

## **Research on Minors' Online Transaction Behavior from the Perspective of Electronic Contract Qingdao Huanghai University**

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### **Abstract**

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*In the 21st century, e-commerce is developing rapidly in China, and the phenomenon of online shopping for minors is more common. Different from the traditional form of contract conclusion, electronic contract has the characteristics of electronization of expression of will, virtuality and universality of subject and so on. By studying the online trading behavior of minors, this paper focuses on the identification dilemma of minors' qualification as the subject of electronic contract in online trading, and expounds the specific cases involved in judicial practice, in order to solve the problems such as the effectiveness of electronic contract signed by minors, and give reasonable suggestions to the operators of e-commerce platform and platform operators, Protect the current stable online trading order and pay more attention to the online trading life of minors.*

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**Key words:** Electronic Contract; subject qualification; minors; online transactions

As the most typical civil legal act, contract must have the general constituent elements of legal act, that is, the actor has corresponding civil capacity. The intention of the actor is true and does not violate the mandatory provisions of laws and administrative regulations, nor does it violate public order and good customs. Electronic contract, also known as electronic commerce contract, refers to the agreement reached by the parties on the establishment, modification and termination of civil rights and obligations in the form of data messages based on various electronic network channels. According to the particularity of online contracting, this paper discusses the contracting ability of minors in online transactions.

There are too many cases of minors' online consumption in real life. For example, the southern morning post once reported that a 14-year-old junior high school student, after registering a Alipay wallet, bound his mother's bank card without his family's attention, and then recharged online games through express payment. Within two months, he continued to spend his personal card, The total amount is about 100000 yuan. <sup>[1]</sup> It is because her mother, Ms. Hu, has not opened the auxiliary function of SMS reminder for bank card consumption, so when Ms. Hu found that the book amount in the bank card was adjusted and changed abnormally, and asked the online game company to return the money after understanding the cause of the matter, she was rejected by the game company.

At this time, if you were the mother, how would you feel if your children spent 100000 yuan of savings on playing games in just two months? Should the game company return the money? On the contrary, from the perspective of the game company, if the background record clearly shows that it is the normal consumption of an adult, but asks for a refund after consumption, should the money be returned?

Such conflicts and contradictions mentioned in the above cases are more prominent in the field of online transactions, especially the emergence and rapid development of electronic contracts, which have a great impact on China's traditional contract system. Because minors are limited by the age regulations of the bank for handling bank cards, they cannot handle and obtain bank cards.

Therefore, a large number of minors use other people's accounts and bank cards for online shopping, which also leads to the formation of a gray market of online shopping commissions for middle school students in some places. <sup>[2]</sup> In addition, online back-to-back transactions and offline face-to-face transactions have deviations in the cognition of trading objects. Based on the standard network, it is difficult to see or identify the opposite party of the transaction. Both parties operate the keys or the mouse according to the legal system, which also belongs to their literal meaning. Moreover, even in the online store, traders are required to input other personal identity information, such as personal email address, ID card number, date of birth, etc., to prove that they are consumers with full capacity. However, the possibility of forging or providing false original information still exists.

From the concept of e-commerce contracts, e-commerce contracts formed in online transactions are concluded in the form of data messages. Therefore, in the process of information transmission, online transactions present a series of data codes. As a business platform, it is difficult to verify the identity of the real trading partner. Online merchants basically have no way to know whether the other party is an adult; Therefore, in real online transactions, businesses are also prone to encounter a legal problem: whether the transaction object has full civil capacity.

According to the declining trend of the age of Internet users, there are indeed some real transactions with minors as trading objects in online transactions. <sup>[3]</sup> However, minors are generally persons with limited or no capacity for civil conduct. According to the current legal provisions, the contract concluded by them is a contract whose effectiveness is to be determined. Unless ratified by the guardian within the legal period, the contract will be invalid. At the same time, due to the particularity of electronic contracts, according to Article 48 of the electronic commerce law of the people's Republic of China, the contracting capacity of the parties is determined by presumption in the conclusion of electronic contracts. Therefore, the validity of contracts cannot be determined unilaterally by age. On the premise that it does not conflict with the existing laws, we should reasonably regulate the online trading behavior of minors, abandon the classification of capacity of conduct, and give minors greater contracting capacity within the appropriate amount of subject matter and under the condition of ensuring safety during the trading period. In order to integrate into a series of developed transaction systems on the premise of ensuring the legitimate interests of consumers, give full play to the convenient and effective advantages of electronic contracts, and maintain the order and stability of transactions.

## 1、 The online trading partner is deemed to have full civil capacity

### (1) Legal provisions

Article 48 of the e-commerce law stipulates that the behavior of the parties in electronic commerce to conclude or perform a contract using an automatic information system has legal effect on the parties using the system. In electronic commerce, the parties are presumed to have corresponding civil capacity. However, unless there is sufficient evidence to the contrary.

It can be seen that this provision in the e-commerce law presumes that the transaction object in the online transaction has corresponding civil capacity, that is, the online transaction contract has legal binding force on both parties to the transaction. If one party denies the effectiveness of the online transaction contract because it claims that it does not have the corresponding civil capacity, it must be able to provide evidence that can reverse this presumption; Otherwise, the network contract it signed is a legal and effective transaction contract, and both parties must fulfill their contractual obligations.

### (2) Practical cases

#### **The minor's parents' claim that the contract is invalid was rejected**

Xiaoming's (not her real name) mother sued a game company in Xiaoming's name, asking for confirmation that the contract between Xiaoming and the game company was invalid. The reason was that Xiaoming recharged the game account 8 without her permission and without her knowledge, and asked the game company to return the game recharge fee of more than 8000 yuan.

After the trial, the court held that Xiaoming claimed that there was a service contract relationship between him and the game company, but Xiaoming did not submit sufficient evidence to prove that he was a game user, nor did he provide the user name, password and other information for registering the game during the trial.

In addition, Xiao Ming claimed to recharge the game company, but the credit card counterparty information submitted in the name of Xiao Ming's mother was Alipay, not the game company. Therefore, it is impossible to prove that there is a service contract relationship between Xiaoming and the game company only based on the existing evidence. Finally, the court rejected all Xiaoming's claims.

It can be seen that the law presumes that both parties to online transactions have corresponding civil capacity. If a party denies this, the burden of proof is on the claiming party; If the facts cannot be proved, the court will reject the claim. (3) Suggestions for platform and users

The trading platform can restrict the transactions of minors, such as judging the age of the account registrant according to the real name authentication at the time of registration, adding facial recognition and other technologies to the real name authentication link, and intercepting the online transactions of some parties who do not match their age through technical means.

For users, parents often neglect the education of minors' online consumption, as well as insufficient monitoring of Alipay, online bank accounts and payment passwords, which are the direct reasons for the unreasonable online consumption of minors. <sup>[4]</sup> Parents need to conscientiously perform their guardianship obligations, supervise the online transactions of their children, correctly guide them to conduct online transactions that are consistent with their age, and prevent them from conducting online transactions that are inconsistent with their age.

## 2、 Civil capacity should keep pace with the times

### (1) Legal provisions

Article 19 of the Civil Code stipulates that a minor over the age of eight is a person with limited capacity for civil conduct and shall be represented by his or her legal representative or approved and ratified by his or her legal representative when performing civil legal acts; However, they may independently perform civil legal acts that are purely beneficial or that are appropriate to their age and intelligence.

Article 20 a minor under the age of eight is a person without capacity for civil conduct, and his legal representative shall act as his agent in civil legal acts.

From the above laws and regulations, we can find that not all online transactions carried out by minors need to be confirmed by legal representatives. <sup>[5]</sup> A civil legal act performed by a minor that is compatible with his age and intelligence shall have legal effect.

Many minors are also proficient in Internet shopping, such as buying school supplies and learning software, which is inseparable from the progress of network technology, the popularization of network education and the continuous improvement and development of e-commerce transactions. It can be said that a large number of online transactions occur among minors over the age of eight. These minors have a high understanding of the nature, purpose, means and content of their transactions, and are often more skilled and in-depth than some adults in operating computers and "playing around" the shopping process. Therefore, if the legal representative is required to ratify the contract simply because it is a person with limited civil capacity, a large number of normal transactions will be in an unstable state, and the advantages of efficiency, mass and convenience of e-commerce will be greatly discounted. In dealing with minors' online transactions and judging whether their actions have legal effect, we should not only consider their age and intelligence, but also consider their family economic status appropriately. In actual situations, we should analyze specific problems in a specific way, not "one size fits all".

### (2) Practical cases

#### **Continuous small transactions are not recognized as valid contracts**

In the case of contract breach dispute between Wu and Kwai Technology Co., Ltd. (hereinafter referred to as "Kwai company"), Kwai company argued in the first instance that "it can be seen from the Alipay receipt provided by the plaintiff that the recharge in this case is not one or two large recharge consumption, but hundreds of consumption, with the maximum amount of 698 yuan, and some are even 198 yuan, 6 yuan and 1 yuan. The defendant believes that the small amount of consumption behavior is compatible with the defendant's age, and the recharge behavior is effective".

Kwai company appealed in the second instance that although the overall target amount of the case was high, the maximum consumption amount was 698 yuan and the minimum was 1 yuan. When the court of first instance tried this case, it did not consider the growth environment of modern minors, their ability to accept new things, and their psychological and intellectual maturity. It mechanically believed that all the transactions conducted by Wu when he was under 10 years old were inconsistent with his age and intelligence, which was the result of the wrong application of law, which seriously damaged the business interests of Kwai company.

The judgment of this case does not support the opinion of Kwai company. It can be seen that the consumption of minors on game and live broadcasting platforms is generally characterized by obvious continuity and density. It is inappropriate to discuss the effectiveness of a single transaction without considering the time span and frequency. In order to protect the interests of minors The effectiveness of continuous transactions in a short period of time should be comprehensively considered.

### (3) Suggestions to the platform and users

For some comprehensive shopping e-commerce platforms, it is necessary to study and formulate a table for the shopping needs of minors, in which purchasers of different ages corresponding to different categories and goods are recorded, and a large number of transactions of minors that meet their cognitive levels are included in normal transactions, Abandon the traditional civil theory that the person with limited capacity for civil conduct needs to be ratified to perform acts, such as the practice that "the contract concluded by the person with limited capacity for civil conduct needs to be ratified by his legal representative". At the same time, it should be noted that when determining the effectiveness, due consideration should be given to protecting minors and their interests, and ensuring the integrity and security of transactions. Protect the trust interests of the counterparty to the transaction and safeguard the security and fairness of the transaction. <sup>[6]</sup>

For users, due to the continuous improvement of the network information environment and the particularity of minors' identity, minors will gain more independent trading voice in the online world if they purchase goods according to categories. So that they can gain a sense of identity as normal trading subjects in online trading activities, and let minors become eligible identity subjects within the scope of specific commodities. At the same time, the continuous upgrading and improvement of electronic signature and electronic authentication technology can also better supervise the conclusion of minors' electronic contracts. It is conducive to enhancing minors' awareness of independent trading, making reasonable plans for money, avoiding blind and impulsive consumption, and better integrating into modern economic society.

## Epilogue

The traditional civil theory is not only unrealistic to the network transaction, but also reduces the transaction efficiency, which is not conducive to the development of the network economy. Whether the restrictions on minors' contracting ability should be relaxed in the e-commerce environment, the essence of the consideration is the protection status of minors' interests and bona fide counterparts in jurisprudence and how to achieve the balance of their interests. The principles of traditional civil law and the legal principles contained therein all take the special protection of minors as the primary purpose. <sup>[7]</sup> And from another perspective, restricting minors' purchase rights is ostensibly to safeguard the interests of consumers, but in fact it is a great damage to the interests and enthusiasm of the other party to the transaction. It violates the fast and convenient characteristics of online shopping and the principle of fairness stipulated in the civil code.

In the era of electronic information, the asymmetry of information between e-commerce operators and consumers tends to protect the interests of consumers, which is not conducive to maintaining the stability of transaction order. Considering from the perspective of e-commerce operators and consumers, giving reasonable suggestions to both sides of the transaction can not only regulate the behavior of e-commerce platform operators, And can protect the legitimate rights and interests of consumers. In order to adapt to the development of the Internet, the market transaction order and the basic principles of the traditional civil law are just like two ends of the balance, which are biased against any party's interests. Only with the continuous development and progress of the Internet era, and timely updates and adjustments in practice, can we achieve the benign development of minors' online transaction behavior in the e-commerce environment.

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