

An Analysis of the Legal Status and Liability of the Anchor of Livestream Marketing

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Abstract: With the rapid development of livestream marketing, this industry presents huge market potential and better development prospects. But behind the growing prosperity of the industry, because livestream marketing is a cross behavior that is a mixture of trading behavior and publicity behavior, the anchor's identity is difficult to clarify. And because of false advertising and poor product quality, it further makes it difficult for consumers to defend their rights. In order to solve the above-mentioned legal issues, it is therefore important to analyze the legal status and legal liabilities of the anchor. However, due to the multiple identity attributes of the anchor, it may be an e-commerce operator, advertisement publisher, or advertising spokesperson at the same time. The first prerequisite for clarifying the legal liability of the anchor is to distinguish the legal status of the anchor in different livestreaming scenarios. And then The anchor shall be investigated for legal liability according to the method of improper behavior.

Keywords: Livestream Marketing, Legal Status, Product Quality, False Advertising

With the rapid development of Internet technology, the popularization of mobile Internet terminals, and the continuous expansion of network users, livestream marketing has created a sales miracle. Entering 2020, according to the data released by KPMG and Ali Research Institute, the overall scale of live e-commerce will exceed one trillion in 2020, and it is expected to be close to 2 trillion in 2021. In the first half of 2020, the national e-commerce live broadcasts exceeded 10 million, which is equivalent to more than 50,000 live broadcasts every day. Livestream marketing, a brand-new "e-commerce and live broadcast" sales model, came into being. In simple terms, livestream marketing is the use of livestream technology to recommend various products to fans by internet celebrity anchors. Compared with the traditional e-commerce sales model, livestream marketing has stronger interaction and affinity, and can simplify the sales path and establish a direct connection between products and consumers. For consumers, people can observe product details more intuitively and enjoy lower discounts. For e-commerce operators, they can develop new online shopping customers, increase the stickiness of online consumers, and greatly increase product sales.

Livestream marketing can actively drive and promote people's consumption. But behind the continuous expansion of the market size, it also means that the market needs to be regulated and further developed.

1. Issues in livestream marketing

1.1 The nature of the anchor's behavior and identity positioning are unknown

The new model of livestream marketing has broken the traditional e-commerce business structure. The number of participants has increased and the relationship has become more complicated. In actual operation, there are endorsement stars, well-known anchors, and Internet celebrity shop owners and ordinary shop assistants to promote their own products. Moreover, the live anchor uses its influence on the network platform to conduct live broadcast promotion and directly or indirectly facilitate transactions. The work content of the anchor determines that it surpasses the role of traditional e-commerce platform operators and sellers, and is more like an advertising spokesperson.[1] This practice blurs the line between online promotion and general advertising. This makes the anchor look beyond the above-mentioned "seller" role and more like an advertising subject. In the case of close integration of propaganda behavior and transaction behavior, how to locate the anchor identity and how

to determine the relationship between livestream marketing and advertising endorsements are very complicated issues. In particular, there are many disputes over whether the "Advertising Law" can be applied. In such a chaotic situation, ordinary consumers cannot tell what role anchors play in the process of online live shopping. Sometimes they are like e-commerce operators and sometimes they are like hired sellers. From the point of view of their advertising products, they look like advertising spokespersons or advertising publishers. The anchor's multiple identities make consumers have a fuzzy perception of the anchor's main status, which not only affects the consumer's shopping experience, but also directly creates barriers to consumer rights protection

1.2 Consumers' rights and interests are vulnerable to infringement in live online shopping

Due to the lack of necessary market regulations, a lot of chaos has appeared in this emerging industry. This has led to a weakening of consumer trust in livestream marketing, which may cause the cooling of the livestream e-commerce market. We can roughly summarize the common problems into three categories: the first is exaggerated publicity and false marketing. In order to increase sales, anchors have exaggerated descriptions of product quality, raw materials, use effects, and cost-effectiveness. During the live broadcast, radical words appeared in the slogan, such as "unprecedented lowest price" and "super premium". Some anchors contain false information during live broadcast. The anchor uses technical means to modify the background data and create a false and hot atmosphere to induce consumers who are at a disadvantage of information to consume impulsively. These actions not only infringe on the rights and interests of consumers, but also undermine fair competition in the industry. The second is that it is difficult to guarantee the quality of live broadcast products. Some products are infringing products or even substandard products. This practice seriously infringes the rights and interests of consumers. The third aspect is the lack of after-sales protection and the difficulty in safeguarding rights. Due to the special transaction methods of live online shopping, consumers may face the situation that orders cannot be cancelled, transaction vouchers are difficult to save, and no after-sales service is available. According to the "Online Survey Report on Consumer Satisfaction of Live E-commerce Shopping" released by the China Consumers Association, the complaint process of live e-commerce is complicated and cumbersome. After-sales service is poor, no operator can be found for rights protection, and the chain of evidence is incomplete. Some consumers are worried about the lack of guarantee of product quality and after-sales service, and they clearly express that they do not like livestream marketing and will not purchase products through this method. As consumers' awareness of rights protection is relatively weak, it also has a negative impact on the healthy and sustainable development of livestream marketing.

2. Anchor's legal status and possible legal liability

The prerequisite for distinguishing the legal status and legal liability of anchors is to clarify what kind of legal adjustment scope livestream marketing belongs to. At present, it is generally believed that livestream marketing should be regulated by the E-Commerce Law, Consumer Rights Protection Law and other laws, but it is disputed whether it falls within the adjustment scope of the Advertising Law. However, according to Article 2 of the Advertising Law, livestream marketing is judged. The first is that the supply side of livestream marketing is a large number of merchants, who are commodity operators or service providers; the second is that livestream marketing utilizes the recognized information medium of the Internet; the third is that livestream marketing is essentially a kind of commercial promotion with a distinct marketing purpose; the fourth is that if livestream marketing occurs within the territory of the People's Republic of China. It fully meets all the qualifications for commercial advertisements adjusted by the Advertising Law, so the livestream marketing should fall within the scope of adjustment of the Advertising Law.[2]

2.1 Anchor's legal status

The special business model of livestream marketing is to closely link live online, advertising, and e-commerce operations. Anchor is the axis connecting the three, so it should have multiple identities. In the context of multi-field intersection, the legal status of the anchor is directly related to its behavior mode, and it should be discussed in different situations.

2.1.1 The anchor and the operator are the same legal subject

This is the case in which Merchants sell products live for their own stores, or online celebrity

anchors promote their own brand, self-produced or operated products through the live broadcast room. In this case, the anchor and the operator are the same legal subject. First, the anchor description and explanation Information about goods or services; secondly, according to the interactive situation in the livestream marketing room, the anchor supplements the relevant information about the goods or services. The content described by the anchor is clear and specific (such as including the name and price of the product), which can be regarded as an offer in the legal sense; Legally, the behavior of consumers who watch the live broadcast to sign an order is a promise; and the sale and purchase contract has been established at this time. In this case, The anchor is the seller and naturally the e-commerce operator.

In addition, the behavior of these anchors as operators at the same time has innovated the operating model. While livestream marketing sales, the behavior of anchors to advertise their products or services in a variety of ways should also be regulated and adjusted by the Advertising Law. In the actual operation process, the anchor conceives its own promotion plan, and designs, produces and publishes related advertisements, so the anchor is considered to be the advertiser and the advertisement publisher. Therefore, in the case that the anchor and the operator are the same legal subject, when the business activities and promotional activities are carried out simultaneously, the anchor should have multiple identities as the e-commerce operator, the advertiser, and the advertisement publisher.

2.1.2 The anchor accepts the commission of the operator to livestream market

The e-commerce operator and the anchor have reached a cooperation agreement in advance. And the e-commerce or brand operator entrusts the anchor to promote the brand product to the audience. Through the anchor's live video or brand, and the store's own official livestream marketing channel to attract fans to buy the product. Then the operator directly pays the agency price in accordance with the entrustment contract or a certain percentage of the agreed sales profit as the remuneration of the anchor. The anchor has signed a commission contract with the commodity producer or operator in advance, and the act of the anchor live-streaming the goods is the act of entrustment. The anchor and the producer and operator form an entrusted-agent legal relationship. The anchor is the entrusted party, and the operator is the entrusting party.

Not only that, in this mode of operation, the anchor borrows his own name or image to promote the product in order to attract fans to buy. In the process of livestream marketing endorsement promotion, the anchor actually carried out advertising release activities, and the main positioning of the anchor fully conforms to the concept of advertising spokesperson and advertisement publisher stipulated in the Advertising Law. Therefore, when the anchor accepts the commission of the operator, the behavior of the anchor to promote and sell products and services can be deemed to have the dual identity of the anchor and the advertisement publisher.

2.1.3 The anchor is an employee of the operator

This situation is relatively simple. In this situation, for the purpose of store operation, the operator registers a livestream marketing account on the e-commerce platform and assigns employees the task of selling goods online. At this time, the employees are only nominal anchors, not the actual anchors. The behavior of employees selling goods live is a kind of job behavior. Compared with the livestream marketing anchors, employees usually do not use their own popularity influence and personal identity to promote goods. Employees are neither e-commerce operators nor consistent with the concept of relevant advertising subjects. So they should generally be recognized as shopping guides or sales agents. According to Article 1191 of the Civil Code, it is known that when the anchor is held by an employee, the legal liability of the anchor shall be borne by the operator.

2.1.4 Exceptional case

2.1.4.1 Cross-platform livestream marketing

The anchors only abstractly promote and introduce related products in the live broadcast. The consumers who watch the livestream marketing can obtain product information. They cannot place an order directly in the live video room, but need to click on the relevant link to jump. Go to the designated store of other e-commerce platform to complete the purchase. In this case, the types of subjects involved are relatively complicated. The anchor gets a certain percentage of remuneration through live video broadcasting to promote related products. Although different from direct sales, this business activity is a service provided through the Internet information network. Its main content is the release, promotion and advertising of product information, which is consistent with the provisions of the E-commerce Law on e-commerce operations. Therefore, as the business entity that provides

information release and advertisement release, it should abide by the relevant provisions of the E-commerce Law on e-commerce operators.

In addition, it also involves the subject of advertising. According to the provisions of the Advertising Law, the identification of advertising spokespersons needs to meet three requirements: the first is to use their own name or image; and the second is to prove or recommend products or services; and the third is that this person cannot be an advertiser. We can judge from this that anchors are advertising spokespersons when they conduct livestream marketing on non-e-commerce platforms. Their promotion and publishing behavior are also consistent with the definition of the behavior of the advertisement publisher. Therefore, when the anchor conducts live delivery of cross-platform transactions on a platform that is not an e-commerce platform, his main identity is the e-commerce operator, advertising spokesperson, and advertising publisher.

2.1.4.2 Livestream marketing that does not involve transactions

The anchor has added the recommendation of the product to the live content. This kind of recommendation will neither directly involve the transaction nor insert the jump link. It just publishes the contents to be promoted or introduces the basic performance of the product and shares its own experience, which is the most effective way to achieve sales. First of all, it can be determined that because there is no business activity for selling goods or providing services, this type of anchor is not an e-commerce operator. However, the advertising behavior of anchors should still be regulated and adjusted by the Advertising Law. When the anchor merely completes the task of publishing advertisements entrusted by the brand or the operator, the identity of the anchor is the advertisement publisher. When the anchors need to combine the content of the product promotion with the anchors themselves to prove and recommend the products in their own name, the anchor meets the three requirements identified by the advertising spokesperson. Therefore, the anchor has the dual identities of the advertisement publisher and the advertisement spokesperson.

2.2 Anchor's legal liability

In the process of analyzing the legal status of anchors, we found that anchors have multiple identities in the process of live broadcast marketing. The legal relationship of live marketing involves many laws such as the Consumer Rights Protection Law, the Advertising Law, the E-commerce Law, the Product Quality Law, and the Anti-Unfair Competition Law and many other laws. The legal liabilities that the anchors may bear are also different due to the application of different laws. Returning to the existing problems of livestream marketing, by dividing the responsibility of false propaganda and poor quality, the trouble of difficult rights protection is completely solved.

2.2.1 Liabilities for product quality

Liabilities for product quality refers to the legal consequences that the producers, sellers, and those directly liabilities for product quality should bear if they violate the product quality obligations stipulated by the Product Quality Law. Therefore, when the anchor is an operator, his business activities of producing, selling goods or providing services should abide by the relevant laws and avoid the occurrence of illegal acts. When disputes arise, they should also actively perform their obligations and assume liabilities. As far as the current product quality issues in livestream marketing are concerned, Article 1702 of the Civil Code clearly stipulates that if a product is defective and causes damage to others, the producer shall bear tort liability. In addition, according to Article 13 and Article 74 of the E-Commerce Law, e-commerce operators must guarantee product quality. When the operator breaches the contract and the quality of the product does not conform to the product introduced in the live broadcast, the operator shall bear civil liability in accordance with the law. Not only that, Article 44 of the Consumer Rights Protection Law also specifically provides further provisions for consumers buying goods or receiving services on online trading platforms. After the infringement has caused damage, Article 55 of the Consumer Law stipulates that the operator knows that the goods or services are defective and still provides them to consumers, causing the death of consumers or other victims or serious damage to their health. Victims have the right to demand business operators to compensate for losses in accordance with Article 49, Article 51 of this law and other legal provisions, and have the right to demand punitive damages less than twice the losses suffered.

2.2.2. Liability for false claims and unfair competition

Among the advertising issues involved in livestream marketing, the most common is the issue of false claims. Regarding the authenticity of advertisements, Article 4 of the Advertising Law clearly

stipulates that advertisers shall be responsible for the authenticity of advertising content. That is, when the propaganda behavior in live broadcast marketing complies with the false advertising behavior stipulated in Article 28 of the Advertising Law and the anchor is an advertiser, according to the provisions of Chapter 5 of the Advertising Law, it is not only Stakeholder can pursue the civil liability of the anchor, but the market supervision and management department can also impose administrative penalties on the anchor. When false propaganda seriously threatens the social and economic order, the anchor will even be severely sanctioned by criminal justice.[2] In addition. If the anchor has multiple identities as both an advertiser (e-commerce operator) and an advertisement publisher, the anchor shall not only bear the legal liability for the above-mentioned false propaganda, but also the legal liability for unfair competition. Advertisements using absolute terms will not only mislead consumers and make consumers choose products with inferior quality and high price, but also easily damage the goodwill of similar products and the legitimate rights and interests of competitors in the same industry.[4] From a legislative perspective, the Anti-Unfair Competition Law's regulation of unfair commercial propaganda activities has been linked with the Advertising Law's regulation.[5] In order to increase sales, the anchor makes false sales or exaggerates the efficacy of the product to deceive or induce consumers. According to Article 85 of the E-commerce Law, if the above-mentioned e-commerce operators' false or misleading commercial propaganda and other unfair competition behaviors comply with the provisions of Article 8 of the Anti-Unfair Competition Law, the administrative department has the right to punish the anchor administrative liabilities. The protection of consumers in the Anti-Unfair Competition Law is a kind of overall protection, while the protection of consumers in the Consumer Protection Law is individual protection.[6]

When the anchor is not an advertiser but only an advertisement publisher or an advertisement spokesperson, according to Article 56 of the Advertising Law, it is known that the legitimate rights and interests of consumers are damaged due to false propaganda and the products involved endanger the lives and health of consumers. The anchor shall bear joint and several liability in accordance with the law. If it is a commodity or service other than the above, and the anchor does not know it, then the anchor does not need to bear joint civil liability. For example, Article 140 of the Food Safety Law specifically stipulates that if an individual recommends food to consumers in false advertisements or other false propaganda, which damages the legitimate rights and interests of consumers, he shall bear joint and several liability with the food business operator. The competent administrative department has the right to pursue its administrative responsibility in accordance with Article 55 of the Advertising Law. Besides, Article 38 of the Advertising Law clearly stipulates that advertising spokespersons must not recommend and prove unused products or services that have not been received. Therefore, when the anchor has the identity of an advertising spokesperson, if the anchor recommends unused products to consumers and a dispute arises as a result, consumers can claim rights to the anchor with the goods. In addition to civil liability, the anchor may also bear administrative liability.

3. Conclusion

Under the influence of the covid-19, the livestream marketing, which is a way of shopping at home without geographical and time constraints, has quickly seized a market in the Internet economy due to its outstanding interactive and social characteristics. But in the stage of rapid development, the hidden issues behind it are more worthy of attention and reflection. Promoting the healthy development of livestream marketing can not only promote the orderly development of the economy, but also protect the legitimate rights and interests of consumers. Therefore, it is essential to regulate the improper behavior in the livestream marketing. Because the special business model of livestream marketing is a combination of online live broadcast, e-commerce and advertising. In judicial practice, to clarify the legal status of the anchor must be specifically analyzed in different situations. The relevant laws governing their behavior should be determined, and the legal liabilities for product quality or false publicity should be clarified. In addition, the legislature should formulate more complete laws, regulations, guidelines, and standards for livestream marketing based on actual conditions; market supervision departments should strengthen the supervision of livestream marketing and establish a more efficient and direct consumer complaint platform to help consumers protect their rights.

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