

SPC Guiding Case No. 266: Huang [X]huan v. [X] Credit Management Co., Ltd. (Personal Information Protection Dispute)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Keywords

Civil / protection of personal information / enjoy first, pay later / credit services / principle of necessity / minimal impact

Holding

The “enjoy first, pay later” function requires the activation of credit services as a necessary condition, and the collection by the relevant credit service provider of personal information reflecting the user's credit or risk status falls within the scope of information “necessary for concluding or performing a contract to which the individual is a party.” Where a credit service provider, in order to provide the “enjoy first, pay later” service, collects the user's relevant credit information in a manner that has the least impact on individual rights and interests, and has fulfilled its notification obligation with respect to the collection of personal information, and the user claims that the collection infringes his or her personal information rights and interests, the people's court shall not support the claim in accordance with the law.

Basic Facts

On March 15, 2021, Huang [X]huan discovered that a credit account had been opened in his name without his permission. He therefore inquired with the customer service of the credit account operator, [X] Credit Management Co., Ltd. (“[X] Credit Company”), and learned that this had resulted from his use of the “enjoy first, pay later” function when activating the Chongqing public transport ride code on March 7, 2021. To activate the Chongqing public transport ride code through an application, one had to click “Agree to the agreement and activate”; below this, blue text stated: “View the [X] Application Chongqing Public Transport Payment Service Agreement, the [X] Service Agreement, and the User Authorization Agreement; authorize the Chongqing public transport ride code to obtain your name, mobile phone number, and ID card number for real-name card issuance.” The [X] Application Chongqing Public Transport Payment Service Agreement stated that the public transport payment service was provided to users by [X] (Hangzhou) Information Technology Co., Ltd. jointly with [X] (China) Network Technology Co., Ltd. (collectively, the “[X] Technology Companies”); that when a user met certain conditions and was unable to pay the ride fee in time, the [X] Technology Companies would pay the ride fee on the user's behalf in advance and acquire a claim against the user for the ride fee; and that the user must agree to authorize the [X] Technology Companies to query the user's credit score as a reference for risk assessment in activating and continuously providing the public transport payment service. The [X] Service Agreement stated that the user authorized [X] Credit Company to collect information from information providers that lawfully stored the user's personal information and to process it, and that the scope of the collected information might include personal identity information, transaction information, performance information, device information, and other information capable of evaluating and reflecting the user's credit or risk status. Huang [X]huan immediately requested the customer service of [X] Credit Company to close his credit account and delete the relevant personal information; subsequently, Huang [X]huan's credit account was canceled and the relevant personal information was deleted.

On March 25, 2021, Huang [X]huan activated an electronic public transport card for Qingyuan City, Guangdong Province, through an application, and reviewed the relevant service agreements. Among them, the [X] Public Transport Payment Service Agreement and the [X] Service Agreement were both marked in blue font and could be clicked to view. These agreements were largely the same in content as the agreements for activating the Chongqing public transport ride code. On April 25, 2021, Huang [X]huan canceled the credit account on his own.

On October 13, 2021, Huang [X]huan brought a lawsuit over a personal information protection dispute, alleging that [X] Credit Company, when he activated the ride code and the “enjoy first, pay later” service, had misled him, coerced him, and activated the credit service unnecessarily, and requesting the court to order [X] Credit Company to cease the infringement and compensate for the damage.

Judgment

The Hangzhou Internet Court rendered the civil judgment (2021) Zhe 0192 Min Chu No. 8058 on April 6, 2022, dismissing Huang [X]huan's claims. After the judgment was pronounced, neither party appealed, and the judgment became legally effective.

Reasoning

The focus of dispute in this case was whether [X] Credit Company's collection of Huang [X]huan's personal information when providing him with the “enjoy first, pay later” function constituted infringement.

First, the collection of the personal information in issue was necessary for the “enjoy first, pay later” contract. In application scenarios such as electronic public transport ride codes, riding first and paying later — that is, “enjoy first, pay later” — is a service provided by commercial entities on the basis of the user's choice, a reasonable use of data carrying personal information, and an innovative commercial application of the creditworthiness mechanism. In this case, [X] Credit Company's provision of the “enjoy first, pay later” function could help third parties reduce the risk of capital loss that might arise from users' non-payment of ride fees, that is, urging users who had not paid their ride fees to repay. In this process, the credit service mainly performed three functions: (1) [X] Credit Company, based on the credit service evaluation system it operated, provided the public transport company and the [X] Technology Companies with the user's credit and risk status; (2) [X] Credit Company received the user's ride order information and payment status synchronously pushed by the public transport company and the [X] Technology Companies, further accumulated order information, and analyzed the user's performance capability; (3) the public transport company and the [X] Technology Companies pushed repayment information to non-performing users through the credit service. Because the “enjoy first, pay later” function involves a third-party platform advancing funds in advance, the third-party platform clearly needs to assess the user's credit status before providing the service and to decide whether to provide the service on that basis, so as to ensure the realization of the claim.

Given that the provisions of the Civil Code of the People's Republic of China on the processing of personal information are relatively general, and that the Personal Information Protection Law of the People's Republic of China had been promulgated and came into effect during the trial of this case, the relevant spirit of the Personal Information Protection Law was referred to in the trial of this case. Paragraph 1 of Article 13 of the Personal Information Protection Law provides that information processing “necessary for concluding or performing a contract to which the individual is a party” is one of the circumstances in which personal information may be processed. As stated above, the collection of the relevant information clearly falls within what is necessary for concluding or performing the contract, and could actually have been carried out without the individual's consent; however, the public transport company, the [X] Technology Companies, and [X] Credit Company nevertheless adopted the method of obtaining the user's consent in advance to collect the information, thereby protecting the user's rights and interests to the greatest extent.

Second, the collection of the personal information in issue fulfilled the statutory notification obligation. Under the “notification-consent” rule in the Personal Information Protection Law, a personal information processor, even if it does not need to obtain the individual's consent to process personal information, is still required to fulfill the notification obligation. In this case, the electronic public transport card in issue was jointly launched by the public transport company, the [X] Technology Companies, and [X] Credit Company, and Huang [X]huan had to review the agreements before applying for it. In this process, the relevant agreements were all placed in prominent positions, reminding users to review them in a manner different from the black font elsewhere on the page, and in the contract text, the clauses on personal information processing adopted obvious markers sufficient to attract the user's attention, such as bold font, enlarged font size, and blue coloring. Therefore, Huang [X]huan's claim that [X] Credit Company misled him into activating the credit service could not be established.

Third, there was no misleading or coercion in the collection of the personal information in issue. Huang [X]huan claimed that the credit service was bundled with the electronic ride code and that he was forced to activate it, in violation of Article 9 of the Law of the People's Republic of China on the Protection of Consumer Rights and Interests concerning consumers' right to decide on their own whether to purchase any service. As a consumer, Huang [X]huan indeed enjoyed the right of autonomous choice; he could ride by paying cash, could choose a physical public transport card, and of course could also choose the electronic public transport card in issue. In this case, the public transport company did not force him to choose the electronic public transport card to ride. At the same time, the Electronic Public Transport Card Service Agreement clearly informed users that if they did not wish to continue using the service, they could apply to cancel the card or stop using the service on the electronic public transport card service page. The [X] Service Agreement also clearly informed users that they had the right to close the authorization through the path of “My — [X] Credit — Credit Management — Authorization Management” under the application. It can thus be seen that both the public transport company and [X] Credit Company gave users the corresponding right to autonomously choose the service, and users could also terminate the authorized use of their personal information in a relatively convenient manner.

Fourth, the collection of the personal information in issue conformed to the principle of minimal necessity. Article 6 of the Personal Information Protection Law provides: “The processing of personal information shall have a clear and reasonable purpose, shall be directly related to the purpose of processing, and shall be carried out in a manner that has the least impact on individual rights and interests. The collection of personal information shall be limited to the minimum scope necessary to achieve the purpose of processing, and personal information shall not be collected excessively.” In this case, the credit service, by conducting a credit evaluation of the user in advance, provided the public transport company with only conclusive information on “admission or non-admission,” which was necessary to realize the “enjoy first, pay later” function and conformed to the principle of minimal necessity.

In summary, [X] Credit Company's processing of Huang [X]huan's personal information did not violate legal provisions and did not constitute infringement of Huang [X]huan's personal information rights and interests.

Relevant Legal Provisions

Article 1035 of the Civil Code of the People's Republic of China.

Articles 6, 13, and 17 of the Personal Information Protection Law of the People's Republic of China.

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