suffered harm because the platform operator violated its review obligations might hold the platform operator liable in the form of joint and several liability,¹⁷⁸ or corresponding liability.¹⁷⁹

In practice, the courts only rely upon Article 38 to resolve the product liability disputes. However, through outlining the legal framework, it is noticed that Article 38 stipulates the verification obligations in a vague manner which lacks a clear clarification on the content of obligations and the manner of performing these obligations. If the courts only apply Article 38 without collaborating with other *E-commerce Law* provisions, it could cause difficulties in determining the platform operators' liability and accordingly affect consumers' interest protection. This thesis suggests that the other two obligation provisions should be considered part of the platform operators' verification obligations in determining the platform operators' product liability issue. This chapter investigates the platform operators' verification obligations under the whole *E-commerce Law* (not only Article 38) and the liability they will assume if they breach the obligations.

An examination of 88 cases¹⁸⁰ revealed that judges in product liability cases had held inconsistent views on three issues resulting from the vague language of Article 38, including (1) differing views on the content and scope of the platform operator's verification obligations; (2) debates over the procedure of the platform operator's verification obligations; and (3) the controversies over the corresponding liability for breach of the verification obligations. These issues have piqued a great deal of scholarly interest and debate since the implementation the *E-commerce Law*. Without clarity on these three issues, the platform operator might not be held accountable for product liability when infringing on consumers' interests. This chapter focuses on analysing the language of Article 38 and its application in cases concerning the verification obligations and liabilities of the platform operators, revealing the difficulties and

¹⁷⁸ *E-commerce Law* (n 18) art 38(1).

¹⁷⁹ *Ibid* art 38(2).

¹⁸⁰ See Appendix 1 Table 1: Platform operators' product liability cases (January 2019 – December 2020).

weaknesses in protecting consumers' rights under Article 38 of the *E-commerce Law*. The issues discussed include what constitutes platform operators' verification obligations, to what extent they perform their obligations, and what liability the platform operator would assume if they failed to fulfil the verification obligations.

3.3 Platform Operators' Verification Obligations

3.3.1 Content of the Verification Obligations

Content of verification obligations refers to what information the platform operator should verify and check to prevent any possible harm from a defective product to consumers. Understanding the platform operators' obligations and breach thereof can help determine the product liability that the platform should carry. Jointly reading with the relevant provisions, Articles 27 and 29, Article 38 verification obligations can be summarised as the obligation to verify seller information,¹⁸¹ the obligation to verify administrative licensing certificates,¹⁸² and the obligation to review product information.¹⁸³ This section will further clarify the content of these obligations and lay the foundation for discussion in the following sections.

3.3.1.1 Obligation to Verify Sellers' Identity Information

Online sellers must register with the market regulatory departments under Article 10 of the *E-commerce Law*. Verification of the seller's identity information is essential to the platform's practical management of seller activities towards protecting consumer rights. The primary purpose of the verification is to ensure that the seller can be located immediately in a product liability dispute. Furthermore, sellers providing false identifying information will lead to different consequences. The worst-case scenario is that the seller has an intention to conduct illegal business activities on the platform and intentionally avoids

¹⁸¹ *E-commerce Law* (n 18) art 27 & 38(1).

¹⁸² *Ibid* arts 27, 29 & 38(2).

¹⁸³ *Ibid* arts 29, 38(1).

providing personal and business information or provides fake information. The verification process will help identify illegal sellers and eliminate their participation in transactions on the platform.

Other legislation has also provided platform operators with verification obligations because reviewing seller information and qualifications is a crucial strategy for preventing infringement of consumer interests. Before the *E-commerce Law*, the Ministry of Commerce issued the *Service Norms for Third-party E-commerce Transaction Platforms ('Service Norms for E-commerce Platforms')*.¹⁸⁴ Section 6.1(3) provides that the platform operators shall check the business license and other various kinds of administrative licensing certificates. Article 62(1) of the *Food Safety Law*¹⁸⁵ provides that when trading food on the internet, platform operators should register sellers in their real names and, where a licence is required by law, should also examine the licence of the sellers. The introduction of the *E-commerce Law* has expanded the coverage of verification obligations to be assumed by not only food sellers, as provided by the *Food Safety Law*, but by all sellers on the platform.¹⁸⁶

Fulfilling the obligation to verify sellers' identity information is relatively straightforward. Usually, the platforms can require the sellers to submit an electronic copy of their proof of identity, as well as their contact details which would include their phone number and their residential or business address, to be able to go through an online registration process which will be automatically recorded in the platform's system. If the platform operator can provide this information when required during a subsequent product liability dispute, they will be deemed to have fulfilled the obligation to verify sellers' information.

¹⁸⁴ See s 6.4 of the 《第三方电子商务交易平台服务规范》 [*Service Norms for Third-party E-commerce Transaction Platforms*] (People's Republic of China) Ministry of Commerce, Order no 2, 18 August 2016) ('*Service Norms for E-commerce Platforms*').

¹⁸⁵ *Food Safety Law* (n 116) art 62(1).

¹⁸⁶ *E-commerce Law* (n 18) arts 27 & 38.

In the 88 cases, the courts found that the sellers had operated illegally and sold defective products to consumers. The platform operators were held to have fulfilled their verification obligations in 39 cases¹⁸⁷ because they had provided the sellers' information recorded in their systems. The problem with the courts applying the legislation in this manner is that, in certain situations, the courts did not evaluate the accuracy of the information, which might result in the seller not being found according to the information provided by the platform operator and the customer is unable to seek compensation from the liable seller. For example, In *Wang v Shanghai Xunmeng & Lin*,¹⁸⁸ Wang purchased defective products from the defendant in 2020. The defendant, Lin, provided the platform with his business license and contact information at the registration. The license was cancelled in 2019 without notifying the platform. The platform operator did not find the cancellation because it did not review the sellers' information regularly. Neither the court nor the consumer could find Lin according to the information provided by the platform operator. Nevertheless, the court held that the platform operator had already fulfilled its verification obligation because it could provide the seller's information, and thus the platform was not liable for the consumer's damages.

3.3.1.2 Obligation to Verify Seller's Administrative Licensing Certificates¹⁸⁹

Under Article 38(2) of the *E-commerce Law*, platform operators have an obligation to verify a seller's administrative licensing certificates for a particular product category related to the lives and health of consumers if the seller wants to sell products of that category.

¹⁸⁷ See Appendix 1 Table 2: Platform operators could provide sellers' contact information cases.

¹⁸⁸ 《王本侠与上海寻梦信息技术有限公司、林晓杰信息网络买卖合同纠纷一审民事判决书》 [Wang Benxia and Shanghai Dream Information Technology Co., Ltd., Lin Xiaojie Online Trading Contract Dispute First Civil Trial Judgment] 上海市长宁区人民法院 [Shanghai Changning District People's Court], (2020)沪 0105 民初 21122 号 [Economic First Trial No 21122], 26 April 2021 ('Wang v Shanghai Xunmeng & Lin').

¹⁸⁹ The types of the Administrative Licensing Certificates are stipulated in art 39 of the 《中华人民共和国行政许可法》 [Law of the People's Republic of China on Administrative Licensing] (People's Republic of China) Standing Committee of the National People's Congress, Order No 29, 23 April 2019, ('Law on Administrative Licensing').

The product related to life and health refers to food or medical products that can directly affect consumers' life and health. Because of the nature of the products, in that they tend to have quite severe impacts on consumers should they be defective, the government has passed specific laws to regulate their manufacture and distribution, such as *the Medicinal Product Administration Law of China*.¹⁹⁰ Furthermore, a product related to the lives and health of consumers might be any product potentially dangerous to the user because of its defect. The State set up administrative departments to regulate such product providers, requiring them to obtain an administrative licensing certificate before distributing the product to consumers.

An 'administrative licensing certificate', as it is called in the *Law of the People's Republic of China on Administrative Licensing* ('*Law on Administrative Licensing*'),¹⁹¹ is an approval decision for administrative licensing issued by the administrative authorities.¹⁹² Administrative licensing is a kind of administrative conduct of granting a person or an organisation the right to undertake specific activities upon an examination by administrative authorities.¹⁹³

Article 12(4) of the *Law on Administrative Licensing* provides that an administrative licensing certificate will be required in matters directly related to equipment, facilities, products and goods critical to public safety, personal health, and security of life and property. Besides the general requirements under the *Law on Administrative Licensing*, there are specific regulatory rules designated by law for each category of items that require an administrative licensing certificate to be handled. For example, Article 35 of the *Food Safety Law*¹⁹⁴ requires that people engaging in food production or sales must obtain an administrative licensing

¹⁹⁰ 《中华人民共和国药品管理法》 [*Medicinal Product Administration Law of the People's Republic of China*] (People's Republic of China) Standing Committee of the National People's Congress, Order No. 31, 26 August 2019, ('*Medicinal Product Administration Law*').

¹⁹¹ *Law on Administrative Licensing* (n 189).

¹⁹² *Ibid* art 39.

¹⁹³ *Ibid* art 2.

¹⁹⁴ *Food Safety Law* (n 116) art 33.

certificate in accordance with the law. The food product trading platform operators hold a statutory obligation to review these administrative licensing certificates.¹⁹⁵

3.3.1.3 Obligation to Review Product Information

Whether the platform operators should assume the obligation to verify product information is still a widely controversial topic. Platform operators usually deny that the burden of product information verification should fall upon them.¹⁹⁶ For example, the Taobao platform, in the 'enormous information' clause¹⁹⁷ in its service agreement, declares that Taobao is unable to review the enormous amount of product information and product quality one by one, as well as the legality and authenticity of the products. The clause states that consumers will be taking the risk upon themselves when they make the decision to purchase a product. Chinese courts have overwhelmingly upheld the platform's position. In 88 sample cases researched, the issue of the platform operators' verification obligation to the product information was concerned in 14 cases, in which 11 cases confirmed that the platform operators do not need to verify the product information.¹⁹⁸ In the remaining three cases¹⁹⁹ in which the courts held the platform operator should verify the product information, one case²⁰⁰ was reversed by the appeal judges.

¹⁹⁵ Ibid art 62.

¹⁹⁶ See 《吕彬与广州摩购电子商务有限公司等网络购物合同纠纷一审民事判决书》[*First trial civil judgment of Lu Bin and Guangzhou Mogou E-commerce Co., Ltd. and other online shopping contract disputes*] [2020] 北京互联网法院 [Beijing Internet Court], (2020)京 0491 民初 19420 号 [Economic First Trial No 19420], 25 December 2020 ('*Lu v Mogou E-commerce Co., Ltd.*').

¹⁹⁷ '《淘宝平台服务协议》Taobao Platform Service Agreement', (Business agreement, 19 August 2019) <https://terms.alicdn.com/legal-agreement/terms/TD/TD201609301342_19559.html?spm=a2145.7268393.0.0.f9aa5d7cSDR9SE>.

¹⁹⁸ See Appendix 1 Table 3: The platform operator's obligation to verify product information.

¹⁹⁹ Ibid.

²⁰⁰ 《张丽、沭阳温乐尔商贸有限公司、北京京东叁佰陆拾度电子商务有限公司网络购物合同纠纷一审民事判决书》[*Zhang Li, Shuyang Wenler Trading Co., Ltd., Beijing Jingdong Sanbai Lu Shidu E-Commerce Co., Ltd. Online Shopping Contract Dispute First Trial Civil Judgment*] [2020] 涡阳县人民法院 [Guoyang County People's Court], (2019) 皖 1621 民初 6389 号 [Economic First Trial No 6389], 19 January 2020 ('*Zhang Li v Jingdong*').

For example, in the case of *Jingdong.com v Zhang*,²⁰¹ Zhang purchased a health product from a seller on the e-commerce platform JD.com operated by Jingdong company. The seller advertised the product as having therapeutic effects. After receiving the product, Zhang found that it was an unqualified product without a manufacturer. In this case, Jingdong did not carry out any form of review of the product information sold by the seller. At the first trial, the judge found that Jingdong, as the platform operator, had failed in its obligation to review the product information and should therefore be held jointly and severally liable. In the appeal, Jingdong argued that it, as a platform operator, had reviewed the sellers' identity information and administrative licensing certificates (food business licence) and did not need to review the product information. Therefore, it should not be held liable. The judges of the second instance overturned the first trial decision and ruled for Jingdong.²⁰²

Initially, the massive burden of a comprehensive review of the vast amount of information was an important reason why the courts exempted platform operators from the obligation to verify.²⁰³ As technology has matured, a technical review has proven to be affordable and feasible for platform companies. For example, Ma suggested that the development costs of technical censorship can be shared between platform service providers of different sizes without requiring duplication of investment by other small web service providers.²⁰⁴ Smaller service providers may also outsource their review operations to an independent third-party organisation and entrust them with centralised processing rather than having to operate and maintain technical systems independently.²⁰⁵

²⁰¹ 《北京京东叁佰陆拾度电子商务有限公司、张丽网络购物合同纠纷二审民事判决书》[*The Judgment of the Second Trial of Beijing Jingdong Sanbai Liu Shidu E-commerce Co., Ltd. and Zhang Li's Online Shopping Contract Dispute*] [2020] 安徽省亳州市中级人民法院 [The Intermediate People's Court of Bozhou City, Anhui Province], (2020)皖 16 民终 2574 [Economic Appeal No 2574], 27 August 2020 ('*Jingdong v Zhang Li*').

²⁰² Ibid.

²⁰³ 马丽 [Ma Li], '网络交易平台治理研究 [Research on the Governance of Online Trading Platforms]' (Doctor Thesis, 中央党校 Party School of the Central Committee of CPC, 2019) 163.

²⁰⁴ Ibid.

²⁰⁵ Ibid.

The court in the case *Ding No 1*²⁰⁶ explained that the term ‘know’ refers to the platform operator having knowledge of the relevant illegal facts of the seller, which can be discovered by the platform operator in fulfilment of the review obligations, and also includes the situation where there is a complaint or report of the existence of the above-mentioned illegal acts. The plaintiff could not prove that the platform operator failed to review the product information or had received any report or complaint about the defective product before his purchasing, although the court in this case recognised the platform operator’s review obligation. The platform operator did not need to take the liability for the defective product in this case.²⁰⁷

This research argues that Article 38(1) of the *E-commerce Law* intended a statutory requirement for platform operators to verify product information. It states that platform operators are to take joint and several liability with the seller if they ‘know or should know’ of the existence of an illegal activity or defective products. Lawmakers must ensure that measures are put in place to regulate the platform operators to verify the sellers and their inventory before the purchase. Accordingly, the provision of know or should know in Article 38(1) is actually an expression to require the platform operators to perform an obligation to verify the product information for safety purposes.

Platform operators can eliminate the possibility, to an extent, of defective products on the online market by reviewing and verifying the product and seller information. Article 29 of the *E-commerce Law* delineates that where a platform operator finds that a seller is providing illegal products or defective products that might endanger consumers’ safety, it must take the necessary measures to deal with such circumstances and make relevant reports to the authority. Article 80 stipulates an administrative penalty for breach of Article 29. This legislation

²⁰⁶ 《丁博与北京京东叁佰陆拾度电子商务有限公司等网络购物合同纠纷一审民事判决书》 [First trial civil judgment of Ding Bo and Beijing Jingdong Sanbailu Shidu E-Commerce Co., Ltd. and other online shopping contract disputes] [2020] 北京互联网法院 [Beijing Internet Court], (2019) 京 0491 民初 23608 号 [Economic First Trial No 23608], 31 March 2020 ('Ding No 1').

²⁰⁷ Ibid.

supports the notion that platform operators have an obligation to review product information.

3.3.2 Ways to Perform Verification Obligations

The benchmark for determining whether a platform operator has fulfilled its verification obligations remains unclear. Although the *E-commerce Law* established platform operators' verification obligations, the method and extent to which the platform operators carry out these obligations remain an issue that requires further clarification due to the vagueness of terms employed in the *E-commerce Law*. For example, what should the platform operator do to fulfil its verification obligations? What criteria should be employed for determining whether the platform operator has completed its verification obligations? Does the platform operator only need to outline requirements for the seller to provide a copy of relevant documents, or do they need to verify the authenticity and validity of these documents?

The way the platform operator performs the verification obligation can be a formality review or substantive review. The term formality verification obligations refer to the procedure where the platform operator only needs to receive and review the written materials without pursuing whether the material is genuine or not. The platform usually sets up a system to register and record the material and information of the sellers and will be deemed to have fulfilled the verification obligations under the requirement of formality verification.²⁰⁸ Substantive verification obligations require the platform operator to verify the authenticity of the materials.²⁰⁹

²⁰⁸ 何弦月 [He Xuanyue], '《电子商务平台经营者侵权责任研究》 [Research on E-commerce Platform Operator's tort liability]' (Master Thesis, 昆明理工大学 Kunming University of Science and Technology, 2021) 33.

²⁰⁹ 朱岩 [Zhu Yan], '《形式审查抑或实质审查 - 论不动产登记机关的审查义务》 [Formal or Substantive Review - On the Duty of Review of Immovable Property Registration Authorities]' (2006) 6 *法学杂志 Journal of Law* 106, 106.

3.3.2.1 Chinese Academics' Points of View

There has been considerable controversy amongst Chinese academics over the method the platform operators should adopt to acceptably fulfil their verification obligations. Some scholars argue that the platform operator does not participate in trading transactions; therefore, the extent and manner of review should be merely a formality. For example, Liu²¹⁰ believes that the review should be a formality, as opposed to a substantive one in light of the fact that platform operators expect to perform a regulatory function for the transaction process, and it will be difficult for them to verify seller and product information. He believed that as long as the platform operator fulfils its formality review obligation, it should not be liable for the sellers' fraud.²¹¹ Similarly, Li²¹² believes that it is quite harsh to require the platform operators to conduct a substantive review of sellers' information strictly, because it is not easy to achieve on a technical level.²¹³ Another scholar, Xuanyue He,²¹⁴ supported the views of Li²¹⁵ and Liu²¹⁶ but asserted from another angle that it is unrealistic to require platform operators to conduct substantive verification of seller information. She argues that, unlike the managers of offline shopping malls who could conduct on-site examinations of the sellers, the e-commerce sellers are spread all over the country, so the e-commerce platform operator's review obligation should be limited to formality review.²¹⁷

People who believe platform operators should only be responsible for formality verifications draw their conclusions from the belief that platform operators will

²¹⁰ 刘金瑞 [Liu Jinrui], '《网络食品交易第三方平台责任的理解适用与制度创新》 [Understanding the Application of Third Party Platform Liability for Online Food Trading and Institutional Innovation]' (2017) 4 *东方法学 Oriental Jurisprudence* 84, 85.

²¹¹ Ibid.

²¹² 李宇 [Li Yu], '《电子商务平台经营者对消费者的侵权责任研究》 [Research on E-commerce platform operators' tort liability for consumers]' (Master Thesis, 内蒙古大学 Inner Mongolia University, 2020).

²¹³ Ibid.

²¹⁴ 何弦月 [He Xuanyue] (n 208).

²¹⁵ 李宇 [Li Yu] (n 212).

²¹⁶ 刘金瑞 [Liu Jinrui] (n 210).

²¹⁷ 何弦月 [He Xuanyue] (n 208).

not be able to effectively carry out a comprehensive substantive verification of all of their users and their inventory due to the financial burden. This thesis argues that they emphasised the platform operator's interests, often at the consumer's expense.

On the other hand, some scholars believe that the verification required to fulfill a platform's verification obligations should be substantive. They argue that however large the burden the platform operators may have to bear, the customers' right to life and health is and should be of the highest priority and is of the most significant interest in the civil law domain. Platform operators are the more suitable party to safeguard this right.²¹⁸ Sun and Yuan²¹⁹ argued that establishing the platform operators' obligation to verify sellers' qualifications will minimise the possibility of consumers suffering damages. Therefore, the platform operator should assume obligations of substantive verifications of the accuracy of product and seller information. Sun and Yuan noted that only requiring platform operators to assume obligations to formality verifications means that lawmakers ignore the accessibility to information enabled by the information era.²²⁰ In order to conduct a substantive review, the scholars suggested that the platform operator can query the qualification certificate online by entering the certificate number into the system made publicly available by the relevant authoritative parties.²²¹

²¹⁸ 刘俊海 [Liu Junhai], '《增强电子商务法可诉性优化电子商务生态环境》 [Enhancing the actionability of e-commerce law and optimizing the ecological environment of e-commerce]' (2019) 1 *人民司法 (应用)* *People's Justice (Application)* 13, 17. See also 郭晨 [Guo Chen], '电商平台经营者的民事法律责任研究 - 以《电子商务法》第三十八条为分析对象 [Research on the Civil Liability of the Operators of E-commerce Platforms - an Analysis of Article 38 of The E-commerce Law]' (Master Thesis, JiLin University, 2019) 17. See also 周樾平 [Zhou Xiping], '《电子商务平台的安全保障义务及其法律责任》 [Safety Guarantee Obligations and Legal Responsibilities of E-commerce Platforms]' (2019) 6 *学术研究 [Academic Research]* 66, 68.

²¹⁹ 孙晋 & 袁野 [Sun Jin & Yuan Ye], '《论平台经营者的民事法律责任 - 电子商务法第 38 条第 2 款的解释论》 [On the Civil Legal Liability of Platform Operators: An Explanation of Paragraph 2 of Article 38 of the E-commerce Law]' (2020) 1 *财经法学 Finance and Economics Legal Research* 53, 60.

²²⁰ *Ibid* 56.

²²¹ *Ibid* 60.

3.3.2.2 Chinese Courts' Attitude

In product liability cases, a common defence strategy platform operators employ is that they have already fulfilled their verification obligations as they have performed formality verifications. For example, the Taobao platform argued in a case that called for an examination of its product liability that it had fulfilled its obligations to formality verifications by setting up a clause in the 'Taobao Service Agreement' which required sellers to register using truthful information.²²²

From the 88 sample cases, it can be observed that the Chinese courts did not favour overburdening the platform operators. Throughout these cases, it is found that the Chinese courts generally held that the platform operators should not be assuming any statutory liability as long as they have fulfilled their obligation to formality verification. Concerning the platform operators' review obligations, only in five cases²²³ did the presiding judges hold that the platform operators should

²²² See 《杨翠香与洪泽先政商贸有限公司、江苏双沟曲酒厂网络购物合同纠纷一审民事判决书》 [Yang Cuixiang v Hongze Xianzheng Trading Co., Ltd., Jiangsu Shuanggouqu Winery Online Shopping Contract Dispute First Trial Civil Judgment] 天津市津南区人民法院 [Tianjin Jinnan District People's Court], (2020)津 0112 民初 2168 号 [Economic First Trial No 2168], 2020 ('Yang v Hong').

²²³ See 《白某某、侯某某生命权、健康权、身体权纠纷二审民事判决书》 [Civil Judgment of Second Trial for Disputes over Bai and Hou Right to Life, Health and Body] 辽宁省营口市中级人民法院 [Intermediate People's Court of Yingkou City, Liaoning Province], (2020)辽 08 民终 1939 号 [Economic Appeal No 1939], 29 September 2020 ('Bai & Hou Rights To Life And Health'). See 《浙江淘宝网络有限公司、周鹏程等产品责任纠纷民事一审民事判决书》 [Zhejiang Taobao Network Co., Ltd., Zhou Pengcheng and others product liability dispute civil first trial judgment] 陕西省定边县人民法院 [Dingbian County People's Court of Shaanxi Province], (2021)陕 0825 民初 1103 号 [Economic First Trial No 1103], 30 December 2021 ('Taobao Heating Pipe'). See 《广东威博电器有限公司、遵义双圆贸易有限公司等侵权责任纠纷民事二审民事判决书》 [Guangdong Weibo Electric Co., Ltd. and Zunyi Shuangyuan Trade Co. Tort liability dispute second trial civil judgment] 贵州省遵义市中级人民法院 [Zunyi City Intermediate People's Court, Guizhou Province, People's Republic of China], 黔 03 民终 4416 号 [Economic Appeal No 4416], 26 September 2021 ('Electric Water Boiler'). See 《岳龙华与拍库(北京)科技有限公司一审民事判决书》 [Yue Longhua and Paiku (Beijing) Technology Co., Ltd. First Trial Civil Judgment] 北京市石景山区人民法院 [Beijing Shijingshan District People's Court, People's Republic of China], 京 0107 民初 1052 号 [Economic First Trial No 1052], 09 August 2019 ('Yue v Paiku'). See 《哈尔滨小跳蛙体育投资有限公司北京三快科技有限公司违反安全保障义务责任纠纷二审民事判决书》 [The Civil Judgment of the Second Trial in the Dispute over the Liability Dispute of Violation of Safety Guarantee Obligation by Harbin Little Leaping Frog Sports Investment Co., Ltd. and Beijing Sankuai Technology Co., Ltd.] [2020] 黑龙江省哈尔滨市中级人民法院 [Harbin Intermediate People's Court of Heilongjiang Province], (2020)黑 01 民终 4637 号 [Economic Appeal No 4637], 25 November 2020 ('Little Leaping Frog Sports').

assume obligations to substantive verifications. In 46 cases²²⁴ the judges believed that conducting formality verifications was enough as a fulfilment of verification obligations. The platform operator's verification obligations will be considered fulfilled if the platform operator provides the seller's information.

3.3.2.3 Formality Review

A formality verification is more feasible in practice than a substantive verification. The platform operators have influential management power and technology support. Suppose the liability of platform operators who fail to fulfil their review obligations is not strictly regulated. In that case, the cost of breaking the law will be reduced, thus increasing the number of operators dealing with harmful goods or services in e-commerce transactions and failing to achieve the function of deterring sellers and eliminating potential threats. Therefore, joint and several liabilities should be imposed on the platform operators that failed to fulfil their obligation to conduct formality verifications. On the other hand, the ever-evolving technological advancements of the information era have made it possible for platforms to perform substantive verifications efficiently and even automate the process through programming. The remaining 29 cases did not discuss this issue.

E-commerce platform operators have an obligation to verify the product information of listings on the platform. Product safety is a significant, if not the sole, point of consideration for consumers during online shopping. Online transactions are different from physical transactions in that consumers do not have physical access to the products for inspection during the transaction. They cannot hold it in their hands, feel its weight or texture, notice odd smells, or even get a good idea about the relative size of the product. The only access consumers have to the product information on the internet is through the pictures and text selected, written and displayed by the seller. Therefore, online trading platform operators must examine the authenticity and legality of the product information with help from their access to large-scale data-processing technology. The

²²⁴ See Appendix 1 Table 4: Types of Platform Operators' Verification Obligations in Cases.

verification process would include examining proof of quality and manufacturing information for products and ingredient information to ensure that the products sold are legitimate and of standard. It is important to note that platform operators require sellers to provide information about their products and review them. The extent of the verification is limited to a formality review. The platform operator is not required to conduct a substantive review. If the manufacturer or seller provides false information about the product and causes damage to the consumer, the platform is not jointly and severally liable.

3.3.2.4 Substantive Review

E-commerce platform operators should conduct a substantive verification of sellers' administrative licensing certificates, cross-referencing their user databases with that made public by licensing authorities. Due to the rapid development of internet technology, it is now more accessible for platform operators to fulfil their verification obligations in the form of substantive verifications. The point of performing a substantive verification is to root out illegitimate sellers and defective products on the platform. Sellers are required to successfully acquire a business license and relevant administrative licensing certificates from administrative authorities before conducting business to ensure that they are qualified and reliable before distributing goods and services for profit. A substantive verification is more likely to prevent defective products from entering the e-commerce marketplace. Suppose an e-commerce platform operator fails to complete substantive verifications of a seller's information and business qualifications. In that case, it should be held liable for the harm caused to consumers by defective products sold by that seller.

3.3.2.5 Timeliness of Providing Sellers' Information

Another bedrock to fulfilling the obligations of verifying seller and product information is that the information provided to consumers must be timely. Although the verification process is relatively easy to execute, the court's criterion for determining if the process had been entirely and competently performed is too

lenient and lax. The courts took a relatively easy attitude towards the time required for providing the information. In most cases, the platform operators provided sellers' contact information to consumers on their demand.²²⁵ However, the court recognised that providing time could be before the trial,²²⁶ or during the trial.²²⁷

The court in *Wu v Shanghai Shizhuang*²²⁸ held a different view from the majority of Chinese judges. In this case, the plaintiff, Wu, purchased shoes from the seller on the platform operated by the defendant. Wu asked for the seller's information with the defendant due to a quality problem of the shoes, and the defendant did not immediately provide Wu with the seller's registration information. During the trial, the defendant provided the court with the information. The Dong'an County People's Court of HuNan Province held that the platform operator breached its verification obligations because it did not promptly provide the seller's information to the consumer seeking redress. Therefore, the court held that the platform operator should take on joint and several liability with the seller.²²⁹ Evidently, it is not enough to merely collect, store, update, retrieve then distribute seller and product information. The process must be prompt and timely so that it represents the platform operators' acknowledgement of the importance of consumer rights.

²²⁵ See Appendix: Table 2: Platform operators provide sellers' contact information cases.

²²⁶ The platform operator did not provide the seller's information to the consumer until the court began the trial 《张晓东与北京转转精神科技有限责任公司服务合同纠纷一审民事判决书》 [Zhang Xiaodong and Beijing Zhuanzhuan Co., Ltd. Service Contract Disputes First-instance Civil Judgment] 北京互联网法院 [Beijing Internet Court] (2019)京 0491 民初 27076 号号 [Economic No 27076] 23 January 2020 ('Zhang v Beijing Zhuanzhuan').

²²⁷ See 《孙健与北京京东叁佰陆拾度电子商务有限公司信息网络买卖合同纠纷一审民事判决书》 [Sun Jian and Beijing Jingdong Sanbailu Shidu Electronic Commerce Co., Ltd. First Trial Civil Judgment in the Dispute over Information Network Sales Contract] [2021] 北京互联网法院 [Beijing Internet Court], (2021)京 0491 民初 21512 号 [Economic First Trial No 21512], 03 September 2021 ('Sun v Jingdong').

²²⁸ 《吴震涛与上海识装信息科技有限公司网络购物合同纠纷一审民事判决书》 [Wu Zhentao and Shanghai Shizhuang Information Technology Co., Ltd. online shopping contract dispute first trial civil judgment] [2021] 湖南省东安县人民法院 [Dong'an County People's Court of Hunan Province], (2021)湘 1122 民初 468 号 [Economic First Trial No 468], 20 April 2021 ('Wu v Shanghai Shizhuang IT Co., Ltd.').

²²⁹ Ibid.

3.4 Product Liabilities for Breach of Verification Obligations

E-commerce platform operators have obligations to verify and document the sellers' identity information, business qualifications and administrative licensing certificates. As the platform's owner and manager, the platform operator is in a position to monitor sellers' activities. By verifying the qualifications and eligibility of sellers, unqualified sellers and unqualified products can be barred from entering the market and, therefore, will not be part of the selection of items available to consumers.

Article 38 of the *E-commerce Law* from which platform operators' verification obligations are derived also establishes two product liabilities concerning the various forms of breaches of the verification obligations. Article 38(1) requires platform operators to take joint and several liability. Article 38(2) stipulates a corresponding liability for platform operators who fail to verify sellers' administrative licensing certificates. This section will discuss the different liabilities separately based on the platform operators' violation of different verification obligations.

3.4.1 Joint and Several Liability

Article 38(1) stipulates two requirements for the platform operator to be held jointly and severally liable, namely that the platform operators (1) know or should know about the goods or activities endangering the consumer's personal and property safety and (2) have not taken necessary measures to prevent the harm. Of the 88 cases studied, in only nine cases²³⁰ was the platform operator held jointly and severally liable. As can be seen, it is challenging for consumers to rely on Article 38(1) to hold platform operators liable. This section addresses the two elements of joint and several liability of platform operators: the rule about knowing or should know and the rule about taking necessary measures.

²³⁰ See Appendix 1 Table 5: Platform operators assumed joint and several liability cases.

Know or Should Know

To reach the state of knowledge or should know, an e-commerce platform operator either knows through consumers' reports about the defective products or actively monitors seller activities and verifies seller and product information. Given the massive volume of online transactions, platform operators typically do not actively monitor seller activities. If the definition of what constitutes 'know or should know' was not adequately clarified, then platform operators might seek to navigate around their responsibilities, essentially rendering *E-commerce Law* 38(1) ineffective.

In most product liability cases, the consumers would claim that the platform operator allowed the seller to sell the product in question on the platform despite knowing that there may be a breach of law. However, the consumers bear the burden of proof under Article 90 of the *Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China ('Interpretation 2003')*.²³¹

Of the 88 sample cases examined for this study, in 39 cases the plaintiffs had been asked to prove the platform operators' knowledge.²³² If it could not be shown that the platform operators knew or should have known, the judge would generally deem that they were unaware of the seller's illegal conduct and their sales of defective products and thus not be held liable.²³³ In most cases, as long as the platform operator has recorded the seller's identity information during registration, displayed this information along with the product listing (regardless of the authenticity of the information mentioned above), and clarified its

²³¹ *Interpretation 2003* (n 39).

²³² See Appendix 1 Table 6: Platform operators' 'know or should know' and 'take necessary measure' cases.

²³³ For example, see the case 《彭淑丹与北京京东叁佰陆拾度电子商务有限公司信息网络买卖合同纠纷一审民事判决书》 [*Civil Judgment of the First Trial of Peng Shudan and Beijing Jingdong Sanbailu Shidu E-Commerce Co., Ltd. in the Information Network Sales Contract Dispute*] [2021] 北京互联网法院 [Beijing Internet Court], (2021)京 0491 民初 18578 号 [Economic First Trial No 18578], 12 August 2021 ('Peng v Jingdong').

obligations to the seller and consumer in a mutually agreed upon service agreement, the platform operator will be exempt from liability.

This study argues that in the absence of objective judging criteria (e.g., requiring platform operators to review sellers and product information ²³⁴), simply mandating consumers to prove that the platform operators know of the defective product is a barrier preventing consumers from asserting their rights. It becomes difficult for consumers to prove if no guidelines are officially established to determine what constitutes knowing or should know. By requiring platforms to assume verification obligations, they would naturally know or should know had they fulfilled their obligations, and therefore consumers would not have to bear the burden of proof for this particular link in the chain of proofs they have to provide just so that they can show they have been wronged. Unfortunately, no judge has taken this reasoning in 88 cases but instead asked the consumer to prove it. Therefore, consumers would have had to resort to alternative pathways to prove the platform operator's awareness of infringements, like the plaintiff in the case *Ding No 2*.²³⁵

In the case of *Ding No 2*, the plaintiff, Ding, purchased a bag of nuts from a seller on the platform JD.com in January 2019. When Ding consumed the nuts, he found that they had deteriorated and the product information on the package was wrong. Ding then complained to Jingdong, the platform operator, but was unfruitful in his attempts to claim damages. In April 2019, Ding purchased another bag of the same nuts from the same shop and found they were still of poor quality. Ding realised that his complaint did not take effect to stop the seller from providing

²³⁴ Although Article 27 provides that the platform operator is obliged to review sellers' information, the court did not consider this Article when deciding the platform operators' product liability. Thus, this research suggests that the Article 27 obligation should be considered when determining whether the platform operator breached Article 38.

²³⁵ *Ding No 1* (n 206). 《丁博与北京京东叁佰陆拾度电子商务有限公司等网络购物合同纠纷一审民事判决书》 [First trial civil judgment of Ding Bo and Beijing Jingdong Sanbailu Shidu E-commerce Co., Ltd. and other online shopping contract disputes] [2020] 北京互联网法院 [Beijing Internet Court], (2019)京 0491 民初 23609 号 [Economic First Trial No 23609], 31 March 2020 ('*Ding No 2*').

defective products online. So, he filed two lawsuits, *Ding No 1*²³⁶ and *Ding No 2*, for each of the purchases, demanding that Jingdong company assume liability for failing to exercise its verification obligations.

The Beijing Internet Court trialled the cases on the same day. In the case of *Ding No 1*, the judges held that Jingdong was not liable because the plaintiff did not provide evidence that Jingdong knew that the seller was selling food that did not meet food safety standards.²³⁷ The judges explained that know or should know means that the platform operator was aware that the seller had violated the law, either by fulfilling its verification obligations or by consumers' reports about the seller's violation.²³⁸

In *Ding No 2*,²³⁹ the judges ruled that Jingdong was jointly and severally liable. The judges held that the same products were still available in the online shop after receiving the consumer's complaint for over two months. It indicated that Jingdong failed to take the necessary measures despite knowing of the defective product.²⁴⁰

The case has demonstrated that it is not easy for consumers to prove that the platform operator knows or should know about the defective products. The case relied on the consumer's actions to inform the platform operator of infringement cases, even though the platform was more than capable of knowing or should have been knowing of the issue had they dutifully operated by the bare minimum standards expected of them to take a formality review of the product information.

Taking Necessary Measures

After demonstrating that platform operators know or should know, consumers must then demonstrate that platform operators did not take the 'necessary

²³⁶ *Ding No 1* (n 206).

²³⁷ *Ibid.*

²³⁸ *Ibid.*

²³⁹ *Ibid. Ding No 2* (n 235).

²⁴⁰ *Ding No 2* (n 235).

measures' required. This process may prove difficult for the consumers. The reason is the relatively soft standard applied by the courts for taking the 'necessary measures'. Concerning the scope of 'necessary measures', there is no clear standard or guidance on how and what measures can be treated as necessary. Consequently, it is difficult to determine whether the platform operator has taken the necessary measures. In practice, the courts gave some examples of taking necessary measures, like removing or blocking the product list on the platform website, temporarily suspending services to sellers and cessation of transactions.²⁴¹

Of the 88 cases concerning the product liability of platform operators, the plaintiffs in 51 cases²⁴² argued that the platform operators were jointly and severally liable for failing to take the necessary measures in relation to the defective products, in 48 cases of which the platform operators were not liable.²⁴³ In 17 of these cases,²⁴⁴ the platform operator was deemed to have taken the necessary measures by removing the product from the platform's product list. In three cases,²⁴⁵ the platform operators took an active manner in assisting consumers in resolving the disputes. The courts in 22 cases²⁴⁶ did not discuss the issue of taking necessary measures because the consumers could not prove the platform operators knew or should have known about the illegal actions on the platforms. Plaintiffs in six cases failed²⁴⁷ because they could not prove the platform operators did not take necessary measures.

3.4.2 Corresponding Liability

The e-commerce platform operator's obligation to review the seller's administrative licensing certificates arises from Article 38(2) of the *E-commerce*

²⁴¹ See *Ding No 1* (n 206).

²⁴² See Appendix 1 Table 6: Platform operators' 'know or should know' and 'take necessary measure' cases.

²⁴³ *Ibid.*

²⁴⁴ *Ibid.*

²⁴⁵ *Ibid.*

²⁴⁶ *Ibid.*

²⁴⁷ *Ibid.*

Law. According to Article 38(2), the platform operators will take corresponding liability if they fail to examine the sellers' administrative licensing certificates concerning consumers' health and life.

The *E-commerce Law* went through four drafts, with the legislature changing the product liability of the platform operators from 'joint and several liability'²⁴⁸ to 'corresponding supplementary liability',²⁴⁹ and finally to 'corresponding liability' stipulated in Article 38(2). The use of these three terms carries different levels of liability that the platform may incur. The term 'corresponding liability' falls between 'joint and several liability' and 'corresponding supplementary liability' in terms of degree. In judicial practice, the judges will still need to apply the platform operator's corresponding liability as joint and several, contributory or supplementary liability, depending on the actual circumstances.

Corresponding Liability Is Interpreted as Joint and Several Liability

Corresponding liability for breach of verification obligations could be interpreted as a joint and several liability. Joint and several liability is stipulated in Article 178 of the *Civil Code*,²⁵⁰ which provides that where two or more persons are jointly and severally liable under the law, the right holder is entitled to claim the liability of some or all of the jointly and severally liable persons. When numerous people are responsible, joint and several liability means that each person is liable for paying off all debts, regardless of their individual part of the fault. The original goal of establishing joint and several liability is to impose each responsible person

²⁴⁸ '《电子商务法草案进入三审》 E-commerce law (draft) enters third hearing', 全国人民代表大会 *The National People's Congress of China* (Web Page, 20 June 2018)

<http://www.npc.gov.cn/zgrdw/npc/lfzt/rlyw/2018-06/20/content_2060061.htm>.

²⁴⁹ '《电子商务法草案四审稿出炉》 E-commerce Law (Draft) in fourth reading', 全国人民代表大会 *The National People's Congress of China* (Web Page, 28 August 2018)

<http://www.npc.gov.cn/zgrdw/npc/lfzt/rlyw/2018-08/28/content_2059563.htm>.

²⁵⁰ *Civil Code* (n 38) art 178: where two or more persons are jointly and severally liable under the law, the right holder is entitled to claim the liability of some or all of the jointly and severally liable persons. The share of responsibility of the joint and several liable persons is determined according to the size of their respective responsibilities; if it is difficult to determine the size of responsibility, they are equally liable. A joint and several people whose actual liability exceeds his or her share of liability is entitled to recover from the other joint and several persons.

with an obligation to compensate the victim, making it easier for the victim to be remedied as long as there is a tortfeasor with the ability to pay.²⁵¹

In the case *Bai & Hou Rights to Life and Health*,²⁵² the plaintiffs booked holiday accommodations through online travel service platforms Ctrip and Tujia. The hotel operator neither had the qualifications to conduct a business nor sufficiently fitted the hotel room with safety protection equipment. The plaintiffs' 5-year-old daughter had fallen out of the window during their stay in the hotel, a highrise building, and passed away as a result. It was found that the Ctrip and Tujia platform operator had allowed the defendant hotel to display product information and perform business transactions on their platform without verifying the defendant's qualifications and the hotel's information. The court held that the platform operator had failed to fulfil their verification obligations and should assume joint and several liability with the hotel operator. In appeal, the Intermediate People's Court of Yingkou City upheld the decision.²⁵³

Corresponding Liability as Contributory Liability

Contributory liability is the proportional liability imposed on the platform based on its contribution to the resulting damages in accordance with the degree of fault involved in the events that led up to and surrounding the transaction.²⁵⁴ In the 88 cases sampled, platform operators in three cases were held to assume contributory liability for failing to review sellers' administrative licensing

²⁵¹ See 孙晋 & 袁野 [Sun Jin & Yuan Ye] (n 219).

²⁵² *Bai & Hou Rights To Life And Health* (n 223).

²⁵³ *Ibid.*

²⁵⁴ *Civil Code* (n 40) art 177: where two or more persons share liability in accordance with the law, they shall assume corresponding liability respectively if their respective liabilities can be determined; or evenly assume liability if it is difficult to determine their respective liabilities.

certificates.²⁵⁵ In the *Tongle Animal Clinic* case,²⁵⁶ Zhang's cat died due to a veterinary mistake during a spay operation at the hospital. Zhang contacted the veterinary hospital through an e-commerce platform and subsequently made payments to the hospital for the surgery via the same platform. The court found that the staff member of Tongle Animal Clinic who had performed the surgery had not obtained the required 'Practising Veterinary Surgeon's License of China' for veterinary practitioners. The court also found that the list of treatment activities that the hospital registered did not cover animals' cranial, abdominal and thoracic surgery. The platform operator, Beijing Sankuai company, did not correctly verify these qualification documents before allowing business to be conducted by the defendant. The court, therefore, held that Beijing Sankuai company was liable for 10% of the plaintiff's losses under Article 38(2) of the *E-commerce Law*.²⁵⁷

Corresponding Liability as Supplementary Liability

Supplementary liability means that the platform operator assumes liability to supplement the portion of the compensation paid by the direct tortfeasor (the seller). This tort liability occurs when the direct infringer cannot adequately compensate for the losses caused by his infringement, and the platform operator supplements the compensation by paying for the remaining amount. Corresponding liability can sometimes take the form of supplementary liability because the inaction of the platform operator (failure to fulfil verification obligations) is not a vital step in the events that led up to the outcome where the consumer suffered damage – the damage would have occurred regardless of the fulfilment of obligations by the platform operator.

²⁵⁵ The platform operator took 10% liability in 《张一鸣、佛山市同乐动物诊疗有限责任公司等财产损害赔偿纠纷民事一审民事判决书》 [Judgment of First Instance for Property Damage Compensation Disputes between Zhang Yiming and Foshan Tongle Animal Clinic Co., Ltd.] 广东省佛山市顺德区人民法院 [People's Court of Shunde District, Foshan City, Guangdong Province], (2021)粤 0606 民初 19193 号 [Economic First Trial No 19193], 19 October 2021 ('*Tongle Animal Clinic*'). The platform operator took 25% liability in *Electric Water Boiler* (n 223), and the platform operator took 50% liability in *Little Leaping Frog Sports* (n 223).

²⁵⁶ *Tongle Animal Clinic* (n 255).

²⁵⁷ *Ibid.*

For example, in the case of *Wang v Shenzhen Yishi Huolala Technology Co.*, one of the Ten Exemplary Cases of the City's Courts released by the Shenzhen Intermediate People's Court in 2020 (City Intermediate Court Chapter),²⁵⁸ the judges noted that the failure of the platform operator to fulfil its obligation to verify the driver's administrative licensing certificate was not a direct cause of the accident in the hearing. Still, it did allow for the existence of a potential hazard. This negligence is harmful as it introduces unqualified drivers and vehicles into the transportation industry, which infringes on the public's right to know and choose. The court, therefore, held that the company should assume a supplementary liability for the damage caused to Wang as a result of the accident due to its negligence in fulfilling its administrative licensing certificate verification obligation.²⁵⁹ The court emphasised that the platform operators' obligation to verify the administrative licensing certificate referred to the administrative licensing certificate to conduct the taxi business under Article 38(2) of the *E-commerce Law* rather than the driver's licence regulated under Article 38(1) of the *E-commerce Law*. So the platform operator was held to assume a supplementary liability of seller's liability.²⁶⁰ In the appeal, the Shenzhen Intermediate People's Court of Guangdong Province reduced the platform operator's supplemental liability to 50% of the seller's liability.²⁶¹

²⁵⁸ 《王某诉深圳依时货拉拉科技有限公司等机动车交通事故责任纠纷案》 [*Wang v Shenzhen Yishi Huolala Technology Co., Ltd. and other motor vehicle traffic accident liability disputes*] 广东省深圳市宝安区人民法院 [People's Court of Bao'an District, Shenzhen City, Guangdong Province], 粤 0306 民初 3266 号民事判决 [Economy First Trial No 3266], 15 October 2019 ('*Wang v Huolala*').

²⁵⁹ *Ibid.*

²⁶⁰ *Ibid.*

²⁶¹ 《王某诉深圳依时货拉拉科技有限公司等机动车交通事故责任纠纷案》 [*Second trail on Wang v Shenzhen Yishi Huolala Technology Co., Ltd. and other motor vehicle traffic accident liability disputes*] 广东省深圳市中级人民法院 [Shenzhen Intermediate People's Court of Guangdong Province], (2020)粤 03 民终 943 号 [Economy Appeal No 943] 26 November 2020 ('*Second trail on Wang v Holala*').

3.5 Existing Problems

3.5.1 Unclear Criteria for Determining Platform Operators' Verification Obligations

For platform operators to take on joint and several liability with the seller, they must have failed to fulfil their verification obligations and take the necessary measures to protect consumers. In the context of B2C e-commerce transactions, it is feasible to require platform operators to conduct a formality review of the sellers' and products' information. By failing to fulfil their verification obligations, platform operators essentially allow illegal sellers to potential infringe consumer interests on their platforms. Therefore, the platform operator should be jointly and severally liable with the seller for the latter's infringement activities. According to this research, platform operators' verification obligations are vague regarding the content and the procedure, leading to difficulties in determining the product liability of the platform operators in practice. The lack of clarity in determining platform operators' verification obligations is mainly manifested in the following areas.

Firstly, in relation to the content of the verification obligations, the most controversial issue is whether the platform operators have an obligation to verify the product information. In the 88 case examples²⁶² the judges in three cases²⁶³ held that the platform operators were obligated to review the product information. In one of the three cases, *Jingdong v Zhang Li*,²⁶⁴ the Intermediate People's Court of Bozhou City reverted to the first trial judge's decision and held that the platform operator did not have an obligation to review the product information.

This thesis argues that the term 'should know' implies an expectation for the platform operator to perform reviews and verify the product being sold on the platform. A few courts currently hold this view in Chinese judicial practice. For

²⁶² See Appendix 1 Table 1: Platform operators' product liability cases (January 2019 – December 2020).

²⁶³ *Yue v Paiku* (n 223); *Taobao Heating Pipe* (n 223); *Jingdong v Zhang Li* (n 201).

²⁶⁴ *Jingdong v Zhang Li* (n 201).

example, in *Yue v Paiku*,²⁶⁵ Yue purchased an antique vase from an online shop through the defendant's Chinese platform. Upon receipt of the goods, Yue discovered a significant mismatch between the goods received and advertised goods. The judges held that the platform operator had an obligation to verify the product information and had failed to fulfil the verification obligation, resulting in the plaintiff's purchase not matching the advertised goods displayed by the seller. The platform operator was held to have breached Article 38(1) and was jointly and severally liable with the seller.²⁶⁶

Secondly, the *E-commerce Law* did not establish a time limit requirement for platform operators to complete the verification obligations. The verification obligations are carried out in chronological order, beginning with the seller's registration, then the seller's initial release of transaction information and ending with the seller's update of transaction information or business information. The *E-commerce Law* stipulates the verification obligations of the platform operator but does not stipulate a timeframe for fulfilling those obligations. For example, Article 27 of the *E-commerce Law* requires the platform operator to verify, record and update the sellers' identify information. The purpose of this obligation is for the platform operator to be able to provide the seller's information to consumers in a product damage dispute as soon as possible to minimise the loss or damage. Therefore, this obligation should be fulfilled at the time of the seller's registration or within a reasonable time if the seller's information changes. Because there is no specific timeline, the platform operators performed this obligation in a particularly lax manner. For example, in the case of *Wang BX v Xunmeng Co.*,²⁶⁷ the platform operator did not update the seller's information in a timely way,

²⁶⁵ *Yue v Paiku* (n 223).

²⁶⁶ *Ibid.* See also *Taobao Heating Pipe* (n 223).

²⁶⁷ 《王本侠与上海寻梦信息技术有限公司信息网络买卖合同纠纷一审民事判决书》[Civil Judgment of the First Trial of the Dispute over the Contract of Sale and Purchase of Information Network between Wang Benman and Shanghai Xunmeng Information Technology Co.] [2021] 上海市长宁区人民法院 [Shanghai Changning District People's Court], (2020)沪 0105 民初 17099 号 [Economic First Trial No 17099], 03 June 2021 ('*Wang BX v Xunmeng Co.*').

resulting in the seller still being able to provide the defective product after cancelling its business licence.²⁶⁸

The final difficulty in determining platform operators' verification obligations is the two conditions outlined in Article 38(1), which require that the platform operators 'know or should know' the existence of the defective product or sellers' illegal action and take 'necessary measures' to protect consumers from harm caused by defective products. Under Article 38(1), to hold a platform operator liable, the consumer must first prove that the platform operators know or should know, then prove the platform operators failed to take necessary measures to prevent the harm. However, the process for consumers to prove that a platform operator has failed to fulfil its verification obligations can be quite complicated. Of the 88 cases sampled, platform operators in nine cases²⁶⁹ were held to assume joint and several liabilities in the first instance. Generally, the courts hold the view that as long as the platform operators have fulfilled their obligation of formality verification of the sellers' information, they are not in a position to know of any illegal activity beyond that, including the sales of defective products and illegal sellers, unless the consumers can provide proof that the platform operators know or should know.

As this research discussed in this chapter, it is difficult for consumers to prove the platform operators' knowledge about the defective products, which leads to the platform operators rarely being held liable under Article 38(1).²⁷⁰ As evident from Ding's case, Ding had to make two purchases of the same defective product to prove that the platform operators knew the existence of the defective product.²⁷¹ Is it reasonable to expect someone to pay money for something again, something that they know is defective, solely to prove the fault of the platform operator? The present research argues that for this law to be effectively applied, the duty of

²⁶⁸ Ibid. See also 《王广晨与北京口袋时尚科技有限公司网络购物合同纠纷一审民事判决书》 [Wang Guangchen and Beijing Pocket Fashion Technology Co., Ltd. Network Shopping Contract Disputes First Trial Civil Judgment] [2020] 襄阳高新技术产业开发区人民法院 [Fuyang High-tech Industrial Development Zone People's Court], (2020)鄂 0691 民初 645 号 [Economic First Trial No 645], 22 July 2020 ('Wang v Beijing Pocket Fashion').

²⁶⁹ See Appendix 1 Table 5: Platform operators assumed joint and several liability cases.

²⁷⁰ See the discussion about 'Know or Should Know' in section 3.3.1.

²⁷¹ Ibid; *Ding No 2* (n 235).

proof for consumers should not be one that can only be effectuated through a process that is unreasonable to expect from an average citizen.

In some cases, the courts considered consumers' complaints to the platforms as situations in which the platform operators knew of the defective products. If the platform operators removed the product list or provided feedback on the complaint, they would not be liable for consumers' damages. The issue with the courts applying the law in this way is that it might stop further harm to other potential buyers but leads to damaged consumers not being compensated by the platform operators.

3.5.2 Courts Confusing the Information Disclosure Obligation with Verification Obligations

When determining whether a platform operator breached its verification obligations under Article 38(1) of the *E-commerce Law*, the courts, in most cases, considered the platform operator's verification obligation as an obligation to disclose the seller's contact information under Article 44(1) of the *Consumer Law of China*. As long as the platform operator provided the sellers' information, it would be deemed to have fulfilled the obligation under Article 38(1).²⁷²

Article 44(1) of the *Consumer Law of China* provides that e-commerce platform operators are obliged to provide information such as the true identity of the seller to the damaged consumer. The platform operator will compensate consumers' damages if it cannot provide sellers' information. Regardless of whether the platform operators reviewed the registration information of the sellers, as long as

²⁷² For example, *Sun v Jingdong* (n 227). See also 《张晓东与北京转转精神科技有限责任公司服务合同纠纷一审民事判决书》 [*Zhang Xiaodong and Beijing Zhuanzhuan Spirit Technology Co., Ltd. Service Contract Dispute First Trial Civil Judgment*] [2020] 北京互联网法院 [Beijing Internet Court], (2019)京 0491 民初 27076 号 [Economic First Trial No 27076], 23 January 2020 ('*Zhang v ZhuanZhuan Tech*'). See also Appendix: Table 2: Platform operators provide sellers' contact information cases.

it disclosed the sellers' information it would be deemed to have fulfilled its obligation to information disclosure.²⁷³

In 39 of the 88 sample cases²⁷⁴ surveyed for this study, judges did not consider the content of the platform operator's verification obligations under the *E-commerce Law*. Instead, they applied Article 44(1) of the *Consumer Law of China*. When determining whether platform operators fulfilled their verification obligations, courts tended to decide on Article 44(1) of the *Consumer Law of China*, which means the platform operators were deemed to have fulfilled the verification obligations as long as they provided the sellers' information.

This research argues that the courts were applying the law in relation to the verification obligation determination too narrowly and could cause consumers' rights protection difficulties. Although the verification obligations under Article 38(1) implied a disclosure obligation, they should not be treated as a disclosure obligation only. The obligation established in Article 44(1) of the *Consumer Law of China* is less than that established in Article 38(1) of the *E-commerce Law*. Article 44(1) only requires the platform operator to bear an obligation to record the sellers' contact information. In contrast, the verification obligations under Article 38(1) of the *E-commerce Law* include verifying the sellers' information, product information and sellers' administrative licensing certificates.

Furthermore, the liabilities provided in Article 44(1) of the *Consumer Law of China* and Article 38(1) of the *E-commerce Law* are different. The platform operators will be liable to compensate the consumers in advance under Article 44(1) of the *Consumer Law of China*. The purpose of this provision is not to impose a product

²⁷³ For example, see the cases 《林华伟诉浙江淘宝网络有限公司网络购物合同纠纷案》 [Lin Huawei v Zhejiang Taobao Network Co., Ltd. online shopping contract dispute] [2016] 浙江省杭州市余杭区（市）人民法院 [People's Court of Yuhang District (City), Hangzhou City, Zhejiang Province], (2015)杭余商初字第 3090 号 [Economic First Trial No 3090], 18 May 2016 ('Lin Huawei v Taobao'). 《张生良与司元丽、浙江淘宝网络有限公司产品责任纠纷一审民事判决书》 [Zhang Shenggen and Si Yuanli, Zhejiang Taobao Network Co., Ltd. Product Liability Dispute First Trial Civil Judgment] [2020] 杭州互联网法院 [Hangzhou Internet Court] (2020)浙 0192 民初 131 号 [Economic First Trial No 131] 10 July 2020 ('Zhang v Si & Taobao').

²⁷⁴ See Appendix 1 Table 2: Platform operators provide sellers' contact information cases.

liability on the platform operators but rather to impose a management obligation on the platform operator and help consumers get compensation from the sellers. On the other hand, the platform operators are required to assume joint and several liability for breach of Article 38(1) of the *E-commerce Law*.

3.6 Conclusion

Platform operators' verification obligations are essential for developing e-commerce businesses. Consumer interest is intimately tied to the seller's business qualifications and the administrative licensing certificates of some particular products. Online consumers and sellers finalise their transactions through an e-commerce platform. Consumers cannot review the qualifications and eligibility of sellers. Consumers choose a platform to deal with sellers based on trust in the platform. Consumers would like to believe that the platform operators have checked the sellers' information and qualifications before allowing them to conduct business on the platform. For sellers, the e-commerce platform operator acts as a manager and a collaborator in their business activities.²⁷⁵ The e-commerce platform's administration policy for permitting sellers to conduct transactions after reviewing their qualifications is a form of credit endorsement for the sellers on the platform. With the endorsement of the e-commerce platform, it is easier for sellers to gain consumers' trust and thus enhance their business efficiency.

The platform operators' verification obligation under Chinese law is not clearly stipulated. Consumers may find that the platform operators are not liable for defective products sold by a seller with a fake business qualification because the platform has no obligation to examine the truthfulness of the qualification. On the other hand, platform operators are not so willing to conduct too many review activities, as they are instead pursuing the largest profits. If the law is vague, the platform operators will take the easiest and cheapest way of window dressing, and the law cannot catch them even though the consumers are hurt.

²⁷⁵ See section 2.5 of Chapter 2.

The legal terminologies used in Article 38 of the *E-commerce Law* are unclear in terms of the content of the platform operators' verification obligations and the manner in which the platform operators perform the verification obligations, making it difficult for courts to implement the legislation uniformly, resulting in fragile customer protection measures and potentially harming the long-term development of the e-commerce economy. Platforms might seek to abuse these ambiguities in an attempt to maximise profit legally. There is also an element of unfairness to the platform operator if they are held accountable for failing to fulfil obligations that are not clearly outlined.

This chapter explored the content of platform operators' verification obligations. The use of technology allows the effective implementation of platform rules by embedding them into the code that sustains these transactional activities. This reflects that the platform in e-commerce systems has a stronger supervisory function. The exercise of power by e-commerce platforms is mainly achieved by formulating and implementing corresponding rules. The more sharply defined the law is on the obligations and liabilities of the platforms, the easier it will be for the platforms to exercise their autonomy, which not only is beneficial to bettering consumer protection but can also help the development of the platform economy.

Chapter 4 Obligation to Safeguard Consumers and Product Liability of Platform Operators

4.1 Introduction

Given their neutral status and lack of involvement in the actual transaction, in drafting the *E-commerce Law* the issue of whether e-commerce platform operators should bear statutory safeguard obligation was subject to debate, disagreement and continuous revision and was finally regulated in Article 38(2).²⁷⁶

Article 38(2) of the *E-commerce Law* provides two obligations for platform operators: the obligation to verify sellers' administrative licensing certificates and the obligation to safeguard consumers' safety. An e-commerce platform operator will bear a corresponding liability for consumers' damage if it fails to fulfil either of the two obligations. The issue of the obligation to verify the sellers' administrative licensing certificates has already been discussed as part of platform operators' verification obligations in Chapter 3 of the thesis. The platform operators'

²⁷⁶ The third draft of the E-commerce Law increased a provision of the joint and several liability for e-commerce platform operators. If they fail to review the qualification of the seller who provides products or services related to the life and health of consumers, or fail to meet the safety obligations, the platform operators will take several and joint liability. The fourth draft amended the joint and several liability to corresponding supplementary liability. The modification has led to extensive discussion in the community. In the Standing Committee deliberation process, some members hoped to strengthen the liability of the e-commerce platform further. The Constitution and Law Committee of the 13th National People's Congress, after study, eventually amended the corresponding supplementary liability to corresponding liability. See 全国人民代表大会宪法和法律委员会 [Constitution and Law Committee of the National People's Congress], 《全国人民代表大会宪法和法律委员会关于《中华人民共和国电子商务法（草案）》修改情况的汇报》 [Report of the Constitution and Law Committee of the National People's Congress on the Amendment of the E-commerce Law of the China (Draft)] (Committee Report, 19 June 2018). See also 全国人民代表大会宪法和法律委员会 [Constitution and Law Committee of the National People's Congress], 《全国人民代表大会宪法和法律委员会关于《中华人民共和国电子商务法（草案四次审议稿）》修改意见的报告》 [Report of the Constitution and Law Committee of the National People's Congress on the Amendments of the E-commerce Law of China (the Fourth Draft)] (Committee Report, 31 August 2018).

obligation to safeguard consumers' safety is discussed as a separate issue in this chapter to clarify what a platform operator's safeguard obligation should be and how to determine the liability of breach of the safeguard obligations.

Platform operators have an obligation to protect consumers from defective products. The purpose of the obligation to safeguard consumers is to take certain precautions to prevent the occurrence of possible dangers and prevent damage to the consumers.²⁷⁷ Due to the technical capability and management position of e-commerce platforms, platform operators should assume to the greatest extent possible the obligation to eliminate potentially dangerous products that may cause damage to consumers.²⁷⁸ It is reasonable to expect the platform operators to keep the online trading as a safe environment, including product safety.²⁷⁹ Specifically, the reasons to impose an obligation on e-commerce platform operators to safeguard consumers are as follows:

Firstly, the attraction of online trading is that many sellers are present on the platform, and consumers can access information about the products or services of a large number of merchants in a short period. However, with this comes a rise in the potential of defective or dangerous products. Suppose the platform operator does not take any precautions; then the potential risk of consumers being harmed by defective products increases. For online consumers, it is reasonable to trust that the platform operator will safeguard their safety of life and property.²⁸⁰

²⁷⁷ 张新宝 & 唐青林 [Zhang Xinbao & Tang Qinglin], '《经营者对服务场所的安全保障义务》 [The Operator's Duty Of Care For The Safety Of The Service Premises]' (2003)(3) *法学研究* [*Chinese Journal of Law*] 79, 83.

²⁷⁸ 魏昀天 [Wei Yuntian], '《电子商务平台安全保障义务的实证考察与理论进路》 [An Empirical Examination and Theoretical Progression of the Safety and Security Obligations of E-commerce Platforms]' (2021) 3 *法律适用* *Journal of Law Application* 34, 39.

²⁷⁹ 陈芳 [Chen Fang], '《虚拟空间之安全保障义务研究 - 以互联网服务提供商的视角》 [A Study of Security Obligations in Virtual Space - A Perspective of Internet Service Providers]' (2014) 1 *武汉大学学报(哲学社会科学版)* *Journal of Wuhan University (Philosophy and Social Science Edition)* 69.

²⁸⁰ See Rufus Pichler, 'Trust and Reliance, Enforcement and Compliance: Enhancing Consumer Confidence in the Electronic Marketplace' Stanford University, 2000). See also Cristina Coteanu, *Cyber consumer law and unfair trading practices* (Routledge, 2017) Chapter 2.

Secondly, platform operators are better equipped to identify and control hazards. As the platform owner, builder, and manager, the platform operator has the most substantial regulatory and technical power among the various parties involved in the e-commerce transaction. The e-commerce activities are supported by internet information technology. The public's security of life and property must depend on the holders of specialised information technology, namely, the platform operators in e-commerce transactions. The platform operators can and should proactively prevent hazards through technical measures. Nevertheless, the e-commerce platform operator, as the owner and manager of the platform, has a greater technical advantage than the consumer in identifying and determining a threat to the consumer and controlling the occurrence of danger. Therefore, it is reasonable to require the platform operators to carry out an obligation to safeguard consumers.

Finally, e-commerce platform operators are more deeply involved in transactions than traditional venue managers and are expected to assume a higher duty to safeguard consumers. E-commerce platform operators derive benefits from operating the platform. In addition to providing a trading platform for all parties, platform operators also provide value-added services, such as bidding rankings, advertising referrals, big data computing and other ways to make a profit. The e-commerce platform operators generally charge sellers for advertising and ranking fees and a pre-agreed percentage of the transaction in some promotional activities.²⁸¹ In these cases, the platform operator has, to an extent, evolved from a simple third-party service provider to a collaborative partner with the seller. Under the principle of proportionality between benefits and risks, the platform operator should also bear the actual costs of ensuring the safety of the transaction while reaping huge profits. In summary, it is necessary to impose an obligation to safeguard consumers on the platform operators.

²⁸¹ See Appendix 2 Table 9: 2021–2022 E-commerce platform entry fees detail – sampled by Tmall.com, JD.com and Amazon Marketplace.

Because of the special status of platform operators, whether they should be subject to the duty of safeguard provided in the *Civil Code* is still a very new topic. Although this has been regulated in the *E-commerce Law*, it is not a black and white issue in practice. The liability provided in Article 38(2) is a corresponding liability. Although the corresponding liability could be interpreted as one of the statutory liabilities under Chinese law, including joint and several liability,²⁸² supplementary liability²⁸³ and contributory liability,²⁸⁴ it is a controversial issue in practice because the content of the safeguard obligation is uncertain. The vagueness of the legislative language can lead to difficulties in applying the law and further difficulties in enforcing consumer rights. This chapter, therefore, examines the scope and content of the platform operator's safeguard obligations and how the corresponding liability of the platform operator applies.

4.2 Content of Obligation to Safeguard Consumers

4.2.1 Legislative Evolution of Platform Operators' Obligation to Safeguard Consumers

The obligation to safeguard consumers in China originated in the 2001 *Yinhe Hotel* case.²⁸⁵ The main facts of the case were that the two plaintiffs' daughter was murdered at the Yinhe Hotel. The murderer followed the victim to her room, but the hotel staff had not registered the visitor or conducted an inquiry. The hotel was, therefore, liable for gross negligence. The judge discussed the defendant's obligation to safeguard consumers and emphasised that the defendant's duty to its customers was that it 'must take effective security precautions and exercise the utmost care and diligence to protect the customer from unlawful acts'.²⁸⁶

²⁸² See *Civil Code* (n 40) arts 1170, 1171.

²⁸³ *Ibid* art 1198.

²⁸⁴ *Ibid* art 1172.

²⁸⁵ 《王利毅、张丽霞诉上海银河宾馆赔偿纠纷案》 [*Wang Liyi and Zhang Lixia v Shanghai Galaxy Hotel Case of Compensation Dispute*] (中华人民共和国最高人民法院公报 [Gazette of the Supreme People's Court of the People's republic of China] 2, ('*Yinhe Hotel*)).

²⁸⁶ *Ibid*.

Because there was no express provision in the Chinese civil law system requiring operators of commercial facilities to bear a safeguard obligation to their customers, the court's discussion of the obligation to safeguard consumers was based on the collateral obligation to a contract. The judges held that a contractual relationship had been formed between the victim and the defendant. The defendant was liable for breach of contract for failing to thoroughly and diligently perform the collateral obligation to the contract.²⁸⁷ The case was published as a typical case by the *Supreme People's Court Gazette (SPC Gazette)*²⁸⁸ as a reference for Chinese courts dealing with similar cases.

Then in 2003, the Supreme People's Court issued the *Interpretation 2003*.²⁸⁹ The application of the obligation to safeguard consumers in torts was expressly provided for the first time in Article 6 of the *Interpretation 2003*.²⁹⁰ In 2009, the *Tort Law of the People's Republic of China ('Tort Law Expired')*²⁹¹ was enacted. Article 37 of the *Tort Law Expired*²⁹² stipulated that a manager of a public venue has an obligation to safeguard consumers. It has been amended as Article 1198 of the *Civil Code*.²⁹³

In 2013, Article 18(2) of the *Consumer Law of China* introduced an obligation of the operators of the hotels, shopping malls, restaurants, banks, airports, stations, ports, theatres, and other business premises to safeguard consumers, bringing

²⁸⁷ Ibid.

²⁸⁸ Ibid.

²⁸⁹ *Interpretation 2003* (n 39).

²⁹⁰ Ibid. Art 6, where a natural person, legal person or any other organization who engages in the business of hotel, catering or entertainment, etc. or carries out other social activities, fails to perform the security guaranty obligation within a reasonable scope, and thus causes any other person to suffer from a personal injury, and the obligee to compensation claims against the obligor for bearing corresponding compensation liabilities, the people's court shall support such claim.

²⁹¹ 《中华人民共和国侵权责任法》[*Tort Law of the People's Republic of China*] (*Expired*) (Invalidated by: *Civil Code of the People's Republic of China* (Issued on 05-28-2020 Effective on 01-01-2021)) (Standing Committee of the National People's Congress, Order No 21, 26 December 2009, ('*Tort Law (Expired)*')).

²⁹² Ibid art 37.

²⁹³ *Civil Code* (n 40) art 1198, the operator or manager of a commercial or public venue such as hotel, shopping center, bank, station, airport, sports venue, or entertainment place or the organiser of a mass activity shall assume the tort liability for any harm caused to another person as the result of his failure to fulfill the duty of safety protection.

the obligation to safeguard consumers into the consumer protection law area. Chinese law did not place the responsibility for sales practices that occur in shopping malls on the operator. In a product liability dispute, consumers first seek compensation from the seller. Suppose the seller's lease with the mall ends, and the consumer has difficulty finding the seller and thus cannot enforce their rights. In that case, the consumer may seek compensation from the mall operator under the *Consumer Law of China*. However, this provision of the *Consumer Law* is not an endorsement of the product liability of the mall operator because Article 43 of the *Consumer Law of China* also gives the mall operator the right to recover compensation from the seller after compensating the consumer.²⁹⁴

Article 18(2) of the *Consumer Law of China*²⁹⁵ and Article 1198 of the *Civil Code*²⁹⁶ stipulate the safeguard consumers obligation of physical premises such as shopping malls. Due to the virtual nature of the e-commerce market, there is no clear interpretation of whether these provisions apply to e-commerce platform operators.

In 2019, the *E-commerce Law* specified in Article 38(2) that e-commerce platform operators have an obligation to ensure the safety of products related to consumers' health and lives. If a platform operator fails to fulfil its obligation, it shall bear corresponding liability for the consumer's damager.

Nevertheless, the *E-commerce Law* does not provide any further clarifications on what this obligation should include. This leads to uncertainty about what constitutes the platform operators' safeguard obligation in relation to product safety.

²⁹⁴ Article 43 of the *Consumer Law of China* (n 115) provides that consumers whose lawful rights and interests are infringed upon in purchasing commodities or receiving services at trade fairs or leased counters may claim compensation from the sellers or service providers. After trade fairs are over or counter leases expire, they may also claim compensation from the organisers of trade fairs or the counter lessors. The organisers of trade fairs or the counter lessors shall, after paying compensation, have the right to be reimbursed by the sellers or service providers.

²⁹⁵ *Consumer Law of China* (n 115).

²⁹⁶ *Civil Code* (n 40).

4.2.2 Guiding Principles for Safeguard Obligation

Before discussing further, this research outlines the guiding principles for the safeguard obligations derived from the *E-commerce Law*:

First, textual reading of Article 38(1) shows that although the safeguard obligation does not appear, the requirement for platform operators to protect the rights and interests of consumers in online transactions is a substantive expression of the safeguard obligation. This research suggests that Article 38(1) obligations should be included in the safeguard obligations.

Second, although Article 38(2) separately provides the verification obligations with the safeguard obligation, the verification obligations also fall within the scope of the safeguard obligation.

The platform operators' obligation to protect consumers' safety is a controversial topic. There are two views on the content of the platform operator's obligation to safeguard consumers. One view is that the obligation to safeguard consumers should not include the obligation to verify sellers' administrative licensing certificates. Article 38(2) established two obligations for the platform operators: the obligation to verify sellers' administrative licensing certificates and the obligation to protect consumers' safety. According to the structure of article 38(2), the platform operator will be liable for breach of either of the two obligations.²⁹⁷ Lin held this view on the ground that two obligations are listed in Article 38(2) of the *E-commerce Law* as use of the word 'or' is a sign of the legislator's intention to treat these two obligations separately.²⁹⁸

²⁹⁷ See 林涸民 [Lin Huanmin], '《电商平台经营者安保义务的规范解读与制度实现》 [The normative interpretation and system realization of the security obligations of e-commerce platform operators]' (2020) 42(6) *现代法学* [*Modern Law Science*] 195. See also cited in 萨荷雅 [Sa Heya], '《电子商务平台经营者的安保责任研究》 [Research on the security responsibility of e-commerce platform operators]' (Master Thesis, Inner Mongolia University, 2021).

²⁹⁸ See 林涸民 [Lin Huanmin] (n 297). See also cited in 萨荷雅 [Sa Heya] (n 297).

The other view is more widely accepted, which is the argument that the obligation to safeguard consumers means that the platform operator should exhaust all methods within the reasonable capacity that can prevent consumers from harm. Including sellers' administrative licensing certificates verification, establishing systems for reporting and complaints, setting up credit rating policy, and monitoring products provided on the platform should also be included in the platform operators' obligation to safeguard consumers.²⁹⁹ For example, although the wording of Article 38(2) of the *E-commerce Law* separates the obligation to verify sellers' administrative licensing certificates from the obligation to ensure customers' safety, Zhang³⁰⁰ contended that this does not imply that the two obligations are mutually exclusive. Examining the sellers' administrative licensing certificates is equivalent to establishing a benchmark for entrance to the e-commerce market, which is the first line of defence for protecting consumers' safety.³⁰¹

This research argues that failure to comply with verification obligations may result in product liability owing to product safety issues; however, complying with verification obligations does not suggest fulfilling safeguard obligations. A platform operator who performed its verification obligation might still be liable for breach of the safeguard obligation. For example, if a defective product hurts a consumer, the platform operator might not be liable for product liability provided it has verified the seller's administrative licensing certificate. However, if the platform operator verified the seller's administrative licensing certificate but failed to perform other safeguard obligations, such as alerting the consumer about the potential dangers of the product in that category or providing timely assistance on a consumer's complaint, the platform operator was still liable for breach of safeguard obligations.

²⁹⁹ 周樾平 [Zhou Xiping] (n 218).

³⁰⁰ 张婕妤 [Zhang Jieyu], 'Research on 'Corresponding Responsibility' of E-commerce Platform violating Security Obligations' (Master Thesis, 甘肃政法大学 Gansu University of Political Science and Law, 2021).

³⁰¹ Ibid.

Third, the content of the obligation to safeguard consumers is about what a platform operator is supposed to do to protect customers from defective products. Platform operators should protect online customers' interests by making every effort within their power to do so. The Drafting Group of the E-commerce Law explained that the *E-commerce Law* establishes the platform operator's obligation to safeguard consumers, which is intended to impose on the platform operator the obligation to protect consumers' safety to a 'reasonable scope and limits'.³⁰²

This research believes that the 'reasonable scope and limits' are those obligations relating to consumer safety that have been expressly set out in the *E-commerce Law*, including verification obligations under Articles 27, 29 and 38,³⁰³ an obligation to alert consumers about the sellers' illegal actions under Article 36, and an obligation to establish a credit evaluation and complaint reporting system under Article 39. It does not go beyond the scope of e-commerce legislation. Meanwhile, it avoids imposing excessive requirements on e-commerce platform operators while providing consumers with the necessary assurance and a legal basis for seeking compensation in the event of harm. As a result, this research proposes that these obligations in the *E-commerce Law* can be specific criteria for determining whether the platform operator has fulfilled its obligation to safeguard consumers. In addition, an obligation to provide timely assistance to consumers should be part of the platform operator's obligation to safeguard consumers, even though it is not stated in the *E-commerce Law*.

4.2.3 Verification Obligations as Safeguard Obligation

This thesis proposes that an e-commerce platform operator's obligation to safeguard consumers should first and foremost include the verification obligations. The verification obligations encompass all of the obligations discussed in Chapter 3 of this research. It includes the obligation to review the

³⁰² 《中华人民共和国电子商务法条文释义》 [Interpretation of the provisions of the E-commerce Law of the People's Republic of China] Beijing (法律出版社 Law Press China, October 2018) ('Interpretation of the E-commerce Law').

³⁰³ See discussion in Chapter 3.

seller's identity information, the obligation to review product information, and the obligation to verify the seller's administrative licensing certificates. Each review obligation focuses on a different aspect related to ensuring product safety. The final effect is to protect consumers from being harmed by sellers' illegal activities and defective products. As a result, the platform operator's fulfilment of the verification obligations is the essential component of completing its obligation to safeguard consumers.

This chapter discusses verification obligations as a form of safeguarding obligations of the platform operators, which should be distinguished from the verification obligation under Article 38(1). For example, if a platform operator failed to verify the seller's information, it might assume joint and several liability for breach of Article 38(1); on the other hand, the platform operator might bear a corresponding liability under Article 38(2) if it failed to safeguard consumers in the way of failing to verify seller's information.

The platform operator's verification obligations are fundamentally a management responsibility. To achieve the ultimate goal of safeguarding consumers who purchase products on the platform, the platform operator, as the controlling body of the platform, must have specific identification and control ability to exclude illegal sellers and potentially dangerous products. The verification obligations are the platform operators' tools to identify the dangers and prevent risks that may occur in the future.

In addition, the platform operator's verification obligations are to safeguard consumers. Due to the virtual nature of online shopping, online consumers' access to information about the sellers is based on the presentation of the e-commerce platform. In this context, the consumers can only rely on the information provided by the platform operator to determine the identity of the sellers and the product information. Requiring platform operators to undertake verification obligations can compel strict management of sellers. It could prevent

illegal sellers taking chances in dealing with defective products on the platform, thereby ensuring the safety of the consumer at the source of the transaction.

The Chinese courts' views are mostly unsettled on what constitutes the platform operators' obligation to safeguard consumers. There are no clear and detailed provisions in the *E-commerce Law* governing the circumstances and scope of application of platform operators' obligation to protect consumers under Article 38(2). Although the platform operator's obligations to safeguard consumers and verify the sellers' administrative licensing certificates are set out separately in Article 38(2) of the *E-commerce Law*, many courts have considered these two obligations the same. In other words, the platform operator would be deemed to have fulfilled its obligation to protect consumers' safety as long as it verifies the seller's administrative licensing certificate. By applying the key words 'E-commerce Law', 'Article 38(2)', and 'obligation to safeguard', this study searched the China Judgments Online website for cases concerning the platform operators' obligation to safeguard. From January 2019 to December 2021, 17 cases, including appeals, were found. In 10 of these cases,³⁰⁴ the judge held that the platform operators failed to meet the obligation to safeguard consumers because they did not verify the sellers' administrative licensing certificates. The cases *Ma v Li*³⁰⁵ and *Wu v XN Co. Ltd.*³⁰⁶ are typical examples of these cases.

In the case of *Wu v XN Co. Ltd.*,³⁰⁷ the Beijing No. 4 Intermediate Court identified the obligation to verify sellers' administrative licensing certificates as an obligation to safeguard consumers. The judge noted that the platform operator, Jingdong

³⁰⁴ See Appendix 1 Table 7: Platform operators' obligation to safeguard consumers and corresponding liability cases.

³⁰⁵ 《马某某等与李某某等生命权、健康权、身体权纠纷一案民事判决书》[*Ma et al. and Li et al. in a dispute over the right to life, health and body Civil Judgment of First Trial*] [2020] 北京市朝阳区人民法院 [Beijing Chaoyang District People's Court], (2018)京 0105 民初 88274 号 [Economic First Trial No 88274], 10 April 2020 ('*Ma v Li*').

³⁰⁶ 《吴志祥等与合肥欣皓妮阳商贸有限公司网络购物合同纠纷二审民事判决书》[*Wu Zhixiang et al. and Hefei Xinhao Niyang Trading Co., Ltd. Civil Judgment of Second Trial for Online Shopping Contract Dispute*] [2019] 北京市第四中级人民法院 [Beijing Fourth Intermediate People's Court], (2019)京 04 民终 104 号 [Economic Appeal No 104], 22 August 2019 ('*Wu v XN Co. Ltd.*').

³⁰⁷ *Ibid.*

company, had asked the seller to provide a copy of the business licence and the food business permits and that it had completed its obligation to verify the seller's administrative licensing certificates. Therefore, Jingdong did not breach its obligation to safeguard consumers.³⁰⁸

In *Ma v Li*,³⁰⁹ the plaintiffs' daughter died after being hurt accidentally in a hotel room. The business operator, Li, did not obtain any administrative licensing certificate nor install safety devices in the room. It was found that the platform operator, Sankuai company, did not examine Li's administrative licensing certificate and allow Li to conduct business on the platform. Beijing Chaoyang District Court held that the Sankuai company's failure to fulfil its verification obligations is equivalent to failure to fulfil its obligation to safeguard consumers and should assume a supplementary liability with Li. The judges explained: 'The administrative licensing certificates verification is similar to the obligation to safeguard consumers, which prevents consumers from being infringed by an illegal business. Article 38(2) of the *E-commerce Law* states the verification obligation and the obligation to protect consumers' safety together, which shows the commonality in the legal nature of the two'.

This research proposes to include the verification obligations under Article 38(1) as part of the safeguard obligations to assist the court in determining the product liability. For example, in the case *Jingdong.com v Zhang*,³¹⁰ although the courts held that Jingdong company did not have an obligation to verify the product information, this thesis argues that Jingdong company, to an extent, failed to perform its obligation to safeguard consumers by failing to verify the product information and should be held liable.

³⁰⁸ Ibid.

³⁰⁹ *Ma v Li* (n 305).

³¹⁰ *Jingdong v Zhang Li* (n 201).

4.2.4 Obligation to Alert Consumers

Platform operators are suggested to meet information disclosure obligations as part of their obligations to safeguard consumers. Suppose a platform operator fulfilled its verification obligation in relation to sellers' and product information and the sellers' administrative licensing certificates. In that case, they should be able to discover the possible defective products, or that the sellers are conducting business on the platform without legal certificates or administrative licensing certificates. The disclosure of information on e-commerce platforms is, on the one hand, a means of monitoring and encouraging sellers to operate legally. On the other hand, it also serves as a caution to consumers through the disclosure of relevant information.

According to Article 36 of the *E-commerce Law*, the platform operator should impose a warning if a seller conducts business illegally. In some cases, the platform operator should suspend or terminate the provision of services to the seller, after which the platform operator shall promptly publicise the relevant information. There is no provision concerning the consequence for violating this obligation in the *E-commerce Law*. Considering this obligation as one of the obligations to protect consumers' safety, the liability for breach of this obligation can correspondingly be determined under Article 38(2).

The e-commerce platform operators should also be obligated to alert and warn consumers about any potential risks concerning products. Due to the involvement in online trading activities, the platform operators are no longer simply providers of trading venues but also have certain decision-making and management rights over sellers and products. Requiring the platform operator to undertake the obligations to disclose illegal sellers' information and alert consumers does not add an additional burden to the platform operator. Usually, if the platform operator can fulfil its verification obligations, the disclosure and alert obligation is a facilitated act to enhance the possibility of product safety. As a result, the e-commerce platform operators' obligation to warn consumers is a further measure towards fulfilling their obligation to safeguard consumers.

4.2.5 Obligations to Establish Credit Evaluation and Complaint Reporting System

In e-commerce transactions, consumers judge the product only by the seller's description and other buyers' reviews. As a result, consumers are highly dependent on the seller's credit and product quality ratings when shopping online. Suppose a platform operator takes an unconcerned or negligent attitude towards a seller's credit rating, resulting in falsified reviews that do not truly reflect the customers' feelings. In that case, the consumer will likely choose based on the review and thus suffer losses. Therefore, e-commerce platform operators should establish a proper and complete credit rating system to protect consumers. Article 39 of the *E-commerce Law* sets out the obligation of platform operators to improve their credit rating and complaint mechanisms. The platform operators are required to provide consumers with an open evaluation channel and not to delete evaluations arbitrarily.³¹¹

Establishing a complaint and reporting system is also one way to supervise the sellers. A reasonable complaint and reporting channel can ensure the platform operators quickly capture the infringing action. A combination system of complaints and credit ratings could, to an extent, further protect consumers. For example, multiple complaints about a seller or a product will reduce the seller's overall rating, service rating, and other rating points. An increased proportion of negative reviews on a product will further affect the product's credit ranking and overall ranking. These will guide consumers in their choices and help them avoid risky products. Article 59 of the *E-commerce Law* provides that the platform operator shall establish a convenient and effective complaint and reporting mechanism, disclose information on how to file complaints and reports, and receive and process complaints and reports in a timely manner.

³¹¹ *E-commerce Law* (n 18) art 39(2).

Although the *E-commerce Law* has established the platform operators' obligations to establish credit evaluation and complaint reporting systems, it does not specify the liability of breach of these obligations. This research argues that the obligations of establishing a credit rating system and a complaint and reporting system are also part of the obligation to safeguard consumers, and the liability for breach of these obligations can correspondingly be determined under Article 38(2).

4.2.6 Obligation to Provide Timely Assistance

The last component of the platform operator's obligation to safeguard consumers is to provide timely assistance. The obligation to provide timely assistance means that where damage has already occurred, the e-commerce platform operator should take necessary measures to prevent further damage and provide timely assistance to the consumer. Generally, e-commerce platforms cannot provide direct, physical assistance to consumers whose personal safety has been harmed. Still, they can indirectly provide post-event protection to consumers in a number of ways, such as temporarily closing payment transfer channels, requiring the seller to take down infringing goods, and providing consumers with information about the goods and the seller. In addition, e-commerce platform operators can use their unique information management position and technical advantages to cooperate with the police and government departments by disclosing the accurate registration information of the sellers, product information, and transaction information³¹² to indirectly protect consumers' rights and interests.

The obligation to provide timely assistance is an ex-post obligation. By making timely remedies, platform operators can prevent damage expansion and prevent more consumers from being harmed. Because consumers trust the platform and platform operators' dominance over e-commerce transactions, platform operators should provide timely assistance after a consumer suffers

³¹² *E-commerce Law* (n 18) art 31.

damage. Although the *E-commerce Law* does not impose an obligation on platform operators to provide post-facto assistance, it is reasonable and positive to include a normative obligation to provide timely assistance as part of the platform operator's obligation to safeguard consumers.

4.3 The Liability of Platform Operators for Breach of Obligation to Safeguard Consumers

According to Article 38(2) of the *E-commerce Law*, if an e-commerce platform operator fails to fulfil its obligation to verify sellers' administrative licensing certificates or fulfil its obligation to safeguard consumers, it shall assume corresponding liability for the damage caused to consumers. The obligation to verify sellers' administrative licensing certificates is more straightforward than the obligation to safeguard consumers as to the scope and criteria for determining the platform operators' fulfilment. Accordingly, the corresponding liability must be considered more profound and complicated when a platform operator breaches the obligation to safeguard consumers. Chapter 3 has discussed the corresponding liability in breach of the sellers' administrative licensing certificates verification obligation. The corresponding liability for breach of the obligation to safeguard consumers is examined and discussed in detail in the following sections of this chapter.

4.3.1 Debate on Corresponding Liability

Concerning the liability for breach of consumer safeguard obligation under Article 38(2) of the *E-commerce Law*, the 'corresponding liability' proposed has been the subject of much debate since the enforcement of the *E-commerce Law*. Although the 'corresponding liability' is also applied to the breach of administrative licensing certificates verification obligation, the debates were mainly focused on how to interpret the corresponding liability for breach of the safeguard obligation. The main focus of the debate is on what form of liability the 'corresponding liability' should be. The views of scholars can be divided into two categories: the sole interpretation approach and the multiple explanation approach.

Sole Interpretation Approach

Under the sole interpretation approach, scholars believe that there is only one way to recognise this liability. Some believe that this way should be holding platform operators jointly and severally liable with sellers for breach of the obligation to safeguard consumers. The reason is that e-commerce platform operators are rule-makers for platform services and transactions, stipulating the rules for entering and exiting the platform, quality assurance of goods and services, and protection of consumer rights and interests. Moreover, protecting consumer safety is part of the social responsibility of e-commerce platform operators. Therefore, a higher requirement should be imposed on e-commerce platform operators, namely 'joint and several liability'.³¹³

Others believe that 'corresponding liability' refers to 'supplementary liability'. The reason is that the failure to fulfil the obligation to safeguard consumers does not necessarily cause the incidence of the damage directly. As a result, requiring the e-commerce platform operator to bear a supplementary liability for breach of the obligation to safeguard consumers is more appropriate.³¹⁴ Zhang argues that the platform operator's inaction could not directly cause harm to the person or property safety of the consumer but plays a supporting role in the consequences of the infringement. The basis for the joint and several liability of the platform operator lies in the fact that the platform operator constitutes joint infringement with the seller in 'common intention'.³¹⁵ According to Zhang,³¹⁶ the fault of the platform operator in Article 38(2) of the *E-commerce Law* is negligence. It, therefore, does not constitute a basis for joint and several liability. Sun and Yuan³¹⁷ believed that although the platform operator was not involved in the

³¹³ 王道发 [Wang Daofa] (n 124).

³¹⁴ See 杨立新 [Yang Lixin], '《电子商务民事责任之立法基础与基本规则》 [Legislative basis and basic rules of civil liability in electronic commerce]' (2019) 1 *甘肃社会科学* [*Gansu Social Sciences*] 100. See also 萨荷雅 [Sa Heya] (n 297).

³¹⁵ 张婕妤 [Zhang Jieyu] (n 300).

³¹⁶ *Ibid.*

³¹⁷ 孙晋 & 袁野 [Sun Jin & Yuan Ye] (n 219).

commercial operations between the sellers and consumers, they could not be completely exempt from the product liability because platform operators, as the actual controllers and operators of e-commerce trading platforms, have obtained many economic benefits through the platform services. At the same time, their control over the potential security risks of the platform far exceeds other entities.³¹⁸ Even if the fault does not necessarily cause the damage, the damage can be prevented from occurring if the platform operators fulfil the obligation to safeguard consumers. Therefore, it is fair for the platform to assume supplementary liability.³¹⁹ In addition, Zhou believes that the platform's failure to fulfil its security obligation to undertake supplementary liability is more in line with the platform's capabilities and will help encourage the platform operators to take preventive measures.³²⁰

Multiple Explanation Approach

Scholars who held a multiple explanation approach mostly took a cautious view when discussing the forms of corresponding liability in Article 38(2). Some scholars³²¹ suggested considering the degree to which the platform operator is at fault; or the extent to which their fault contributed to the resulting damage. Mi and Liu argued that if the platform operator is grossly negligent, having them assume joint and several liability is more appropriate; otherwise, the platform operator should only be burdened with supplementary liability.³²² Chen proposed the diversification of liability.³²³ According to Chen,³²⁴ the application of joint and several liability, supplementary liability or contributory liability should be judged

³¹⁸ Ibid.

³¹⁹ Ibid.

³²⁰ 周樾平 [Zhou Xiping] (n 218).

³²¹ 米新丽 & 刘正之 [Mi Xinli & Liu Zhengzhi], '《论电子商务平台的安全保障义务》 [On the Safety and Security Obligations of E-commerce Platforms]' (2020) 11 *行政管理改革 Administrative Reform* 50.

³²² Ibid.

³²³ 陈晓敏 [Chen Xiaomin], '《论电子商务平台经营者违反安全保障义务的侵权责任》 [On the tort liability of e-commerce platform operators who violate the duty of safety and security]' (2019) 5 *当代法学 Contemporary Law Review* 30.

³²⁴ Ibid.

under the specific circumstances of each case, taking into account the main and minor faults of the platform operator and sellers.³²⁵

4.3.2 Joint and Several Liability Applies When the Law Has Special Provisions

According to the *Civil Code*, the tortfeasor's joint and several liability is premised on the provisions of the law or the parties' agreement.³²⁶ In product liability disputes between e-commerce platform operators and consumers, since there is no contractual relationship for the product transactions, it is only possible to confirm whether the platform operator is jointly and severally liable based on legal provisions. The corresponding liability will be interpreted as joint and several liability when the breach of safeguard obligation is in the manner of a breach of verification obligations under Article 38(1). For example, in the case of *Bai & Hou Rights to Life and Health*,³²⁷ the court held that the platform operator breached its safeguard obligation by failing to verify the product safety information and accordingly assumed joint and several liability.

Article 131 of the *Food Safety Law*³²⁸ stipulates that where an operator of an online food trading platform fails to register the legal name of the food traders or examine their administrative licensing certificates or fails to fulfil its obligations such as reporting and ceasing providing online trading platform services, causing the damage to consumers, it shall assume joint and several liability with the food trader. Article 131 applies to a food trading platform. If the food trading platform operator fails to perform obligations to verify food sellers' identify information or administrative licensing certificates, the platform operator will be jointly liable with the seller. It is worth noting that an integrated shopping platform also has sellers providing food for sale; if the platform operators do not verify the food sellers' administrative licensing certificates, the court usually applies Article 38(2) to

³²⁵ Ibid.

³²⁶ *Civil Code* (n 40) art 178(3).

³²⁷ *Bai & Hou Rights To Life And Health* (n 223).

³²⁸ *Food Safety Law* (n 116) art 62(2), the platform operator has an obligation to stop the actions violating the Food Safety Law as soon as they discover them.

determine the platform operators' product liability.³²⁹ As a result, the platform operator, in such a case, might assume a joint and several liability, a contributory liability, or a supplementary liability.

4.3.3 Joint and Several Liability Applies in Life Endangered Cases

When a consumer's life or health damage is directly related to the platform operator's failure to meet its obligation to safeguard consumers, the corresponding liability should be interpreted as joint and several liability. The Drafting Group of the E-commerce Law of the Financial and Economic Committee of the National People's Congress interpreted that the nature of the e-commerce platform operator's responsibility, the degree of fault, the consequences of damage, causation and other factors should be taken into account for e-commerce platform operators' product liability determination.³³⁰

It is a case-by-case situation to interpret the corresponding liability in judicial practice. In the 17 sample cases relating to platform operators' obligation to safeguard consumers, two held that the platform operators were jointly and severally liable.³³¹ Both cases involved platform operators who let substandard products be displayed for sale on their platforms without fulfilling their verification obligations, and consumers lost their lives. The judges in both cases held that the platform operators failed to meet the obligation to safeguard consumers. Therefore, the corresponding liability of the platform operator was interpreted as joint and several liability. The judges in the *Taobao Heating Pipe*³³² case

³²⁹ See cases *Wang v Shanghai Xunmemg & Lin* (n 188); 《秦汉新城郑建平百货店、浙江淘宝网销售有限公司与黎格格、马纯忠、郑建平、西安国际港务区马纯春百货店等网络购物合同纠纷一案民事二审判决书》[*Civil Second Trial Judgment in the case of online shopping contract disputes between Qinhan New Town Store, Zhejiang Taobao Network Co., Ltd. and Li Gege, Ma Chunzhong, Zheng Jianping, and Xi'an International Port Area Ma Chunchun Store*] [2021] 广东省佛山市中级人民法院 [Intermediate People's Court of Foshan City, Guangdong Province], (2020)粤 06 民终 10835 号 [Economic Appeal No 10835], 07 February 2021 ('*Qinhan New Town*').

³³⁰ *Interpretation of the E-commerce Law* (n 302).

³³¹ *Bai & Hou Rights To Life And Health* (n 223). See also *Taobao Heating Pipe* (n 223).

³³² *Taobao Heating Pipe* (n 223).

emphasised that ‘the defendant Taobao company, as a well-known e-commerce platform operator, should have more rigorous safety supervision responsibility.’

4.3.4 Supplementary Liability and Contributory Liability Applies When There Is an Indirect Causation Relationship

The platform operator whose failure to safeguard consumers indirectly caused the damage will assume supplementary liability or contributory liability. If the obligation to safeguard consumers cannot substantially prevent damage, the breach is an indirect cause of damage.³³³ Two conditions must be satisfied in deciding whether the platform operator will assume supplementary liability. Firstly, the platform operator’s inaction had a role in the occurrence of the damage, but the breach of its obligation to safeguard consumers did not directly cause the damage. Secondly, the tort of the direct perpetrator has an independent determinative effect on the outcome of the damage. Even if the platform operator fulfilled its obligation, it would not materially alter the consequences of the damage.³³⁴

According to Article 1171 of the *Civil Code*, where two or more persons commit torts respectively, causing the same harm, and each tort is sufficient to cause the entire harm, the tortfeasors shall be liable jointly and severally. Article 1171 imposes a joint and several liability on each infringer, precisely on the basis that the tort of each individual is sufficient to cause total damage. Article 1172 stipulates contributory liability where two or more persons commit separate infringements that result in the same harm. The tortfeasors shall assume a different share of the liability, respectively. Article 1172 does not require that ‘the infringing act of each tortfeasor is sufficient to cause the entire damage’. When dealing with a specific case where several persons commit a tort, the application of Articles 1171 and 1172 should be determined by analysing whether the tortfeasors’ infringing conduct could have caused the total damage alone.

³³³ 王道发 [Wang Daofa] (n 124) 295.

³³⁴ 张婕妤 [Zhang Jieyu] (n 300) 28. See also 王道发 [Wang Daofa] (n 124) 294.

In the case *Ma v Li*,³³⁵ the court identified a causal link between the failure of the platform operator, Sankuai company, to fulfil its duty of care to protect the consumer's safety and the consequences of the consumer's death. Therefore, the court held that the Sankuai company was liable for the consumer's death. When determining the liability imposed on the Sankuai company, the court further analysed that the Sankuai company did not have the foresight of the defects in Li's services and did not know them. Therefore, imposing joint and several liability on the platform operator lacked a legal basis. The court ordered that Sankuai company bear supplementary liability.³³⁶

In the *Traffic Accident Dispute Between Holala Company and Wang*,³³⁷ the perpetrator, Huang, conducted business on the e-commerce platform operated by Holala without an administrative licensing certificate for commercial operation. The court found that Holala Company breached its obligation to safeguard consumers and should bear supplementary liability. The court held that: 'The company's breach of good faith and failure to meet its obligation to safeguard consumers were not the direct cause of the accident, but it did create a potential hazard'. Holala was held to bear supplementary liability.

Contributory liability falls between joint and several liability and supplementary liability in terms of the degree of punishment. In the e-commerce environment, defining a platform operator's product liability as a contributory liability is more challenging than either of the other two types; therefore, judges rarely impose contributory liability on platforms in practice. From the 17 cases³³⁸ researched, the contributory liability applied in cases where the consequences were severe,

³³⁵ *Ma v Li* (n 305).

³³⁶ *Ibid.*

³³⁷ *Second trial on Wang v Holala* (n 261).

³³⁸ See Appendix 1 Table 7: Platform operators' obligation to safeguard consumers and corresponding liability cases.

including death³³⁹ and serious injury;³⁴⁰ at the same time, the negligence of the platform operators was partly liable for the damage incurred.³⁴¹

4.4 Existing Problems

4.4.1 Unclear Criteria for Determining Platform Operators' Obligation to Safeguard Consumers

Article 38(2) of the *E-commerce Law* provides the platform operators' obligation to safeguard consumers' safety generally without clarifying what constitutes the safeguard obligation. Due to the lack of clarity on content of the safeguard obligation, the courts have adopted a method of reading the obligation to verify the sellers' administrative licensing certificates as a safeguard obligation, as evidenced by the 88 example cases, making it difficult for consumers to enforce their rights on the one hand and providing no clear expectations for platform operators to act on the other. As discussed in section 4.2 of this chapter, an obligation to safeguard includes three forms of verification obligations and other forms of obligations. Furthermore, the two obligations are set out in Article 38(2) separately, indicating that a breach of either obligation by the platform operator entails liability. To read the two obligations as the same will contradict the legislative intention.

4.4.2 Corresponding Liability Does Not Reflect the Emphasis on the Protection of Consumers

The corresponding liability under *E-commerce Law* Article 38(2) does not reflect the purpose of protecting consumers.

Firstly, Article 37 of the *E-commerce Law Third Draft* provided joint and several liabilities for platform operators' breach of obligations to protect consumers' rights

³³⁹ *Electric Water Boiler* (n 223), and *Tongle Animal Clinic* (n255).

³⁴⁰ *Little Leaping Frog Sports* (n 223).

³⁴¹ See Appendix 1 Table 7: Platform operators' obligation to safeguard consumers and corresponding liability cases.

and interests.³⁴² Under that provision, the platform operators will assume joint and several liability if (1) they know or should know about the defective product or illegal activities on the platform and failed to take necessary measures, or (2) they failed to verify the sellers' administrative licensing certificates, or (3) breached their obligation to safeguard consumers' safety.³⁴³ The *E-commerce Law Fourth Draft* changed the joint and several liability to corresponding liability for breach of the obligation to verify the sellers' administrative licensing certificates and safeguard consumers³⁴⁴ because the joint and several liability imposes too much burden on the platform.³⁴⁵ Nevertheless, Article 38(2) was finalised with the corresponding liability.

Secondly, consumers and e-commerce platform operators have equal civil rights and are protected by the law. However, consumers are more likely to be infringed and less able to defend their rights, so the law should significantly strengthen the protection of the rights and interests of vulnerable consumers. For the product liability of the online platform operators, Article 44(1) of the *Consumer Law of China* and Article 131 of the *Food Safety Law* both establish joint and several liability for the infringement consequences of the platform operators.³⁴⁶ However, Article 38(2) of the *E-commerce Law* provides corresponding liability. The corresponding liability does not reflect the law's focus on protecting the rights and

³⁴²全国人民代表大会宪法和法律委员会 [Constitution and Law Committee of the National People's Congress], 《全国人民代表大会宪法和法律委员会关于《中华人民共和国电子商务法(草案三次审议稿)》修改意见的报告》 [Report of the Constitution and Law Committee of the National People's Congress on the amendments to the "E-commerce Law of the People's Republic of China (Draft for the Third Review)"], 19 June 2018).

³⁴³ Ibid.

³⁴⁴ 全国人民代表大会宪法和法律委员会 [Constitution and Law Committee of the National People's Congress], 《全国人民代表大会宪法和法律委员会关于《中华人民共和国电子商务法(草案四次审议稿)》修改意见的报告》 [Report of the Constitution and Law Committee of the National People's Congress on the Amendments of the E-commerce Law of China (the Fourth Draft)] (n 276).

³⁴⁵ See *ibid.* See also 程啸 [Cheng Xiao], '《关于电子商务平台经营者安全保障义务的几点意见》 [Several Opinions on the Safety Guarantee Obligations of E-commerce Platform Operators] Pleading, 17 August 2018) <http://cnews.chinadaily.com.cn/2018-07/20/content_36614811.htm>.

³⁴⁶ Regarding the term 'platform operator', it is worth noting that 'providers of the online trading platform' was adopted in Article 44 of the *Consumer Law of China*, and 'provider of a third-party online food trading platform' was adopted in the *Food Safety Law*, and 'platform operator' was adopted and defined in Article 9 of the *E-commerce Law*. This research uses the term 'platform operator'.

interests of consumers. The legislator intended to balance the interests of the consumers and platform operators.³⁴⁷ However, the content of obligations to safeguard consumers' safety was not clearly defined in the *E-commerce Law*, and the stipulation of corresponding liability caused the situation where the courts apply the law in a conservative approach to impose the liability on the platform operators.³⁴⁸

4.4.3 Difficulty in Application due to Vague Language

There is disagreement about the interpretation of the corresponding liability among scholars and the judiciary. As the corresponding liability can be interpreted as joint and several liability, supplementary liability or contributory liability, judges face a dilemma in deciding. There was concern that imposing joint and several liability on e-commerce platform operators was overly burdensome.³⁴⁹ Supplementary liability, on the other hand, was considered an exemption for e-commerce platforms for gross negligence.³⁵⁰

In two of the 17 cases examined by this research, the judges found the platform operators to be jointly and severally liable for failing to meet their obligation to protect consumers' safety.³⁵¹ The judges imposed the platform operators' contributory liability in three cases.³⁵² The judges ruled that the platform operators had supplementary liability in five cases.³⁵³ In the remaining seven

³⁴⁷ *Interpretation of the E-commerce Law* (n 302) 121.

³⁴⁸ For example, see the cases *Qinhan New Town* (n 329), and *Jingdong v Zhang Li* (n 201).

³⁴⁹ 《吴迪与浙江淘宝网络有限公司、刘秀伟网络购物合同纠纷一审民事判决书》 [*Wu Di and Zhejiang Taobao Network Co., Ltd., Liu Xiowei online shopping contract dispute civil judgment of first trial*] 黑龙江省牡丹江市爱民区人民法院 [Mudanjiang City, Heilongjiang Province People's Court], (2021)黑 1004 民初 1656 号 [Economic First TrialNo 1656], 28 November 2021 ('*Wu v Taobao*').

³⁵⁰ 米新丽 & 刘正之 [Mi Xinli & Liu Zhengzhi] (n 321) 52.

³⁵¹ *Taobao Heating Pipe* (n 223); *Bai & Hou Rights To Life And Health* (n 223).

³⁵² *Tongle Animal Clinic* (n 255); *Little Leaping Frog Sports* (n 223), and *Electric Water Boiler* (n 223).

³⁵³ *Electric Water Boiler* (n 223), *Second trial on Wang v Holala* (n 261); 《郭贝与赵贤林等机动车交通事故责任纠纷二审案件二审民事判决书》 [*The Civil Judgment of the Second Trial of the Second Instance Case of a Motor Vehicle Traffic Accident Liability Dispute between Guo Bei and Zhao Xianlin*] [2020] 上海市第一中级人民法院 [Shanghai No. 1 Intermediate People's

cases, the courts held that the platform operators were not liable for consumers' damages caused by the defective product.³⁵⁴

Article 38(1) of the *E-commerce Law* requires the platform operators to safeguard personal or property safety. The e-commerce platform operator is jointly and severally liable for the violation of Article 38(1). Article 38(2) aims to protect consumers' personal life and health. Platform operators' violation of the safeguard obligation under Article 38(2) shall bear corresponding liability, including joint and several, contributory, or supplementary liability. Article 38 of the *E-commerce Law* has constructed five possible legal consequences for platform operators' breach of their obligations:

- (1) If a consumer suffers **personal harm**, the platform operators can be liable for joint and several liability according to Article 38(1);
- (2) if a consumer suffers **personal (life or health) harm**, the platform operators can be liable for joint and several liability according to Article 38(2);
- (3) if a consumer suffers **personal (life or health) harm**, the platform operators can be liable for contributory liability according to Article 38(2);
- (4) if a consumer suffers **personal (life or health) harm**, the platform operators can be liable for supplementary liability according to Article 38(2);
- (5) if a consumer suffers **property damage**, the platform operators can be liable for joint and several liability according to Article 38(1).

In the fifth situation above, Article 38 of the *E-commerce Law* has constructed a legislation application environment in which the platform operator can only be

Court], (2020)沪 01 民终 5967 号 [Economic Appeal No 5967], 12 November 2020 ('*Guo v Zhao*').); 《黄翠红等与赵贤林等机动车交通事故责任纠纷二审案件二审民事判决书》 [The Civil Judgment of the Second Instance of the Second Trial Case of a Motor Vehicle Traffic Accident Liability Dispute between Huang Cuihong et al. and Zhao Xianlin] [2020] 上海市第一中级人民法院 [Shanghai No. 1 Intermediate People's Court], (2020)沪 01 民终 4520 号 [Economic Appeal No 4520], 12 November 2020 ('*Huang v Zhao*').); *Ma v Li* (n 305).

³⁵⁴ See Appendix 1 Table 7: Platform operators' obligation to safeguard consumers and corresponding liability cases.

jointly and severally liable for a consumer's property damage. The case *Tongle Animal Clinic*³⁵⁵ illustrated this contradiction. In *Tongle Animal Clinic*, the judges relied on 38(2) for the platform operator's failure to meet its safeguard consumers obligations and found it contributorily liable at 10% for the death of the consumer's pet cat.³⁵⁶ However, the language of 38(2) was designed to apply only to the life and safety of the consumer and not to the safety of the consumer's property, and it should not be applied in this case. If the death of the pet cat is treated as property damage to the consumer, 38(1) would need to be applied, and the platform operator would be jointly and severally liable. The judges may have considered it was too harsh to hold the platform operator jointly and severally liable in this situation and therefore reluctantly applied 38(2). It is regrettable and also evidenced the issue of applying this provision.

The courts' attitude toward determining the platform operators' liability in cases where life was concerned is worth noting. In the 17 cases examined, there were six cases³⁵⁷ concerning life damage, and one³⁵⁸ was about a consumer with paraplegia caused by a defective product. In five of these seven cases,³⁵⁹ platform operators failed to review sellers' administrative licensing certificates. One platform operator was held to assume joint and several liability, platform operators in three cases³⁶⁰ assumed contributory liability, and one was supplementarily liable.³⁶¹ On the other hand, in cases where consumers purchased fake medicine or unqualified health products without further personal damages, the platform operators were not liable for failing to review the sellers' administrative licensing certificates.³⁶²

³⁵⁵ *Tongle Animal Clinic* (n 255).

³⁵⁶ *Ibid.*

³⁵⁷ *Ibid.*

³⁵⁸ *Little Leaping Frog Sports* (n 223).

³⁵⁹ See Appendix 1 Table 7: Platform operators' obligation to safeguard consumers and corresponding liability cases.

³⁶⁰ *Ibid.*

³⁶¹ *Ibid.*

³⁶² *Ibid.*

It is presumed that the courts made decisions based on the seriousness of the consequences caused to consumers. The issue is that the courts did not consider the potential risk of the defective products to the consumers and society. The platform operators violated their obligation to verify sellers' administrative licensing certificates, provided the opportunity for sellers to bring the defective products online and endangered consumers' safety. Although the defective products had not harmed consumers, the platform operators' violation of the verification obligation cannot be overlooked. Article 38 of the *E-commerce Law* provides the platform operator's verification obligations and obligation to safeguard consumers. The verification obligations and the safeguard obligation have a close correlation. The effect of the verification obligations is to exclude illegal merchants and defective products from the online market. The safeguard obligations are all the efforts made by the platform operators with a reasonable degree to protect the safety and health of consumers. The ultimate purpose of the two obligations set out in Article 38 is to protect consumers' property and life interests from illegal sellers and defective products. The purpose will not be able to be adequately achieved if the language of the law is not clear enough, and, even worse, it has created a challenging environment for courts to apply the law. So, this thesis suggests that the different degrees of liabilities might be imposed on the platform operators based on the seriousness of the consequences. The consequences should include both the personal harm and property damages to encourage the platform operators' diligence when performing their obligations to protect consumers' safety.

4.5 Conclusion

For the first time, Article 38(2) of the *E-commerce Law* specifies that e-commerce platform operators are subject to an obligation to safeguard consumers. However, because the provision is too broad, its application in judicial practice varies. This is primarily reflected in differences in determining the platform operator's obligation and differences in determining the 'corresponding liability'. In Chinese law, the obligation to safeguard consumers is a relatively new legal obligation.

Although the Chinese Civil Code and the *Consumer Law of China* mention a safeguard duty, they neither specify the definition nor limit its scope. Furthermore, the *Civil Code* and the *Consumer Law of China* refer to offline business operators and managers. Although the *E-commerce Law* Article 38(2) addresses the safeguard obligation of e-commerce platform operators, it is unclear whether the *Civil Code* provision also applies to e-commerce platform operators.

From the perspective of the regulation purpose, the content of the platform operators' safeguard obligation includes, first and foremost, reviewing and registering the information of operators and products on the platform. Second, to publicise information on sellers' illegal, irregular, or non-compliant behaviour, completing the obligation to remind consumers of the risk.³⁶³ Third, the platform operator should improve the complaint reporting and the evaluation mechanism, providing substantive feedback to consumers' complaints and reports. Fourth, the platform operator should use its unique information and technical advantages to provide timely assistance to consumers after the damage.

Further, corresponding liability stipulated in Article 38(2) is also a controversial term, and the legislator's intention was perhaps to create a flexible environment, giving judges more power of discretion. However, in the more than three years of judicial practice since the implementation of the *E-commerce Law* in January 2019, the courts have also shown various views and ambiguities in adjudication of cases. It is also evident from the endless scholarly debates that the legislators' intentions do not seem to have been realised. Interpreting the platform operator's 'corresponding liability' is a point of contention. A reasonable and appropriate liability application would effectively remedy consumers while serving as a sufficient warning to platform operators.

³⁶³ Although the *E-commerce Law* has provisions on the platform operators' obligations, like the obligation to verify sellers' information under Article 27 and the obligation to disclose the sellers' illegal activities under Article 36, there is no corresponding tort liability provided in the *E-commerce Law*. Furthermore, the courts did not consider these obligations when assessing the platform operators' obligation to safeguard consumers' safety. This thesis argues that these obligations should be considered as the obligation to safeguard consumers' safety as well. The tort liability under Article 38 should be imposed if the platform operators breach these obligations.

E-commerce brings convenience to the public while also raising new issues. Although the establishment of platform operators' obligation to safeguard consumers under Article 38(2) can play a precautionary role in further reducing the concerns of consumer groups trading in online shopping platforms, the uncertainty of the content of the safeguard obligation and the controversial application of different liability have become unsettled issues, weakening consumers' opportunities to seek compensation from the platform operators. With the increase in cases, the platform operators' obligation to safeguard consumers and product liability need to be further clarified.

Chapter 5 Recommendations and Solutions

5.1 Introduction

The e-commerce trading platform creates commercial exchanges between customers and merchants. On the other side, online transactions open a potential source of danger to customers' rights and interests. Platform operators are responsible for monitoring and preventing infringements caused by a potentially defective product and also obligated to redress infringements, preventing the harm from expanding.³⁶⁴ The primary research question of this thesis is: to what extent has China's *E-commerce Law* proven effective in protecting consumers' right to be free of defective products? This thesis found that the *E-commerce Law* solved the platform operators' product liability issue by setting up Article 38. It is a novel and bold attempt to protect online consumers by establishing a piece of legislation. However, the legislation wording in its vague understanding led to a challenging situation for the consumers and courts to determine the platform operators' liability.

Article 38 of the *E-commerce Law* establishes the obligations of platform operators and product liability, which is a significant step forwards in consumer protection. It shows that Chinese regulators have recognised the obligations of platform operators to provide consumers with a safe and trustworthy online shopping environment. Suppose a platform operator fails to meet its obligations as an organiser and manager of online commerce activities; in that case, it will be held liable for any harm caused to consumers by sellers' products.

However, there is uncertainty in Article 38 regarding the platform operators' obligations and the product liabilities. Too general provisions on the platform operators' obligations lead to both uncertainties of the content of the obligations and unclear standards to perform them. The existing problems with the

³⁶⁴ 孙晋 & 袁野 [Sun Jin & Yuan Ye] (n 219).

uncertainty of the platform operators' obligations have been discussed in Chapters 3 and 4. The vagueness of the obligation clauses led to confusion in identifying platform operators' product liability and made it difficult for consumers to obtain compensation from them.³⁶⁵ Coupled with the status as an online transaction venue provider, the professionalism of network technology, the opacity of algorithms and the difficulty of defining the damage to consumers' rights and interests, judges face a difficult situation in identifying the platform operators' compliance with their obligations and the determination of the corresponding liability.

This research investigated the application in practice of cases two years after the law came into force and revealed the problems with Article 38 in consumer protection disputes, which can be summarised as follows. The legal obligations of e-commerce platform operators are not detailed enough, and the liability is hard to impose. When third-party sellers commit direct infringement, judges still mostly view the platform as a neutral and passive information transmission channel, ignoring the substantial control of the platform over online transactions and the active role it plays in the conclusion of transactions. E-commerce platform operators control and participate in the transaction process to the extent that goes far beyond the status of a connector or transaction platform provider. To set too light a legal responsibility for platform operators can imbalance the rights of other parties in e-commerce, especially for consumers who are already vulnerable and can hardly be genuinely protected in product liability disputes. Furthermore, due to the overly broad use of legal language, the judges hold a view that the platform is a mere intermediary in determining the platform operators' obligations, with varying perceptions of the platform operators' liabilities. It is found that the issues with platform operators' obligations and liabilities in Article 38 exist and need to be addressed more precisely to be applied to consumer protection. Based on the problems addressed in previous chapters and the aim of this research, this chapter proposes recommendations and solutions to the existing problems. The proposed recommendations and solutions including:

³⁶⁵ Ibid.

Clarify criteria for determining the verification obligations (s 5.2.1); clarify consideration factors for assessing safeguard obligations (s 5.2.2); shift the burden of proof from the consumer to the platform operator (s 5.2.3); strengthening regulation of platform service agreements (s 5.2.4); reconsidering applicability of the *Civil Code* in e-commerce (s 5.2.5); and amend the *E-commerce Law* on platform operators' product liability (s 5.2.6).

5.2 Recommendations

Product liability for platform operators has become a contentious and urgent issue to be addressed in the field of consumer protection. Even though China's *E-commerce Law* finally confirmed platform operators' product liability in the form of express provisions in Article 38, some issues have emerged in judicial practice concerning platform operators' product liability. This research employed the keywords 'Article 38 of the E-commerce Law' and 'obligation and liability of the platform operators' to search cases on the China Judgement Online website, a unified national court platform for disclosing adjudication documents established by the Supreme People's Court of China, between January 2019 and December 2021. Eighty-eight cases involved sellers illegally operating and offering defective products to consumers. However, only 16 cases held the platform operators as assuming product liability, with ten severe injury or death cases.³⁶⁶

Based on the case analysis, problems with the product liability regime for operators of e-commerce platforms include vague standards for determining their verification and safety obligations, disagreements over the types of liability, and challenges in implementing Article 38 of the *E-commerce Law* in judicial practice. This section proposes the following recommendations and solutions in response to these issues.

³⁶⁶ See Appendix 1 Table 8: Platform operators' assumed product liability cases.

5.2.1 Clarify Criteria for Determining the Verification Obligations

Articles 27, 29, and 38 of the *E-commerce Law* set out the content and manner of the platform operator's verification obligations. Articles 38 and 83 provide for the administrative punishment and legal liability of platform operators who breach the verification obligations. However, the unclear language has resulted in a disagreement on the content and form of verification obligations, leaving platform operators unable to satisfy their promises, consumers unable to exercise their rights, and courts inconsistent in their decision-making. This section provides recommendations on e-commerce platform operators' verification obligations, intending to improve the relevant provisions further and regulate the e-commerce trading environment.

5.2.1.1 Use Formality Verification on the Sellers' and Product Information

The suggestion regarding the platform operators' verification obligations is to verify sellers' information and product information in a formality form procedure. Verification requirements on the sellers' and product information have been stipulated in Articles 27 and 29 of the *E-commerce Law*. Specifically, under Article 27, the platform operators must require the sellers to submit truthful information, including their identity, address, contact and administrative license. The platform operators also need to verify and register such information, establish a registration system, and have it verified and updated regularly.³⁶⁷ In addition, under Article 29, the platform operators should monitor and eliminate the possibility that illegal sellers and defective products appear on the online market.

There are two problems with Articles 27 and 29. Firstly, Articles 27 and 29 did not specify a requirement for the platform operators to conduct a formality review of the sellers' and product information. Given the tremendous amount of sellers and products on the platform, it is reasonable and feasible to require the platform operator to conduct a formality review of sellers' and product information.

³⁶⁷ *E-commerce Law* (n 18) art 27.

Secondly, the breach of Articles 27 and 29 only constitute an administrative warning and penalty in serious cases. The courts did not consider these two Articles to be of the verification requirements of the platform operators in product liability cases, which caused the challenging situation of how to determine platform operators ‘know or should know’ about the defective product. Although the formality review is more manageable and affordable for the platform operators,³⁶⁸ they did not execute diligence in practice. For example, in the case of *Wang v Beijing Pocket Fashion*,³⁶⁹ the consumer bought unqualified medicine for cancerous tumours from the seller on the defendant’s platform. According to the seller’s information provided by the platform operator, it was found that the seller was dead before the consumer purchased the medicine. The court held that the platform operator had registered the seller’s information at his registration and, therefore, was not liable.

In deciding such a case, the courts have simplified the formality verification standard that the platform operator only needs to provide the seller’s contact details. This research argues that doing a formality verification is a minimum requirement for the platform operator as a transaction market provider. It is insufficient to protect consumers from illegal sellers and defective products to merely require the platform operators to provide the seller’s contact information. This research proposes that if the platform operator fails to do a formality review according to Articles 27 and 29, the court should consider holding the platform operator jointly and severally liable for the harm suffered by the consumer under Article 38(1).

5.2.1.2 Redefine How Substantive Review Is Performed in E-commerce

This study argues that before explicitly requiring platform operators to carry a substantive verification obligation, it is first necessary to identify the difference

³⁶⁸ 何弦月 [He Xuanyue] (n 208) 43.

³⁶⁹ *Wang v Beijing Pocket Fashion* (n 268).

between the substantive verification in a traditional business and an e-commerce environment.

Traditionally, substantive verification refers to a procedure in which offline mall managers conduct on-site inspections of merchants who have entered the market. This form of substantive verification is almost impossible to achieve in the online e-commerce market. It has been argued that requiring the platform operators to conduct an on-site inspection of the merchants' business situation, address, and other relevant information would be costly and unrealistic.³⁷⁰ As a result, the view that e-commerce platform providers take formality verification procedures is dominant.

Because of the virtual character of online transactions and the advancement of big data technologies, the notion of substantive verification should not follow the standards in offline commerce. Substantive verification in e-commerce does not require the platform operator to conduct an on-site inspection of the seller, which is the job of the administrative authorities that issue business licences and administrative licensing certificates. The requirement for substantive verification for the platform operator should be a procedure of networked data matching with the relevant department. The platform operator can set the rule to simplify this procedure, requiring sellers to do self-match on the government website and upload matching results with copies of business licences and administrative licensing certificates to complete a substantive review with e-commerce characteristics.

5.2.1.3 Clarify Test Criteria of Know or Should Know

The *E-commerce Law* established the platform operators' verification obligations by providing that the platform operator should take necessary measures if they know or should know about the defective product, which caused uncertainty

³⁷⁰ See 张婕妤 [Zhang Jieyu] (n 300) 27. See also 武腾 [Wu Teng], '《电子商务平台经营者的侵权责任》 [Tort Liability of E-Commerce Platform Operators]' (2022) 39(2) *法商研究 Studies in Law and Business* 103, 107.

about how the courts can determine the platform operators' mind status. According to the discussion in Chapter 3, it is not easy for consumers to rely on Article 38(1) of the *E-commerce Law* to seek compensation if the burden of proving the platform operators' knowledge of the illegal products falls on the consumers. In the 88 sample cases, the platform operators in 35 cases³⁷¹ were not liable because the consumers could not prove the platform operators knew or should have known of the sellers' illegal activity or the defective products. The purpose of the legislation is not to make it more difficult for consumers to enforce their rights. In other words, the court needs more specific criteria for proving that the platform operators do or do not know about the defective product. Therefore, in this context, know or should know should be interpreted as a substantive requirement in which the platform operator has examined the sellers' and product information.

The court can decide whether the platform operator knows of the defective product by examining whether it has fulfilled its verification obligations. Suppose the platform operator fails or neglects to perform any obligation of verification within its reasonable capacity and foreseeable scope; in that case, it shall be deemed to constitute knowledge, and then the court can further test whether the platform operator has taken necessary measures to prevent the damage.

Establishing clear criteria for know or should know will help standardise the platform operators' verification obligations. Moreover, clear criteria will allow platform operators to be more precise about the scope of their obligation and help improve the judicial practice efficiency and the feasibility of consumer redress.

The verification obligations of the platform operator can be implemented in the following recommended procedures.

³⁷¹ See Appendix 1 Table 6: Platform operators' 'know or should know' and 'take necessary measure' cases.

(1) In accordance with the chronological order of the sellers' registration to the final transactions on the platform, the platform operator performs verification obligations in a timely manner, including the establishment of sellers' information files, verification of sellers' qualification information, and conduct of a formality reviewing of the product information.

(2) To require the operators of flagship stores, exclusive shops and franchised stores to submit their trademark registration certificates or letter of authorisation when registering the store on the platform.

(3) The platform operator needs to establish a product information database and require the seller to extract keywords from the product information and business qualification information and enter them. Based on the database, the platform operator will take effective technical actions to match the product keywords with the seller's qualification keywords and automatically block or filter those that cannot be matched but reserve the rights and opportunity for the seller to explain and appeal. For example, a seller with a registered food business licence will have a qualification keyword 'food' to match all their product information. If the product information submitted by the seller contains 'treatment', 'efficacy', 'special effect', or 'special treatment', the system can block or filter the product.

Furthermore, when a seller intentionally misplaced a product in a wrong category that does not require a special licence, the platform operator can identify whether the seller is trying to avoid the inspection by asking the seller to submit keywords for the product information. For example, in *Xiao Huikai v Guangzhou Ertian Pharmaceutical Co.*,³⁷² the seller registered illegal weight-loss potions and injections under the Beauty Equipment category to avoid the inspection of Taobao. The product caused severe injury to the consumer. If the platform

³⁷² 《校慧凯与广州二天堂制药有限公司等信息网络买卖合同纠纷民事一审案件民事判决书》[Civil Judgment of the First Trial in the Dispute over the Contract of Sale and Purchase of Information Network between Xiao Huikai and Guangzhou Ertian Pharmaceutical Co.] (上海市长宁区人民法院 [Shanghai Changning District People's Court, People's Republic of China], (2021)沪 0105 民初 2979 号 [Economic First Trial No 2979], 26 September 2021, 26 September 2021) ('*Xiao Huikai v Guangzhou Ertian Pharmaceutical Co.*').

operator had required the seller to upload the keyword of the product information, like 'weight loss potions and injections', the defective product would be blocked, and the consumer would not be hurt.³⁷³

(4) Clarify the obligation to keep seller and product information up to date. It is hard to require the platform operators to do real-time monitoring of sellers' and product information exchanging. In the service contract, the platform operator can require the sellers to update the information regularly in a specific manner and time limit. The platform operator can also establish a system to remind the seller to perform this contractual obligation. If the sellers fail to do so, the platform can suspend their transactions until they complete the update.

5.2.1.4 Clarify the Timeliness of Review Actions

This research proposes that the timeliness of the verification obligations is one of the criteria for determining whether the verification obligations have been fulfilled. The platform operator should verify the applicant merchants' business information and administrative licensing certificates at the registration beginning and establish an information management system for managing and backup. The platform operator should examine the new sellers and exclude unqualified sellers effectively. After being admitted to conducting business, the seller will release product information on the platform. At this stage, the platform operator should also promptly review the product information uploaded by the seller to a certain extent and prohibit the seller from releasing illegal or unqualified products. The illegal or unqualified products will be relatively easy to discover as long as the platform operators take the procedures and methods of performance recommended in previous sections of this chapter, to verify the product and seller information. In practice, the sellers can always add new transaction information or remove the previously published commodity information, resulting in

³⁷³ See also 《王燕与浙江淘宝网络有限公司网络服务合同纠纷一审民事判决书》 [Wang Yan and Zhejiang Taobao Network Co., Ltd. network service contract dispute first trial civil judgment] 杭州互联网法院 [Hangzhou Internet Court], 浙 0192 民初 8486 号[Economic First Trial No 8486], 15 November 2019 ('Wang Yan v Taobao').

commodity data that is continually changing. The platform should require sellers to update their database within a time limit to ensure the legality of their products. It is a valuable measure for assisting the platform operator in excluding dangerous products.

5.2.2 Clarify Consideration Factors for Assessing Safeguard Obligations

The safeguard consumers obligation that an e-commerce platform operator should undertake is not static, which creates difficulties in practice in assessing whether they are fulfilling that obligation. Because the *E-commerce Law* does not specify what constitutes platform operators' violation of safeguard obligation, the following aspects should be considered when determining whether a platform operator has breached its obligation to protect consumers' safety, taking into account the characteristics of the e-commerce business model.

5.2.2.1 Consistency with Laws, Agreements or Industry Norms

To determine whether the platform operator has fulfilled its safeguard obligation, it should first examine whether the platform operator has fulfilled its obligations under laws and regulations, contractual agreements or industry standards; for example, the verification obligation on sellers' business qualifications under section 6.1(3) of the *Service Norms for E-commerce Platforms*.³⁷⁴ Similarly, Article 131 of the *Food Safety Law*³⁷⁵ states that, if the provider of a third-party online food trading platform fails to register the legal name of food traders or examine their administrative licensing certificates and any damage is caused to consumers' lawful rights and interests, it shall assume joint and several liability with the food sellers. As a result, any laws with particular requirements can be utilised to establish whether the platform operator has met its safeguard responsibility.

³⁷⁴ See s 6.4 of the *Service Norms for E-commerce Platforms* (n 184).

³⁷⁵ *Food Safety Law* (n 116) art 131.

5.2.2.2 Considering the Nature of the Platform Business

Different products related to consumers' lives and health are transacted on different platforms, and the circumstances surrounding the platform operators' performance of the safeguard obligation are highly variable. Therefore, the determination of the content of the safeguard obligation is a case-by-case matter based on the platform's business nature. For example, the Taobao platform³⁷⁶ and JD.com platform³⁷⁷ mainly provide trading venues for the sale of goods, while the Ele.Me platform³⁷⁸ and Meituan platform³⁷⁹ mainly provide online food ordering and delivery services. Consumers often face varying degrees of uncertainty or potential risk when purchasing different types of goods on different platforms. The manner and extent to which the safeguard consumers obligations are performed vary between different types of platform operators.

In practice, different degrees of requirements of the safeguard obligation can be imposed on the platform operators providing different products. For example, the supervision of e-commerce platforms selling food, drugs and cosmetics should be stricter, and the requirement to fulfil the safeguard obligation should be higher than the general household products. Furthermore, the verification content and standards of the e-commerce platform operator for sellers can be further refined according to the scope and scale of the platform business, such as the content of verification, the frequency of the verifying, and the emergency response to consumer personal injury.

5.2.2.3 The Principle of Causality³⁸⁰

Causality means that there is a relationship between the infringing act and the result of the damage caused. In essence, whether the safeguard obligation has been fulfilled should ultimately come down to whether there is a causation

³⁷⁶ <https://world.taobao.com/>.

³⁷⁷ <https://www.jd.com/>

³⁷⁸ <https://h5.ele.me/minisite/?spm=a2ogi.12117545.0.0>

³⁷⁹ <http://i.meituan.com/>

³⁸⁰ *Civil Code* (n 40) art 1165 provides that a person who is at fault for infringement upon a civil right or interest of another person, causing harm, shall be subject to tort liability.

between the platform operators' inaction and the damage suffered by the consumer. A platform operator's breach of a safeguard consumers obligation is a type of negative omission to consumers' safety, which occurs when the platform operators fail to eliminate a hazard that might endanger the customer. The test is whether the consumer's harm could have been avoided or mitigated if the platform operator had exercised due diligence and implemented risk prevention and control measures.

5.2.2.4 The Public's Reasonable Expectation Principle

The public's reasonable expectation that the platform operator fulfils its safeguard obligation is one of the criteria to measure whether the e-commerce platform operator has fulfilled its safeguard obligation. When trading on an e-commerce platform, consumers have certain expectations of the platform operator's safeguards and product reputation. The platform operator should actively respond to such expectations by taking measures to prevent consumers from being harmed by defective products.

In practice, platform operators have to manage a large number of merchants and serve a large group of consumers; requiring platform operators to fulfil their safeguard obligation to their users can only be based on the standards that the public can reasonably expect. E-commerce platform operators are expected to be able to identify the dangers which can be detected by a reasonable person and take specific measures to avoid them. As the judges noted in the case *Ma v Li*,³⁸¹ the online platform MeiTuan is well-known, with a large user base and high reputation. The purchase of goods on this platform is primarily based on trust, which means that the merchants with whom it cooperates are good or legal. This is similar to a credit guarantee, requiring the platform to shoulder specific social responsibilities while pursuing commercial profits and be more cautious to avoid becoming a medium for illegal operations.

³⁸¹ *Ma v Li* (n 305).

When a dispute arises, the e-commerce platform operator is also expected to promptly assist the parties to the transaction in a reasonable way to defend their rights, save transaction records, help the two sides resolve disputes, and protect the legitimate rights and interests of consumers.

5.2.3 Shift the Burden of Proof from the Consumer to the Platform Operator

It is challenging for consumers to rely on Article 38 of the *E-commerce Law* to seek product liability from platform operators because the two types of product liability set out in Article 38 both impose a burden on the consumer to prove that the platform operator is at fault. Article 91 of the *Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China ('Interpretation (1) 2020')*³⁸² specifies the rule that the burden of proof is on the infringed person to prove that the tortfeasor is at fault.

Furthermore, it is not easy for consumers to prove that the e-commerce platform operator failed to try its best to protect their right to life and health and breached Article 38(2) of the *E-commerce Law*. Without knowledge of the cooperation model and regulatory process between the e-commerce platform operator and the sellers, it is difficult for consumers to prove the fault of the e-commerce platform operator, which makes them reluctant to apply Article 38(2) of the *E-commerce Law* to defend their rights.

Under Article 38(1) of the *E-commerce Law*, the platform operator bears product liability by satisfying the following elements: firstly, the platform operator's knowledge of the illegal or defective product which needs to be proved by the consumer; and secondly, the platform operator's inaction, i.e. failure to take the necessary measures. Here, the necessary measures are an indeterminate

³⁸² 《最高人民法院关于审理食品安全民事纠纷案件适用法律若干问题的解释（一）》 [Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Food Safety Civil Disputes (1)] (最高人民法院审判委员会 [Supreme People's Court Judicial Committee] 法释〔2020〕14号 [Interpretation No. 14] 08 December 2020, 2015) ('Interpretation (1) 2020').

concept and need to be filled in by the judge at their discretion. After proving the knowledge of the platform operator about the defective product, the consumers need to prove the platform operator's failure to take necessary measures to prevent their damage. However, as discussed in section 3.3.1, in most cases the courts considered that the platform operators had taken necessary measures by removing the product from the list after receiving consumers' reports. Removing the defective product from the list after receiving the consumers' reports is mitigation rather than a precaution. Furthermore, the proof of burden is on the plaintiff to prove that the platform operator did not take any necessary measures. It is also challenging for consumers to prove what the platform operators had done before they purchased the defective products. Thus, although the *E-Commerce Law* 38(1) provides for a more severe form of joint and several liability, the limitations on the conditions for recognition make it less likely that the platform will be held liable, and the risk of the transaction is more likely to be allocated to the consumer. Consumers have to be more cautious in their consumer activities.

This study suggests that the judiciary can balance the unequal relationship between e-commerce platform operators and consumers by requiring platform operators to prove the fault elements through the reversal of the burden of proof rule. It is reasonable to require the platform operator to prove that it has fulfilled its obligations by detailing its management methods and technical applications.³⁸³

Unfortunately, the provisions on the allocation of the burden of proof have been substantially removed from the *2019 Several Provisions of the Supreme People's Court on Evidence in Civil Litigation* ('*Evidence Provisions 2019*').³⁸⁴ The *2008 Several Provisions of the Supreme People's Court on Evidence in Civil Litigation* ('*Evidence Provisions 2008*') provided that the parties shall have the burden to provide evidence to prove the facts on which they base their claims or to refute

³⁸³ 林涸民 [Lin Huanmin] (n 297).

³⁸⁴ 《最高人民法院关于民事诉讼证据的若干规定(2019修正)》 [*Several Provisions of the High People's Court on Evidence in Civil Litigation (2019 amended)*] (People's Republic of China) Supreme People's Court, order No 19, 25 December 2019, 25 December 2019) ('*Evidence Provisions 2019*'). Art 2.

the facts on which the other party bases its claims.³⁸⁵ Under Article 4(vii) of the *Evidence Provisions 2008*, the burden of proof was reversed. It provided that in a tort action for damage caused by a common dangerous act, the burden of proof shall be on the person who committed the dangerous act to prove that there is no causal relationship between their act and the result of the damage.³⁸⁶ In the *Evidence Provisions 2019*, both provisions have been removed. This study suggests that the Supreme People's Court should issue judicial interpretations of the *E-commerce Law* or issue guiding cases to judges on whether the platform operators fulfilled their obligations by reversing the burden of proof in litigation.

Finally, it is worth noting that if the courts apply Article 27 or 29 in determining the platform operators' knowledge about the defective product, it will be found that they had such knowledge before receiving the consumers' report. In that case, taking necessary measures after receiving the report should be considered insufficient to comply with Article 38(1), and thus a breach of Article 38(1) should be ordered.

5.2.4 Strengthening Regulation of Platform Service Agreements

Strengthening the regulation of service rules for e-commerce platform operators can help fundamentally protect the rights and interests of platform users. Platform operators have a right to set up service agreements and platform policies. Large-scale e-commerce platforms like Taobao and JD.com in China can control product quality to an extent. For example, contract or management rules may pressure the seller to enhance product safety. Platform service agreements and transaction rules can be regulated primarily in the following aspects.

³⁸⁵ 《最高人民法院关于民事诉讼证据的若干规定(2008修正)》[*Several Provisions of the High People's Court on Evidence in Civil Litigation (2008 amended)*] (People's Republic of China) Supreme People's Court 31 December 2008) art 2 ('*Evidence Provisions 2008*').

³⁸⁶ *Ibid* art 4(vii).

1). Enhance the rules of sellers' registration information

The platform operator has an obligation to verify the seller's information in a timely manner. The seller should submit valid contact information, identification information, a copy of the business license, and administrative licensing certificates for particular industries when registering. In addition, to make the verification more effective, the platform can require sellers to submit a search result from the official website of the government agencies to prove the authenticity of the documents provided by the seller.

2). Improve the rules of publishing product information

Sellers on the platform are required to publish product information that meets laws and regulations. The platform should develop a scientific, reasonable and transparent catalogue of product and strictly prohibit sellers from escaping the requirements of relevant special administrative licensing certificates by intentionally misplacing products in the wrong catalogue.

3). Raise consumer awareness of potential risks

Platform operators might establish rules for sellers, especially high-risk items, to provide appropriate reminders to consumers on the product display page. Sellers may also be obliged to include links to relevant government websites and manufacturers in order for customers to check the seller's credentials and product legitimacy before placing an order.

4). Improve the system to require the sellers to prevent and control the risk

Sellers are at the forefront of risk prevention and control, so they should have the most direct obligation to reduce the risk. The first reaction of consumers harmed by defective products is to complain to the seller. The platform could set the relevant rules to direct the seller to the processing method and time limit. In addition, the platform may establish more actionable procedures and databases to identify consumers' complaints and reports. The complaint will immediately enter the platform database if the keywords concern customers' property and health safety. The platform can adopt AI and manual monitoring to follow up on

complaint processing outcomes. Setting the frequency of complaints about the same items or the same seller, the platform assigns a warning level and other sanctions for each degree of the complaint.

5). Improve the deposit system

The platform operator is allowed to impose deposit rules under the *E-commerce Law*. The platform operator should provide clear guidelines for the use and the deposit amount. Sellers who break the above-suggested rules 1–4 are liable to the appropriate penalties.

6). Improve rules for seller's exit

The inability to locate the seller is the most challenging barrier customers face while protecting their rights. The platform operator is not held liable in most e-commerce product infringement cases. As a result, even if the judge favours the consumer, the consumer might be unable to trace the vendor and will not receive compensation. The platform operator should set up a transparent exit system for sellers and link it to the information submission system, information update system, complaint database system and deposit system. Before the complaints database is cleared, the seller is not allowed to quit the platform. Otherwise, the relevant deposit will be deducted. If a court awards compensation for a customer, sellers who have been sued are not permitted to exit the platform until the consumer has been compensated.

5.2.5 Reconsidering Applicability of the *Civil Code* in E-commerce

The applicability of Article 1198 of the *Civil Code*³⁸⁷(Article 37 of the *Tort Law Expired*³⁸⁸) to cyberspace is inconclusive. Article 1198 of the *Civil Code*³⁸⁹ provides that the operator or manager of a commercial or public venue shall assume the complementary liability for any harm to another person due to failure to fulfil the obligation to safeguard. This research argues that Article 1198 of the

³⁸⁷ *Civil Code* (n 40).

³⁸⁸ *Tort Law (Expired)* (n 291).

³⁸⁹ *Civil Code* (n 40).

Civil Code is different from Article 38(2) of the *E-commerce Law* in terms of the business operating environment and form of liability for breach of safeguard obligations.

Some courts have referred to the supplementary liability under Article 1198 of the *Civil Code* when considering the liability for breach of the obligation to safeguard consumers under Article 38(2) of the *E-commerce Law*.³⁹⁰ This phenomenon is perhaps rooted in the consistency of terminology, as Article 38(2) of the *E-commerce Law* adopts the same vocabulary as Article 1198 of the *Civil Code*, namely, the obligation to safeguard consumers. Article 1198 of the *Civil Code* is designed to regulate the physical existence of public space. However, unlike physical space, the e-commerce market is a virtual space. The different natures of the offline public places and virtual spaces leads to different requirements for the obligation to safeguard consumers. Concerning the product safety issue, this research argues that the platform operators should bear a heavier duty of care than the managers of offline shopping malls.

The liability for breach of safeguard obligations under the *Civil Code* is not the same as under the *E-commerce Law*. In a public space like a hotel or gymnasium, the administrator or organiser shall bear supplementary liability if they fail to fulfil the obligation to safeguard consumers.³⁹¹ The e-commerce platform operator shall bear corresponding liability according to Article 38(2) of the *E-commerce Law* when it violates its obligation to safeguard consumers. The Drafting Group of the *E-commerce Law* has also made it clear in the *Interpretation of the E-commerce Law*³⁹² that the corresponding liability is not limited to supplementary liability but includes joint and several liability and contributory liability. The difference in legal consequences clearly shows that the obligation to safeguard consumers under the *E-commerce Law* differs from

³⁹⁰ See *Second trial on Wang v Holala* (n 261), see also 《何小飞诉北京密境和风科技有限公司网络侵权责任纠纷案》 [*He Xiaofei v Beijing Mijing Hefeng Technology Co., Ltd. for a dispute over Internet infringement liability*] [2019] 北京互联网法院 [Beijing Internet Court], (2018)京 0491 民初 2386 号 [Economic First Trial No 2386], 21 May 2019 ('*He v Mijing Hefeng*').

³⁹¹ *E-commerce Law* (n 18).

³⁹² *Interpretation of the E-commerce Law* (n 302) 119.

business premises or public places such as hotels, shopping malls, and sports stadiums.³⁹³ Therefore, understanding the platform operators' obligation to safeguard consumers must be within the framework of the *E-commerce Law*.

E-commerce trading channels, transaction modes, and even transaction subjects fundamentally differ from traditional offline commerce. The definition of product liability for platform operators cannot be confused between offline and online modes. In the absence of precise provisions for platform operators' product liability in the *Civil Code*, it is the responsibility of the *E-commerce Law* to set clear product liability to regulate the e-commerce market and protect the interests of consumers.

5.2.6 Amend the E-commerce Law on Platform Operators' Product Liability

According to the analysis in Chapters 3 and 4 of this research, Article 38 of the *E-commerce Law* has problems in practice and implementation which affect consumers' rights protection, including:

- 1) Unclear criteria for determining platform operators' verification obligations.
- 2) Unclear criteria for determining platform operators' obligation to safeguard consumers.
- 3) Problems with liabilities under article 38 of the *E-commerce Law*.
- 4) Difficulties in applying Article 38 of the E-commerce Law in judicial practice.

Article 1 of the *E-commerce Law* states that this law aims to protect all parties' legitimate rights and interests in e-commerce and promote the sustainable and healthy development of e-commerce. The issues in Article 38 are inconsistent with the legislative purpose of the *E-commerce Law*. As discussed in the previous chapters of this research, the vague of Article 38 has caused consumers difficulty

³⁹³ 林涸民 [Lin Huanmin] (n 297), 199.

in relying on seeking compensation from the platform operators in product liability cases.

In addition, e-commerce activities rely on complete computer technology and facilities, including authentication systems, digital certificate systems, consumer protection systems, and electronic payment systems. Consumers are more vulnerable in such an environment. Protecting their rights and interests reinforces the need for government regulators to intervene. As a result, this study recommends that the regulators amend the provisions of Article 38 and other Articles of the *E-commerce Law* regarding platform operators' obligations and liabilities. Based on the study of this research, it is recommended that the platform operators' verification obligations and obligations to safeguard consumers be adjusted along the following lines.

5.2.6.1 Amend the Regulations about the Platform Operator's Verification and Safeguard Obligations

Articles 27, 29 and 38 of the *E-commerce Law* provide verification obligations for platform operators concerning sellers and products. Breaching Articles 27 and 29, the platform operators will only face an administrative penalty provided in Article 80. However, the 'know or should know' provision in Article 38(1) gives the effect that the platform operators bear verification obligations about products and sellers. A violation of Article 38(1) will result in more severe consequences: joint and several liability. As there is no direct provision or judicial interpretation of its application, this implication is left to the judge's discretion. Most judges leave it to the consumer to prove that the platform operators knew or should have known. It is challenging for the consumer to prove subjective awareness of the platform.

Secondly, Article 38(2) of the *E-commerce Law* establishes two obligations of platform operators to review sellers' administrative licensing certificates and ensure consumers' safety. However, no provisions specify what constitutes the obligation to safeguard consumers in the *E-commerce Law*. So, the obligation to review sellers' administrative licensing certificates has been equally applied in

judicial practice as a safeguard obligation to protect consumers' safety. The platform operator was deemed to have fulfilled the obligation to safeguard consumers as long as they verified the seller's administrative licensing certificates.³⁹⁴ Such a practice makes Article 38(2) vague and weakens the extent of the platform's safeguard obligations.

The fundamental purpose of Article 38 of the *E-commerce Law* is to protect the safety of consumers. Platform operators are required to protect consumers' personal and property safety from defective products by fulfilling their obligations to verify sellers and product information and other obligations to safeguard consumers. In other words, protecting the consumers' safety is the final purpose reached by the verification obligations and other obligations. Therefore, this study proposes three suggestions for amendment of the obligations in future amendments to the *E-commerce Law*.

(1) The law sets up a specific section for the platform operators' obligation to safeguard consumers.

(2) The verification obligations, the obligation to warn consumers and the obligation to provide timely assistance should be included as subsections of the safeguard obligation section.

(3) The verification obligations can be specified as the obligation to review information about sellers, the obligation to review information about products, and the obligation to review administrative licensing certificates of sellers.

³⁹⁴ See Appendix 1 Table 7: Platform operators' obligation to safeguard consumers and corresponding liability cases.

5.2.6.2 Clarify the Provisions on Product Liability for Platform Operators

The two types of product liability stipulated in Article 38 of the current *E-commerce Law* need to be rearranged. For breach of different obligations, the *E-commerce Law* sets the liability borne by platform operators as joint and several liability and corresponding liability. The joint and several liability imposes the most severe tort liability on the platform operator. Still, the two prerequisites, to know or should know of the defective product and not take necessary measures, are hard to prove by the plaintiff consumer. It has resulted in minimal applicability of this provision in actual judicial cases.³⁹⁵ As a result, the existing liability provisions are proposed to be adjusted as follows:

5.2.6.2.1 Retain Article 38(1), Apply Joint and Several Liability to a Limited and Defined Extent

Firstly, it is proposed to retain the joint and several liability provision in Article 38(1) after clarifying the various provisions on the platform operator's obligations. Joint and several liability is the heaviest penalty form of tort liability. The platform operator has no absolute control over the product in most cases. Accordingly, the inaction of the platform operator cannot alone constitute the total damage to the consumer. Therefore, joint and several liability should be imposed on them in a limited and clear scope.

As the proposed amendments already create a verification obligations clause for platform operators, the obligation to know or should know in 38(1) is no longer defined as verification obligations. Know or should know in Article 38(1) is suggested to be amended as the platform operator is aware of the existence of a defective product through passive channels, such as a consumer report of a defective product. Failure of the platform operator to take active measures regarding the reported product leads to the continued sale of the defective product in the marketplace, thus causing harm to the consumer. It is reasonable

³⁹⁵ See discussion about 'know and should know' and 'take necessary measure' in section 3.3.1.

for the platform operators to be held jointly and severally liable in such circumstances.

5.2.6.2.2 Contributory Liability for Breach of Verification Obligations

Platform operators should be held liable for breach of their obligation to verify seller and product information or their obligation to examine sellers' administrative licensing certificates. Platform operators can reduce the likelihood of consumers being harmed by defective products at the source by reviewing seller and product information. A breach of the verification obligations will constitute consumer harm but may have severe consequences. Therefore, in practice, the proportion of product liability that the platform operator should bear can be identified following the principles of considerations recommended in section 5.2.2 of this study and determine the share of the contributory liability to be imposed on the platform operator.

5.2.6.2.3 Supplementary Liability for Breach of Obligation to Warn Consumers and Provide Prompt Assistance

Platform operators who breach obligations to alert consumers and provide timely assistance are suggested to assume supplementary liability. In most cases, the failure of a platform operator to fulfil obligations to alert consumers or provide timely assistance cannot be a direct cause of consumer harm. Therefore, it is in line with the logical system of the legal basis and the principle of social justice if the platform operators are required to assume supplementary liability for breach of obligations to alert consumers and provide timely assistance.

5.2.6.3 Removal or Redefinition of Concepts in Article 38 of the E-commerce Law

Finally, the language used in legal provisions should meet the standards of precision and certainty. The enacted law can be respected, understood, and abided by. All citizens can clearly understand their rights and obligations. The difficulties posed to judicial practice and consumers by the vague language of

Article 38 of the *E-commerce Law* have been discussed in previous sections of this study, including 'know or should know', 'necessary measures', and 'corresponding liability'. The vague and imprecise language of the law makes it difficult for judges to adjudicate cases and may result in a misinterpretation of the legislation's purposes, thus failing to achieve the original objectives and effects.

5.3 Conclusion

Under Article 176 of the *Civil Code*, the parties to civil legal relations shall perform their civil obligations and assume civil liabilities in accordance with the provisions of laws or the agreements of the parties. An e-commerce platform operator's legal obligations include statutory and contractual obligations. Statutory obligations are derived from the provisions of the law. If the platform operator fails to fulfil the obligations per the law, it will be punished by the corresponding law. Contractual obligations bind the parties, following the principle of freedom of contract. Once the agreement is violated, it should also bear the corresponding consequences according to the agreement.

Injuries caused by third-party items will continue unless actions are made to hold platform operators accountable, and consumers have suffered as a result of platform operators evading and acting outside of existing norms.³⁹⁶ In general, e-commerce platform operators have greater civil, responsible capabilities. By extending product liability to online markets, victims would be paid for damage caused by defective items.³⁹⁷ Introducing product liability might have three advantages: driving online markets to enhance product safety (by monitoring third-party sellers), causing product pricing to reflect their risks, and compensating affected consumers.³⁹⁸ E-commerce platform operators owe a duty of care to their customers. Their power and control over e-commerce exacerbate the obligation to safeguard online customers. They must strive for

³⁹⁶ Alexandra Chang, 'Regulation won't kill the sharing economy. We just need new rules' (2014) 285(2) *Popular Science* 28.

³⁹⁷ Busch (n 10).

³⁹⁸ *Ibid.*

social responsibility. In the Chinese legislative language, the term 'duty of care' does not exist. Other obligations to replace the duty of care, such as the platform obligations to verify and safeguard, are notably addressed in the *E-commerce Law*. However, China's current rules regarding the product liability of the platform operators are not yet perfect, making it difficult for consumers to require e-commerce platform operators to bear civil liability for the vendors' infringement actions on the platform.

The *E-commerce Law* establishes reference rules for resolving new internet infringement issues and provisions for goods that endanger the lives or health of consumers. However, concerning the platform operators' product liability, there are some vague and challenging problems for judicial practice. Given the constant rise in data flow in e-commerce, consumer claims will only increase. Traditional product liability theories are being scrutinised and re-examined in this new era. E-commerce has altered and will continue to transform how we live and think about old conceptions of product liability law.

Appendix 1

Table 1: Platform operators' product liability cases (January 2019 – December 2020)

	Case
1.	<i>Maotai Prince Liquor Case</i> ³⁹⁹
2.	<i>Wang v Shanghai Xunmeng & Lin</i> ⁴⁰⁰
3.	<i>Zhang v T Airlines</i> ⁴⁰¹
4.	<i>Gu v Xunmeng Co., Ltd.</i> ⁴⁰²
5.	<i>Wang Xin v Xunmeng Co., Ltd.</i> ⁴⁰³
6.	<i>Li v Xunmeng Co., Ltd.</i> ⁴⁰⁴
7.	<i>Zeng v v Xunmeng Co., Ltd.</i> ⁴⁰⁵

³⁹⁹ 《信息网络买卖合同纠纷一审判决书》[*Information Network Sales Contract Dispute First Trial Judgment*] 上海市长宁区人民法院 [Shanghai Changning District People's Court], (2020)沪 0105 民初 22999 号 [Economy First Trial No 22999], 15 July 2021 ('*Maotai Prince Liquor Case*').

⁴⁰⁰ *Wang v Shanghai Xunmeng & Lin* (n 188).

⁴⁰¹ 《张旭与杭州淘美航空服务有限公司易飞畅行商务管理北京有限公司服务合同纠纷一审民事判决书》[*Zhang Xu and Hangzhou Taomei Airlines Service Co., Ltd. Yi Fei Changxing Business Management Beijing Co., Ltd. service contract dispute first trial civil judgment*] [2021] 天津市河东区人民法院 [Tianjin Hedong District People's Court], (2021)津 0102 民初 772 号 [Economic First Trial No 772], 12 May 2022 ('*Zhang v T Airlines*').

⁴⁰² 《顾文与上海寻梦信息技术有限公司、马佩吟信息网络买卖合同纠纷一审民事判决书》[*First trial civil judgment of Gu Wen, Shanghai Xunmeng Information Technology Co., Ltd., and Ma Peiyin Information Network Sales Contract Dispute*] [2020] 上海市长宁区人民法院 [Shanghai Changning District People's Court], (2020)沪 0105 民初 17441 号 [Economic First Trial No 17441], 08 December 2020 ('*Gu v Xunmeng Co., Ltd.*').

⁴⁰³ 《汪鑫与上海寻梦信息技术有限公司贾凡等信息网络买卖合同纠纷一审民事判决书》[*Wang Xin and Shanghai Xunmeng Information Technology Co., Ltd. Jia Fan and other information network sales contract disputes first trial civil judgment*] [2021] 上海市长宁区人民法院 [Shanghai Changning District People's Court], (2020) 沪 0105 民初 22886 号, [Economic First Trial No 22886], 7 April 2021 ('*Wang Xin v Xunmeng Co., Ltd.*').50).

⁴⁰⁴ 《李运通与上海寻梦信息技术有限公司等网络服务合同纠纷民事一审案件民事判决书》[*Li Yuntong and Shanghai Xunmeng Information Technology Co., Ltd. and other network service contract disputes civil first trial civil judgment*] [2021] 上海市长宁区人民法院 [Shanghai Changning District People's Court], (2021)沪 0105 民初 13057 号 [Economic First Trial No 13057], 27 October 2021 ('*Li v Xunmeng Co., Ltd.*').

⁴⁰⁵ 《曾浩忠与宜兴市茶叶仙子陶艺有限公司、上海寻梦信息技术有限公司信息网络买卖合同纠纷一审民事判决书》[*Zeng Haozhong and Yixing Chaye Fairy Pottery Co., Ltd. and Shanghai Meng Xunmeng Information Technology Co., Ltd. Information Network Sales Contract Dispute First Trial Civil Judgment*] [2021] 上海市长宁区人民法院 [Shanghai Changning District People's

8.	<i>Gao v Zhongsheng</i> ⁴⁰⁶
9.	<i>Liu Chong v Taobao</i> ⁴⁰⁷
10.	<i>Yang Gang v Taobao</i> ⁴⁰⁸
11.	<i>Lu v Mogou E-commerce Co., Ltd.</i> ⁴⁰⁹
12.	<i>Wu v Jingdong</i> ⁴¹⁰
13.	<i>Wu v Taobao</i> ⁴¹¹
14.	<i>Sun v Jingdong</i> ⁴¹²
15.	<i>An v Taobao</i> ⁴¹³
16.	<i>Song Lina v Taobao</i> ⁴¹⁴

Court], (2020)沪 0105 民初 23079 号 [Economic First Trial No 23079], 20 January 2021 ('*Zeng v Xunmeng Co., Ltd.*').

⁴⁰⁶ 《高立公与芜湖中盛电子商务有限公司等信息网络买卖合同纠纷一审民事判决书》[*Gao Ligong and Wuhu Zhongsheng Electronic Commerce Co., Ltd. and other information network trading contract disputes first trial civil judgment*] [2020] 北京互联网法院 [Beijing Internet Court], (2020)京 0491 民初 35213 号 [Economic First Trial No 35213], 10 November 2020 ('*Gao v Zhongsheng*').

⁴⁰⁷ 《刘冲与浙江淘宝网络有限公司重庆澄一堂中草药销售有限公司产品责任纠纷一审民事判决书》[*Liu Chong v Zhejiang Taobao Network Co., Ltd. Chongqing Chengyitang Chinese Herbal Medicine Sales Co., Ltd. Product Liability Dispute First Trial Civil Judgment*] [2020] 重庆市渝北区人民法院 [Chongqing Yubei District People's Court], (2020)渝 0112 民初 11916 号 [Economic First Trial No 11916], 03 August 2020 ('*Liu Chong v Taobao*').

⁴⁰⁸ 《杨钢与浙江淘宝网络有限公司产品销售者责任纠纷一审民事判决书》[*Yang Gang v Zhejiang Taobao Network Co., Ltd. First Trial Civil Judgment in the Dispute over the Responsibility of Product Sellers*] [2019] 江苏省南京市栖霞区人民法院 [People's Court of Qixia District, Nanjing City, Jiangsu Province], (2019)苏 0113 民初 410 号 [Economic First Trial No 410], 11 March 2019 ('*Yang Gang v Taobao*').

⁴⁰⁹ *Lu v Mogou E-commerce Co., Ltd.* (n 196).

⁴¹⁰ 《吴晟与北京京东叁佰陆拾度电子商务有限公司网络购物合同纠纷一审民事判决书》[*First trial civil judgment of Wu Sheng and Beijing Jingdong Sanbailu Shidu E-commerce Co., Ltd. for online shopping contract disputes*] [2020] 北京互联网法院 [Beijing Internet Court], (2020)京 0491 民初 23775 号 [Economic First Trial No 19420], 03 November 2020 ('*Wu v Jingdong*').

⁴¹¹ *Wu v Taobao* (n 349).

⁴¹² *Sun v Jingdong* (n 227).

⁴¹³ 《安某与浙江淘宝网络有限公司网络服务合同纠纷一审民事判决书》[*First trial civil judgment of An and Zhejiang Taobao Network Co., Ltd. for a dispute over a network service contract*] [2019] 杭州互联网法院 [Hangzhou Internet Court] (2019)浙 0192 民初 5468 号 [Economic First Trial No 5468], 15 November 2019 ('*An v Taobao*').

⁴¹⁴ 《宋丽娜与上海西相电子科技有限公司、浙江淘宝网络有限公司网络购物合同纠纷一审民事判决书》[*Song Lina v Shanghai Xixiang Electronic Technology Co., Ltd. and Zhejiang Taobao Network Co., Ltd. First Trial Civil Judgment for Online Shopping Contract Disputes*] [2020] 浙江省绍兴市越城区人民法院 [People's Court of Yuecheng District, Shaoxing City, Zhejiang Province], (2019)浙 0602 民初 11368 号 [Economic First Trial No 11368], 30 March 2020 ('*Song Lina v Taobao*').

17.	<i>Zhuang v Xunmeng Co., Ltd.</i> ⁴¹⁵
18.	<i>Zhang v ZhuanZhuan Tech</i> ⁴¹⁶
19.	<i>Zhang v Tan</i> ⁴¹⁷
20.	<i>Wen v Jingdong</i> ⁴¹⁸
21.	<i>Yan v Taobao</i> ⁴¹⁹
22.	<i>Tang v Pingdingshan Fushixin Trade Co., Ltd.</i> ⁴²⁰
23.	<i>Tian v Tmall.com</i> ⁴²¹
24.	<i>Adanlin and Guotong Petroleum Storage Card Technology Co., Ltd. and Beijing Jingdong</i> ⁴²²
25.	<i>Geng v Huo</i> ⁴²³

⁴¹⁵ 《庄伟宾与上海寻梦信息技术有限公司、林华兴信息网络买卖合同纠纷一审民事判决书》 [Zhuang Weibin v Shanghai Xunmeng Information Technology Co., Ltd. and Lin Huaxing Information Network Sales Contract Dispute in the First Trial Civil Judgment] [2020] 上海市长宁区人民法院 [Shanghai Changning District People's Court], (2020)沪 0105 民初 16461 号 [Economic First Trial No 16461], 19 November 2020 ('Zhuang v Xunmeng Co., Ltd.').

⁴¹⁶ *Zhang v ZhuanZhuan Tech* (n 272)

⁴¹⁷ 《张某与谭某等信息网络买卖合同纠纷一审民事判决书》 [First trial civil judgment of Zhang and Tan and other information network sales contract disputes] [2021] 北京互联网法院 [Beijing Internet Court], (2021)京 0491 民初 15563 号 [Economic First Trial No 15563], 2021 ('Zhang v Tan').

⁴¹⁸ 《文建中与北京京东叁佰陆拾度电子商务有限公司等信息网络买卖合同纠纷一审民事判决书》 [First trial civil judgment of Wen Jianzhong and Beijing Jingdong Sanbailu Shidu Electronic Commerce Co., Ltd. and other information network sales contract disputes] [2021] 北京互联网法院 [Beijing Internet Court], (2021)京 0491 民初 11697 号 [Economic First Trial No 11697], 05 March 2021 ('Wen v Jingdong').

⁴¹⁹ 《晏霞与王素华、浙江淘宝网络有限公司产品责任纠纷一审民事判决书》 [Yan Xia v Wang Suhua and Zhejiang Taobao Network Co., Ltd. First Trial Civil Judgment for Product Liability Disputes] [2021] 重庆市沙坪坝区人民法院 [People's Court of Shapingba District, Chongqing], (2020)渝 0106 民初 8116 号 [Economic First Trial No 8116], 28 January 2021 ('Yan v Taobao').

⁴²⁰ 《汤守童与平顶山市富实鑫商贸有限公司等产品销售者责任纠纷一审民事判决书》 [Tang Shoutong and Pingdingshan Fushixin Trade Co., Ltd. and other product sellers' liability disputes in the first trial civil judgment] [2020] 北京互联网法院 [Beijing Internet Court], (2020)京 0491 民初 19498 号 [Economic First Trial No 19498], 26 December 2020 ('Tang v Pingdingshan Fushixin Trade Co., Ltd.').

⁴²¹ *Tian v Tmall* (n 162).

⁴²² 《阿檀林与国通石油储油卡科技有限公司、北京京东网络购物合同纠纷一审民事判决书》 [Adanlin and Guotong Petroleum Storage Card Technology Co., Ltd. and Beijing Jingdong Network Shopping Contract Dispute Civil Judgment of First Trial] [2020] 青海省西宁市城西区人民法院 [People's Court of Chengxi District, Xining City, Qinghai Province], [(2020)青 0104 民初 550 号] [Economic First Trial No 550], 03 April 2020 ('Adanlin and Guotong Petroleum Storage Card Technology Co., Ltd. and Beijing Jingdong').

⁴²³ 《耿伯敏与霍丽宜等信息网络买卖合同纠纷民事一审案件民事判决书》 [Civil Judgment of the First Trial of the Dispute between Geng Bemini and Huo Liyi and Other Information Network Sales Contracts] [2021] 上海市长宁区人民法院 [Shanghai Changning District People's Court], (2020)沪 0105 民初 13778 号 [Economic First Trial No 13778], 29 March 2021 ('Geng v Huo').

26.	<i>Wang v Xunmeng Co.</i> ⁴²⁴
27.	<i>Tu v Xunmeng Co., Ltd.</i> ⁴²⁵
28.	<i>Lin Jin v Taobao</i> ⁴²⁶
29.	<i>Lin v Xunmeng Co., Ltd.</i> ⁴²⁷
30.	<i>Zhang Li v Jingdong</i> ⁴²⁸
31.	<i>Jingdong v Zhang Li</i> ⁴²⁹
32.	<i>Zhu v Qinghai Junqi Ze Trading Co., Ltd.</i> ⁴³⁰
33.	<i>Ding v Jingdong Appeal</i> ⁴³¹
34.	<i>Qinhan New Town</i> ⁴³²
35.	<i>Wang BX v Xunmeng Co.</i> ⁴³³

⁴²⁴ 《王鹏与上海寻梦信息技术有限公司信息网络买卖合同纠纷一审民事判决书》[Civil Judgment of the First Trial of the Dispute over the Contract of Sale and Purchase of Information Network between Wang Peng and Shanghai Xunmeng Information Technology Co.] [2021] 上海市长宁区人民法院 [Shanghai Changning District People's Court], (2020)沪 0105 民初 21022 号 [Economic First Trial No 21022], 22 April 2021 ('Wang v Xunmeng Co.').

⁴²⁵ 《涂嘉辉与上海寻梦信息技术有限公司、刘丽信息网络买卖合同纠纷一审民事判决书》[First Trial Civil Judgment of Tu Jiahui, Shanghai Xunmeng Information Technology Co., Ltd. and Liu Li Information Network Sales Contract Dispute] [2020] 上海市长宁区人民法院 [Shanghai Changning District People's Court] (2020)沪 0105 民初 7580 号 [Economic First Trial No 7580], 16 October 2020 ('Tu v Xunmeng Co., Ltd.').

⁴²⁶ 《林进与临沂市兰山区颐芳食品店等信息网络买卖合同纠纷民事一审案件民事判决书》[Lin Jin and Linyi City Lanshan District Yifang Food Store and other information network sales contract disputes civil first trial civil judgment] [2021] 上海市长宁区人民法院 [Shanghai Changning District People's Court], (2021)沪 0105 民初 14250 号 [Economic First Trial No 14250], 28 October 2021 ('Lin Jin v Taobao').

⁴²⁷ 《林进与上海寻梦信息技术有限公司等网络服务合同纠纷民事一审案件民事判决书》[Lin Jin and Shanghai Xunmeng Information Technology Co., Ltd. and other network service contract disputes civil first trial civil judgment] [2021] 上海市长宁区人民法院 [Shanghai Changning District People's Court], (2021)沪 0105 民初 12024 号 [Economic First Trial No 14024], 12 November 2021 ('Lin v Xunmeng Co., Ltd.').

⁴²⁸ *Zhang Li v Jingdong* (n 200).

⁴²⁹ *Jingdong v Zhang Li* (n 201).

⁴³⁰ 《朱庆祝与青海隼杞泽商贸有限公司等信息网络买卖合同纠纷民事二审案件民事判决书》[The Civil Judgment of the Second Instance of the Civil Second Trial of the Dispute over the Information Network Sales Contract between Zhu Qingming and Qinghai Junqi Ze Trading Co., Ltd.] [2021] 上海市第一中级人民法院 [Shanghai No. 1 Intermediate People's Court], (2021)沪 01 民终 7534 号 [Economic Appeal No 7534], 29 July 2021 ('Zhu v Qinghai Junqi Ze Trading Co., Ltd.').

⁴³¹ 《丁博与北京京东叁佰陆拾度电子商务有限公司网络购物合同纠纷二审民事判决书》[Civil Judgment of the Second Trial of Ding Bo and Beijing Jingdong Sanbailu Shidu E-commerce Co., Ltd. for the Online Shopping Contract Dispute] [2020] 北京市第四中级人民法院 [Beijing Fourth Intermediate People's Court], (2020)京 04 民终 65 号 [Economic Appeal No 65], 30 April 2020 ('Ding v Jingdong Appeal').

⁴³² *Qinhan New Town* (n 329).

⁴³³ *Wang BX v Xunmeng Co.* (n 267).

36.	<i>Feng v Jingdong</i> ⁴³⁴
37.	<i>Wang v Xunmeng Co., Ltd.</i> ⁴³⁵
38.	<i>Zheng v Tianjin Jingdong</i> ⁴³⁶
39.	<i>Xiao Huikai v Guangzhou Ertian Pharmaceutical Co.</i> ⁴³⁷
40.	<i>Yue v Paiku</i> ⁴³⁸
41.	<i>Taobao Heating Pipe</i> ⁴³⁹
42.	<i>Little Leaping Frog Sports</i> ⁴⁴⁰
43.	<i>Bai & Hou Rights to Life and Health</i> ⁴⁴¹
44.	<i>Guangdong Weibo Electric Co.</i> ⁴⁴²
45.	<i>Wu v Zhang</i> ⁴⁴³
46.	<i>Ding Xiaoxiang v Xunmeng Co., Ltd.</i> ⁴⁴⁴
47.	<i>Wu v Shanghai Shizhuang IT Co., Ltd.</i> ⁴⁴⁵

⁴³⁴ 《冯爱华与北京京东叁佰陆拾度电子商务有限公司网络服务合同纠纷二审民事判决书》[*Feng Aihua v Beijing Jingdong Sanbailu Shidu Electronic Commerce Co., Ltd. Civil Judgment of Second Trial for Disputes over Internet Service Contracts*] [2020] 北京市第四中级人民法院 [Beijing Fourth Intermediate People's Court], (2020)京 04 民终 205 号 [Economic Appeal No 205], 08 July 2020 ('*Feng v Jingdong*').

⁴³⁵ 《王杰与上海寻梦信息技术有限公司等信息网络买卖合同纠纷民事一审案件民事判决书》[*Wang Jie and Shanghai Xunmeng Information Technology Co., Ltd. and other information network sales contract disputes civil first trial civil judgment*] [2021] 上海市长宁区人民法院 [Shanghai Changning District People's Court], (2020)沪 0105 民初 24016 号 [Economic First Trial No 24016], 01 September 2021 ('*Wang v Xunmeng Co., Ltd.*').

⁴³⁶ 《郑婧与天津京东达业贸易有限公司等信息网络买卖合同纠纷一审民事判决书》[*First trial civil judgment of Zheng Jing and Tianjin Jingdong Daye Trading Co., Ltd. and other information network sales contract disputes*] [2021] 北京互联网法院 [Beijing Internet Court], (2021)京 0491 民初 12045 号 [Economic First Trial No 12045], 15 December 2021 ('*Zheng v Tianjin Jingdong*').

⁴³⁷ *Xiao Huikai v Guangzhou Ertian Pharmaceutical Co.* (n 372).

⁴³⁸ *Yue v Paiku* (n 223).

⁴³⁹ *Taobao Heating Pipe* (n 223).

⁴⁴⁰ *Little Leaping Frog Sports* (n 223).

⁴⁴¹ *Bai & Hou Rights To Life And Health* (n 223).

⁴⁴² *Electric Water Boiler* (n 208).

⁴⁴³ 《吴建伟与张超等信息网络买卖合同纠纷一审民事判决书》[*First trial civil judgment of Wu Jianwei and Zhang Chao and other information network sales contract disputes*] [2020] 北京互联网法院 [Beijing Internet Court], (2020)京 0491 民初 27091 号 [Economic First Trial No 27091], 31 March 2021 ('*Wu v Zhang*').

⁴⁴⁴ 《丁晓祥与上海寻梦信息技术有限公司网络服务合同纠纷一审民事判决书》[*Ding Xiaoxiang and Shanghai Xunmeng Information Technology Co., Ltd. First Trial Civil Judgment in the Dispute over the Internet Service Contract*] (上海市长宁区人民法院 [Shanghai Changning District People's Court], (2021)沪 0105 民初 573 号 [Economic First Trial No 573], 28 June 2021, ('*Ding Xiaoxiang v Xunmeng Co., Ltd.*').

⁴⁴⁵ *Wu v Shanghai Shizhuang IT Co., Ltd.* (n 228).

48.	<i>Ding v Jingdong</i> ⁴⁴⁶
49.	<i>Ding No 1</i> ⁴⁴⁷
50.	<i>Ding v Kangmeng E-commerce Co., Ltd.</i> ⁴⁴⁸
51.	<i>Ding No 2</i> ⁴⁴⁹
52.	<i>Chen v Jingdong</i> ⁴⁵⁰
53.	<i>Cong v Taobao</i> ⁴⁵¹
54.	<i>Yu v BST</i> ⁴⁵²
55.	<i>Yue v Jingdong</i> ⁴⁵³
56.	<i>Zhang Yuan v Jingdong.com</i> ⁴⁵⁴

⁴⁴⁶ 《丁博与北京京东叁佰陆拾度电子商务有限公司网络购物合同纠纷一审民事判决书》[*Ding Bo and Beijing JD.com Sanbai Lu Shidu Electronic Commerce Co., Ltd. online shopping contract dispute first trial civil judgment*] [2019] 北京互联网法院 [Beijing Internet Court], (2019)京 0491 民初 29680 号 [Economic First Trial No 23680], 02 December 2019 ('*Ding v JD.com 1st*').

⁴⁴⁷ *Ding No 1* (n 206).

⁴⁴⁸ 《丁博与杭州康梦电子商务有限公司等网络购物合同纠纷一审民事判决书》[*Ding Bo and Hangzhou Kangmeng Electronic Commerce Co., Ltd. and other online shopping contract disputes first trial civil judgments*] [2020] 北京互联网法院 [Beijing Internet Court], ((2019)京 0491 民初 23610 号 [Economic First Trial No 23610], 31 March 2020 ('*Ding v Kangmeng E-commerce Co., Ltd.*').

⁴⁴⁹ *Ding No 2* (n 235).

⁴⁵⁰ 《陈晖与杭州中昕贸易有限公司、北京京东叁佰陆拾度电子商务有限公司网络购物合同纠纷一审民事判决书》[*Chen Hui, Hangzhou Zhongxin Trading Co., Ltd., Beijing Jingdong Sanbai Lu Shidu Electronic Commerce Co., Ltd. Online shopping contract dispute first trial civil judgment*] [2020] 盐城经济技术开发区人民法院 [Yancheng Economic and Technological Development Zone People's Court], (2020)苏 0991 民初 863 号 [Economic First Trial No 863], 22 June 2020 ('*Chen v Jingdong*').

⁴⁵¹ 《丛晓光与许燕玲浙江淘宝网络有限公司产品责任纠纷一审民事裁定书》[*Cong Xiaoguang and Xu Yanling Zhejiang Taobao Network Co., Ltd. product liability disputes in the first trial civil judgment*] [2019] 大连市沙河口区人民法院 [Dalian Shahekou District People's Court], (2019)辽 0204 民初 815 号 [Economic First Trial 815], 22 February 2019 ('*Cong v Xu & Taobao*').

⁴⁵² 《于风鹏与北京空间变换科技有限公司等信息网络买卖合同纠纷一审民事判决书》[*Yu Fengpeng and Beijing Space Transformation Technology Co., Ltd. and Other Information Network Sales and Purchase Contract Dispute, Civil Judgment of First Trial*] [2021] 北京互联网法院 [Beijing Internet Court], (2021)京 0491 民初 18443 号 [Economic First Trial No 18443], 12 November 2021 ('*Yu v BST*').

⁴⁵³ 《岳建国与北京京东叁佰陆拾度电子商务有限公司产品销售者责任纠纷一审民事判决书》[*The first-instance civil judgment of Yue Jianguo and Beijing Jingdong Sanbailu Shidu E-Commerce Co., Ltd. for product seller liability disputes*] [2021] 北京互联网法院 [Beijing Internet Court] (2021)京 0491 民初 12806 号 [Economic No 12806], 12 October 2021 ('*Yue v Jingdong*').

⁴⁵⁴ 《张元与北京京东叁佰陆拾度电子商务有限公司等网络购物合同纠纷一审民事判决书》[*First Trial Civil Judgment on Online Shopping Contract Dispute between Zhang Yuan and Beijing Jingdong Sanbailuju E-commerce Co.*] [2020] 北京互联网法院 [Beijing Internet Court], (2019)京 0491 民初 40915 号 [Economic First Trial No 40915], 30 December 2020 ('*Zhang Yuan v Jingdong.com*').

57.	<i>Peng v Taobao</i> ⁴⁵⁵
58.	<i>Peng v Jingdong</i> ⁴⁵⁶
59.	<i>Xu v Alibaba</i> ⁴⁵⁷
60.	<i>Zhu Jiang v Taobao</i> ⁴⁵⁸
61.	<i>Yang v Hong</i> ⁴⁵⁹
62.	<i>Shen v Tmall Network Co. Ltd.</i> ⁴⁶⁰
63.	<i>Wang v Jingdong</i> ⁴⁶¹
64.	<i>Wang Yan v Taobao</i> ⁴⁶²
65.	<i>Cheng Jinzhi</i> ⁴⁶³
66.	<i>Zheng v Hong & Taobao</i> ⁴⁶⁴

⁴⁵⁵ 《彭淑丹与浙江淘宝网络有限公司信息网络买卖合同纠纷一审民事判决书》[*Peng Shudan and Zhejiang Taobao Network Co., Ltd. Civil Judgment of the First Trial for the Dispute over the Information Network Sales Contract*] [2021] 北京互联网法院 [Beijing Internet Court], (2021)京 0491 民初 18577 号 [Economic First Trial No 18577], 12 August 2021 ('*Peng v Taobao*').

⁴⁵⁶ *Peng v Jingdong* (n 233).

⁴⁵⁷ 《徐轻与广州温特瑞家居用品有限公司、杭州阿里巴巴广告有限公司网络购物合同纠纷一审民事判决书》[*First trial civil judgment of Xu Qing v Guangzhou Wenterui Household Products Co., Ltd. and Hangzhou Alibaba Advertising Co., Ltd. for online shopping contract disputes*] [2019] 浙江省瑞安市人民法院 [Ruian City People's Court of Zhejiang Province], (2019)浙 0381 民初 2008 号 [Economic First Trial No 2008], 22 June 2019 ('*Xu v Alibaba*').

⁴⁵⁸ 《朱江与浙江淘宝网络有限公司网络侵权责任纠纷一审民事判决书》[*Zhu Jiang v Zhejiang Taobao Network Co., Ltd. First Trial Civil Judgment in the Internet Tort Liability Dispute*] [2019] 北京市丰台区人民法院 [Beijing Fengtai District People's Court], (2019)京 0106 民初 3100 号 [Economic First Trial No 3100], 28 February 2019 ('*Zhu Jiang v Taobao*').

⁴⁵⁹ *Yang v Hong* (n 222).

⁴⁶⁰ 《沈颖虹与成都金品家具有限公司,浙江天猫网络有限公司买卖合同纠纷一审民事判决书》[*Shen Yinghong and Chengdu Jinpin Furniture Co Ltd., Zhejiang Tmall Network Co Ltd Civil Judgment of First Trial on Dispute over Sale and Purchase Contract*] [2019] 上海市闵行区人民法院 [Shanghai Minhang District People's Court], (2019)沪 0112 民初 13134 号 [Economic First Trial No 13134], 25 June 2019 ('*Shen v Tmall Network Co Ltd.*').

⁴⁶¹ 《王思誉与北京京东叁佰陆拾度电子商务有限公司信息网络买卖合同纠纷一审民事判决书》[*First Trial Civil Judgment on the Dispute over the Contract of Sale and Purchase of Information Network between Wang Siyu and Beijing Jingdong Sanbailuju E-commerce Co.*] [2021] 北京互联网法院 [Beijing Internet Court], (2021)京 0491 民初 3206 号 [Economic First Trial No 3206], 19 July 2021 ('*Wang v Jingdong*').

⁴⁶² *Wang Yan v Taobao* (n 373).

⁴⁶³ 《程金枝与杭州市余杭区市场监督管理局、杭州市市场监督管理局行政监察(监察)一审行政判决书》[*Cheng Jinzhi and Hangzhou Yuhang District Market Supervision Administration, Hangzhou Municipal Market Supervision Administration Administrative Supervision (Supervision) Administrative Judgment of First Trial*] [2020] 浙江省杭州市江干区人民法院 [Jiangan District People's Court, Hangzhou, Zhejiang Province], (2019)浙 0104 行初 321 号 [Economic First Trial No 321], 22 June 2020 ('*Cheng Jinzhi*').

⁴⁶⁴ 《郑雪文与洪江树、浙江淘宝网络有限公司网络购物合同纠纷一审民事判决书》[*Zheng Xuewen and Hong Jiangshu, Zhejiang Taobao Network Co., Ltd. online shopping contract*

67.	<i>Xiao v Manke & Tmall</i> ⁴⁶⁵
68.	<i>Wang v Hangzhou Yi Cheng Technology Co.</i> ⁴⁶⁶
69.	<i>Jingdong v Zhang</i> ⁴⁶⁷
70.	<i>Wang v Beijing Pocket Fashion</i> ⁴⁶⁸
71.	<i>Fan v Xunmeng</i> ⁴⁶⁹
72.	<i>Tongle Animal Clinic</i> ⁴⁷⁰
73.	<i>Huang v Zhao</i> ⁴⁷¹
74.	<i>Guo v Zhao</i> ⁴⁷²
75.	<i>Second trial on Wang v Holala</i> ⁴⁷³
76.	<i>Wu v XN Co. Ltd.</i> ⁴⁷⁴
77.	<i>Chengdu Habai v Wen</i> ⁴⁷⁵

dispute civil judgment of first trial] 浙江省衢州市柯城区人民法院 [Ke Cheng District People's Court, Quzhou City, Zhejiang Province], 浙 0802 民初 4201 号 [Economic First Trial No 4201], 28 August 2019 ('*Zheng v Hong & Taobao*').

⁴⁶⁵ 《肖国亮与深圳市曼科维亚科技有限公司、浙江天猫网络有限公司网络购物合同纠纷一审民事判决书》 [*Xiao Guoliang and Shenzhen Mankovia Technology Co., Ltd. and Zhejiang Tmall Network Co., Ltd. in the first trial in a civil dispute over an online shopping contract*] [2020] 天津市津南区人民法院 [Tianjin Jinan District People's Court], (2020)津 0112 民初 1396 号 [Economic First Trial No 1396], 01 July 2020 ('*Xiao v Manke & Tmall*').

⁴⁶⁶ 《王粤术与杭州易程科技有限公司网络购物合同纠纷一审民事判决书》 [*Civil Judgment of the First Trial of Dispute over Online Shopping Contract between Wang Yuejiao and Hangzhou Yi Cheng Technology Co.*] [2020] 杭州互联网法院 [Hangzhou Internet Court], (2019)浙 0192 民初 9897 号 [Economic First Trial No 9897], 16 January 2020 ('*Wang v Hangzhou Yi Cheng Technology Co.*').

⁴⁶⁷ 《北京京东叁佰陆拾度电子商务有限公司与张元信息网络买卖合同纠纷二审民事判决书》 [*Civil Judgment of Second Trial in Beijing Jingdong Sanbai Lu Shidu E-commerce Co., Ltd. and Zhang Yuan Information Network Sales Contract Dispute*] [2021] 北京市第四中级人民法院 [Beijing Fourth Intermediate People's Court], (2021)京 04 民终 129 号 [Economic Appeal No 129], 30 April 2021 ('*Jingdong v Zhang Yuan*').

⁴⁶⁸ *Wang v Beijing Pocket Fashion* (n 268).

⁴⁶⁹ 《范红祥与上海寻梦信息技术有限公司、李金元信息网络买卖合同纠纷一审民事判决书》 [*First trial judgment of Fan Hongxiang v Shanghai Xunmeng Information Technology Co., Ltd. and Li Jinyuan Information Network Sales Contract Dispute*] 上海市长宁区人民法院 [Shanghai Changning District People's Court], (2021)沪 0105 民初 7799 号 [Economic First Trial No 7799], 05 July 2021 ('*Fan v Xunmeng*').

⁴⁷⁰ *Tongle Animal Clinic* (n 255).

⁴⁷¹ *Huang v Zhao* (n 353).

⁴⁷² *Guo v Zhao* (n 353).

⁴⁷³ *Second trail on Wang v Holala* (n 261).

⁴⁷⁴ *Wu v XN Co. Ltd.* (n 306).

⁴⁷⁵ 《成都哈拜网络科技有限公司、文亚辉机动车交通事故责任纠纷二审民事判决书》 [*The Civil Judgment of the Second Trial of Chengdu Habai Network Technology Co., Ltd. and Wen Yahui Motor Vehicle Traffic Accident Liability Dispute*] [2020] 湖南省长沙市中级人民法院 [Changsha

78.	<i>Yang v Xiecheng</i> ⁴⁷⁶
79.	<i>Zhang Jun v Jingdong</i> ⁴⁷⁷
80.	<i>He v Mijing Hefeng</i> ⁴⁷⁸
81.	<i>Ma v Xunmeng Co., Ltd.</i> ⁴⁷⁹
82.	<i>Xia v Taobao & Jinlaite</i> ⁴⁸⁰
83.	<i>Yangmatou</i> ⁴⁸¹
84.	<i>Liu v Zhongda & Taobao</i> ⁴⁸²
85.	<i>Liu v Taobao & Junmao</i> ⁴⁸³

Intermediate People's Court, Hunan Province],(2020)湘 01 民终 12683 号 [Economic Appeal No 12683], 20 December 2020 ('*Chengdu Habai v Wen*').

⁴⁷⁶ 《杨焰与上海携程商务有限公司长白山国际旅游度假区开发有限公司等生命权健康权身体权纠纷一审民事判决书》 [*Yang Yan and Shanghai Ctrip Business Co., Ltd. Changbai Mountain International Tourism Resort Development Co., Ltd., etc. Civil Judgment of First Trial*] [2020] 上海市长宁区人民法院 [Shanghai Changning District People's Court], 沪 0105 民初 21830 号 [Economic First Trial No 21830], 08 April 2020 ('*Yang v Xiecheng*').

⁴⁷⁷ 《张军与北京京东叁佰陆拾度电子商务有限公司信息网络买卖合同纠纷一审民事判决书》 [*Zhang Jun and Beijing Jingdong Sanbai Lu Shidu Electronic Commerce Co., Ltd. Information Network Sales Contract Dispute First Trial Civil Judgment*] [2021] 北京互联网法院 [Beijing Internet Court], (2020)京 0491 民初 22549 号 [Economic First Trial No 22549], 06 May 2021 ('*Zhang Jun v Jingdong*').

⁴⁷⁸ *He v Mijing Hefeng* (n 390).

⁴⁷⁹ 《马超与上海寻梦信息技术有限公司等信息网络买卖合同纠纷民事一审案件民事判决书》 [*Ma Chao and Shanghai Xunmeng Information Technology Co., Ltd. and other information network sales contract disputes civil first trial civil judgment*] [2021] 上海市长宁区人民法院 [Shanghai Changning District People's Court], (2021)沪 0105 民初 2979 号 [Economic First Trial No 2979], 26 September 2021 ('*Ma v Xunmeng Co., Ltd.*').

⁴⁸⁰ 《夏国强、济南金来特机械有限公司产品责任纠纷二审民事判决书》 [*Xia Guoqiang and Jinan Jinlaite Machinery Co., Ltd. Civil Judgment of Second Trial for Product Liability Dispute*] [2020] 湖南省益阳市中级人民法院 [Intermediate People's Court of Yiyang City, Hunan Province], (2020)湘 09 民终 2161 号 [Economic Appeal No 2161], 16 December 2020 ('*Xia v Taobao & Jinlaite*').

⁴⁸¹ 《上海洋码头网络技术有限公司、刘世龙产品责任纠纷一审民事调解书》 [*Shanghai Yang Wharf Network Technology Co., Ltd., Liu Shilong's product responsibility dispute first trial civil mediation*] [2021] 上海市第三中级人民法院 [Shanghai Third Intermediate People's Court], (2020)沪 03 民初 333 号 [Economic First Trial No 333], 07 January 2021 ('*Yangmatou*').

⁴⁸² 《刘冲与义乌市钟达贸易有限公司浙江淘宝网络有限公司产品责任纠纷一审民事判决书》 [*Liu Chong and Yiwu Zhongda Trading Co., Ltd. Zhejiang Taobao Network Co., Ltd. product liability dispute first trial civil judgment*] [2020] 重庆市渝北区人民法院 [People's Court of Yubei District, Chongqing City], (2020)渝 0112 民初 8610 号 [Economic First Trial No 8610], 23 June 2020 ('*Liu v Zhongda & Taobao*').50).

⁴⁸³ 《刘冲与浙江淘宝网络有限公司重庆骏顿商贸有限公司产品责任纠纷一审民事判决书》 [*Liu Chong and Zhejiang Taobao Network Co., Ltd. Chongqing Jundun Trading Co., Ltd. Product Responsibility Dispute First Trial Civil Judgment*] [2020] 重庆市渝北区人民法院 [Yubei District People's Court, Chongqing City], (2020)渝 0112 民初 2668 号 [Economic First Trial No 2668], 18 May 2020 ('*Liu v Taobao & Junmao*').

86.	<i>Green Development Foundation</i> ⁴⁸⁴
87.	<i>Jingdong v Song</i> ⁴⁸⁵
88.	<i>Ma v Li</i> ⁴⁸⁶

⁴⁸⁴ 《中国生物多样性保护与绿色发展基金会、浙江淘宝网络有限公司大气污染责任纠纷二审民事判决书》 [China Biological Diversity Protection and Green Development Foundation, Zhejiang Taobao Network Co., Ltd. at air pollution liability disputes, second trial civil judgment] 浙江省高级人民法院 [Zhejiang Higher People's Court], (2019)浙民终 863 号 [Economy Appeal No 863], 14 October 2019 ('Green Development Foundation').

⁴⁸⁵ 《北京京东叁佰陆拾度电子商务有限公司宋寿先网络购物合同纠纷二审民事判决书》 [Beijing Jingdong Sanbailu Shidu E-Commerce Co., Ltd. Song Shouxian's second trial civil judgment on online shopping contract disputes] [2020] 山东省青岛市中级人民法院 [Qingdao Intermediate People's Court of Shandong Province], (2020) 鲁 02 民终 12467 号 [Economic Appeal No 12467], 10 December 2020 ('Jingdong v Song').

⁴⁸⁶ *Ma v Li* (n 304).

Table 2: Platform operators provide sellers' contact information cases

	Case
1.	<i>Maotai Prince Liquor Case</i> ⁴⁸⁷
2.	<i>Wang v Shanghai Xunmeng & Lin</i> ⁴⁸⁸
3.	<i>Zhang v T Airlines</i> ⁴⁸⁹
4.	<i>Gu v Xunmeng Co., Ltd.</i> ⁴⁹⁰
5.	<i>Wang v Xunmeng Co., Ltd.</i> ⁴⁹¹
6.	<i>Li v Xunmeng Co., Ltd.</i> ⁴⁹²
7.	<i>Zeng v v Xunmeng Co., Ltd.</i> ⁴⁹³
8.	<i>Gao v Zhongsheng</i> ⁴⁹⁴
9.	<i>Liu v Taobao</i> ⁴⁹⁵
10.	<i>Yang v Taobao</i> ⁴⁹⁶
11.	<i>Lu v Mogou E-commerce Co., Ltd.</i> ⁴⁹⁷
12.	<i>Wu v Jingdong</i> ⁴⁹⁸
13.	<i>Wu v Taobao</i> ⁴⁹⁹
14.	<i>Sun v Jingdong</i> ⁵⁰⁰
15.	<i>An v Taobao</i> ⁵⁰¹
16.	<i>Song Lina v Taobao</i> ⁵⁰²
17.	<i>Zhuang v Xunmeng Co., Ltd.</i> ⁵⁰³
18.	<i>Zhang v ZhuanZhuan Tech</i> ⁵⁰⁴
19.	<i>Zhang v Tan</i> ⁵⁰⁵

⁴⁸⁷ *Maotai Prince Liquor Case* (n 399).

⁴⁸⁸ *Wang v Shanghai Xunmeng & Lin* (n 188).

⁴⁸⁹ *Zhang v T Airlines* (n 401).

⁴⁹⁰ *Gu v Xunmeng Co., Ltd.* (n 402).

⁴⁹¹ *Wang Xin v Xunmeng Co., Ltd.* (n 52).

⁴⁹² *Li v Xunmeng Co., Ltd.* (n 404).

⁴⁹³ *Zeng v Xunmeng Co., Ltd.* (n 405).

⁴⁹⁴ *Gao v Zhongsheng* (n 406).

⁴⁹⁵ *Liu Chong v Taobao* (n 407).

⁴⁹⁶ *Yang Gang v Taobao* (n 408).

⁴⁹⁷ *Lu v Mogou E-commerce Co., Ltd.* (n 196).

⁴⁹⁸ *Wu v Jingdong* (n 410).

⁴⁹⁹ *Wu v Taobao* (n 349).

⁵⁰⁰ *Sun v Jingdong* (n 227).

⁵⁰¹ *An v Taobao* (n 413).

⁵⁰² *Song Lina v Taobao* (n 414).

⁵⁰³ *Zhuang v Xunmeng Co., Ltd.* (n 415).

⁵⁰⁴ *Zhang v ZhuanZhuan Tech* (n 272).

⁵⁰⁵ *Zhang v Tan* (n 417).

20.	<i>Wen v Jingdong</i> ⁵⁰⁶
21.	<i>Yan v Taobao</i> ⁵⁰⁷
22.	<i>Tang v Pingdingshan Fushixin Trade Co., Ltd.</i> ⁵⁰⁸
23.	<i>Tian v Tmall.com</i> ⁵⁰⁹
24.	<i>Adanlin and Guotong Tech Co., Ltd. and Beijing Jingdong</i> ⁵¹⁰
25.	<i>Geng v Huo</i> ⁵¹¹
26.	<i>Wang v Xunmeng Co.</i> ⁵¹²
27.	<i>Tu v Xunmeng Co., Ltd.</i> ⁵¹³
28.	<i>Lin Jin v Taobao</i> ⁵¹⁴
29.	<i>Lin v Xunmeng Co., Ltd.</i> ⁵¹⁵
30.	<i>Zhang Li v Jingdong</i> ⁵¹⁶
31.	<i>Jingdong v Zhang</i> ⁵¹⁷
32.	<i>Zhu v Qinghai Junqi Ze Trading Co., Ltd.</i> ⁵¹⁸
33.	<i>Ding v Jingdong</i> ⁵¹⁹
34.	<i>Qinhan New Town</i> ⁵²⁰
35.	<i>Wang BX v Xunmeng Information Technology Co.</i> ⁵²¹
36.	<i>Feng v Jingdong</i> ⁵²²
37.	<i>Wang v Xunmeng Co., Ltd.</i> ⁵²³
38.	<i>Zheng v Tianjin Jingdong</i> ⁵²⁴
39.	<i>Xiao Huikai v Guangzhou Ertian Pharmaceutical Co.</i> ⁵²⁵

⁵⁰⁶ *Wen v Jingdong* (n 418).

⁵⁰⁷ *Yan v Taobao* (n 419).

⁵⁰⁸ *Tang v Pingdingshan Fushixin Trade Co., Ltd.* (n 420).

⁵⁰⁹ *Tian v Tmall* (n 162).

⁵¹⁰ *Adanlin and Guotong TechCo., Ltd. and Beijing Jingdong* (n 422).

⁵¹¹ *Geng v Huo* (n 423).

⁵¹² *Wang v Xunmeng Co.* (n 424).

⁵¹³ *Tu v Xunmeng Co., Ltd.* (n 425).

⁵¹⁴ *Lin Jin v Taobao* (n 426).

⁵¹⁵ *Lin v Xunmeng Co., Ltd.* (n 427).

⁵¹⁶ *Zhang Li v Jingdong* (n 200).

⁵¹⁷ *Jingdong v Zhang Li* (n 201).

⁵¹⁸ *Zhu v Qinghai Junqi Ze Trading Co., Ltd.* (n 430).

⁵¹⁹ *Ding v JD.com 1st* (n 431).

⁵²⁰ *Qinhan New Town* (n 329).

⁵²¹ *Wang BX v Xunmeng Co.* (n 267).

⁵²² *Feng v Jingdong* (n 434).

⁵²³ *Wang v Xunmeng Co., Ltd.* (n 435).

⁵²⁴ *Zheng v Tianjin Jingdong* (n 436).

⁵²⁵ *Xiao Huikai v Guangzhou Ertian Pharmaceutical Co.* (n 372).

Table 3: Platform operators' obligation to verify product information cases

	Case	The platform operator bears the obligation to verify product information
1	<i>Zhang v ZhuanZhuan Tech</i> ⁵²⁶	NO
2	<i>Zhang v Tan</i> ⁵²⁷	NO
3	<i>Lu v Mogou E-commerce Co., Ltd.</i> ⁵²⁸	NO
4	<i>Peng v Taobao</i> ⁵²⁹	NO
5	<i>Yan v Taobao</i> ⁵³⁰	NO
6	<i>Cheng Jinzhi</i> ⁵³¹	NO
7	<i>Zhang Chao v Taobao</i> ⁵³²	NO
8	<i>Wang Yan v Taobao</i> ⁵³³	NO
9	<i>Zheng v Hong & Taobao</i> ⁵³⁴	NO
10	<i>Green Development v Taobao</i> ⁵³⁵	NO
11	<i>Xia v Taobao & Jinlaite</i> ⁵³⁶	NO
12	<i>Taobao Heating Pipe</i> ⁵³⁷	YES
13	<i>Yue v Paiku</i> ⁵³⁸	YES
14	<i>Zhang Li v Jingdong</i> ⁵³⁹	YES

⁵²⁶ *Zhang v ZhuanZhuan Tech* (n 272).

⁵²⁷ *Zhang v Tan* (n 417).

⁵²⁸ *Lu v Mogou E-commerce Co., Ltd.* (n 196).

⁵²⁹ *Peng v Taobao* (n 455).

⁵³⁰ *Yan v Taobao* (n 419).

⁵³¹ *Cheng Jinzhi* (n 463).

⁵³² 《张超、义乌市丽派服装厂、杭州阿里巴巴广告有限公司网络购物合同纠纷一审民事判决书》 [*Zhang Chao, Yiwu Lipai Garment Factory, Hangzhou Alibaba Advertising Co., Ltd. Online Shopping Contract Dispute First Trial Civil Judgment*] [2020] 浙江省义乌市人民法院 [The People's Court of Yiwu City, Zhejiang Province], (2020)浙 0782 民初 9079 号 [Economic First Trial No 9079], 24 December 2020 ('*Zhang Chao v Taobao*').

⁵³³ *Wang Yan v Taobao* (n 373).

⁵³⁴ *Zheng v Hong & Taobao* (n 464).

⁵³⁵ *Green Development Foundation* (n 484).

⁵³⁶ *Xia v Taobao & Jinlaite* (n 480).

⁵³⁷ *Taobao Heating Pipe* (n 223).

⁵³⁸ *Yue v Paiku* (n 223).

⁵³⁹ *Zhang Li v Jingdong* (n 200).

Table 4: Types of platform operators' verification obligations in cases

	Case	Formality review	Substantive review
1.	<i>Yue v Paiku</i> ⁵⁴⁰		✓
2.	<i>Taobao Heating Pipe</i> ⁵⁴¹		✓
3.	<i>Little Leaping Frog Sports</i> ⁵⁴²		✓
4.	<i>Bai & Hou Rights to Life and Health</i> ⁵⁴³		✓
5.	<i>Guangdong Weibo Electric Co.</i> ⁵⁴⁴		✓
6.	<i>Zhang Li v Jingdong</i> ⁵⁴⁵		✓
7.	<i>Jingdong v Zhang</i> ⁵⁴⁶	✓	
8.	<i>Maotai Prince Liquor Case</i> ⁵⁴⁷	✓	
9.	<i>Wang v Shanghai Xunmeng & Lin</i> ⁵⁴⁸	✓	
10.	<i>Wang Xin v Xunmeng Co., Ltd.</i> ⁵⁴⁹	✓	
11.	<i>Li v Xunmeng Co., Ltd.</i> ⁵⁵⁰	✓	
12.	<i>Zeng v Xunmeng Co., Ltd.</i> ⁵⁵¹	✓	
13.	<i>Gao v Zhongsheng</i> ⁵⁵²	✓	
14.	<i>Liu v Taobao</i> ⁵⁵³	✓	
15.	<i>Zhuang v Xunmeng Co., Ltd.</i> ⁵⁵⁴	✓	
16.	<i>Tang v Pingdingshan Fushixin Trade Co., Ltd.</i> ⁵⁵⁵	✓	
17.	<i>Adanlin and Guotong Petroleum Storage Card Technology Co., Ltd. and Beijing Jingdong</i> ⁵⁵⁶	✓	
18.	<i>Geng v Huo</i> ⁵⁵⁷	✓	

⁵⁴⁰ *Yue v Paiku* (n 223).

⁵⁴¹ *Taobao Heating Pipe* (n 223).

⁵⁴² *Little Leaping Frog Sports* (n 223).

⁵⁴³ *Bai & Hou Rights To Life And Health* (n 223).

⁵⁴⁴ *Electric Water Boiler* (n 223).

⁵⁴⁵ *Zhang Li v Jingdong* (n 200).

⁵⁴⁶ *Jingdong v Zhang Li* (n 201).

⁵⁴⁷ *Maotai Prince Liquor Case* (n 399).

⁵⁴⁸ *Wang v Shanghai Xunmeng & Lin* (n 188).

⁵⁴⁹ *Wang Xin v Xunmeng Co., Ltd.* (n 52).

⁵⁵⁰ *Li v Xunmeng Co., Ltd.* (n 404).

⁵⁵¹ *Zeng v Xunmeng Co., Ltd.* (n 405).

⁵⁵² *Gao v Zhongsheng* (n 406).

⁵⁵³ *Liu Chong v Taobao* (n 407).

⁵⁵⁴ *Zhuang v Xunmeng Co., Ltd.* (n 415).

⁵⁵⁵ *Tang v Pingdingshan Fushixin Trade Co., Ltd.* (n 420).

⁵⁵⁶ *Adanlin and Guotong Tech Co., Ltd. and Beijing Jingdong* (n 422).

⁵⁵⁷ *Geng v Huo* (n 423).

19.	<i>Wang v Xunmeng Co.</i> ⁵⁵⁸	✓	
20.	<i>Lin v Xunmeng Co., Ltd.</i> ⁵⁵⁹	✓	
21.	<i>Zhu v Qinghai Junqi Ze Trading Co., Ltd.</i> ⁵⁶⁰	✓	
22.	<i>Ding v Jingdong Appeal</i> ⁵⁶¹	✓	
23.	<i>Qinhan New Town</i> ⁵⁶²	✓	
24.	<i>Wang BX v Xunmeng Co.</i> ⁵⁶³	✓	
25.	<i>Feng v Jingdong</i> ⁵⁶⁴	✓	
26.	<i>Wang v Xunmeng Co., Ltd.</i> ⁵⁶⁵	✓	
27.	<i>Zheng v Tianjin Jingdong</i> ⁵⁶⁶	✓	
28.	<i>Xiao huikai v Guangzhou Ertian Pharmaceutical Co.</i> ⁵⁶⁷	✓	
29.	<i>Wu v Zhang</i> ⁵⁶⁸	✓	
30.	<i>Ding No 1</i> ⁵⁶⁹	✓	
31.	<i>Ding v Kangmeng E-commerce Co., Ltd.</i> ⁵⁷⁰	✓	
32.	<i>Cong v Taobao</i> ⁵⁷¹	✓	
33.	<i>Zhang Yuan v Jingdong.com</i> ⁵⁷²	✓	
34.	<i>Yang v Hong</i> ⁵⁷³	✓	
35.	<i>Shen v Tmall Network Co. Ltd.</i> ⁵⁷⁴	✓	
36.	<i>Wang Yan v Taobao</i> ⁵⁷⁵	✓	
37.	<i>Xiao v Manke & Tmall</i> ⁵⁷⁶	✓	
38.	<i>Jingdong v Zhang Yuan</i> ⁵⁷⁷	✓	
39.	<i>Wang v Beijing Pocket Fashion</i> ⁵⁷⁸	✓	

⁵⁵⁸ *Wang v Xunmeng Co.* (n 424).

⁵⁵⁹ *Lin v Xunmeng Co., Ltd.* (n 427).

⁵⁶⁰ *Zhu v Qinghai Junqi Ze Trading Co., Ltd.* (n 430).

⁵⁶¹ *Ding v Jingdong Appeal* (n 431).

⁵⁶² *Qinhan New Town* (n 329).

⁵⁶³ *Wang BX v Xunmeng Co.* (n 267).

⁵⁶⁴ *Feng v Jingdong* (n 434).

⁵⁶⁵ *Wang v Xunmeng Co., Ltd.* (n 435).

⁵⁶⁶ *Zheng v Tianjin Jingdong* (n 436).

⁵⁶⁷ *Xiao Huikai v Guangzhou Ertian Pharmaceutical Co.* (n 372).

⁵⁶⁸ *Wu v Zhang* (n 443).

⁵⁶⁹ *Ding No 1* (n 206).

⁵⁷⁰ *Ding v Kangmeng E-commerce Co., Ltd.* (n 448).

⁵⁷¹ *Cong v Xu & Taobao* (n 451).

⁵⁷² *Zhang Yuan v Jingdong.com* (n 454).

⁵⁷³ *Yang v Hong* (n 222).

⁵⁷⁴ *Shen v Tmall Network Co Ltd.* (n 460).

⁵⁷⁵ *Wang Yan v Taobao* (n 373).

⁵⁷⁶ *Xiao v Manke & Tmall* (n 465).

⁵⁷⁷ *Jingdong v Zhang Yuan* (n 467).

⁵⁷⁸ *Wang v Beijing Pocket Fashion* (n 268).

40.	<i>Fan v Xunmeng</i> ⁵⁷⁹	✓	
41.	<i>Tongle Animal Clinic</i> ⁵⁸⁰	✓	
42.	<i>Huang v Zhao</i> ⁵⁸¹	✓	
43.	<i>Guo v Zhao</i> ⁵⁸²	✓	
44.	<i>Second trial on Wang v Holala</i> ⁵⁸³	✓	
45.	<i>Wu v XN Co. Ltd.</i> ⁵⁸⁴	✓	
46.	<i>Chengdu Habai v Wen</i> ⁵⁸⁵	✓	
47.	<i>Yang v Xiecheng</i> ⁵⁸⁶	✓	
48.	<i>Zhang Jun v Jingdong</i> ⁵⁸⁷	✓	
49.	<i>He v Mijing Hefeng</i> ⁵⁸⁸	✓	
50.	<i>Ma v Xunmeng Co., Ltd.</i> ⁵⁸⁹	✓	
51.	<i>Xia v Taobao & Jinlaite</i> ⁵⁹⁰	✓	

⁵⁷⁹ *Fan v Xunmeng* (n 469).

⁵⁸⁰ *Tongle Animal Clinic* (n 255).

⁵⁸¹ *Huang v Zhao* (n 353).

⁵⁸² *Guo v Zhao* (n 353).

⁵⁸³ *Second trial on Wang v Holala* (n 261).

⁵⁸⁴ *Wu v XN Co. Ltd.* (n 306).

⁵⁸⁵ *Chengdu Habai v Wen* (n 475).

⁵⁸⁶ *Yang v Xiecheng* (n 476).

⁵⁸⁷ *Zhang Jun v Jingdong* (n 477).

⁵⁸⁸ *He v Mijing Hefeng* (n 390).

⁵⁸⁹ *Ma v Xunmeng Co., Ltd.* (n 479).

⁵⁹⁰ *Xia v Taobao & Jinlaite* (n 480).

Table 5: Platform operators' assumed joint and several liability cases

	Cases	Platform operator assumed joint and several liability
1.	<i>Jingdong v Song</i> ⁵⁹¹	✓
2.	<i>Bai & Hou Rights to Life and Health</i> ⁵⁹²	✓
3.	<i>Zhu Jiang v Taobao</i> ⁵⁹³	✓
4.	<i>Taobao Heating Pipe</i> ⁵⁹⁴	✓
5.	<i>Wu v Shanghai Shizhuang IT Co., Ltd.</i> ⁵⁹⁵	✓
6.	<i>Ding No 2</i> ⁵⁹⁶	✓
7.	<i>Yue v Paiku</i> ⁵⁹⁷	✓
8.	<i>Wu v Zhang</i> ⁵⁹⁸	✓
9.	<i>Ma v Li</i> ⁵⁹⁹	✓

⁵⁹¹ *Jingdong v Song* (n 485).

⁵⁹² *Bai & Hou Rights To Life And Health* (n 223).

⁵⁹³ *Zhu Jiang v Taobao* (n 458).

⁵⁹⁴ *Taobao Heating Pipe* (n 223).

⁵⁹⁵ *Wu v Shanghai Shizhuang IT Co., Ltd.* (n 228).

⁵⁹⁶ *Ding No 2* (n 235).

⁵⁹⁷ *Yue v Paiku* (n 208).

⁵⁹⁸ *Wu v Zhang* (n 443).

⁵⁹⁹ *Ma v Li* (n 305).

Table 6: Platform operators' 'know or should know' and 'take necessary measure' cases

	Case	Know or should know	Take necessary measure	Platform operator's liability
1.	<i>Bai & Hou Rights to Life and Health</i> ⁶⁰⁰	Did not discuss	Platform operator did not verify product information and seller's administrative licensing certificate	Joint and several liability
2.	<i>Zhu Jiang v Taobao</i> ⁶⁰¹	Consumer complained	Platform operator did not respond	Joint and several liability
3.	<i>Jingdong v Song</i> ⁶⁰²	Consumer complained	Platform operator did not respond	Joint and several liability
4.	<i>Yang v Xiecheng</i>	Platform operator verified seller's administrative licensing certificate	Did not discuss	Not liable
5.	<i>Ding No 1</i> ⁶⁰³	Consumer could not prove	Did not discuss	Not liable
6.	<i>Ding v Kangmeng E-commerce Co., Ltd.</i> ⁶⁰⁴	Consumer could not prove	Did not discuss	Not liable
7.	<i>Ding v JD.com 1st</i> ⁶⁰⁵	Consumer could not prove	Did not discuss	Not liable
8.	<i>Ding v Jingdong Appeal</i> ⁶⁰⁶	Consumer could not prove	Did not discuss	Not liable
9.	<i>Liu v Zhongda & Taobao</i> ⁶⁰⁷	Consumer could not prove	Did not discuss	Not liable
10.	<i>Yang v Taobao</i> ⁶⁰⁸	Consumer could not prove	Did not discuss	Not liable
11.	<i>Song Lina v Taobao</i> ⁶⁰⁹	Consumer could not prove	Did not discuss	Not liable

⁶⁰⁰ *Bai & Hou Rights To Life And Health* (n 223).

⁶⁰¹ *Zhu Jiang v Taobao* (n 458).

⁶⁰² *Jingdong v Song* (n 485).

⁶⁰³ *Ding No 1* (n 206).

⁶⁰⁴ *Ding v Kangmeng E-commerce Co., Ltd.* (n 448).

⁶⁰⁵ *Ding v JD.com 1st* (n 446).

⁶⁰⁶ *Ding v Jingdong Appeal* (n 431).

⁶⁰⁷ *Liu v Zhongda & Taobao* (n 52).

⁶⁰⁸ *Yang Gang v Taobao* (n 408).

⁶⁰⁹ *Song Lina v Taobao* (n 414).

12.	<i>Zhang v ZhuanZhuan Tech</i> ⁶¹⁰	Consumer could not prove	Did not discuss	Not liable
13.	<i>Zhang v Tan</i> ⁶¹¹	Consumer could not prove	Did not discuss	Not liable
14.	<i>Peng v Taobao</i> ⁶¹²	Consumer could not prove	Did not discuss	Not liable
15.	<i>Peng v Jingdong</i> ⁶¹³	Consumer could not prove	Did not discuss	Not liable
16.	<i>Yang v Hong</i> ⁶¹⁴	Consumer could not prove	Did not discuss	Not liable
17.	<i>Wang v Jingdong</i> ⁶¹⁵	Consumer could not prove	Did not discuss	Not liable
18.	<i>Tian v Tmall.com</i> ⁶¹⁶	Consumer could not prove	Did not discuss	Not liable
19.	<i>Cheng Jinzhi</i> ⁶¹⁷	Consumer could not prove	Did not discuss	Not liable
20.	<i>Tu v Xunmeng Co., Ltd.</i> ⁶¹⁸	Consumer could not prove	Did not discuss	Not liable
21.	<i>Lin Jin v Taobao</i> ⁶¹⁹	Consumer could not prove	Did not discuss	Not liable
22.	<i>Zhang Lina v Tmall</i> ⁶²⁰	Consumer could not prove	Did not discuss	Not liable
23.	<i>Xiao v Manke & Tmall</i> ⁶²¹	Consumer could not prove	Did not discuss	Not liable
24.	<i>Feng v Jingdong</i> ⁶²²	Consumer could not prove	Did not discuss	Not liable

⁶¹⁰ *Zhang v ZhuanZhuan Tech* (n 272).

⁶¹¹ *Zhang v Tan* (n 417).

⁶¹² *Peng v Taobao* (n 455).

⁶¹³ *Peng v Jingdong* (n 233).

⁶¹⁴ *Yang v Hong* (n 222).

⁶¹⁵ *Wang v Jingdong* (n 461).

⁶¹⁶ *Tian v Tmall* (n 162).

⁶¹⁷ *Cheng Jinzhi* (n 463).

⁶¹⁸ *Tu v Xunmeng Co., Ltd.* (n 425).

⁶¹⁹ *Lin Jin v Taobao* (n 426).

⁶²⁰ 《张丽娜、上海昶铭实业有限公司产品责任纠纷二审民事判决书》 [*Zhang Lina and Shanghai Changming Industrial Co., Ltd. Second Trial Civil Judgment for Product Liability Disputes*] [2020] 浙江省杭州市中级人民法院 [Hangzhou Intermediate People's Court of Zhejiang Province], (2020)浙01民终2666号 [Economic Appeal No 2666], 19 June 2020 (*Zhang Lina v Tmall*).

⁶²¹ *Xiao v Manke & Tmall* (n 465).

⁶²² *Feng v Jingdong* (n 434).

25.	<i>Zheng v Tianjin Jingdong</i> ⁶²³	Consumer could not prove	Did not discuss	Not liable
26.	<i>Geng v Huo</i> ⁶²⁴	Did not discuss	By removing product list	Not liable
27.	<i>Wang v Xunmeng Co.</i> ⁶²⁵	Did not discuss	By removing product list	Not liable
28.	<i>Jingdong v Zhang Li</i> ⁶²⁶	Consumer could not prove	By removing product list	Not liable
29.	<i>Zhu v Qinghai Junqi Ze Trading Co., Ltd.</i> ⁶²⁷	Consumer could not prove	By removing product list	Not liable
30.	<i>Qinhan New Town</i> ⁶²⁸	Consumer could not prove	By removing product list	Not liable
31.	<i>Wang BX v Xunmeng Information Technology Co.</i> ⁶²⁹	Consumer could not prove	By removing product list	Not liable
32.	<i>Wang v Xunmeng Co., Ltd.</i> ⁶³⁰	Consumer could not prove	By removing product list	Not liable
33.	<i>Xiao Huikai v Guangzhou Ertian Pharmaceutical Co.</i> ⁶³¹	Consumer could not prove	By removing product list	Not liable
34.	<i>Yu v BST</i> ⁶³²	Did not discuss	By removing product list	Not liable
35.	<i>Wang v Shanghai Xunmeng & Lin</i> ⁶³³	Did not discuss	By removing product list	Not liable
36.	<i>Gu v Xunmeng Co., Ltd.</i> ⁶³⁴	Consumer could not prove	By removing product list	Not liable
37.	<i>Wang Xin v Xunmeng Co., Ltd</i> ⁶³⁵	Did not discuss	By removing product list	Not liable
38.	<i>Li v Xunmeng Co., Ltd.</i> ⁶³⁶	Did not discuss	By removing product list	Not liable

⁶²³ *Zheng v Tianjin Jingdong* (n 436).

⁶²⁴ *Geng v Huo* (n 423).

⁶²⁵ *Wang v Xunmeng Co.* (n 424).

⁶²⁶ *Jingdong v Zhang Li* (n 201).

⁶²⁷ *Zhu v Qinghai Junqi Ze Trading Co., Ltd.* (n 430).

⁶²⁸ *Qinhan New Town* (n 329).

⁶²⁹ *Wang BX v Xunmeng Co.* (n 267).

⁶³⁰ *Wang v Xunmeng Co., Ltd.* (n 435).

⁶³¹ *Xiao Huikai v Guangzhou Ertian Pharmaceutical Co.* (n 372).

⁶³² *Yu v BST* (n 452).

⁶³³ *Wang v Shanghai Xunmeng & Lin* (n 188).

⁶³⁴ *Gu v Xunmeng Co., Ltd.* (n 402).

⁶³⁵ *Wang Xin v Xunmeng Co., Ltd.* (n 52).

⁶³⁶ *Li v Xunmeng Co., Ltd.* (n 404).

39.	<i>Zeng v v Xunmeng Co., Ltd</i> ⁶³⁷	Did not discuss	By removing product list	Not liable
40.	<i>Chen v Jingdong</i> ⁶³⁸	Did not discuss	By removing product list	Not liable
41.	<i>Maotai Prince Liquor Case</i> ⁶³⁹	Did not discuss	By removing product list	Not liable
42.	<i>Wang Yan v Taobao</i> ⁶⁴⁰	Did not discuss	By removing product list	Not liable
43.	<i>Ding Xiaoxiang v Xunmeng Co., Ltd.</i> ⁶⁴¹	Did not discuss	The platform proposed three types of dispute resolution	Not liable
44.	<i>Wu v Jingdong</i> ⁶⁴²	Consumer could not prove	The platform actively assisted in dealing with the dispute	Not liable
45.	<i>Zheng v Hong & Taobao</i> ⁶⁴³	Consumer could not prove	The platform actively assisted in dealing with the dispute	Not liable
46.	<i>Lu v Mogou E-commerce Co., Ltd.</i> ⁶⁴⁴	Consumer could not prove	Plaintiff could not prove	Not liable
47.	<i>Wu v Taobao</i> ⁶⁴⁵	Consumer could not prove	Plaintiff could not prove	Not liable
48.	<i>Sun v Jingdong</i> ⁶⁴⁶	Consumer could not prove	Plaintiff could not prove	Not liable
49.	<i>Wen v Jingdong</i> ⁶⁴⁷	Consumer could not prove	Plaintiff could not prove	Not liable
50.	<i>Zhang v T Airlines</i> ⁶⁴⁸	Did not discuss	Plaintiff could not prove	Not liable
51.	<i>Gao v Zhongsheng</i> ⁶⁴⁹	Consumer could not prove	Plaintiff could not prove	Not liable

⁶³⁷ *Zeng v Xunmeng Co., Ltd.* (n 405).

⁶³⁸ *Chen v Jingdong* (n 450).

⁶³⁹ *Maotai Prince Liquor Case* (n 399).

⁶⁴⁰ *Wang Yan v Taobao* (n 373).

⁶⁴¹ *Ding Xiaoxiang v Xunmeng Co., Ltd.* (n 444).

⁶⁴² *Wu v Jingdong* (n 410).

⁶⁴³ *Zheng v Hong & Taobao* (n 464).

⁶⁴⁴ *Lu v Mogou E-commerce Co., Ltd.* (n 196).

⁶⁴⁵ *Wu v Taobao* (n 349).

⁶⁴⁶ *Sun v Jingdong* (n 227).

⁶⁴⁷ *Wen v Jingdong* (n 418).

⁶⁴⁸ *Zhang v T Airlines* (n 401).

⁶⁴⁹ *Gao v Zhongsheng* (n 406).

Table 7: Platform operators' obligation to safeguard consumers and corresponding liability cases

	Cases	Consumer's Damage	Breach of Obligation	Platform Operator's Product Liability
1.	<i>Taobao Heating Pipe</i> ⁶⁵⁰	Died	Obligation to safeguard consumers equals product review obligation	Joint and several liability
2.	<i>Bai & Hou Rights to Life and Health</i> ⁶⁵¹	Died	Obligation to safeguard consumers equals administrative licensing certificates review obligation	Joint and several liability
3.	<i>He v Mijing Hefeng</i> ⁶⁵²	Died	Obligation to safeguard consumers should generally include review, alerting, deleting, blocking, and disconnecting links.	Supplementary liability RMB 30,000
4.	<i>Ma v Li</i> ⁶⁵³	Died	Obligation to safeguard consumers equals administrative licensing certificates review obligation	Supplementary liability for RMB 830,000
5.	<i>Huang v Zhao</i> ⁶⁵⁴	Injured	Obligation to safeguard consumers equals administrative licensing certificates review obligation	Supplementary liability for RMB 287,000
6.	<i>Guo v Zhao</i> ⁶⁵⁵	Injured	Obligation to safeguard consumers equals administrative licensing certificates review obligation	Supplementary liability for RMB 287,000
7.	<i>Second trial on Wang v Holala</i> ⁶⁵⁶	Injured	Obligation to safeguard consumers equals administrative licensing certificates review obligation	Supplementary liability for 50% of RMB 329,000

⁶⁵⁰ *Taobao Heating Pipe* (n 223).

⁶⁵¹ *Bai & Hou Rights To Life And Health* (n 223).

⁶⁵² *He v Mijing Hefeng* (n 390).

⁶⁵³ *Ma v Li* (n 305).

⁶⁵⁴ *Huang v Zhao* (n 353).

⁶⁵⁵ *Guo v Zhao* (n 353).

⁶⁵⁶ *Second trial on Wang v Holala* (n 258).

8.	<i>Guangdong Weibo Electric Co</i> ⁶⁵⁷	Died	Obligation to safeguard consumers equals administrative licensing certificates review obligation	Contributory liability 25%
9.	<i>Tongle Animal Clinic</i> ⁶⁵⁸	Consumer's cat died	Obligation to safeguard consumers equals administrative licensing certificates review obligation	Contributory liability 10%
10.	<i>Little Leaping Frog Sports</i> ⁶⁵⁹	paraplegia	Obligation to safeguard consumers equals administrative licensing certificates review obligation	Contributory liability 50%
11.	<i>Wu v XN Co. Ltd.</i> ⁶⁶⁰	Unqualified food	Obligation to safeguard consumers equals administrative licensing certificates review obligation	Not liable
12.	<i>Chengdu Habai v Wen</i> ⁶⁶¹	Injured	Obligation to safeguard consumers equals administrative licensing certificates review obligation	Not liable
13.	<i>Yang v Xiecheng</i> ⁶⁶²	Injured	Obligation to safeguard consumers equals notice and alert obligation	Not liable
14.	<i>Wang v Beijing Pocket Fashion</i> ⁶⁶³	Fake medicines for tumours	Avoided discussing article 38	Not liable
15.	<i>Zhang Jun v Jingdong</i> ⁶⁶⁴	Unqualified food	Mixed article 38(1) and (2)	Not liable
16.	<i>Fan v Xunmeng</i> ⁶⁶⁵	Health product contains illegal drug	Mixed article 38(1) and (2)	Not liable
17.	<i>Ding v Jingdong.com</i> ⁶⁶⁶	Unqualified food	Mixed article 38(1) and (2)	Not liable

⁶⁵⁷ *Electric Water Boiler* (n 223).

⁶⁵⁸ *Tongle Animal Clinic* (n 255).

⁶⁵⁹ *Little Leaping Frog Sports* (n 223).

⁶⁶⁰ *Wu v XN Co. Ltd.* (n 306).

⁶⁶¹ *Chengdu Habai v Wen* (n 475).

⁶⁶² *Yang v Xiecheng* (n 476).

⁶⁶³ *Wang v Beijing Pocket Fashion* (n 268).

⁶⁶⁴ *Zhang Jun v Jingdong* (n 477).

⁶⁶⁵ *Fan v Xunmeng* (n 469).

⁶⁶⁶ *Ding v Jingdong Appeal* (n 431).

Table 8: Platform operators' assumed product liability cases

	Cases	Consumer's Damage	Breach of Obligation	Platform Operator's Product Liability
1.	<i>Taobao Heating Pipe</i> ⁶⁶⁷	Died	Obligation to safeguard consumers equals product review obligation	Joint and several liability
2.	<i>Bai & Hou Rights to Life and Health</i> ⁶⁶⁸	Died	Obligation to safeguard consumers equals administrative licensing certificate review obligation	Joint and several liability
3.	<i>He v Mijing Hefeng</i> ⁶⁶⁹	Died	Obligation to safeguard consumers should generally include review, alerting, deleting, blocking, and disconnecting links.	Supplementary liability RMB 30,000
4.	<i>Ma v Li</i> ⁶⁷⁰	Died	Obligation to safeguard consumers equals administrative licensing certificate review obligation	Supplementary liability for RMB 830,000
5.	<i>Huang v Zhao</i> ⁶⁷¹	Injured	Obligation to safeguard consumers equals administrative licensing certificate review obligation	Supplementary liability for RMB 287,000
6.	<i>Guo v Zhao</i> ⁶⁷²	Injured	Obligation to safeguard consumers equals administrative licensing certificate review obligation	Supplementary liability for RMB 287,000
7.	<i>Second trial on Wang v Holala</i> ⁶⁷³	Injured	Obligation to safeguard consumers equals administrative licensing certificate review obligation	Supplementary liability for 50% of RMB 329,000
8.	<i>Guangdong Weibo Electric Co</i> ⁶⁷⁴	Died	Obligation to safeguard consumers equals administrative licensing certificate review obligation	Contributory liability 25%

⁶⁶⁷ *Taobao Heating Pipe* (n 223).

⁶⁶⁸ *Bai & Hou Rights To Life And Health* (n 223).

⁶⁶⁹ *He v Mijing Hefeng* (n 390).

⁶⁷⁰ *Ma v Li* (n 305).

⁶⁷¹ *Huang v Zhao* (n 353).

⁶⁷² *Guo v Zhao* (n 353).

⁶⁷³ *Second trail on Wang v Holala* (n 258).

⁶⁷⁴ *Electric Water Boiler* (n 223).

9.	<i>Tongle Animal Clinic</i> ⁶⁷⁵	Consumer's cat died	Obligation to safeguard consumers equals administrative licensing certificate review obligation	Contributory liability 10%
10.	<i>Little Leaping Frog Sports</i> ⁶⁷⁶	paraplegia	Obligation to safeguard consumers equals administrative licensing certificate review obligation	Contributory liability 50%
11.	<i>Jingdong v Song</i> ⁶⁷⁷	Property damage	Obligation to take necessary measures	Joint and several liability
12.	<i>Zhu v Taobao</i> ⁶⁷⁸	Property damage	Obligation to verify seller's information	Joint and several liability
13.	<i>Wu v Shanghai Shizhuang IT Co., Ltd.</i> ⁶⁷⁹	Property damage	Obligation to verify seller's information	Joint and several liability
14.	<i>Ding No 2</i> ⁶⁸⁰	Property damage	Obligation to take necessary measures	Joint and several liability
15.	<i>Yue v Paiku</i> ⁶⁸¹	Property damage	Obligation to verify product information	Joint and several liability
16.	<i>Wu v Zhang</i> ⁶⁸²	Property damage	Obligation to verify seller's information	Joint and several liability

⁶⁷⁵ *Tongle Animal Clinic* (n 255).

⁶⁷⁶ *Little Leaping Frog Sports* (n 223).

⁶⁷⁷ *Jingdong v Song* (n 485).

⁶⁷⁸ *Zhu Jiang v Taobao* (n 458).

⁶⁷⁹ *Wu v Shanghai Shizhuang IT Co., Ltd.* (n 228).

⁶⁸⁰ *Ding No 2* (n 235).

⁶⁸¹ *Yue v Paiku* (n 223).

⁶⁸² *Wu v Zhang* (n 443).

Appendix 2

Table 9: 2021–2022 E-commerce platform entry fees detail – sampled by Tmall.com, JD.com and Amazon Marketplace

Platform	Tmall.com ⁶⁸³	JD.com ⁶⁸⁴	Amazon ⁶⁸⁵
Deposit	50,000–500,000 CNY ⁶⁸⁶	30,000–100,000 CNY ⁶⁸⁷	NO
Software service fee / usage fee	30,000 & 60,000 CNY ⁶⁸⁸	1000 CNY/month ⁶⁸⁹	\$49.95 monthly ⁶⁹⁰
Commission /Tech service fee	0.5%–0% of the of the total order amount ⁶⁹¹	0.5%–10% of the total order amount ⁶⁹²	8%–15% of the total order amount ⁶⁹³
Advertising Fee	Cost Per Click ⁶⁹⁴ Cost Per Mille ⁶⁹⁵	Cost Per Click ⁶⁹⁶ Cost Per Mille ⁶⁹⁷ Cost Per Sales ⁶⁹⁸	Cost per Click ⁶⁹⁹

⁶⁸³ '《天猫资费标准》 [Tmall.com Rate standard]', *Platform Rules* (Business Agreement) <<https://rule.tmall.com/tsearch.htm?spm=a2177.7731966.0.0.296ec32fe320pW&cld=379&st=1>>.

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⁶⁹¹ '《天猫 2021 年度各类目年费软件服务费一览表 》 [Tmall 2021 annual fee for various categories of software service fee list]' (n 688).

⁶⁹² '《2022 年京东开放平台各类目资费一览表》 [2022 Jingdong platform rate list]' (n 684)

⁶⁹³ '《开店前准备》 [Before you strat]' (n 690)

⁶⁹⁴ '《天猫 2021 年度各类目年费软件服务费一览表 》 [Tmall 2021 annual fee for various categories of software service fee list]' (n 688).

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