Study on Legal Issues of Online Live Commerce
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Abstract
In recent years, as a new way of shopping, online live shopping with goods has witnessed a hot growth, which has not only brought huge economic benefits, but also generated a series of problems. In the broadcast room false advertising, exaggerated propaganda phenomenon is common; it is common for merchants and consumers to bypass the regulations of online platforms and conduct direct transactions; Due to the difficulty in defining the legal status of network broadcast operators and the improper setting of the existing burden of proof rules, the problem of consumer rights protection is still prominent. In order to improve the live webcast with cargo unhealthy practices, and promote the benign development of the network economy, not only to strengthen the legal quality of the live webcast, also should give full play to the regulatory function of the trading platform, at the same time at the legislative level clear legal position of the live webcast, adjust the applicable rules of burden of proof, and increase the risk of consumer rights of success.

Keywords
Direct broadcast with goods; Network broadcast; Protection of consumer rights and interests.

1. Overview of Online Live Commerce
In 2020, the COVID-19 epidemic hit most of the real industry hard, but the live broadcast industry bucked the trend and entered the era of "live broadcast for everyone, and everything can be broadcast". According to data from iiMedia Consulting, there will be more than 81,000 livestreaming related enterprises in China in 2020, of which more than 65,000 new livestreaming related enterprises will be added, which is about 10 times of the total number of new ones in 2019. In the first half year of 2020, there will be more than 10 million online livestreaming in China, and more than 20 million online livestreaming from January to November, with more than 400,000 active anchors. More than 50 billion views and more than 20 million items have been listed on the shelves. [1] "live + electricity" this new shopping way to present popular type of growth, not only because it has brought a new type of labor market, More importantly, on the basis of traditional e-commerce, it has achieved a leap from search to experience. By virtue of the image of network broadcast operators, it has achieved intuitive and real vision and experience sharing.

Compared with traditional e-commerce, online live broadcast has a significant advantage. The biggest highlight lies in the introduction of online live broadcast operators. As long as there is a mobile phone and a network, consumers can enter the broadcast room anytime and anywhere to watch the live broadcast. Broadcasters generally have eloquence, good image and a certain fan base, and fans' love and trust for anchors will often spread to the products they recommend. In addition, anchors will also explain products according to consumers' questions. Real-time interaction enables consumers to realize zero-distance communication with sellers. The natural promotion scenes in the broadcast also bring consumers the happiness and stimulation of "cloud shopping". However, this kind of transaction mode has a great security hidden danger. The commodity operator has the initiative to release
the commodity information, and the information received by consumers is exactly the information specially released by the commodity operator. This kind of information asymmetry makes consumers often in a weak position. In addition, network traffic fraud, false publicity, induced trading, commodity quality is not guaranteed and other chaotic events also occur frequently, seriously disrupting the order and security of transactions in network transactions. "The legal order is a system in which the regime organizations make use of their own coercive power to adjust relations and arrange behaviors systematically'" [2]. The law pursues order and security, but the chaos in the current online live commerce has seriously disturbed the normal economic order. Network as an important part of network economy, live with goods to our country social economy development and the whole is very important to the healthy development of national economy, the present should be on the chaos in live online with analysis and improvement, in the hope of establishing good take goods, promote the benign development of the network economy, network economy boom.

2. Common Phenomena and Legal Problems in Network Live Broadcast of Goods

2.1. Much False Advertising

In recent years, there has been a continuous boom in online live broadcasting of goods. One important factor is that it has overcome the "false appearance" of goods created by traditional TV advertisements. The product picture presented by the TV advertisement is often processed and refined by the professional and technical personnel, and the advertisement spokesmen with good image and the slogan of direct poking heart have undoubtedly enhanced the attraction of the product. Consumers are often disappointed when they get the goods that have been over-packaged and beautified by TV advertisements, and live carrying goods just overcomes this defect of traditional advertisements. With the help of the network live broadcast platform, anchors can introduce the appearance, performance, use and feeling of the products to consumers in an emotional way. They can also adjust the introduction of the products according to the real-time questions of consumers and provide one-to-one question-and-answer service. The real-time nature of live broadcasting makes the interaction between anchors and consumers more convenient and efficient, which not only shortens the distance between them, but also makes consumers trust and wonder about anchors and commodities, and greatly increases their shopping desire. But live with cargo cannot abandon the common faults of e-commerce, consumers and businesses is always by the medium in the communication network platform, the entire consumer link is conducted in the form of virtualization, consumers cannot actually come into contact with the goods, also cannot identify the authenticity of the advertisement, both sides information asymmetry makes the businessman have a chink in the wall. Many businesses will choose false advertising, exaggerated publicity of this low-cost method to increase sales, to earn fat profits.

"Advertising law" the 2nd clear regulation, commercial advertisement is to point to commodity operator or service provider to bear the cost, through certain medium and form directly or indirectly introduce the commodity that oneself sell or the service that place provides. The main form of online live broadcasting is that anchors sell products or services to users with the help of network platforms, and the content of their live broadcasting constitutes commercial advertisements. At present, the measures to control false advertisement in China are mainly administrative punishment, civil liability and criminal sanction. Compared with relying on the law to sanction false advertising, legislation is more inclined to the advertising examination department to audit the qualification of the advertising subject, advertising content, form of expression and relevant certification documents, and the market supervision department to supervise regularly or irregularly. General advertising review is divided into pre-inspection and
post-inspection, our country is a small part of special goods advertising using mandatory pre-inspection, most of the goods or services advertising is still using post-inspection, which is not beneficial to the introduction or release of advertising before the ban of false advertising. [3] Based on the characteristics of real-time network broadcast, the regulation effect of advertising censorship on false advertising and exaggerated publicity is not obvious. In the online live broadcast, most of the prior review focuses on the formal elements such as the qualification of the main body. The content of the anchors’ promotion of goods or services to consumers constitutes commercial advertisements, and this "dynamic" advertisement forces the regulatory authorities to fail to conduct in-process review. There is no doubt that the large number of live broadcasts and the rich content also increase the difficulty for the market supervision departments to review after the event. In practice, automatic detection is usually carried out with the help of big data, but the standard is often only covering common content, and personalized ads are treated differently. Such strict and inflexible censorship standards easily lead to a "one-size-fits all" situation, which severely hit the development of the online live broadcasting industry.

2.2. Strong Concealment of Network Transactions

The development of online live broadcasting with goods cannot be separated from the carrier of virtual stores of merchants and the live broadcasting platform that plays a role of connecting merchants and consumers. In recent years, with the e-commerce platform with clear boundaries of live platform, social continuously introducing electric business platform, to provide similar e-commerce platform services for online trading, led to live online platform is electronic commerce platform operators shall bear the responsibilities of electric business platform, whether the problem discussed in this paper. The Measures for the Supervision and Administration of Online Transactions (hereinafter referred to as the Measures), which came into force in May 2021, as an important departmental regulation for the implementation of the E-commerce Law, make clear provisions on the positioning of operators in online trading activities such as live broadcasting and goods taking. Network service providers such as network social networking and network live broadcasting shall perform the obligations of network trading platform operators in accordance with the law if they provide operators with network business sites, commodity browsing, order generation, online payment and other network trading platform services. "Method" has been clear about the live with the condition of goods platform liable electric business platform, its not defining the way subject identity attribute is used to determine what kind of responsibility, but the behaviour of platform based on live take goods attribute determine its shall bear the responsibility, no matter live online platform or in other situations are originally belong to the network trading platform, As long as the operator provides the network business site, commodity browsing, order generation, online payment and other activities with the same service nature as the network trading platform, it should assume the responsibility of the network trading platform operator. [4] Network live broadcasting with goods has the characteristics of strong concealment. This phenomenon can often be seen in the live broadcast with goods, operators often put their WeChat or Alipay QR code posted in the broadcast room, consumers directly by scanning the QR code to pay. Starting from the behavioral attributes of network platforms, although they do not directly participate in the transaction activities of consumers and operators, they still provide operators and consumers with business sites, commodity browsing and other services, and play the functions of traditional e-commerce platforms. Therefore, they need to undertake the responsibilities of e-commerce platforms. The E-commerce Law stipulates that e-commerce platform operators have the obligation to preserve information on commodities and services and trading information, and platforms also enjoy the right to exercise supervision.
as a third party based on legal provisions. In general network shopping, network operators and consumers through live trading platform, trading information, chat records and the way of transaction, key information will leave a mark on the broadcast platform, is generally not less than three years and save time, once the consumer rights and interests are violated, customers can request platform to provide those records can be directly used as evidence, but different from general network shopping, live with cargo behavior with occult, resulting in live platform participation is abate, don't even involved in the specific live with cargo behavior, only through the trade between the two parties WeChat or pay treasure to transfer record cannot consider live platform is the trade between the media, the live platform not only can't provide a transaction records when consumer rights protection, it is also difficult to use laws to regulate it.

2.3. It Is Difficult for Consumers to Protect Their Rights

Regardless of the traditional e-commerce shopping or the popular online live commerce, consumers are in a weak position and often face shopping risks such as substandard quality of goods and difficulty in returning or exchanging goods. Therefore, it is very difficult for them to protect their rights. The news reported that an antiques collector paid 180,000 yuan to buy a raw jade stone purport to be mined from Myanmar in a broadcast studio, only to receive a pile of ordinary jade instead, and then demanded compensation from the seller but was rejected. When consumers want to take responsibility for the unsatisfactory goods they have bought in the live broadcast, they often encounter the situation that merchants, anchors and live broadcast platforms try to shirk their responsibilities to each other without any result. Live webcast with goods increased compared with the traditional electricity business shopping webcast is the main body, in previous studies, the scholars of business and live platform's legal research is more, less to live to study, to clarify the legal status of the live webcast, clear its liability problems may put forward new path to consumer rights protection. In the aspect of judicial relief, the limitation of judicial proceedings is also an important factor that leads to the difficulty of consumer rights protection. The first link for consumers to fall into a shopping scam is false advertising. At present, the infringement of false advertising is regarded as a general tort, which is applicable to the principle of imputability of fault liability and the rule of "who claims, who provides the proof". Due to the strong concealness of online live shopping, consumers generally have a weak awareness of evidence preservation in the process of shopping, and lack of key evidence to support their claims. The rule of "the one who claims, the one who provides the proof" undoubtedly increases the difficulty of proving for consumers.

3. Solutions to the Problems in the Online Live Commerce

3.1. Strengthen the Legal Literacy of Network Broadcast Operators

The Measures for Supervision clearly stipulates that operators of online trading platforms shall establish an inspection and monitoring system for operators within the platforms and the commodity or service information released by them, which means that broadcast platforms are obliged to inspect and supervise the content of commercial advertisements in the broadcast rooms. However, due to the real-time characteristics of live broadcast with goods, anchors have strong initiative in the process of live broadcast and can freely play. It is often the case that the commercial advertisements formed by anchors' recommendations are inconsistent with the commercial advertisements initially reviewed, which leads to frequent false advertisements and exaggerated publicity. Webcast itself is entertaining, specialization degree and the barriers to entry are relatively low, but the qualification is not clear to the live webcast regulated industry standards, most of the anchor moral standards and literacy level is uneven, without professional training, legal consciousness, only aim at the maximization of economic benefits, disregard for the rule of law.
In order to reduce false advertising and exaggerated propaganda, it is necessary to enhance the legal awareness and responsibility of anchors. First of all, relevant departments can formulate specific industry standards to raise the threshold of access for network broadcast operators. Meanwhile, a training period can be set for the training and learning of relevant laws and regulations for these would-be practitioners, so as to improve their legal literacy and prevent the emergence of false advertising and exaggerated publicity from the source. Secondly, the monitoring system of the trading platform should be refined, and the accountability and monitoring system of the platform should be constantly improved. On the one hand, a complaint and prosecution mechanism can be set up on the platform, and regular assessment can be carried out on the network broadcast operators. On the other hand, the merchants with bad behavior and repeated false advertising and exaggerated publicity will be banned and recorded in the honesty list.

3.2. Give Full Play to the Regulatory Function of the Trading Platform

A network platform is a website or application (APP) built by using Internet technology. In practice, its common identity is information intermediary, and its core obligation is information review. [5] With the vigorous development of network live broadcasting, network platforms are becoming more and more capable of collecting and processing big data, and their protection of consumers in network relationships is also constantly strengthened. In addition to information review, network platforms are also obligated to ensure the safety of network users to a certain extent. Due to the concealment of online transactions, transactions between consumers and merchants can be conducted directly through private QR codes without leaving any trace on the online platform, which undoubtedly lays hidden dangers for some consumers to protect their rights after shopping. The Measures clearly stipulate that the operator of an online trading platform shall keep the identity information of the operator within the platform for no less than three years from the date of his withdrawal from the platform. The transaction information of commodities or services, payment records, logistics and express delivery, return and exchange of goods and after-sales service shall be kept for no less than three years from the date of completion of the transaction. This saved transaction information can later be directly used as evidence for consumer rights. Market supervision and administration departments also need operators of online trading platforms to provide relevant identity information, commodity or service information, payment records, logistics and express delivery, return and exchange of goods, and after-sale transaction information of operators in the platforms when carrying out supervision and inspection, settlement of consumer disputes and other regulatory and law enforcement activities according to law. Therefore, the preservation of transaction information is of great importance to the protection of consumers' rights and interests and the enforcement of regulatory authorities. It is necessary to eliminate the direct transactions of merchants and consumers through QR codes. Internet trading platform should provide technical support for trading link is fluent, consumers pay the cost when shopping can exist before the third party trading platform, the trading platform should be prepared for a commodity or service information, payment record the collection of information, such as to complete all the transaction records retained after putting the proceeds into business accounts. In the face of so many number of businesses, trading platform can take regular or not regular spot checks to filter, backroom deals with big data monitoring the quantity and amount for matching, focus on the businesses of abnormal data clearly, at the same time can be established between merchants inform on, rewards and punishments and clear management mechanism, to obey the rules of the trading platform of merchants to provide preferential, Businesses that violate the rules will be punished and recorded proportionately. If they exceed a certain number of times, they will face the punishment of being banned from the platform.
3.3. A Double Breakthrough in Self-reliance and Judicial Relief

As the key point for consumers to buy live broadcast products, network broadcast operators play an important role in promoting products and facilitating transactions. They should bear corresponding legal responsibilities when consumers' rights and interests are infringed. The Guiding Opinions of the State Administration for Market Regulation on Strengthening the Supervision of Online Broadcast Marketing Activities does not categorize online broadcasters as advertising spokespersons, publishers and advertising operators. As for the responsibility of network broadcast providers, it is stipulated that natural persons, legal persons or other organizations shall use network broadcast to publicize the performance, function, quality, sales status, user evaluation and honors of commodities or services, which shall be true and lawful, and comply with the relevant provisions of the Anti-Unfair Competition Law. If the content of the live broadcast constitutes commercial advertisements, the responsibilities and obligations of advertisement publishers, advertising agents or advertising spokespersons shall be fulfilled in accordance with the provisions of the Advertising Law. According to the regulation, a live webcast can only fulfill the responsibilities and obligations of an advertisement publisher, an advertising agent or an advertising spokesperson if the content of the live broadcast constitutes a commercial advertisement. In other cases, the relevant provisions of the Anti-Unfair Competition Law shall apply. Application of Advertising Law in the Supervision of Online Live Marketing Activities.

When the live broadcast content constitutes commercial advertisements, in the assisted marketing mode, the webcast is independent of the merchants, and the nature of their behaviors should be analyzed in detail. The webcast shall fulfill the responsibilities and obligations of the advertisement publisher when broadcasting the advertisement content. When recommending commodities or services to the public in their own name and image during live broadcasting, they shall perform the responsibilities and obligations of advertising spokespersons; when participating in soliciting advertising business and planning live broadcast advertising content, they shall perform the responsibilities and obligations of advertising operators. In the self-operated mode, the webcast is usually the staff of the merchant or the merchant himself. In this case, the webcast is the commodity operator, whose other identities are absorbed by the advertiser to fulfill the responsibilities and obligations of the advertiser. The definition of the subject identity of the live broadcast operators in the Advertising Law enables consumers to seek self-relief when their rights and interests are infringed, and requires the live broadcast operators to assume the responsibilities and obligations of the advertisement publishers, advertising operators or advertising spokespersons according to their specific behaviors. In the aspect of judicial relief, legislation can be adopted to reverse the burden of proof in infringement cases of false advertising, so as to reduce the difficulty of consumers' proof, arouse consumers' enthusiasm for the right of relief through litigation, and improve the situation that consumers are lazy about the right of relief through litigation.

References

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