1. Introduction

Live streaming sale, as a new mode of retailing, has become a huge hit, and gets even hotter during the COVID-19. Sales via live streaming platforms never stops surprising the public by breaking sales record, for example, gross sales of RMB one million\(^1\) in a five-hour live streaming on Alibaba for women's garment. Even some reserved luxury brands cannot help but joining the trend.

With such development also comes legal concerns. The regime of live-streaming sale includes: the E-commerce Law (effective on 2019-01-01), the Product Quality Law (Revision 2018, effective on 2018-12-29), the Law on the Protection of Rights and Interests of Consumers (Revision 2013, effective on 2014-03-15)("Consumer Protection Law"), the Advertising Law (Revision 2018, effective on 2018-10-26), the Law Against Unfair Competition (Revision 2019, effective on 2019-04-23), Tort Law (effective on 2010-07-01) and the Cybersecurity Law (effective on 2017-06-01).

2. Liabilities of the streamer, the seller and the platform

2.1 Two fundamental patterns

There are two main fundamental patterns of live streaming sales in China:

- **Pattern 1**: *Live-streaming and transaction platforms* that not only provide live-streaming, but also provide a platform for sale transactions, of which Alibaba is typical. ("Comprehensive Platform").

- **Pattern 2**: *Live-streaming platforms that refer to third-party e-commerce platforms or online stores*: Such platforms only provide live-streaming services; audience will click the links to purchase products on third-party websites; for example, Tik Tok and Kwai. ("SNS Streaming Platform").

2.2 Legal relations between the streamer, the seller and the platform

The fundamental relationships between the platform, the seller and the streamer are as follows:

1. **The streamer and the platform**: Usually streamers click “I have read and agreed” to the terms of use on the platform when registering, some with an additional exclusivity agreement. By doing such, which is common on predominant live streaming platforms\(^2\), the streamer becomes an independent contractor, an employee, of the platform.
2. **The seller and the platform**: The relation between the seller and the platform depends on the pattern of the platform. Legally speaking, the SNS Streaming Platforms generally are not directly linked to the sellers. But for the Comprehensive Platform, under the E-commerce Law, the seller and streamer, is an “business operator on the platform”, and the platform is an “e-commerce platform operator” with heavy duties. (as clarified in 3.3).

3. **The seller and the streamer**: A seller may be a streamer, promoting his/her own products. Alternatively, a seller may engage a streamer to promote for him/her via live stream, where the seller may be jointly liable for the streamer under certain conditions.

### 2.3 Liabilities of different subjects

The responsibilities of the streamer, the seller and the platform under different patterns and agreements are not identical. We will analyze by figuring out the major role it plays under the following major governing laws and regulations.

1. **The Advertising Law**
   - In general, the seller is an advertiser, and the streamer is an advertising agency (and also an advertiser if the streamer sells the promoted products). The platform is an advertising publisher. If the streamer also makes an endorsement, he/she will also be an endorser.
   
   They each have corresponding obligations under the Advertising Law.

2. **The Product Quality Law, the Law on the Protection of Rights and Interests of Consumers and Tort Law**
   - The seller bears the responsibilities of an “business operator” under the Consumer Protection Law and an “seller” under the Product Quality Law and Tort Law. It will be responsible for examination and acceptance of products, product quality warrant, labeling and return, replacement or repair, etc. Particularly, the seller is responsible for the advertisements made by the streamer.
   
   The SNS Streaming Platforms usually are not responsible for product quality or protection of consumers, since the sale of products is not made on the platforms. But Comprehensive Platforms are responsible for products and consumers.

   According to the Consumer Protection Law, the Comprehensive Platform may be liable for compensation claimed by consumers, for example, when the platform does not take essential actions upon its knowledge of the seller’s harm to the consumers’ interests, or the platform does not check the seller’s qualifications duly.

3. **The E-commerce Law**
   - Sellers and streamers are required to register with authorities, and file with the platform of their identification (further clarified in 3.1).

   Comprehensive Platforms are responsible for product qualities under certain circumstances. Additionally, they are also obliged to do the following, amongst others:

   - to check the information, licenses and permits provided by the streamer and/or the seller;
   - to establish rules and systems to protect intellectual property rights;
   - to adopt appropriate measures for deleting, screening, disconnecting and terminating transactions and services in certain situations;
   - to review the qualifications of advertisers and the content of advertisements.

4. **the Cybersecurity Law**
The platforms are “network operators” with network protection, and data protection obligations. Especially, the platform shall obtain informed consent before collecting the audience’s personal information, and may not disclose, modify without authorization or destroy personal information. It shall also take technical and other necessary measures to ensure the security of personal information7.

The seller and the streamer may not sell or provide or share any personal information with any third parties without informed consent from the data subject8.

3. Several legal issues

3.1 Registration and licenses

Except for certain circumstances9, the platform operators and the sellers shall register with the local Administrator of Market Regulation (AMR) and obtain necessary permits/ filings, for example, Food Safety License and Retailing License for selling spirits and beverage, and the Internet Content Provider (“ICP”) license for operating e-commerce business.

3.2 Endorsement by celebrities

If a celebrity, in the live streaming, makes an endorsement for products or service, he/she may only recommend or testify for goods or services they have actually used and based on facts. Minors under the age of ten shall not endorse any products.

3.3 Fake promotion

The seller, the streamer and the platform shall not make false or misleading promotion10. For example, they shall not fake transactions or user reviews to mislead consumers11, nor shall they block or delete negative comments, such as those real-time flying comments in the “bullet screen” mode streaming.

3.4 Return of goods within seven days without reason

As per the Consumer Protection Law, consumers who purchase the goods online may return the goods and get fully refunded within 7 days upon delivery without reason, provided that the goods are in good condition12.

4. Conclusion

Though the Live-streaming is new, the seller, streamer and the platform engaging in the live-streaming can still find their places under the existing regime. Live-streaming combines e-commerce sale and promotion, and the platform, the seller and the streamer bear multiple identities and corresponding liabilities.

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3. Refers to entity or natural person who design, produce or publish advertisements themselves or entrust others to do so to promote their goods or services. ↩
4. Refers to entity or natural person who publish advertisements for advertisers or advertising agencies entrusted by advertisers. ↩
5. Refers to entity or natural persons other than the advertiser that recommend or endorse goods or services in advertisements using their own name or image. ↩
6. Refer to article 23 of the Protection of Rights and Interests of Consumers.

7. Refer to Article 42 of the Cybersecurity Law.

8. Refer to Article 46 of the Cybersecurity Law.

9. Except for individuals selling self-produced agricultural products and home-made handicraft products, and individuals using their own skills to engage in convenient labor activities and sporadic small transactions for which licensing is not required by law, as well as e-commerce business operators who are not required to register pursuant to the laws and administrative regulations.

10. As article 8 of the Anti-Unfair Competition Law prescribed, “Business operators shall not make false or misleading commercial promotion for the performance, functions, quality, sales, user evaluation, accolades etc., so as to defraud or mislead consumers. Business operators shall not organize false transactions etc., to help other business operators to carry out false or misleading commercial promotion.”

11. Article 17 of the E-commerce Law

12. Four (4) kinds of goods which are not bound by the rule of “Return of Goods within Seven Days without Indication of Reason” due to their special nature: (i) goods customized to the exact requirements of consumers; (ii) fresh and perishable goods; (iii) audio and video products, computer software and other digital products downloaded online or whose packages are ripped open by consumers; and (iv) newspapers and periodicals delivered.

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