

# A Study on the Civil Liability of Third-Party Streamers in False Advertising

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## Abstract

Livestream shopping has become a key part of the digital economy, yet it is also fraught with problems. The phenomenon of false advertising caused by third-party streamers is increasingly prominent, which seriously harms the rights and interests of consumers and negatively affects the order of market competition. Synthesizing the norms and experiences in theory and practice, and categorizing civil liability based on the actual function played by the third-party streamers in livestreaming sales and the legal relationship with the business operators. A clearer liability framework has been formed, such as the joint and several liability of the employed third-party streamers in false advertising, liability for breach of contract and damages liability of the fiduciary third-party streamers in false advertising. To determine the civil liability of third-party streamers, the first consideration is whether the act of false advertising is sufficient to cause consumers to misunderstand, and then to recognize the three different types of damages caused by false advertising, personal injuries, property damage, and infringement of consumers' right to know. Then explore the causation between the act and the result, and then decide whether to take into account the subjective attitude by the type of damages. Finally, the allocation of liability between the third-party streamers and the business operators in the case of joint tortfeasance is objectively analyzed by combining the principle of fairness and self-responsibility. It clarifies the circumstances under which the third-party streamer assumes and exempts from civil liability, adds the principle of no-fault liability for personal injury caused by false advertising to consumers, and promotes the healthy development of the livestream shopping industry by improving the doctrinal norms.

**Keywords:** false advertising; streamer; civil liability; livestream shopping; principle of liability.

## 1. Introduction

With the rapid development of science and technology in modern society, Internet technology has been popularized. According to the statistics released by the Ministry of Commerce Department of Electronic Commerce and Informatization of People's Republic of China, the online retail sales of the country in January-November 2024 amounted to 14 trillion yuan, an increase of 7.4% over the same period last year<sup>[1]</sup>. Accompanied by the e-commerce industry showing a booming trend, many new e-commerce subjects appear in the Internet to engage in and assist in e-commerce trading activities, and Internet livestream shopping has become a common publicity and marketing channel for new e-commerce. Third-party streamer refers to the streamer who implements livestreaming sales for other business operators' goods or services, distinguishing it from the self-operated live streaming mode in which the manufacturer and seller of goods and services act as the streamer<sup>[2]</sup>. It usually constitutes a bridge between the business operator and the consumer, competing with multiple legal subject status. The current law is ambiguous as to the civil liability of the third-party streamers, who is not the direct provider of goods or the operator of the live streaming platform, in the false advertising, and there are no monographs at home and abroad that study the civil liability of the third-party streamers' false advertising in livestream shopping. At present, scholars in China don't have a unanimous view on the legal status of third-party streamers. Some scholars believe that its legal status is directly related to the live sales model, sure that the third-party streamer is in line with the status of the subject of the Advertising Law of the People's Republic of China, to the subject status of the advertisement to assume civil liability; some scholars believe that the network live broadcast marketing employment mode is relatively new, different from the traditional employment relationship and labor relationship. Although the academic community has different views on the legal status of third-party streamers, but has not yet formed a systematic and comprehensive research system. Scholars mostly study the overall liability system of multiple subjects in livestreaming sales, and less often specialize in the civil liability of third-party streamers. At the same time by the slow development of foreign livestream shopping industry restrictions, the academia for the third-party streamer civil liability research is correspondingly less, the reference value is limited.

The paper starts from the theories about the identity of third-party streamers in the academia, and based on the “intermediary theory” and “endorser theory”, it systematically categorizes third-party streamers, including employed third-party streamers and fiduciary third-party streamers. The latter is further categorized into intermediary streamers and endorser streamers. The article forms a complete liability system for the false advertising behavior of third-party streamers in livestream shopping. It clarifies the liability forms of different types of third-party streamers, the modules of tort liability, and the allocation of tort liability with the business operator under joint tortfeasance. It also utilizes normative analysis to clarify the no-fault liability and the presumption of liability of the third-party streamer. In the Internet livestream shopping gradually become normalized marketing mode, the anchor false advertising behavior frequently and chaotic breeding. Defining the liability forms of the third-party streamer in the field of e-commerce false advertising will help to strengthen the normative constraints on the third-party streamer, facilitate consumers to safeguard their lawful rights and interests, and promote the orderly development of the Internet live broadcast marketing on the legal track.

## 2. The Doctrinal Controversy and Judicial Status of the Civil Liability of Third-Party Streamers

### 2.1 Doctrinal State

The controversy in China’s academia over livestream marketing mainly focuses on three aspects: the definition of livestreaming sales, the legal nature of livestreaming sales, and the characterization of the legal identity of the subject of livestreaming sales<sup>[3]</sup>. Among them, the definition of the legal identity of the subject of livestreaming sales in question has a leading value in determining the civil liability of third-party streamers in false advertising, and constitutes a prerequisite for exploring other issues. Academia currently on the identity of third-party streamer there are a variety of different theories, the two most mainstream are the “intermediary theory” and “endorser theory”. “Intermediary theory” that, because the business operator and the streamer signed a contract of mandate, the streamer as a bridge between the consumer and the business operate of the transaction, contributing to the conclusion of the sales contract between the business operator and the consumer, with the law of the “intermediary” status<sup>[4]</sup>. For the client, as an intermediary, the streamer shall bear the obligation to inform the opportunity to enter into a sales contract and the obligation not to conceal the true situation or to inform the false facts relating to contracting. The determination of the streamer’s liability in false advertising also differs based on the shape of its different obligations to the client. According to the “endorser theory”, third-party streamer has the identities of both the livestreaming seller and the endorser of goods, which constitutes the competing identities. Streamers commodify their personality rights to attach them to the goods they sell, so that consumers convert their identification with the streamers into trust in the goods and increase the business operator’s sales benefit<sup>[5]</sup>. The civil liability borne by the endorser streamer mainly focuses on the damage liability of false advertising behavior for consumer infringement and the liability for breach of contract for the business operator.

Both the intermediary theory and the endorser theory characterize the identity of the third-party streamer from different directions, providing a theoretical basis for understanding the civil liability of the third-party streamer. But both of the above theories take the legal nature of the streamer’s identity directly as an attributional element of its civil liability, severing the false advertising behavior of the third-party streamer as a whole from the sale of the business operator. The determination of civil liability has subject-objective binary attributes<sup>[6]</sup>, existing theories fail to fully reflect the principle of subjective-objective unity. The streamer false advertising behavior for the whole process of the conclusion and performance of the sales contract of the elements of the size of the process should be used as an important factor in determining the civil liability, but in the existing theories have not been fully taken into account, the need for further improvement.

### 2.2 Judicial Situation

From the rise and development of electronic commerce to the present, livestream marketing has been at the top of the webcasting industry, and a large number of Internet marketing cases have occurred in judicial practice. In the existing cases, the majority of disputes occurred in the form of sales contract between consumers and business operators and streamers, most of which constitute false advertising fraud. In the sales contract disputes involving Internet marketing, the courts mostly referred to Article 148 of the Civil Code of the People’s Republic of China and Articles 44 and 55 of the Law of the People’s Republic of China on the Protection of Consumer Rights and Interests for their judgments. The courts’ adjudication of their typical cases mainly involved the following steps: First, the contract seller’s false advertising behavior was identified. The court determined the seller’s false advertising behavior from the three elements, unlawful behavior, damage results, to the causal relationship between the violation of the law and the buyer’s declaration of will to enter into the contract. Next, the seller’s damages liability and liability for breach of contract was clarified in accordance with the Civil Code and the Law on the Protection of Consumer Rights and Interests. Finally, the liability form of the streamer was

comprehensively judged according to the different civil legal relationships between the streamer and the business operator<sup>[7]</sup>. On the livestream marketing of the established judicial decision steps, can to a certain extent to protect the lawful rights and interests of consumers, constraints on the behavior of the business operator, urging it to undertake obligations in accordance with the provisions of the law and contractual agreements. However, the whole judicial practice process for the civil liability of the streamer less attention, only at the end of the program dependent on the business operator's liability situation on the civil liability form of the third-party streamer ruled that it is difficult to play an effective legal constraints on the streamer. In fact, in many livestream marketing transactions, streamers have far more influence on consumer purchasing behavior than merchants do. The judicial practice of livestream shopping anchor liability form is very critical, should pay attention to, and further refinement.

### 3. Liability Forms to Consumers of Third-Party Streamers

Along with the rapid development of the network, livestream marketing is loved by consumers for its strong sense of interaction and experience as well as large discounts. Due to the ease of live banding and the low threshold, the chaos of false advertising often occurs. Article 9 of Anti-Unfair Competition Law of the People's Republic of China stipulates that a business shall not conduct any false or misleading commercial publicity of its goods as to the performance, function, quality, sales condition, clients' reviews and the awards received to deceive or mislead consumers<sup>[8]</sup>. The subject of false advertising in livestream shopping is pluralistic, including the business operator providing goods or services, the streamer broadcasting live to consumers, and the platform providing livestreaming services, etc., and each subject assumes different legal liabilities due to the different legal relationships between them and consumers. As a business operator, if it engages in false advertising, it shall assume the liability for breach of contract for failing to perform or failing to perform the sales contract in accordance with the law or the agreement of the parties. If the false advertising behavior harms the civil rights and interests of consumers, consumers can also claim that the business operator assumes tort liability. Due to the different roles played by third-party streamers in the livestream shopping, the legal relationship with the business operator and the civil liability they should assume will be different, so the paper will be divided into the third-party streamers of the employed streamer and fiduciary streamer to discuss. According to the streamer in the marketing of different identity nature, and then combined with the false advertising behavior of different factual situation on the liability of third-party streamer. This will better protect the lawful rights and interests of consumers, but also to protect the legal rights of the streamer.

#### 3.1 Liability Forms of Employed Third-Party Streamers

Employed streamer is to enter into an employment contract with the merchant, in accordance with the time and form agreed in the contract on the livestreaming platform to recommend the employer's goods or services, and obtain the agreed remuneration of a class of third-party streamer. Nowadays, many offline stores or online stores will hire their own employees or other natural persons with strong influence unlike celebrities and stars to promote their products on major online platforms and livestreaming sales. Taobao, Douyin and other platforms have many such livestream, merchants hire streamers to explain the product as a way to increase sales. In this employment relationship, as the employer's business operator is obliged to give the streamer agreed remuneration, the anchor should also engage in the employer's instructions or authorization within the scope of the livestream marketing and other labor activities<sup>[9]</sup>. Based on the main content of the rules of the employment contract to construct the civil liability form of the employed streamer, to clarify the employer's liability and the employee's liability in the livestream shopping, to maintain the labor relationship between the two parties, so that the purpose of the conclusion of the contract can be fully realized.

When false advertising occurs in livestream shopping based on the behavior of the employed streamer, the merchant, as the counterparty to the contract with the consumer, shall first assume the liability for breach of contract. In the absence of any agreed or statutory exemptions, merchant shall continue to perform its obligations, take remedial measures, pay damages, or be otherwise held liable for breach of contract. If certain damage results from the false advertising behavior, the business operator shall also be liable for tort. However, under the employment relationship, in order to fully protect the rights and interests of the injured consumers, the allocation of internal liability between the business operator and the third-party streamer for false advertising behavior should be focused on the research. In addition to the streamer is employed by an individual, the formation of labor relationship between the two, in today's livestream shopping model, there are also most of the streamer is employed by the enterprise, and the formation of employment relationship between the enterprise. The paper argues that in the latter case, the personality of the streamer for the employer enterprise absorption, no longer has independence, belongs to the category of self-employed streamer, the paper will not discuss.

According to Article 1192 of the Civil Code of the People's Republic of China, where, in a labor relationship formed between individuals, the streamer causes any harm to another person as the result of the labor services, the party receiving labor services shall assume the tort liability. After assuming the tort liability, the party receiving labor services may claim reimbursement from the streamer that is with intent or grossly negligent <sup>[10]</sup>. In our civil law, it is generally accepted that the evidential reasons for the tortious substitution liability of the party receiving labor in Article 1192 include the control theory, the deep pocket theory, and the indemnity theory <sup>[11]</sup>. The control theory assumes that the party receiving labor is able to dominate the employee's behavior, or exert significant influence over his behavior, so that the employee commits an aggravating act against a third party under his domination or exerted influence, and therefore the party receiving labor should assume substitution liability for the employee's behavior. The deep pocket theory is equivalent to the economic power advantage hypothesis, generally holds that the economic power of the employer is superior to that of the employee, and that he is more capable of compensating the third party for the damage. The indemnity theory advocates that the party receiving labor should bear the risks arising from the use of the party providing labor while obtaining benefits through the use of the party providing labor, and therefore the party receiving labor should assume substitution liability. Since the enactment of the current Civil Code of the People's Republic of China, the normative model of substitution liability in tort in Article 1192 has adopted the full substitutive model, whereby the tort liability of the party providing the labor to the third party is borne entirely by the party receiving the labor.

It is considered by the author that due to the complexity of the employment relationship between the employed third-party streamer and the business operator, if the business operator assumes full substitution liability for the infringement of false advertising, it will reduce the infringement cost of the streamer, and the regulation of the law for the streamer will be greatly reduced. And according to the deep pocket theory, the business operator and third-party streamer's liability property sum must be greater than the business operator's separate liability property. In the case of false advertising let the two assume joint and several liability, that is, the business operator assumes the limited substitution liability, will be more conducive to the victim to obtain relief <sup>[12]</sup>. Because of the strong personal attributes of the employment contract, the personal and property rights and interests of the labor provider are fully protected in the process of contract performance. So when determining the joint and several liability of the employed streamer and the merchant, the subjective attitude of the streamer with respect to his own false advertising behavior should be strictly considered. If the employed streamer know their own false advertising behavior will happen to damage the legal consequences of consumer rights and interests, still hope or let the damage result of the subjective attitude that is intentional, of course, the streamer and the business operator to assume joint and several liability for infringement of rights and interests. Determine that the streamer of the false advertising behavior of gross negligence, should be considered whether the streamer of the violation of the law on its identity or duty of care provided by the position <sup>[13]</sup>. The duty of care includes: the duty of care of the third-party streamer in his daily livestreaming sales, such as knowing or should have known that the marketing product has serious side effects on a certain category of consumers but did not pay attention to and inform such consumers; it also includes the duty of care of the society in general, which should be measured in terms of the perpetrator's age, level of cognition, and level of education, among other aspects. Employed streamer due to gross negligence resulting in consumer rights and interests are harmed, should be within the scope of their own negligence and the business operator to assume joint and several liability.

### 3.2 Liability Forms of Fiduciary Third-Party Streamers

The fiduciary third-party streamers generally receive a commission from the business operator. The business operator utilizes the economic value of the traffic behind the streamer. The streamer promotes the goods or services of the business operator through its own appeal and credibility, and receives a commission or remuneration from it. According to the different content of the mandate relationship between the streamer and the business operator, the fiduciary streamer is usually divided into intermediary streamer and endorser streamer <sup>[14]</sup>. The intermediary streamer is commissioned by the business operator to provide the business operator with the opportunity to conclude a sales contract with the consumer. However, the endorser streamer is usually commissioned by the business operator due to its strong social influence and public popularity to improve the status and sales of the business operator's products. Based on the different legal subject statuses of the two types of third-party streamers, different liability forms will be recognized under false advertising.

An intermediary streamer concludes a contract of intermediary mandate with a business operator, reporting to the business operator the opportunity to conclude a sales contract and providing mediation services for the conclusion of the contract. The intermediary streamer acquires the right to claim remuneration and has the status of an intermediary within the meaning of civil law. Pursuant to Article 962 of the Civil Code of the People's Republic of China, where the intermediary intentionally conceals any material fact or provided false information on contracting, thereby harming the client's interests, it may not request payment of any remuneration and shall be liable for compensation <sup>[15]</sup>. Therefore, as an intermediary

streamer has the obligation to report truthfully, if the intermediary streamer intentionally conceals important facts related to the sale of products or provides false information constitutes false advertising, resulting in damage to the lawful rights and interests of consumers, there is a breach of contract and tort of competition.

From the objective aspect, the intermediary streamer violates the obligation of truthful reporting when helping the client to enter into the main sales contract, which belongs to contracting fraud and constitutes breach of contract liability; the streamer fails to inform the consumers in time that there are defects or major quality problems in the goods or services sold, which not only causes damage to consumers' rights and interests, but also violates the consumers' right to know and constitutes tort liability<sup>[16]</sup>. Starting from the subjective aspect again, when the intermediary streamer is subjectively intentional, its failure to perform the obligation of truthful reporting should assume the damages liability of consumer. However, if only intentional as the subjective elements for determining the damages liability, it will make the streamer for negligence caused consumer infringement of the result of a positive state of mind, resulting in an imbalance of interests, is not conducive to the protection of entrusted merchants and the lawful rights and interests of consumers. Therefore, the streamer with negligence mentality caused consumer damage, the business operator and the streamer intermediary contract does not stipulate, should refer to the provisions of Article 577 of the Civil Code of the People's Republic of China shall be applied. One of the parties does not perform the contractual obligations or performance of the contractual obligations are not in line with the agreement, it should assume the breach of contract liability to continue to perform its obligations, to take remedial measures or to pay damages<sup>[17]</sup>.

Endorser streamer and the business operator are based on a cooperative relationship, converting the traffic brought about by their own appeal and credibility into economic capital. Business operators directly or indirectly sell their own goods and services by commissioning this type of streamer to bring goods live, which is in line with the provisions of Article 2 of the Advertising Law of the People's Republic of China on commercial advertising. This type of fiduciary third-party streamers also competes with the legal subject status of endorser. In the process of livestream marketing by endorser streamers, it often occurs that advertisers take advantage of consumers' love and trust in the streamers to issue false advertisements, conduct untrue propaganda, spread false promises and other fraudulent behaviors, thus harming the lawful rights and interests of consumers. Article 56 of the Advertising Law of the People's Republic of China makes indicative provisions for determining the liability form for false advertising behavior of the streamer, which shall be divided according to whether the streamer has knowledge of the content of the false advertising<sup>[18]</sup>. If the advertisement publisher or advertising agent has committed the false advertising behavior, but the endorser streamer does not know about it, then the streamer is not liable for damages. If the streamer, as an endorser, knows that the advertiser releases false advertisements and does not stop them or knows that there are serious problems with the quality of the products sold, which causes damage to the health of consumers, not only destroys the consumer's trust interest in the streamer with goods, but also infringes on the consumer's right to life, right to health and other personal rights. The streamer shall be assume tort liability jointly with the advertiser, and shall compensate consumers for damages in accordance with the Law of the People's Republic of China on the Protection of Consumer Rights and Interests.

#### **4. Liability of Third-Party Streamers to Consumers**

The huge profits brought by the e-commerce livestreaming industry attracts more and more subjects to engage in livestream shopping, resulting in a gradual increase in the number of consumer rights defense cases in the field of livestream shopping in China. According to the "Livestream Shopping Consumer Rights Protection Public Opinion Analysis Report" released by China Consumer Net, the number one ranked issue in livestream shopping rights protection public opinion in 2024 is marketing publicity, which shows that false advertising is the core problem frequently occurring in the field of livestream shopping. Reasonably consider the size of the streamer's causal power under multiple perspectives of damages, subjective fault, etc<sup>[19]</sup>. Clarify the rules of civil liability determination of false advertising behavior of third-party streamers, which is conducive to the effective regulation of the behavior of streamers in judicial application as well as in multiple dimensions of real-life transactions.

##### **4.1 Determination of the Streamer's False Advertising Behavior and Damages**

In the case of civil liability for false advertising by an a streamer, it is the fact that the streamer has committed the act of false advertising as the criterion for determination. According to Article 8 of the Anti-Unfair Competition Law of the People's Republic of China, business operators shall not use advertisements or other methods to make misleading false advertising about the quality, composition, performance, use, producer, expiration date, origin of the goods. This can be concluded for the streamer false advertising behavior of the determination, mainly contains two aspects, one is the streamer of the goods does not meet its own situation of publicity, the second is that the publicity is enough to make consumers

misunderstanding. In China's academia, the mainstream view that the false advertising behavior of the core criteria for the determination of "enough to cause misunderstanding". False advertising that is not considered to be misleading can be directed to the market supervision, do not need legal regulation<sup>[20]</sup>. However, at the judicial level, different social concepts may make it difficult for judicial applicants to uniformly determine "inducement of misunderstanding". In the field of livestream shopping, the standard of "causing misunderstanding" is usually applied to after-the-fact remedies, and cannot regulate the perpetrators of false advertising behavior before the damage occurs. As to whether the actor has falsely advertised the goods, the livestreaming platform can review the products in accordance with the national quality standards, commodity industry standards, etc., before the products flow to the consumers, to prevent the occurrence of the damage results, so as to achieve the regulation of false advertising behavior.

In tort liability, damages can be divided into personal and property and other aspects of the damages. In the same way, the false advertising behaviors committed by third-party streamers can also cause personal or property damages to consumers. For example, the sale of products do not meet national product standards, consumers use, may be harmful to their bodies; sales of fake products, consumers will have property losses; if the sale of products for consumers with a commemorative significance, but the actual receipt of the product is a big gap with its expected, may be caused by the mental level of the consumer damage. Third-party streamer to consumers caused by different aspects of the damages, it will affect the principle of civil liability. Due to the fact that false advertising concerning the life and health of consumers may produce serious social harmful consequences, the Law of the People's Republic of China on the Protection of Consumer Rights and Interests makes special provisions on the liability of the main body for recommending goods or services to consumers in such false advertising, and does not reflect the fault element in the formulation of the law<sup>[21]</sup>. The Advertising Law of the People's Republic of China further distinguishes between "a false advertisement on a good or service involving the life or health of consumers causes any damage to consumers" and "a false advertisement on a good or service other than one as mentioned in the preceding paragraph". Only in the latter case, the prerequisite that the endorser "knows or should know" is added<sup>[22]</sup>, corroborates that the former adopts the principle of no-fault liability. Along with the prevalence of electronic commerce, livestream shopping involved in a wider range of product areas, the degree of impact on the public interest is also more far-reaching, and the false advertising of third-party streamers is no different from the aforementioned situation. Therefore, in the case of products endangering the life and health of consumers, third-party streamer for no-fault liability principle, that is, if the streamer of false advertising behavior related to the life and health of consumers, and caused physical damages to consumers, regardless of whether the streamer subjective fault exists, the streamer should assume tort liability. False advertising behavior caused property damages, usually the subjective attitude of the third-party streamer as a civil liability determination of the elements.

#### **4.2 Causation Between the Streamer's False Advertising Behavior and the Damages**

In China's civil law, the causation between the victimizing act and the damages, as one of the necessary elements of all legal liabilities, including tort liability, distinguishes the factual consequences attributable to different actors and effectively implements the principle of self-responsibility. Therefore, clarifying the causal link between the false advertising behavior of third-party streamers and the damages can not only play the role of the law's disciplinary action, but also better protect the lawful rights and interests of civil subjects.

The determination of causation is closely linked to the distinction between the damages, and the degree of causation determined for different damages is different. False advertising behavior of the damages of the main existence of three categories, including personal injuries, property damage, and damage to consumers' right to know. False advertising may make consumers buy defective or poor quality products, in serious cases, the product will cause damage to the consumer's life and health. Streamer's false advertising behavior will also make consumers mistakenly believe that they have bought high-quality, life-satisfying products, but the actual situation of the product is not equivalent to the price paid by the consumer, and can not achieve its expected quality and effect, and bring property damage to consumers. As livestream shopping can not be face to face transactions, consumers can not check the quality of goods or services in advance, only through the streamer to promote and publicize the real information of the goods to achieve their right to know. If the streamer carries out false advertising, conceal the real information of the goods, it will directly lead to the consumer's right to know is damaged.

The causation between streamer's false advertising behavior and the damages that is the streamer advertising behavior for consumers to produce the decision to buy products and lead to the occurrence of the damages to the magnitude of the force. Mainly manifested in the main streamer false advertising behavior of consumers were misled to buy, use the goods or services that are false advertising, and directly to their own damage. For different damages is recognized by the size of the force is different. If the false advertising behavior on the consumer's right to know damage, the causation for direct

causation, the streamer of the false advertising behavior is the only, direct cause of the consumer's right to know damage. If the consumer's personal or property rights and interests are harmed, due to the streamer is the promotion of goods or services, not goods, services, producers and actual sellers, false advertising behavior is only part of the cause of the consumer damage, is not caused by all the causes of the damage occurred. Therefore, the false advertising behavior for personal or property damages of causation is a kind of antecedent, non-directly caused by the equivalent of causation. In our China's doctrine, the judgment of causation mainly use "adequate causation theory", that is, the relationship between the victimizing act and the damages is of an adequate nature and must significantly increase the objective likelihood of the damage occurring. In the use of "adequate causation theory" on false advertising behavior and the damages of the determination of causation should pay attention to the following three points: one is the need for an objective link between the false advertising behavior and the damage; the second is the extent to which the behavior enhances the likelihood of the damage occurring; the third is the extent to which the behavior can be foreseen by an ordinary rational person to enhance the possibility of the occurrence of the damage<sup>[23]</sup>. The rational person here should be measured according to the cognitive ability of ordinary people in society.

In the livestream shopping, there are cases in which the streamer is not liable because the causation between the false advertising behavior and the damages is not established. Streamer in the livestream advertising over-exaggerate the quality of goods or services, ingredients, efficacy, and so on, and the social rational people can identify, identify the advertising behavior of the streamer, and can produce the correct judgment of the real situation of the goods or services. If the consumer suffers damages, the streamer of their own false advertising behavior does not assume tort liability. If the consumer has the intention to buy and has repeatedly purchased the same goods or services, because the consumer knows or should know the quality of goods or services, ingredients, efficacy and other aspects of the real situation, despite the streamer in the livestream of false advertising, also do not need to assume liability. If the consumer is subjectively negligent as to the damages caused by the false advertising, the tort liability of the anchor is usually not exempted, but the liability will be reduced with the intervention of this factor. When the consumer has the normal cognitive ability and in the live purchase of goods inadvertent negligence and other negligence, this time the streamer of the false advertising behavior and the damages of the causal link should be accompanied by the consumer's degree of fault and weakened, the streamer of the corresponding tort liability should be reduced.

At the level of leading to the occurrence of the damage, judicial practice, usually the consumer assumes the burden of proof to prove that he suffers from the damage caused by the three aforementioned acts of false advertising. In the case of Wang Moumou, Ruili Maidian Trade Co., Ltd. dispute over tort liability, the consumer Wang Moumou provided a live video of the three stones in question. The video clearly showed that the streamer with the goods did not completely and visually display the three stones and used exaggerated rhetorical techniques to describe the stones, which indeed violated Wang Moumou's right to know and property rights. Eventually, the court of second instance found that the streamer of the company's false advertising, and ruled that the company should refund the amount of goods to the appellee Wang Moumou<sup>[24]</sup>.

### 4.3 Clarifying the Principles of Liability for Third-Party Streamers

After the false advertising behavior committed by the third-party streamer produces damages for consumers, it is generally liable for tort and breach of contract according to the consumers and the law. According to the previous section, fiduciary intermediary streamers should be liable to consumers and business operators for breach of contract in the absence of exemptions from liability. However, in terms of tort liability, different principles of liability, the streamer will assume different sizes of civil liability. The current Advertising Law of the People's Republic of China China's current Advertising Law has constructed a three-tier liability system for the liability of the subject of false advertisements. Advertisers assume civil liability for most of the illegal advertisements, while advertising agents and advertisement publishers are liable together with the advertisers if they know or should know that illegal advertisements still exist and are still engaged in the production and publication of advertisements<sup>[25]</sup>. And the endorser only applies the no-fault principle to assume joint and several liability in the case where the falsely advertised goods are related to the life and health of consumers and cause consumer damage, and still applies the principle of fault liability to assume joint and several liability in most cases<sup>[26]</sup>.

In the emerging field of livestream shopping, the relationship between third-party streamers and consumers has been different from the traditional advertising subjects and consumers. The traditional advertising subjects and consumers usually rely on the advertisers to reach a deal with the advertisers' pre-designed advertising content and the popularity and popularity of the endorser, etc.. While third-party streamers can be flexible in the livestream according to different situations to the sales product introduction and display, and with the consumer conversation. With their own words and behavior to motivate consumers to produce the intention to buy and close the deal with them. It can be seen that, compared

with traditional endorser, consumers have a stronger basis of trust for streamers [27]. The causative potency and attributability of the streamer's tort liability is also stronger, and the principle of civil liability for third-party streamers needs to be adjusted compared to the original liability system of the Advertising Law of the People's Republic of China.

When the third-party streamer is a fiduciary endorser streamer, the consumer purchases the product or service promoted by him in the livestreaming room, the life and health of the damage, the streamer shall assume no-fault liability, which is the same as the liability system of the traditional endorser in the Advertising Law of the People's Republic of China. When the product or service causes general damage to consumers, the court currently adopts the principle of fault liability to determine the tort liability of the streamer false advertising. That is, the victim assumes the burden of proof that the streamer is at fault. It is considered by the author that based on the strong foundation of consumer trust in the streamer and the influence of the streamer on the consumer's desire to buy, the streamer's tort liability should be applied to the principle of liability based on presumed fault. In the doctrine, the relevant factors to be considered in the allocation of the burden of proof mainly include the evidentiary distance factor and the ability to prove factor [28]. The evidentiary distance factor requires that the burden of proof be borne by the party who is closer to the evidence and has easier access to it. The ability to prove factor asserts that the allocation of the burden of proof takes into account the ability of both parties in the collection and retrieval and dominant utilization of evidence. In the streamer false advertising behavior of civil liability determination, the streamer is easier than the consumer access to the quality of goods or services, efficacy and other information, but also easier to collect and access the live process of live video, in the litigation is in a strong position. Comprehensive consideration of the evidentiary distance factor and the ability to prove factor, the streamer has a stronger ability to prove, should be reversed to the burden of proof to the streamer to ensure fairness in litigation. And in the actual litigation process, the victimized consumers often face the difficulty of proof. In Li Min, Guo Aina and other disputes over the sales contract of civil second instance, the appellant Li Min applied to the court to the space exchange company to retrieve the appellee Guo Aina live broadcast "Fang for jewelry" live video. But the space exchange company in the case of the livestreaming platform operator is an outsider Beijing microsoft vision technology limited company for the reason of the livestreaming video is not provided. Beijing Microcast Vision Technology Co. Ltd. also failed to provide the live video on the grounds of system upgrading, and ultimately appellant Li Min did not collect the evidence of the live video [29]. In summary, the use of the general tort liability burden of proof allocation invariably increases the litigation burden of the victimized consumers, so that the burden of proof of the third-party streamer is too light, which is not conducive to the maintenance of the lawful rights and interests of the victims. Therefore, the principle of liability for false advertising behavior of the streamer should use the presumption of fault liability, the burden of proof will be reversed to the streamer. The streamer can not prove that they did not commit false advertising behavior, they should assume the tort liability.

## **5. Internal Allocation of Liabilities Between the Third-Party Streamer and the E-Commerce Company**

### **5.1 The Contractual Relationship Between Third-Party Streamers and E-Commerce Companies**

In the field of market economy, the contract is to maintain the market circulation and market order of the strong guarantee. In the same way, the contractual relationship is also to maintain the basic requirements of the livestreaming market order. In the livestream shopping, the contractual relationship between the third-party streamer and the e-commerce company is not only the starting point of the livestream shopping, but also an important basis for solving the problem of civil liability sharing between the two. Different types of third-party streamer, according to their own and the business operator signed a different kind of contract, in the livestreaming sales in different civil rights and obligations, resulting in their false advertising activities in different civil liability. Employed third-party streamer is employed by an individual and signs a labor contract with an individual business operator, and the streamer sells the business operator's goods or services in the livestreaming room according to the business operator's instructions or authorization. This kind of streamer is usually the business operator's employees or other natural persons who do not have strong social influence, and the business operator has a labor relationship, belonging to the performance of work duties of the job behavior. When the streamer in the job behavior of false advertising damage to the rights and interests of consumers, should be in the streamer there is intentional or gross negligence subjective state of mind, in accordance with the second part of this paper discusses the employment of the third-party streamer liability form to determine.

Fiduciary third-party streamer usually signed a cooperation agreement with the e-commerce company, the streamer can freely set up and arrange the commodity information of the livestreaming room, to build a path for consumers and business operators to enter into a sales contract, but also to use the streamer's own reliance on the interests of the promotion of the conclusion of the sales contract. For example, Li Jiaqi live most of the stars livestreaming room, are with the actual business

operator of the goods entered into a cooperation agreement, livestreaming goods or services are provided by the business operator, the consumer in the click on the purchase link will be forwarded to the corresponding store to buy. Based on the provisions of the Advertising Law of the People's Republic of China for commercial advertising and the livestream shopping cooperation agreement and the identity of the competition, the fiduciary third-party streamer in the livestream shopping presents a different identity form. When the fiduciary third-party streamer in the livestreaming room in his own name or image of the business operator's goods, services for recommendation, at the same time for the business operator to publish advertising, the streamer appeared endorser and advertisement publisher identity competition. If the streamer accepts the business operator entrusted to provide advertising design, production services, and engaged in publishing advertisements, in their own name or image of the recommendation of the advertisement of the goods and other activities, in this case the anchor both advertising agents, advertisement publishers and endorsers identity. In today's era of livestream shopping bandwagons, many head streamers in order to ensure that their leading value and reputation for consumers' purchasing will, usually supervise the content of advertisements for goods or services and add their own design, endorser streamers to assume the liability of the advertising agent of the phenomenon has matured in practice. Because of both advertising agent identity streamer for advertising content control role is greater than the other two advertising subject, so compared to other endorser streamer, both advertising agent identity streamer should assume greater legal liability.

## 5.2 The Allocation of Liability in the Case of Joint Tortfeasance

In the network livestream marketing, false advertising behavior is the main manifestation of violating the lawful rights and interests of consumers and disturbing the electronic commerce market order. Due to the streamer on the livestream shopping in the false advertising behavior has a strong dominance and control, its behavior is attributable. In the doctrine generally apply the theory of trust protection and the theory of causative potency in tort law to solve the problem of attribution of false advertising behavior of third-party streamer<sup>[30]</sup>. When the streamer and the business operator based on their respective victimizing act, under conditions that constitute a joint tortfeasance against consumers, clear rules for the allocation of liability between the streamer and the business operator, is conducive to restraining the activities of the streamer and the business operator, to safeguard the integrity and legitimacy of the electronic commerce transactions; at the same time, it is conducive to the protection of the consumer's right to know and economic interests, and to point out the direction of the rights of the consumer. It is also more conducive to the unification of judicial practice for the streamer false advertising behavior of the ruling, to maintain the market order of livestream shopping<sup>[31]</sup>.

When the false advertising behavior of the business operator and the streamer constitute joint tortfeasance, the business operator as the actual seller of goods of course assume tort liability, the key to the rule's determination is how to delineate liability between the third-party streamer and the business operator in different situations. The author believes that the infringement situation of the streamer should be discussed in accordance with one of the modules of tort liability - the presence or absence of and differences in the subjective attitude, first of all, consider the application of the principle of no fault infringement situation. That is, false advertising of goods or services related to consumer life and health, the consumer's right to life and health, the right to physical damage, regardless of the subjective fault of the actor, third-party streamer should assume joint and several liability for the consumer's damage with the business operator. The principle of no-fault liability in China's civil law is mainly applicable to product defects, highly dangerous operations and other special tort situation. The establishment of the no-fault joint and several liability allocation with the business operators and the streamers under the joint tortfeasance can urge the streamers to better perform their obligations to protect the smooth progress of livestream marketing.

For the joint tortfeasance that is not related to the life and health of consumers, the paper discusses separately based on the different subjective attitude of third-party streamers when they carry out false advertising<sup>[32]</sup>. Employed streamers and intermediary streamers who know that the business operator, advertising agents, etc. make misleading false advertising of goods or services still carry out the band, belong to common intention, and the streamers should assume joint and several liability with the business operator. In judicial practice, this situation more than ruled that the streamer does not assume civil liability, by the responsible business operator claim reimbursement from the streamer. Lin moumou, Peng moumou network sales contract dispute, the court of second instance that the "Gamble Stone" livestreaming room streamer exaggerated commodity information disclosure of the objective fact is false advertising behavior, so that Lin moumou of the goods to make a wrong judgment and order to buy. The court finally decided that the business operator of the goods Pengmoumou assume the corresponding legal consequences, did not judge Pengmoumou hired streamer assume the corresponding legal liability<sup>[33]</sup>. It is considered by the author that when the streamer intentionally for false advertising behavior and the business operator constitutes the joint tortfeasance, only by the business operator claim reimbursement from the streamer, will make the streamer's liability is not compatible with their own livestreaming promotion behavior,

resulting in the law on the streamer of the regulation of insufficient strength. If the employed streamer and intermediary streamer because of carelessness or overconfidence, did not do the examination obligation or duty of care to the business operator's false advertising, and in accordance with the original content of the advertising on the livestream marketing of goods, in the external relationship, the streamer remains jointly and severally liable with the business operator. In the internal relationship, according to the principle of fairness and self-responsibility, the streamer's share of damages under subjective negligence should be less than the streamer's share under subjective intention. And in the different degree of negligence of the streamer, the streamer and the business operator of the internal share of damages should be different.

According to the provisions of the Advertising Law of the People's Republic of China, the endorser streamer is presumed to have different advertising subject status. In the use of their influence and credibility in livestream shopping, the endorser streamer has the obligation to pre-examine the goods or services. Endorser streamer and the business operator there is a common intention, the two assume joint and several liability, mainly in the following two cases. First, streamer with the status of advertisement publisher and endorser colludes with the business operator to form a clear division of labor to falsely advertise the goods or services provided to the consumers, which belongs to the common direct intention. Second, the endorser streamer knows that the business operator's goods or services are defective, but still designs and produces advertisements that do not conform to the actual situation and carries out false advertising in the livestreaming room or publicizes and markets them directly on the Internet<sup>[34]</sup>. Both of the above situations can be recognized that the streamer and the e-commerce company constitute joint tort, and the endorser streamer should assume joint and several liability with the business operator.

## 6. Conclusion

At a time when the digital economy is deeply reshaping the business ecology, the issue of civil liability arising from the false advertising behavior of third-party streamers, as a key link in the livestreaming economy, has moved from a marginal issue to the forefront of the rule of law. With the continuous innovation and development of the livestreaming industry, new marketing models and publicity means are emerging, bringing challenges to the identification and study of civil liability of third-party streamers. The civil liability of third-party streamers in false advertising has become an urgent problem, and in-depth analysis of the nature of this problem provides theoretical support for the construction of a scientific liability system and a unified path of practice.

Comprehensive full text, clarify the civil liability of the third-party streamer in the livestream shopping, can be analyzed from the following points. First, according to the actual function played by the third-party streamer in the livestream shopping and the legal relationship between the business operator to correctly define its identity type, specifically including the employed third-party streamers and fiduciary third-party streamers; Second, the false advertising behavior and the damages to the determination, and based on the different damages to make clear the civil liability of the third-party streamer principle of liability, including no-fault liability and liability based on presumed fault; Third, to determine the subjective attitude of the streamer and the consumer, in order to determine whether the streamer has a mitigating or exempt from liability; Fourth, if the streamer and the business operator constitute joint tortfeasance, the liability of the streamer and the business operator should be allocated according to their contractual relationship.

The paper provides a specific analysis of the civil liability of different types of third-party streamers under false advertising behavior, forming a more complete liability system. It is hoped that it can provide useful reference for subsequent academic research and judicial practice, and jointly promote the construction of the rule of law and sustainable development of the livestreaming e-commerce industry.

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