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## Analysis of hot legal issues in China's live-streaming marketing

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### ABSTRACT

As a new e-commerce model, live streaming is rapidly rising in the market with its unique advantages and characteristics. However, with the rise of live-streaming marketing, a series of legal issues are also involved. For example, anchors need to ensure the authenticity and legality of their goods; merchants need to sign contracts with anchors and fulfil regulations on taxation and other aspects, as well as protect the intellectual property rights of their goods, while consumers also need to protect their rights and interests in the process of live-streaming with goods and remain vigilant against false propaganda and fraud. Therefore, the government needs to strengthen the market regulation of live-streaming with goods and study related legal issues to ensure a fair and orderly market. This article will focus on three legal issues: whether the anchor should be held responsible for the goods' quality, the ownership of the live-streaming account and whether the anchor can cancel the brokerage contract with the MCN at any time.

**Key Words:** *Live-streaming, commodity quality responsibility, ownership of live streaming accounts, right of arbitrary termination*

### INTRODUCTION

With the rapid development and popularity of internet technology, live-streaming marketing has become a new business model, widely used in the field of e-commerce, characterized by the influence and appeal of the anchor, recommending goods to viewers and selling them in real-time, which has played an essential role in stimulating consumer potential and driving new economic growth [1]. However, in practice, legal issues arising from the following disputes deserve our attention and exploration.

#### Whether the anchor should be responsible for the goods' quality.

With the rise of live-streaming marketing, more and more anchors have begun to get involved in this field. Live streaming can benefit the host and provide consumers with a more convenient shopping experience. However, the ensuing problems have gradually surfaced, the most important of which is whether the anchor should be responsible for the quality of his goods.

First of all, as promoters of live-streaming marketing, anchors need to be made clear that anchors are mainly responsible for recommending goods for consumers and providing relevant shopping information and services. The anchor is not the producer or seller of the goods and, therefore, should not be held responsible for the quality of the goods. If a product has a quality problem, consumers should seek a solution from the manufacturer or seller rather than placing all the blame on the anchor [2].

Secondly, anchors can still ignore the quality of goods. As a promoter of live-streaming interests, the anchor should conduct certain screenings and reviews of the recommended goods to ensure that the quality and safety of the goods comply with relevant standards and regulations. If the anchor fails to fulfil the due review and screening responsibilities when recommending products, resulting in consumers purchasing substandard products, then the anchor should also bear specific burdens.

Finally, the anchor should also provide adequate instructions and tips on using the products and precautions during the live broadcast of the goods to avoid safety problems caused by improper use by consumers. Suppose the anchor needs to provide adequate instructions and tips on using the product during the live broadcast, and the consumer suffers losses due to improper use. In that case, the anchor should also be held responsible. In summary, anchors should bear a particular responsibility for the quality of goods when bringing goods to market. Although anchors are not the producers or sellers of goods, as intermediaries who bring goods, they should also take specific responsibilities regarding the

quality of goods, information, and after-sales services. Only in this way can we ensure that the rights and interests of consumers are fully protected and can promote the healthy development of the live-streaming within the goods industry.

### **Who owns the live account?**

With the continuous development of the live streaming industry, many people have started to join the ranks of live streaming. Live streaming has become a new way of socialising and a new business model. However, as the live streaming industry grows, some questions have arisen, including who owns the live streaming account. A live streaming account is a digital asset that can generate much revenue, so many people want one of their own. Nevertheless, who owns a live performance? This is a complex question that needs to be analysed from different perspectives.

(1) From a legal point of view, the live account should belong to the registrant. According to the provisions of the Civil Code of the People's Republic of China, both parties to a contract should follow the principles of voluntariness, equality, fairness and honesty and credit and agree on the legal content. If the live-streaming account is registered by signing a contract, then the registrant should have budget ownership. However, the account request is disputed if the live performance was recorded illegally.

(2) From a commercial point of view, the operator should own the live-streaming account. A live-streaming platform is a business model which requires a large amount of capital and human resources to be invested in its operation to generate revenue. Therefore, the ownership of the live-streaming account should belong to the operator of the live-streaming platform. If the registrant of the live version wants to transfer the account to someone else, then the consent of the live platform is required.

(3) From a practical point of view, a live account should be jointly owned by the registrant and the operator. The live account's registrant is the account's initial owner, and they can use the live report for self-presentation and promotion. The operator of the live-streaming platform, on the other hand, is the actual owner and manager of the account.

(4) From an ethical point of view, a live account should be owned by the person who created it. That person should hold the report if a live performance is produced independently. This is because the bill was built separately by the person, who has put in a lot of time, effort and monetary costs, and also includes personal values.

Concerning whether the live account can be transferred, the anchor generally does not enjoy ownership of the live performance but only the right to use it, and the network service platform expressly prohibits the transfer of the account; in this case, the anchor transfer of the live performance belongs to the rightless disposition and does not produce the consequences of the account transfer. In practice, the transfer of live accounts is still standard, and various online trading platforms are dedicated to transferring live performances. The main reason for this phenomenon, on the one hand, is the misplaced perception of ownership of live accounts by industry players, who mistakenly believe that their ownership of the report can be freely transferred; on the other hand, it is because the Internet platform in many cases pay no heed to the transfer of accounts, and does not strictly implement the platform rules prohibiting the transfer of live performances. It should be noted, however, that in the event of a dispute over the transfer of a live account, the public remedy (i.e. litigation) that civil subjects are accustomed to relying on may dismiss the claim for recovery of the live performance.

What is particularly noteworthy is that, with the implementation of the real-name system and the successful commercialisation of live accounts in recent years, real-name authentication has become mandatory for online service platforms [3]. In this case, if the seller of a live performance reneges on the report, it can retrieve the sold history through the mobile phone or accurate name authentication information initially bound to it, which will inevitably put the traded performance in a state of dispute. Because of this, live account transfers, especially for the transferee, are naturally risky, so care must be taken to transfer high-value accounts.

To sum up, it is a complicated issue regarding who owns the live account. From a legal point of view, the live account should belong to the registrant; from a commercial point of view, the live performance should belong to the operator; from a practical point of view, the live account should belong to the registrant and the operator jointly. Therefore, when registering a live performance, users should comply with the platform's regulations and register following them to ensure the account's legitimacy. At the same time, the registrant and the operator should sign a contract to clarify their respective rights and obligations so that disputes can be avoided.

### **Can the anchor cancel the brokerage contract with the MCN at any time?**

In the continuous development of the webcasting industry, more and more anchors have joined MCN agencies to gain better resources and a broader space for growth. However, as time passes, some anchors may find that their cooperation with MCN agencies could be smoother than expected, and some conflicts and disputes may even arise. In such cases, can the anchor cancel the MCN's agency contract at any time? This is an issue that has received much attention and is a topic that needs to be explored in depth.

(1) We need to understand what an MCN agency is; an MCN is called Multi-Channel Network, which specialises in providing services for the live webcasting industry. At the same time, the MCN agency will also receive a certain amount of revenue from it, which is usually the anchor's share of advertising.

(2) With the continuous development of the live webcasting industry, the number of MCN agencies is also increasing, and the market competition is becoming more and more intense. Some MCN agencies may adopt improper means, such as false propaganda and cheating anchors, to obtain more resources. These acts will not only harm the interests of the anchors but also affect the healthy development of the whole industry. Therefore, anchors can terminate brokerage contracts with MCN agencies to protect their rights and interests.

(3) several issues must be considered when an anchor terminates an MCN brokerage contract. Firstly, the anchor must read the contract terms carefully and understand their rights and obligations with the MCN agency. If there is a clause in the contract regarding the termination of the contract, the anchor needs to follow the procedures stipulated in the contract to terminate the contract. If there is no explicit provision in the agreement, the anchor can negotiate with the MCN agency about the termination of the contract or resolve the dispute through legal means.

(4) The anchor needs to consider the possible implications of the termination of the contract. The legal relationship between the anchor and the brokerage company should be judged based on the setting and allocation of rights and obligations between the two parties in the contract. Generally speaking, the brokerage contract between the two is a composite contract, encompassing agency, brokerage, commission and labour relations in one and cannot be regulated by the sub-contracts. In a few cases, if the subject matter of the contract has a solid personal dependency and economic subordination, it constitutes an employment contract.

## CONCLUSION

As an emerging product in the era of social e-commerce, live-streaming can better stimulate consumer demand for products by creating content for products and using in-depth interactive marketing with users. However, the rapid development of live-streaming has exposed various problems, such as fraudulent credit, false propaganda, sales of counterfeit and shoddy products, lack of after-sales service, leakage of consumer information and tax evasion anchors, which have seriously jeopardised the healthy development of the industry. To this end, efforts should be made to improve the legal system, raise the market access threshold, strengthen industry self-regulation, and leverage market mechanisms to regulate the live-streaming with goods business model, lead the healthy and orderly development of the new industry so that live-streaming with goods becomes a new engine for the development of e-commerce and continues to play a more significant role in promoting China's economic growth.

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