



Legal Perspective and Efforts on Animal Right from Consumers’ Foundation (CFCT)

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ABSTRACT:

In our current legal system, pets are considered as goods and objects. We still don’t have specific regulations about the civil relationship of pet sales contracts. Therefore, we may only resort to general provisions in the Civil Code and Consumer Protection Law. However, with a trend towards heightening the animal protection, it would not be appropriate to equate pets in the same breath with lifeless goods. Applying general civil provisions to deal with disputes concerning pet transactions sometimes may contravene the idea of animal protection, offend the owner’s sensibility toward pets, hence not commensurable with bioethics and jurisprudence. At a time when the relationship between human and pets are getting closer in our modern society, ignorance of animal’s life value will lead to deficiency of laws in solving “living” social problem properly. This paper shall focus on pet sales contract to discuss the following issues: firstly, we’ll begin from typical cases which CFCT dealt with to review the cause of actions, elements of the claim, and liability of seller in our legal system; secondly, we’ll bring up proposals for standard form contract of pet sales; finally, we hope that by our efforts the legislature, administration and judiciary will face squarely with the bioethics and legal issues for pet sales contract to establish a more harmonious relationship among human-animal and inter-person subjects.

Keywords: Pet, animal right, transaction, animal protection law, consumer protection law

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中華民國消費者文教基金會關於動物權益 的法律觀點與行動投入

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摘要

在我們現行的法律體系中，寵物被視為商品及客體。目前亦未有特別的法令規範寵物買賣契約的民事法律關係。因此，我們只能依據一般性的民法規定與消費者保護法去解決相關的交易糾紛。然而，隨著動物保護愈受重視，我們會發現將動物與無生命之商品等同視之，是非常不妥當的。適用一般的民事法律規定去處理寵物相關交易問題，有時除了違反動物保護的概念，同時也傷害飼主對寵物的感情，難符生命倫理學及法律學之要求。現代社會中，寵物與人的關係越來越密切，忽略動物的「生命」價值將導致法律在解決社會中的「生活」問題之重大缺陷。本文將聚焦在寵物相關契約，並依序討論以下議題：首先，我們將以中華民國消費者文教基金會處理的一些典

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型的案例來檢視這些糾紛的原因、消費者訴求重點、與相關業者在我國法律體系中所應擔負的責任；其次，我們將提出寵物買賣的契約之建議。希望藉由如此的努力，立法、行政與司法體系將可以更加正視這同時是生命與法律的議題，為人與動物暨人與人之間，建立更和諧的關係。

關鍵字：寵物、動物權、買賣、動物保護法、消費者保護法

I. Introduction

Consumers' Foundation, Chinese Taipei (CFCT) was founded in 1980. CFCT is an independent, non-profit organization. It is not aligned with or supported by any political party or industry. It strives to promote a fair society through defending the rights of all consumers by supporting the consumer movement in general, and campaigning at the national level for policies related to consumer concerns. In 2006, CFCT established the Animal Protection Committee, and continues showing great consideration for animal-related issues to enhance the animal welfare as well consumer rights.

At a time when the relationship between human and pets are getting closer in our modern society, ignorance of animal's life value will lead to deficiency of laws in solving "living" social problem properly. This paper will firstly begin from typical cases which CFCT dealt with to review the cause of actions, elements of the claim, and liability of seller in our legal system; secondly, we'll bring up proposals for standard form contract of pet sales; finally, we hope that by our efforts the legislature, administration and judiciary will face squarely with the bioethics and legal issues for pet sales contract to establish a more harmonious relationship among human-animal and inter-person subjects.

II. Pet Food Safety and Labeling

In 2007, pet food contaminated with melamine imported into the United States sickened and killed cats and dogs. It is worth noting that those defective goods were produced by some major brands. Similarly, Taiwan has Pedigree dog food events in 2004, and yet Taiwan still has no regulations governing pet food safety. In view of this, CFCT had inspected 10 dog foods and 10 cans sold in market for heavy metals, melamine, sodium and preservatives. The results showed that: A. there is a "canned dog food" labeled as "beef flavor" but ingredients are chicken and tuna with beef spices. B. in terms of additives, there are eight pieces found preservatives- sorbic acid, of which two are high amount.¹ Actually, Taiwan does not have any regulations for pet food, and the current "Feed Management Act"(2002) applies only to economic animals such as livestock, poultry or aquatic, and pet foods are not included. Therefore, enterprises may only follow the "Commodity Labeling

¹ Consumers New, CFCT, 368, 2011.12, pp. 26-35.

Act”(2011), and have no obligation to show details about additives. Either, there is no standard or maximum level set of additives for pet foods.

Although the Council of Agriculture (COA) conducted public hearings in April 2009 concerning the draft of pet food safety, yet the legislative procedure is not accomplished. Recently the authority switched these related provisions into the amendments of “Animal Protection Act”(2013), and since the bill is on first reading, there will be a long road to go for completing the legislation.

III. Pet Clothing and Labeling

Many pet owners treat their pets as family members, and consequently an ever growing market for pet products including clothing is blooming. Considering consumer’s health as well as animal, in August 2011, CFCT entrusted the Bureau of Standards, Metrology and Inspection (BSMI) to inspect 14 samples purchased from shops in Taipei and Taoyuan area, priced between NT \$ 85-800.² Although there is no regulations provided the quality of pet clothing, the inspection was conducted with reference of CNS 15290 “Textiles Safety Regulations (General Requirements)” to have “formaldehyde” and “azo” testing, and followed the “Commodity Labeling Act”(2011)³ to view if product labeling conforms to the law.

According to Article 4(1) of the “Commodity Labeling Act”(2011), the term “labeling” as used in this Law shall refer to the expressions or descriptions made by the business operators on the body, the inner and/or the outer packages, and the instruction books or sales literature of any commodity while putting such commodity to display for sale thereof.

Where a commodity is introduced for sale on the market, the particulars which shall be labeled for the commodity by the producer, manufacturer or importer of such commodity are as follows (Article 9 of the Commodity Labeling Act, 2011):

- (1) Name of the commodity;
- (2) Name, telephone number and address of the producer or manufacturer, the place of origin of the commodity, and the name, telephone number and address of the

² <http://www.consumers.org.tw/unit412.aspx?id=1528> (last visited: 2014/2/25).

³ The law was promulgated by Presidential Decree on January 22, 1982, and amended in 1991, 2000, 2003, and 2011.

- importer in the case of imported commodity;
- (3) Contents or composition of the commodity:
 - a. Major components/ingredients or materials;
 - b. Net weight, volume or quantity, or measurements which shall be labeled in statutory measuring units, other measurements may be added , when it is deemed necessary;
 - (4) Date of manufacture in Chinese calendar or Gregorian calendar; and the expiration date or the term of validity, if the commodity has a limited duration of storage; and
 - (5) Other particulars as required by the central government competent authority.

Fortunately, the inspections of 14 samples are in line with the requirements, and it's a very good sign. Notwithstanding there is no national standard about quality and labeling basis of pet clothing yet, we'll keep highly recommending the authority to develop related norms actively and to supervise the consistency of labeling with the contents.

IV. Short-Term Pet Care (Fostering)

Frequently the complaint cases CFCT received also include pet foster care disputes. Once an owner went abroad for twenty days and fostered his Dalmatian; terribly, he came back and found the dog as thin as lath, besides, since the big dog was locked in a unsuitable cage for long periods of time, the dog's limbs and buttock developed pressure sores. Sometimes, dogs and cats are infected with the disease or parasite in foster care and a few sad cases are even casualties because of bad boarding environment.⁴ These disorderly situations really let pet owners and animal rights are infringed, not to mention the lost pets in foster care process, or unscrupulous breeding by traders.

According to the "Animal Protection Act"(2011), any person who operates the pet breeding, trading or fostering industry of specific pets for profits shall apply for a license to the municipal or county (city) competent authority and obtain the business license pursuant to applicable laws before such operation. The law also empowered central competent authority to regulate the person who runs the pet breeding yard, trading and fostering industry of specific pets. Therefore, we then have the "Regulations on Designated Pets Industry" which provides several points related to pet fostering including: the

⁴ <http://www.consumers.org.tw/unit412.aspx?id=599> (last visited: 2014/2/25).

qualifications, facilities, full-time staff, application procedures, expiration and renewal of the license, grounds for revocation or abolishment of licenses.⁵

Anyone who intentionally maltreats or harms animals so as to cause serious handicap to their bodies, malfunction of their major organs or their death is subject to a fine between NT\$100,000 and NT\$500,000, whose name, title or picture may be announced.⁶

If the fostering business operators of specific pets violate regulations stipulated by the central competent authority in accordance with Paragraph 2 of Article 22 regarding the qualifications, facilities, and full-time personnel that are required, the offender shall be subject to a fine between NT\$40,000 and NT\$200,000, and shall remedy such violation by a given deadline, whose name, title or picture may be announced. Offenders who do not remedy by the given deadline may be fined per abolishment of the license.⁷

However, there is no “Template of Standard Form Contract for Fostering” yet for consumers and business operators to refer. When business operators thus refuse to set any written contract with consumers, and some disputes happened, such as the cases this paper states above, it will be another battlefield coming after the sorrow for pets.

V. Pets and Transportation

In Taiwan, the transport industry has no uniform rules for pet transportation. In February 2013, the Animal Protection Committee of CFCT investigated 57 business operators for their variety policies about fee and prohibition. CFCT found that 32 companies (58%) charge for carriage, and, on the contrary, 23 companies (42%) charge free (of which Taiwan Railway is included since its free policy for small cats and dogs. Besides, two companies which ban on pet are not included in the statistics).⁸

On the domestic aviation industry, the current regulations have almost no provisions for passenger with pets. Therefore, the aviation transporters usually base on the standard form contract for carriage to deal with passengers.

In passenger transport section, the norm related to this mainly from the “Restrictions

⁵ See Regulations on Designated Pets Industry, Art. 3 and Art. 5.

⁶ See the Animal Protection Act, Art. 25.

⁷ See the Animal Protection Act, Art. 28.

⁸ Consumers New, CFCT, 382, 2013.02, pp. 22-27.

and Charges of Highway Automobile Transportation on Passengers Carrying Small Animals” actually is disputed from legal point of view. Because the “Highway Act” (2013) legislated by the Parliament authorized the Ministry of Transportation and Communications (MOTC), however, MOTC assigned jurisdiction to the Automobile Transporters Associations instead of setting rules by itself. Consequently, rail transportation enterprises, domestic aviation transporters or other mass transporters are regulated by the same authority though, the practice of pet carriage is still out of frame.

VI. Pet Grooming

Pet grooming services in modern society include bath, nail trim, ear cleaning and teeth brushing or other packages which can be simply divided into charge by times and prepaid grooming. In December 2010, CFCT made telephone interview randomly 8 pet grooming services providers and found that the prepaid pet grooming recorded on paper, card or issued beauty coupons. Especially, four of six shops using cards to record prepaid grooming kept that transaction documentation unilaterally. Nearly 90% of these prepaid transactions are with time-limit term and no escrow.⁹

Some common accidents which may happen during the grooming process are injuries, such as shearing injury, nail bleeding, or, occasionally respiratory failure while using the dryer to dogs and cats suffering from cardiopulmonary diseases, improper use of anesthetics for clipping or shaving, and even serious violence.

Therefore, in order to protect the interests of consumers and animal safety, CFCT suggested that it will be a better way to avoid disputes in advance as well as to reduce misconduct by recording the video image throughout pet grooming process. Furthermore, this article highly recommend the competent authority to prescribe relevant provisions of health management that pet grooming shop may conduct, including selling pet care products etc. to draw a clear line between grooming care and medical treatment for pets. Meanwhile, issuing the “Template of Standard Form Contract for Pet Grooming” for consumers and business operators may be an efficient way at this stage to protect consumers’ interests and animal safety.

⁹ <http://www.consumers.org.tw/unit412.aspx?id=1419> (last visited: 2014/2/25).

VII. Pet Sale

In addition to receiving pets as gift from relatives and friends, most people tend to adopt stray animals or buy pets at shop as well as from neighbors since Taiwan's law does not forbid household breeding. However, once the pet got health problems and disputes arise, not only consumers can not get appropriate legal remedies but also pets may suffer bad treatment, sometimes, even abandonment. Taiwan's law does not deal with the special nature of pets sale, so applying to the warranty rule of sale contract provided in Civil Code can not reasonably solve disputes occurred, instead, the owners' feelings and animal welfare hurt.

Considering the growing disputes of pet sale, the Council of Agriculture as the competent authority of animal affairs has requested the Pet Association and Veterinarian Association to propose a template of standard form contract for pet sale (draft)¹⁰ in 2004. However, the views of pet industry, veterinarians and animal protection groups are totally different,¹¹ so there was no final consensus on this draft, nor any announcement and implementation made by the Council of Agriculture.

This article strongly believes, "animal protection," "equal agreement," "justice," and "reducing the burden to proof," are guiding principles for pet sale contracts, and of the first importance is protecting animals with congenital diseases to be treated properly. Secondly, the seller should reasonably share responsibility for the cost of pet therapy on the basis of consideration of sale. Positively, this will prompt the seller to exercise the due care to keep pets healthy. In this regard, pet sale contract may draw the terms of compensation for the cost of pet diseases, and for respecting the unique of every animal, the buyer may choose not to rescind the contract, and requests the seller should be liable for the cost of pet therapy.¹²

Finally, as human creature, pet health often has complex medical problems and

¹⁰ See the full template. <http://34c.cc/file/agreement.doc>(last visited: 2014/2/28).

¹¹ See the details of different views. http://www.east.org.tw/that_content.php?id=122(last visited: 2014/2/28).

¹² Ju-Yin CHEN, "Liability of Warranty for Pet Sales Contract: Perspectives from the Animal Protection and Consumer's Rights," *Law journal of Chung Yuan Christian University* (TSSCI), 30, 2013.06, p. 8,12, 32.

uncertainty. Thus, when pet health and medical issues turn into contractual disputes, terms of proof or excessive inspection procedure will likely make the claimer struggle to collect evidence and may also lead to waste of social resources.

VIII. Conclusion

Before the related law in Taiwan fundamentally changes the status of the pets as kind of special object in legal systems, the executive, the judiciary as well as legal scholars applying the current laws and in handling transactions involving the relationship between animals and human should pay attention to the relevant provisions of the Animal Protection Act and be sure to have appropriate bioethics literacy. Moreover, even if we still tentatively maintain the concept of “objects” to pets in private trading relationship, beware of strengthening the protection of consumer is one possible legal strategy on account of the unique value that pets mean to the owner. In this paper, we analyze common disputes including pet food, clothing, short-term foster care, transportation, grooming services, and sale. Also we suggest some good way for authority, industry and consumer to deal with problems which exist in our legislation, and we propose some terms for develop template of contract. Hoping these efforts may help to build better relationships between humans and animals.

Reference

Consumers New, CFCT, 368, 2011.12.

Consumers New, CFCT, 382, 2013.02.

Ju-Yin CHEN, “Liability of Warranty for Pet Sales Contract: Perspectives from the Animal Protection and Consumer’s Rights,” *Law journal of Chung Yuan Christian University*, 30, 2013.06.

