

Exploration of the Problem of Selling Counterfeits in Live Marketing

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Abstract: In recent years, with the rapid development of the Internet industry, new trading methods such as live product marketing are gradually integrated into people's lives. Although it has brought a lot of convenience to people, at the same time, there will also be various contradictions and confusion, such as false propaganda, data fraud and other problems. Therefore, in order to solve practical problems, we should further clarify the causes and influencing factors. At the same time, in light of the academic research on the topic of live streaming marketing in recent years, the number of relevant papers is small, but the description combined with the actual litigation situation is rare. Therefore, this article will start from actual cases, analyse the responsible subjects and their liability bearing methods in live streaming marketing layer by layer, and put forward some new opinions and opinions on a new thing such as "live streaming marketing". Relevant suggestions are put forward for the improvement of the theoretical system of such a new thing as "live streaming marketing".

Keywords: Live Product Marketing; Live Counterfeiting; Anchor Liability; Consumer Rights; Punitive Damages

1. Introduction

With the deepening of digitization, the business model of live marketing has been developed rapidly in China, and the audience has been increased on a large scale, which has led to a large number of real-life related disputes. At the same time, due to live marketing this new form of infringement has a fast dissemination speed, involves the infringement of the subject and so on, which makes the determination of the relevant

responsibility of the subject is increasingly difficult.

After summarizing it can be seen that in real life, the causes of live product marketing disputes can be roughly divided into two categories, one is due to product quality problems, the other is due to the anchor in the live broadcast process of false propaganda triggered. However, live product marketing involves a large number of subjects, compared with the ordinary contract of sale is more likely to produce disputes, and although the state has also introduced a lot of regulations and measures, but mostly advocacy provisions, not mandatory, which also makes it difficult to determine the responsibility of the disputes related to the live broadcast marketing and allocation of the way clear.

Combined with the social background of the new coronavirus epidemic in recent years, most people choose to buy online, which is now the live marketing industry to attract a large number of merchants of social factors. This phenomenon has led to vicious competition between merchants and merchants, further triggering the merchants to implement fraudulent behaviour is also more and more, the case of selling fake anchors will also increase day by day, so this also provides a realistic necessity and urgency for purging the legal responsibility of the main body of the live broadcast product marketing.^[1] At the same time, due to the current academic on the topic of live marketing of the relevant papers although the actual litigation situation combined with the narrative is not common, this paper will be through the synthesis and induction method of exposition, value measurement method to analyse the rights and obligations of the subjects of the live marketing of the interrelationship. Therefore, this paper will discuss and analyse the rights and obligations between subjects in live broadcast marketing through the

comprehensive induction method and value measurement method and clarify the distribution of responsibilities.

2. Controversies on the Liability for Counterfeit Sales in Direct Marketing

2.1 Relevant Case Studies

Mr. Xiao watched a jewellery company store during the live broadcast, fancy a diamond jade pendant, and purchased through the store customer service. The two sides agreed to pay the price of 31,800 yuan, while offering to produce identification certificate. After payment, the store will be the plaintiff Mr. Xiao purchased diamond emerald pendant sent to the testing company for testing, the company issued for the pendant authenticity identification of the relevant certificate. But later Mr. Xiao in the process of wearing others pointed out that this is not the real diamond, contact customer service consultations on the jadeite pendant re-appraisal, the pendant is attached to the diamond for the white stone, not the real diamond, although the store proposed to change to the real diamond, Mr. Xiao asked for compensation, the two sides did not reach an agreement after consultations, and finally Mr. Xiao will be the store to the court.

In this case, the product involved in the diamond inlaid by the appraisal of the last can be confirmed is not a real diamond, then the jewellery company on the sale of the product subjectively whether by the fake diamond inlaid with the matter of whether or not to know, is to determine whether its behaviour is suspected of fraud key. In addition, according to the final appraisal results, stand in the general view of the problem will inevitably suspect that the anchor and appraisal company directly there is malicious collusion and other behaviours, therefore the need to clarify the anchor and appraisal of the legal relationship between the company.

According to the facts identified in this case, the plaintiff ordered to buy jade pendant, the jewellery company commissioned the testing company issued a "gemstone identification certificate", the test identified as "jadeite (A goods) pendant, Remarks: accompanied by diamonds", the results of the test and the jewellery company in the live broadcast of the contents of the goods displayed in line with the existing evidence does not prove that there is a

jewellery company to provide consumers with false information or concealment of the true situation of the behaviour. Existing evidence does not prove that the jewellery company exists to provide consumers with false information or conceal the true situation of the subjective intent, it cannot be determined that the jewellery company in the provision of goods or services have fraudulent behaviour, that the appraisal company appraisal behaviour error with gross negligence, resulting in the anchor commissioned the appraisal of the purpose of the contract cannot be achieved, then the jewellery company can ask the appraisal company to bear the appraisal costs, and bear the responsibility of breach of contract.

2.2 Disputes over the Assumption and Allocation of Responsibility

Live marketing infringement of the two types of disputes caused by product quality or false publicity, in practice or false publicity as the reason for the majority, on the one hand, is due to the live this form of its own characteristics, coupled with the live marketing subject of the base continues to get bigger and bigger, the market competition is fierce, which leads to the phenomenon of exaggerated publicity occurs frequently. On the other hand, with China's legislative model is also inseparable, because the system of civil law in the protection of consumer rights and interests in the law of the fake one to pay three is one of its only a few punitive damages, so through the false propaganda of this angle of the lawsuit can ensure that its rights to get the best relief. For product quality is not only civil law adjusted, when serious, will also be subject to administrative law and criminal law constraints, so in the live product marketing responsibility and distribution of the main or around the false propaganda unfolded, if then summarized will find that the focus of the controversy is mainly concentrated in the application of the "Protection of Consumer Rights and Interests Law". As embodied in the above case, the consumer has to prove that the anchor live marketing behaviour there is deception of consumers, so that it meets the premise of the application of the "Consumer Protection Law", and for the party with the goods is the opposite, need to prove that its behaviour does not

constitute the premise of the application of the "Consumer Protection Law".^[2-4]

3. Allocation of Liability for Counterfeiting in Direct Marketing

The main reason why live webcasting of products is different from traditional merchandising is that he is no longer a simple buyer-seller relationship. Generally speaking, live product marketing includes the following parties: the platform that provides webcasting, the anchor who carries out live product marketing, and the product manufacturer. Sorting out how each party affects the allocation of responsibility is key.

3.1 Legal Liability of Suppliers

The convenience of live product marketing for consumers is indisputable, which is also the reason why it can develop rapidly, but regardless of the sales model, the essence of its contract of sale contains two subjects, namely, the buyer and the seller. The seller refers to the subject of providing products to the anchor sales, so it is natural to be responsible for their own sales of products, mainly by the Civil Code, Article 577 of the liability for breach of contract, Article 1203 of the liability for damages, as well as the "Protection of Consumer Rights and Interests Act," Article 55 of the punitive damages to regulate.^[5] However, in the event of fraudulent consumer behaviour, consumers can request compensation based on the provisions of Article 55 of the Consumer Protection Law, which provides that a false one shall be compensated for three, which is also the most common claim in practice. Finally, because there are two promises under the sales model of webcasting with goods, one of which is the promise of the anchor in the live broadcasting room propaganda to consumers, and the second is the consumer in the consumer clicks on the link of the goods, the link in the content of the consumer's commitment, so based on this will make the final allocation of responsibility has a certain degree of ambiguity.^[6] In this paper, we believe that in the process of live product marketing supplier itself will be a certain authorization of the anchor, then if the anchor is in accordance with the supplier's requirements for sales infringement of the relevant rights and interests should be the supplier to bear the

corresponding responsibility. Even if it exceeds the authorized scope of sales, the authorization belongs to the internal agreement between the two sides, can not fight against bona fide third-party consumers, consumers can still request the supplier to bear the corresponding responsibility, and the supplier in the responsibility, can be recovered from the anchor.^[7]

3.2 Legal Liability of Direct Broadcasting Platforms

Live platform as a live product marketing business model of the third party subject, our country in the legislation for its set up more third party responsibility, although the live platform will not directly implement the illegal behavior, also will not suffer from the infringement of wrongdoing, but its for live product marketing set up a platform, enjoying a certain benefit at the same time, it is desirable to make some regulatory work, to protect the occurrence of the platform occurred in their Transactions. Live product marketing is the recent development of the Internet to produce emerging fields, the form of expression is flexible and changeable.^[8]

In different live product marketing mode, the live platform plays a legal role, and the burden of the obligation will often change, so should not be set in stone to look at this rapidly changing industry environment, on the live platform whether the e-commerce platform can not be easy to draw conclusions, the need to combine the case with the provisions of the law and a comprehensive view of the problem. If the anchor through the live platform to open the live broadcast, and in the live room on the shelves of the goods to be sold link, after the fans to watch the live broadcast during the order from clicking on the link to the final submission of the order is completed on the live platform, then the live platform is obliged to do their own supervision of the transaction behavior, such as the preservation of personal data, after-sales service to provide, the transaction of the funds on behalf of the custodian of a series of Safeguard the transaction security obligations. On the other hand, if the transaction between the fans and the anchor is not all completed on the live platform, that is, the two sides of the transaction process is not completed on the live platform to complete a closed-loop, it is

necessary to analyze the specific responsibility of the live platform according to the fact that the most common mode is the anchor through the live platform to obtain the opportunity to trade with the fans, and then take the mode of the offline transactions bypassing the trading platform, this mode due to the contractual Type, price and other contents are completed offline, the live platform does not have the possibility of supervision, should not be responsible for the consequences of the final, and because of the high fraud rate of offline transactions, most platforms have prohibited the provisions of private transactions, if consumers ignore the relevant provisions, insisting on transactions, should be responsible for the adverse consequences of their own behavior.

Sometimes, in order to better protect the interests of the victim, it will not take the above all or nothing way to assume responsibility, and this requires a clear platform, the anchor and the sharing of responsibility between the supplier. Along with the continuous development of the Internet industry, the definition of e-commerce platforms has become broader and broader, and many new live broadcasting platforms have been born, and these platforms are often deficient in the supervision of live broadcasting marketing, which will lead to a large number of consumer disputes. For the sake of a better network environment and the future healthy development of the live marketing model, the live platform should do its duty to supervise the business behavior of its internal merchants.^[9]

3.3 Legal Liability of Anchors

The anchor of live marketing refers to the person who sells goods to consumers in a live broadcast through the live broadcast platform, and its behavior is subordinate to the scope of adjustment of the advertising law, and the launch of the advertisement involves a number of subjects, such as advertisers, advertisement spokespersons, advertisement operators and advertisement publishers of the four types of subjects, so when discussing the legal responsibility of the anchor in the live broadcast marketing, it is necessary to analyze according to the role played by the anchor in the live broadcast marketing.^[10] So when discussing the legal responsibility of the

anchor in live marketing, it is necessary to analyze it according to the role played by the anchor in live marketing, because the role played by the anchor in different sales modes will be different, and the responsibility it bears will also be different.

3.3.1 Legal liability of the daimyo anchors

In the mode of live product marketing, the ability difference between different anchors will be very big, some people anchor such as netizens, stars or a company, their influence is far more than ordinary anchor, so it is easier to be trusted by the majority of consumers, then in order to avoid its abuse of their own advantage to violate the trust interests of consumers, should be set up a more stringent infringement of copyright infringement liability.^[11] Through the previous analysis, we conclude that the supplier first pay compensation to consumers, and then discuss the internal relationship, but in practice does not rule out that the supplier will evade responsibility or not responsible for the situation, and in this case need to measure the interests of the anchor and consumers, consumers are undoubtedly more vulnerable party, in the assertion of their own rights do not enjoy the advantages of the anchor, then in order to So that the rights and interests of consumers can be fully protected, I believe that the anchor should bear the responsibility to pay first, and then by the anchor to the non-performance and the responsibility of the supplier to recover, after all, the anchor and the consumer is different, most of the anchor for the net red, stars and other more influential subject, and its internal agreement with the supplier between the consumer is not known, and even between the anchor and the supplier to perform a script to deceive the consumer thus The situation of profiteering also occurs from time to time, so through this mode of consumer protection has a certain degree of reasonableness, and in practice there have long been cases, such as "fast brother" Simba sold fake bird's nest case, see the practical significance of this allocation of responsibility in practice.

3.3.2 Anchor's legal liability when acting as an advertiser.

Lead anchor as the name suggests is to provide their own fans for the supplier with whom they cooperate, so that they have the opportunity to live marketing with the anchor fans to enter

into a contract of sale, and in this process the basic functions of the goods sold and the introduction of the basic information is completed by the supplier, so in this mode the identity of the anchor is more like an intermediary for the buyer and the buyer to provide the opportunity to deal with the buyer. It is also because of this relationship between the anchor and the supplier and consumers, so that the anchor no longer need to bear the legal responsibility of the aforementioned first compensation. The other side is also because of the flow of the anchor to select the supplier with uncertainty caused by the flow of the anchor to select the cooperative business, generally according to the amount of live bounty to determine the cooperation of the supplier, so the anchor can not be sold beforehand on the information of the goods to audit, and at this time to require it to bear too much responsibility is obviously unreasonable. But in general, the anchor for its fans have great influence, if the final production between the fans and the seller of contradictions and disputes, the anchor should shoulder the responsibility of its fans on behalf of the legitimate rights and interests of the fans to defend.

3.3.3 Legal liability when suppliers act as anchors

If when the supplier himself through the live broadcast to consumers to sell their products, this time the supplier that anchor will have advertisers, advertising spokesman, advertising publishers, sellers and producers of multiple identities, so in this mode will greatly reduce the complexity of the subject relationship of the live broadcast marketing this feature, so that we are more easy to explore its legal responsibility. When the supplier through the live software to its fans or platform users to sell their own products, its legal relationship is similar to the daily life of the transaction behavior, only its occurrence in the live platform, the live platform needs to be responsible for certain regulatory duties. This model for the host of the requirements and online shopping in the seller's responsibility is roughly the same, first of all, it has a product quality defect warranty responsibility. Secondly, after all, the transaction is occurring in the network platform, consumers in the purchase can not be comprehensive review of the product, so it should be set for the

consumer no reason to return the period. As well as its ultimate is also a kind of live marketing, the anchor needs to be truthful to consumers in the live broadcast of the product brand, price, function and other basic information, if the anchor in the live broadcast of false propaganda and other situations, then the consumer can be based on the termination of the contract, and based on the protection of consumer rights and interests law requires that the anchor to bear the responsibility of the fake one to compensate for three.

4. Conclusion

Live product marketing, as an emerging field, provides great potential for China's economic development, and solving the problem of determining and distributing its responsibility and improving its legal system is the way to build a socialist rule of law country in China, while the disputes in practice are particularly complex due to the many subjects involved and the large interests involved. And due to the continuous occurrence of counterfeit and shoddy events, resulting in most of the disputes in this field are centered around the Consumer Rights and Interests Protection Law, therefore, in the future legislation should focus on the interface between the Consumer Rights and Interests Protection Law and the field of live product marketing, making the rules for the distribution of responsibility between the main body of live broadcasting and sales clearer, this paper also gives a basic responsibility including the anchor's first payout, the responsibility of the attraction of the anchor, and the basic responsibility of the supplier Continued burden and other setting suggestions. It is hoped that the discussion in this paper, after analysis, can help clarify the legal relationship between consumers, anchors, suppliers, live platforms, so that the rights and interests of all parties can be protected.

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