

OBSERVATIONS ON THE PROTECTION OF CHINESE CONSUMER RIGHTS IN OUR AGE OF MISINFORMATION

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I. INTRODUCTION

On April 12, 2016, 21-year-old Chinese student Wei Zexi died after a web search led him to undergo experimental treatment for cancer at a military hospital. Wei's online account of his abysmal experience at the clinic went viral.¹ The resulting media furore was largely directed at Baidu, the search engine Wei used. The majority of social media users vilified Baidu for being indirectly responsible for Wei's death, as it had allowed the highest bidder to place advertisements for unsafe medical procedures on its site. In response, the government was quick to limit Baidu's advertising capabilities, with the result that price is no longer the sole determinant in ranking search results (among other requirements).² This article will evaluate the extent to which existing legal measures safeguard the rights of Chinese consumers. It will also propose solutions to protect Chinese citizens – namely, education and a relaxation of censorship laws.

¹ Paul Carsten, "China curbs Baidu healthcare ads business after student's death", Reuters (May 9 2016) online: Reuters <<http://www.reuters.com/article/us-baidu-regulations-idUSKCN0Y014U>>.

² *Ibid.*

II. HOW EFFECTIVELY DO CURRENT MEASURES SAFEGUARD CHINESE CONSUMER RIGHTS?

A. China's Medical Advertising Laws

Article 14 of the *Advertisement Law of the People's Republic of China* [*Advertisement Law*] states that medical advertisements cannot include information about the medicine's effectiveness, any unscientific assertions, or names or images of medical institutions, doctors or patients.³ Those who violate Article 14 may have to pay a fine or remove their advertisements.⁴ Article 34 of *Advertisement Law* states that advertisements for medicines and medical apparatuses shall be examined by relevant administrative departments before they are published and are prohibited from being published without examination.⁵ Those who publish advertisements without obtaining approval shall have to cease publication and pay a fine.⁶

However, given China's suboptimal regulatory environment⁷ and the overwhelming number of advertisements published daily, it is clear that this provision will be of limited efficacy unless more government officials are hired to assess the suitability of advertisements. A system of checks and balances also needs to be implemented to ensure that the officials do not take bribes from advertisers.

B. China's Consumer Protection Laws

Chinese consumers who have been harmed by deceptive advertisements may choose to sue the advertiser. Under Article 55 of the *Law of Civil Procedure of the People's Republic of China*, if there are many plaintiffs who seek to file a claim against a defendant, the plaintiffs may elect representatives from among themselves to proceed with the litigation and the people's court may

³ *Advertisement Law of the People's Republic of China*, 1994, Art 14.

⁴ *Ibid*, Art 41.

⁵ *Supra* note 3 at Art 34.

⁶ *Supra* note 3 at Art 43.

⁷ *E.g.* the 2008 tainted-milk scandal or the recent discovery of sales of millions of illegal vaccines: Megha Rajagopalan, "China bars vaccine sales by drug wholesalers after scandal: state media", *Reuters* (April 26 2016) online: Reuters <<http://www.reuters.com/article/us-china-drugs-vaccines-idUSKCN0XM1FV>>.

issue a public notice inviting those entitled to participate in the action to register with the people's court.⁸ Furthermore, the *Consumer Rights Protection Law of the People's Republic of China* states that the China Consumers' Association and authorised consumer associations shall be able to bring suit for acts which harm the legitimate interests of consumers.⁹ This is fairly similar to the situation in the United States where class action lawsuits often yield large settlements. Although no amount of money can undo the harm caused by shady medical products, a monetary award may ease the financial burden of those who have spent much of their life savings on such products.

The Supreme People's Court Interpretation on Several Issues Concerning the Application of Law in the Trial of Public Interest Consumer Civil Litigation Cases¹⁰ provides guidance for practitioners as to how to proceed in consumer litigation cases. However, it is equally important for such information to be communicated to the general public, to ensure that consumers are aware of the full extent of their rights. The caveat here is that many patients, particularly the lower-income and middle-class, may not be able to afford the legal fees even if they are aware of their legal rights. Furthermore, not every case will result in a hefty award of damages; this will depend on the financial status of the defendant.

C. A Loophole is Closed

After Wei's death, a final push was made to completely end all military-provided paid public services, closing a loophole which allowed military hospitals to contract out services to private operators.¹¹ This was the case at the cancer clinic in the military hospital where Wei underwent treatment. The hospital (the Second Hospital of Beijing Armed Police Corps) had contracted out

⁸ *Law of Civil Procedure of the People's Republic of China*, 1991, Art 55.

⁹ National People's Congress of the People's Republic of China, *Decision of the Standing Committee of the National People's Congress on Revision of the Consumer Rights Protection Law of the People's Republic of China* as promulgated on October 23, 2013, effective March 15, 2014, Art 47.

¹⁰ Legal Interpretation [2016], No 10.

¹¹ Ding Xuezhen, "Military leadership meets to hash out end to paid services", *Global Times* (May 9 2016) online: Global times <<http://www.globaltimes.cn/content/982007.shtml>>.

services at its cancer clinic to a private operator which was part of the Putian-owned network of private hospitals.

The rise of the Putianese hospitals has partly been aided by the government's underinvestment in public hospitals – over 8,000 of China's 11,514 private hospitals are Putianese.¹² Given the ubiquity of such hospitals and the fact that many are poorly run, the government should launch an investigation into the medical practices of such hospitals – revoking licenses if necessary – and accelerate its implementation of healthcare reforms. These measures would tackle the root cause of the problem of misleading advertisements more effectively than imposing restrictions on Web giants like Baidu, which can hardly be expected to possess the expertise necessary to vet healthcare advertisements. It is inevitable that some undesirable listings will slip through Baidu's net.

That said, an investigation and healthcare reforms would undoubtedly take years and would need to be accompanied by a diminishing tendency towards corruption. For now, the new advertising rules are a timely intervention.

III. HOW SHOULD CHINA SHIELD CONSUMERS FROM THE DANGERS OF INACCURATE ADVERTISING?

Given the rise in ownership of mobile devices in China¹³ and increased exposure to online advertisements, it is apposite to consider other policies which could keep patients out of harm's way. The first would be a vigorous campaign to educate consumers about the pitfalls of consuming drugs or undergoing procedures that seem too good to be true. Apart from reaching high school and university students, notices can also be disseminated at workplaces and

¹² Kou Jie, "Military cancer clinic deal under scrutiny", *Global Times* (4 May 2016) online: Global Times <<http://www.globaltimes.cn/content/981236.shtml>>.

¹³ Jacob Poushter, "Smartphone Ownership and Internet Usage Continues to Climb in Emerging Economies", *Pew Research Center* (July 25 2016) online: Pew Global <<http://www.pewglobal.org/2016/02/22/smartphone-ownership-and-internet-usage-continues-to-climb-in-emerging-economies/>>

broadcasted over television, reaching the middle-aged and elderly. Efforts should be concentrated in areas with a high density of private hospitals to maximise impact.

Patients who seek medical advice on the Internet largely do so out of desperation – as was the case with Wei and his parents – and are likely to have consulted reputable doctors before pursuing other options. It would thus be helpful if the medical profession were to be more vigilant in warning patients about the dangers of seeking medical treatment via unregulated means *before* patients are inclined to do so. Netizens' comments in the aftermath of the Baidu saga show that many have high expectations of the advertisements they see in print and non-print media. A sustained counter-advertising campaign by the government could go a long way towards tempering such expectations. In the long term, education will have the added benefit of inculcating a sense of personal responsibility among Chinese consumers, ensuring that they thoroughly research medical products before purchase. Secondly, a relaxation of Chinese Internet censorship policies – known colloquially as the 'Great Firewall of China' – would enable consumers to undertake comprehensive research on various medical procedures and products. Currently, websites like Google and The New York Times are banned in China and Baidu has virtually monopolised the sphere of online advertising, severely limiting netizens' options. As Wei himself noted in his online post, he had to rely on a Chinese friend in the US to use Google to search for information on his treatment after the treatment failed. It was only then that he discovered that "American hospitals had long stopped using the technology due to poor results in clinical trials". In Wei's case, access to Google prior to undergoing treatment may very well have saved his life.

While it is possible to bypass the Internet censorship, it would be patently unfair if the Internet savvy alone were able to access basic healthcare information. (It is worth noting that Wei himself was a computer science student, yet he had to rely on a friend in the US to use Google.) Wide swathes of the population would be left vulnerable to the predatory practices of unscrupulous private operators. China's political motives for Internet censorship should not automatically preclude the possibility of making the 'Great Firewall of China' more porous and allowing users to access a greater variety of websites. Consumers who are better informed are far less likely to undergo unsafe medical procedures. This would alleviate the burden on China's burgeoning healthcare system and improve China's international image.

IV. CONCLUSION

Wei's death led many to blame Baidu for its 'evil' practice of allowing healthcare providers to pay large sum for highly-ranked advertisements on its site. It is arguable that some of this blame is misplaced as the root cause of the problem lies in China's draconian censorship practices, its underfunded healthcare system and the private operators which have crept in to fill the vacuum. As with any complex issue, there are no quick or easy answers. Only time will tell whether the Chinese authorities will be able to muster the political will and resources to ensure that their countrymen are able to avoid a fate like Wei's.