

**BFSU-WANHUIDA IP MOOT COURT PROBLEM****Beijing Foreign Studies University, 2023**

Before:

The People's Court of Haidian District, Beijing

Forest Company

as PLAINTIFF

vs.

New Face Company

as DEFENDANT

**Facts****I**

Forest Company is the operator of Forest.com. Forest.com is a renowned online retail platform in China. More than one million stores open retail businesses on this platform, attracting over 500 million buyers and more than 50 million daily visits. To settle in the Forest platform, all sellers and buyers are required to accept the Forest Platform Service Agreement. The Forest Platform Service Agreement will pop up when the users open the website and click the registration button. By clicking "Accept" the users can become platform subscribers and accept the various services provided by the platform. By clicking "Not Accept", the users will exit the registration interface. Unregistered users can browse the platform's web pages and search for products but cannot carry out sales and purchase activities. In addition to the online retail platform, Forest also operates an Express Payment app, which has become one of the most important mobile payment apps in China.

The Forest Platform Service Agreement contains the following contents:

- (a) This agreement is concluded by you and the Forest platform operator. This agreement has contractual effects on both sides.
- (b) When you use the services provided by Forest, you agree that Forest collects, stores, uses,

discloses and protects your personal information in accordance with the Privacy Policy published on the Forest platform. (c) In order to facilitate your use of other relevant services provided by Forest, you authorize Forest to transfer to Forest-operated Express Payment app and other relevant service providers the information that is offered and formed during the process of your account registration and use of Forest platform services.

The Forest Privacy Policy states that:

1. Before using the services of the Forest platform, you must carefully read and thoroughly understand this policy, and use relevant products or services after confirming your full understanding and agreement of it. As long as you use the services of the Forest platform, it indicates that you have fully understood and agreed to this policy.

2. How do we collect and use your information:

(a) In order to facilitate you to become our member and enjoy our membership services, you need to provide your mobile phone number and e-mail address. If you only need to utilize basic services such as browsing and searching, you don't have to register as our member or offer the above information. During the process of membership registration, if you supply the additional information (your real name, gender, date of birth, residence, and real face, etc.) to complete your personal data, it will be helpful for our provision of more personalized membership services such as member birthday privileges. Without this information, it will affect your use of personalized services, but will not hinder the basic functions of Forest services such as browsing, search and purchase. When you voluntarily cancel your account, we will make it anonymous or delete your personal information as soon as possible according to the requirements of laws.

(b) In order to display and recommend goods or services to you, we will extract your features of browsing, search preferences, behavior habits, location etc., based on your browsing and search records as well as information on equipment, location and order; we will also make indirect user-group portraits based on feature tags for display and promotion. If you wouldn't like to receive our commercial advertisements, you can cancel them at any time through corresponding product unsubscribe button.

(c) For providing goods or services to you, (i) **The information you offer to us.** To facilitate the delivery of goods or services to you, you need to provide the name, address, postal code and phone number of the consignee. If we entrust a third party to deliver the goods or services to you, we will share the above

information to the third party with your consent. If you refuse to provide such information, we will not be able to complete relevant delivery services. In order to complete the transaction, you may need to provide an Express Payment account and select a payment method so that we could know about your payment status. (ii) **The information we collect during your use of the services.** In order to supply you with page display and search results that cater more to your needs, as well as to understand the suitability of the products and to identify abnormal status of the account, we will collect and correlate the information about the services you use and the way of use, including information on equipment and daily logs. If we combine this kind of non-personal information with other information to identify the identity of a specific natural person, or employ it with personal information, then during this combined use, such non-personal information will be considered as personal information. Unless otherwise authorized by you or stipulated by laws and regulations, we will anonymize and de-identify such personal information; (iii) **Your personal information that we collect through indirect accesses.** In order to confirm the transaction status and provide you with after-sales and dispute resolution services, we will collect your transaction, payment and logistics information related to the transaction progress based on your choices of the trading partners, payment institutions and logistics companies, or share your transaction information with the above service providers. When you enjoy the above services through our products or services, you authorize us to receive, summarize and analyze, according to our actual business and cooperation needs, your personal information or transaction information from our affiliates whose sources we confirm legal or that is provided to us by our affiliates upon your permission. If you refuse to supply the above information or refuse to grant the authorization, you may not be able to access relevant products or services of our affiliated companies, or display relevant information, but it will not hamper the use of our core services such as browsing, search, trading, etc. on the platform.

(d) To guarantee security. Please note that in order to ensure membership authenticity and greater security, you'd better offer your personal sensitive information such as ID card, passport and biometric information such as facial features to complete real-name authentication. If you refuse to do so, you may not be able to access services such as account management, creating stores, selling goods, and continuing transactions that may have risks, but it will not hinder such use of services as browsing and

searching. In order to enhance the security for your use of services supplied by us and our affiliates and partners, we may use or integrate your membership, transaction and equipment information, relevant network logs and the information that our affiliates and partners have obtained with your authorization or shared according to law, so as to comprehensively measure your account and transaction risks, conduct identity verification, detect and prevent security incidents, and take necessary measures of recording, auditing, analysing and disposing according to law.

(e) Other uses. When we utilize information for other purposes not specified in this policy, or use information originally collected for specific purposes instead for other ends, we will seek your consent in advance.

(f) Exceptions to authorization and consent. According to relevant laws and regulations, it is not necessary to obtain your authorization and consent to collect your personal information under the following circumstances, including: the collected personal information is disclosed to the public by yourself.

3. How do we share and transfer your personal information: (1) Sharing, including: sharing after obtaining explicit consent, under legal circumstances, or with third-party service providers, with affiliated companies, and with authorized partners. (2) Transfer, including: transfer after obtaining explicit consent, or in case of merger, acquisition or bankruptcy liquidation of Forest service providers. (3) According to law, sharing and transferring personal information that has been de-identified and ensuring that the data receiver cannot recover and re-identify the subject of personal information, cannot be categorized as external sharing and transfer of personal information, and the storage and processing of such data will not entail further notification and your consent.

## II

"Vendor Aid" is a seller-side retail e-commerce data product developed by Forest Company, which was officially launched in September 2022, aiming to facilitate sellers on the Forest platform in understanding the various needs of buyers on the platform and afford a data reference for the operations of the sellers' stores. The "Vendor Aid" furnishes derivative data such as exponential, statistical and predictive data. Such data is processed from the massive original data which is formed when the Forest Company records and collects the traces left by the users' activities (browsing, searching, collecting, adding-to-cart, trading etc.) on the Forest platform. By way of data masking, the users' personal and private information is removed and the data is

then processed, analyzed and integrated in an in-depth way.

On the homepage of "Vendor Aid", there are seven sections, including "Industry Live Broadcast", "Industry Market", "Commodities and Stores List", "Search Term Analysis", "Buyers Group Portrait", "Sellers Group Portrait", and "Search Group Portrait". "Industry Live Broadcast" presents the trend chart of the transaction amount and order number of the stores operated by users, and the ranking data in the peer stores ranking list. The "industry market" demonstrates the market trend chart of various commodities parameters and the ranking data of sub-category commodities trading index. The "Commodities and Stores List" displays the ranking data of the traffic index, transaction index and search popularity, such as the hot selling commodities list, the hot selling shops list. "Search term analysis" shows the ranking data and trend chart of search popularity and click rate of various commodities keywords. The "buyers group portrait" provides data of various commodities buyers that is, the proportion of their gender, age, occupation, regional distribution, consumption level and membership grades, etc. The "sellers group portrait" supplies data such as the number, ratings and percentage of sellers. "Search group portrait" brings out data of the group of people who search for certain goods on proportion of their gender, age, occupation, and payment habits, etc. The data revealed by the "Vendor Aid" is all predictive, exponential and statistical information in the forms of trend chart, ranking list, percentage chart, etc. No data information is found that can identify specific individuals. The annual usage fee is RMB 3000 yuan.

Users of the "Vendor Aid" must sign the "Vendor Aid Retail E-commerce Big Data Software Services Agreement". The agreement, among others, provides as follows: This agreement is signed by you and the Forest Company. Once you click to confirm this agreement or accept it in other ways (including but not limited to: not clicking to confirm this agreement but using the Vendor Aid big data Software), it signifies that you have accepted the terms and conditions of this agreement. The "Specifications for Users" of the Agreement contains the following prohibitive clauses: It is prohibited to sell, lease, lend or otherwise provide the account to a third party; it is prohibited to disclose, transfer, sell, license or otherwise provide the data obtained through the Vendor Aid software to any third party. It also stipulates that: "In order to better service you and other users, you irrevocably authorize Forest to process, analyze information of your store on the Forest platform, and to display in the Vendor

Aid platform the result of those processing and analyzing. Your aforementioned authorization is free and effective for a long term, and will not be suspended, terminated or invalidated by suspension, termination or invalidation of this agreement."

### III

New Face Company (hereinafter referred to as "NF") is the operator of the "NF mutual Assistance Platform". The NF Platform serves to share information and business opportunities. Users download and install the NF app. After registering and logging in, they will enter the app homepage. Several popular software names will appear, such as Microsoft 365, Tencent VIP, etc. The NF platform offers diverse sharing methods according to varied operation strategies of each software. The basic idea is to give the lessor of software membership a commission return, or a rental return which is higher than its annual fee for software use, so that software members can obtain additional benefits by renting out membership on the NF platform. In order to reduce the communication costs between the lessor and the lessee and make the process more efficient and reliable, regardless of the sharing methods, the lessor and the lessee do not trade directly, but instead with the NF Platform respectively according to the lease-in fee (lessee) and commission or lease-out fee (lessor) set by the NF platform, and NF gains incomes from the difference. Due to interest incentive, the NF app has been installed and used by a large number of relevant software users. At the same time, it has attracted a large number of lessees, because they can access those softwares with less cost. In a few months after its launch, there have been tens of thousands of registered users.

At the top of the "NF Platform" homepage is the "Forest Vendor Aid" column. After clicking to enter, you will see the options such as "Vendor Aid Sharing Rules", "Vendor Aid Lease-in", "Vendor Aid Lease-out" and " Making Money by Customer Referral". Enter the "Vendor Aid Sharing Rules" column, it displays: "lessee (computer + NF app) → NF private network (automatic remote connection) → lessor (computer + NF app + Forest user account) → Forest Vendor Aid (automatic login)". Through the above methods, the lessee can log in to the lessor's computer remotely through the way provided by NF and use Forest Vendor Aid with the lessor's membership. Enter the "Vendor Aid Lease-in" column, it shows: "tens of thousands of

customers' choice, more than 300 accounts for renting out"; "Forest price 3000/year, NF price 1000/year", etc. Enter the "Vendor Aid Lease-out" column, it displays: "Lease out the account easily: download and install the NF app, click to register, log in, add a Vendor Aid account, view the income", "Benefits of leasing-out: instant earning, guaranteed income" and so on. Enter the "Making Money by Customer Referral" column, it shows: "For each customer referral, one can draw a prize with a maximum value of 100 yuan, and can also get 15% commission from subordinate level consumption". There is also the "Help Center" column, it displays: "lease-in fee standard: RMB 20 yuan/time, RMB 100 yuan/month, RMB 1000 yuan/year"; "Lease-out benefits: Vendor Aid account sharing entails the following benefits: on hook for eight hours a day and being used for more than five times brings about commission: RMB 15 yuan/day" etc.

Registration on the "NF Platform" requires acceptance of the "NF Platform Service Agreement", in which it is provided that the user allows NF Platform to collect and use the user's personal information such as purchase, sales, delivery address, payment method, etc. on this and other relevant platforms for the purpose of serving the user. Only by clicking "I accept" can you register as a user and enjoy all services on the NF platform. Based on this information, users can conveniently get access to the services provided by the NF platform without filling in relevant personal information again. For example, without the users' filling in delivery addresses, the NF platform will automatically introduce the frequent addresses of the users on other platforms; or without entering the date of birth, the users can enjoy birthday special offers and various discounts on the NF platform. The NF platform will also recommend goods or service to users based on their operations on this and other relevant platforms. These recommendations are automatically made by the NF platform system based on its analyses of user preferences. The NF platform will gain advertising revenues from the recommended commodities providers in proportion to the number of recommended information. Forest is among those platforms on which user's information is collected and used by NF on above purposes.

### **Litigation**

On March 1, 2023, Forest Company filed lawsuit against NF Company in the

People's Court of Haidian District, Beijing Municipality, requesting the Court to order that the following acts of NF constitute unfair competition: 1. Instigate, entice, organize and help Forest's "Vendor Aid" users to download the NF app, lease out the "Vendor Aid" accounts on the NF platform, and make profits therefrom; 2. Instigate, entice, organize and help users of the NF app to lease in the "Vendor Aid" accounts of Forest Company, and supply technical assistance for them to login to the lessors' computers to view the "Vendor Aid" product data remotely, and make profits therefrom; 3. Collect the transaction information of the Forest users on the Forest platform who have registered and used NF platform, and make profits therefrom. Forest Company requests the Court to order NF Company to immediately refrain from the infringement and compensate for the losses, and to impose punitive damages on NF Company.