

Analysis of Civil Liability for False Advertisements Endorsed by Celebrities

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ABSTRACT

In recent years, the issue of celebrity endorsement advertising has become a hot topic in the news and media industry, and the phenomenon of celebrities engaging in false advertising is also common. The social harm caused by this cannot be underestimated and cannot be ignored. After the official implementation of the new Advertising Law, the definition of false advertising was clarified and the advertising endorsement system was improved, but its drawbacks were also significant. This article focuses on the identification of "false advertising" and analyzes the legal principles, legal responsibilities, and shortcomings of the new law behind it.

KEYWORDS

Celebrity Endorsement; False Advertising; Legal Liability.

1. DEFINITION OF THE SCOPE OF FALSE ADVERTISING

I believe many people have seen the movie *Me and My Father's Generation*. One of the stories, *The Duck Prophet*, introduced us to the first development of advertising. On January 28, 1979, Chinese Mainland's first television advertisement, *Sangui Yangrong Wine*, was broadcast by Shanghai TV Station, which lasted about 1 minute and 35 seconds in total. After the broadcast, it was written on the screen: "Shanghai TV Station will accept advertising business from now on." A small bottle of "Sangui Yangrong Wine" suddenly became a very popular gift for visiting relatives and friends on New Year's Day, and also let the word "advertising" take the wave of reform and opening up to the front of the times, making people new.

Time has passed, and the trend of good advertising has begun to distort. Celebrity endorsements have gradually become a means for many profit seeking businesses to engage in false advertising. In recent years, there have been numerous incidents, including the famous actress Zhang Kaili endorsing the "Zulijian" incident, Hu Jun endorsing false financial products, as well as the well-known Guo Degang endorsing the "Cangmi Paiyou" weight loss tea, and Liu Jialing endorsing the "SK-II" and so on. From this, it can be seen that false advertising incidents occur frequently, and many celebrities are also playing the legal sidelines for high endorsement fees, thus being "invited" to court by the public.

With the updating and replacement of laws, the new Advertising Law has continued to write a new chapter on the basis of the old Advertising Law, improving the definition of false advertising. Therefore, false advertising refers to deceiving and misleading consumers with false or misleading content, which constitutes false advertising. There are two forms: one refers to the content promoted in the advertisement that does not match the objective and true state of the product, and the other refers to the language used in the advertisement that causes the public to have incorrect associations

with the actual situation of the product and then make purchases. Generally, these types of endorsement words often exaggerate facts, have vague meanings, and are misleading.

2. THE PRINCIPLE OF CELEBRITY ENDORSEMENT FOR FALSE ADVERTISING AND ASSUMING RESPONSIBILITY

With the official implementation of the new Advertising Law, it is stipulated that celebrity endorsers and advertisers, among other entities, will jointly bear joint and several liability in the event of a "false advertising" incident. This not only fills the gap in the old law, but also brings an end to the long-standing chaos in China where celebrities endorse false advertising but do not bear legal responsibility. So what is the theoretical support behind this?

2.1. Legal Analysis

The theory of "the unity of rights and obligations" in legal philosophy is that, from a legal perspective, the two arise simultaneously and are a pair of corresponding concepts. Without rights, there is no obligation, and without obligations, there is no right. From the perspective of the subject of legal relations, as a citizen, it is not only the holder of rights but also the carrier of obligations. However, it does not exist in both law and reality to only enjoy rights without fulfilling obligations, or to only fulfill obligations without enjoying rights. In other words, the rights that citizens can enjoy are determined by the obligations they undertake; Similarly, the obligations of citizens are determined by the rights they enjoy.

In the context of celebrity endorsement advertising, in today's society, celebrities, as a group that is often active in the public eye, have particularly high incomes that attract attention. The ways in which they obtain high incomes also attract people's attention. If they obtain them through legitimate means, there is nothing else to say. However, if they obtain them through endorsement false advertising, this is a huge imbalance, clearly a "right but not obligation" phenomenon, which is a great asymmetry of rights and obligations.

Celebrity endorsement advertising, although it is an agreement signed with advertisers or product manufacturers to increase the popularity of a certain product or service and increase sales volume through the widespread attention and influence of celebrities, at the same time as signing the agreement, advertisers usually pay a huge compensation of up to ten million yuan to the celebrity first. This situation actually increases the cost of the product, and consumers buy a large number of products out of trust and love for the celebrity. Among them, it is their right for the celebrity to use their influence to obtain a huge compensation. However, if there is a problem with the product, the celebrity does not have to bear any responsibility, which obviously violates the principle of unity of rights and obligations. Therefore, adhering to the principle of unity of rights and obligations, celebrities should be responsible for endorsing false advertising and leading to numerous consumers. Responsible for the damage to legitimate rights and interests.

2.2. Civil Law Analysis

In the concept of civil law, the legal responsibility of celebrities endorsing false advertisements can be analyzed from the principles of trust interest protection, honesty and credibility, fairness, and public order and good customs.

Firstly, let's talk about trust protection, which is defined as if one party makes a commitment to the other party, and at the same time, the other party also has a reasonable belief in the commitment, then the person making the commitment must not violate their own commitment, otherwise they should bear responsibility. When consumers are hesitating about whether to make a purchase, celebrities intervene and rational purchasing behavior is easily influenced. In public perception, what celebrities

personally recommend is usually considered trustworthy. However, once they endorse "false advertisements", their credibility and even society's credibility will be undermined, and they will be filled with precautions. Therefore, in order to protect the trust and interests of the public, celebrities endorsing false advertisements need to bear corresponding legal responsibilities.

Secondly, the principle of "monarchy" and the principle of good faith in civil law require civil subjects to be honest, keep their promises, and keep their promises when exercising their powers and fulfilling their obligations. The parties involved should fully respect the interests of others and society while obtaining their own benefits, and should not abuse their power to harm others. This shows that every aspect of life cannot be separated from it, let alone in the law. The civil activities involved in advertising activities must be constrained by this principle. When celebrities endorse advertisements, they should maintain an honest attitude, review the advertiser and the content of the advertisement, and then truthfully express themselves during the endorsement process. They should not exaggerate or mislead consumers, nor obey the advertiser's instructions to make false statements. They must exercise their rights within the scope of honesty and credibility. Therefore, in order to ensure market order and promote moral values, celebrities endorsing false advertisements need to bear corresponding legal responsibilities.

Once again, the principle of fairness reflects the fundamental value of civil law in promoting social fairness and justice. Therefore, civil subjects should adhere to the concept of fairness and justice when engaging in civil activities. The high income from celebrity endorsements is ostensibly paid by advertisers, but the ultimate source of production is still on us consumers. Therefore, in order for celebrity endorsements to withstand testing and scrutiny, we must dare to "tell the truth, tell the truth". In order to ensure social fairness and justice, false advertising behavior of endorsements needs to bear certain responsibilities to consumers.

Finally, the principle of public order and good customs, as the name suggests, refers to public order and good customs. The endorsement of false advertisements by celebrities must violate the principle of public order and good customs. Because the advertisements broadcasted are aimed at a large number of consumers, and the influence of celebrities leads to an increasing number of audiences. If it is a "false advertisement", it will inevitably harm the interests of consumers, disrupt the social and economic order, and at the same time, it is also a lack of social responsibility and moral integrity of celebrities, making profit the guiding principle of society. Therefore, endorsing false advertisements must bear legal responsibility.

2.3. Analysis of Infringement and Illegality

Due to the fact that celebrity spokespersons do not have a direct contractual relationship with consumers, when victims are unable to handle issues in accordance with the Contract Law, they can protect their rights and interests in accordance with the Tort Liability Law. Joint infringement refers to the intentional or negligent infringement of the legitimate rights and interests of others by two or more individuals, who should bear joint and several [liability](#). [Celebrities endorsing false advertisements](#) and jointly committing infringement with advertisers, [publishers](#), etc. should bear joint liability for the victims. There is a commonality of behavior among celebrities, advertisers, and advertising operators, and they all cause certain degrees of harm to consumers. It is inevitable to constitute joint infringement. Moreover, the false advertising endorsements of celebrities not only infringe on consumers' right to know and choose, but also on their right to life and [health](#). This clearly constitutes illegal behavior, and infringing on the rights of others is illegal.

3. NATURE AND CONSTITUENT ELEMENTS OF LEGAL LIABILITY

As mentioned earlier, celebrity endorsement of false advertising has a general nature of infringement. It is more appropriate to classify this behavior as an infringement, which is beneficial for consumers

to receive timely and sufficient relief when suffering damage. According to the latest revised Advertising Law, celebrities are required to bear joint and several liability, which indirectly reflects that this behavior belongs to infringement liability. Therefore, the composition of civil liability can be analyzed by referring to the constituent elements of infringement behavior.

3.1. Infringement Occurred

The existence of infringement behavior is a prerequisite for constituting infringement liability. When celebrities engage in the act of endorsing false advertisements, they use the "celebrity halo" and a strong audience, are not clear about the products or services they endorse, and engage in misleading or fraudulent behavior. Consumers obtain information that contradicts objective facts, which affects their choices.

3.2. Infringement Causing Harm to the Victim

Damage refers to the adverse consequences caused to the corresponding legal parties. Civil law always adheres to the principle of "no harm, no responsibility". Of course, false advertising endorsed by celebrities also needs to cause damage in order to bear legal responsibility. Its main infringement is the personal rights, property rights, and other economic rights of consumers, including indirect damage.

3.3. There is a Causal Relationship between Infringement and Damage Caused

Causal relationship refers to the objective relationship between the illegal behavior of the perpetrator and the fact of damage caused and caused. According to the theory of equivalent causality, behavior is a necessary condition for causing harm and also increases the likelihood of harm occurring. The false advertising behavior endorsed by celebrities and the harm caused to consumers must have a causal relationship, that is, the infringement of consumer rights is due to believing in the advertisements endorsed by celebrities and purchasing their products or services, and the defects in the products or services endorsed by celebrities result in the infringement of consumer personal or property rights.

3.4. The Infringing Act Committed by the Infringer is at Fault.

Compared to advertisers, consumers are in a disadvantaged position, with incomplete information about products and severe information asymmetry, which further affirms that advertisers, as the dominant party, should bear responsibility. Subjective faults can be divided into two types: intentional and negligent. The legal responsibility borne by celebrities endorsing false advertisements includes both intentional and negligent actions. Intention mainly refers to a celebrity endorsing an advertisement that they knew was false, while negligence mainly refers to a celebrity's obligation to recognize that the advertisement was false but did not recognize it. Most celebrity endorsements of false advertisements are done while knowing that the product has problems, but still endorse and promote it for the sake of profit. In this case, it is obvious that there is subjective intention, and it is undeniable that joint liability should be borne for the damage caused to consumers. At the same time, when a celebrity is at fault, they also have to bear responsibility. When a celebrity fails to fulfill their obligation to review the product when they should have known that there are certain defects in the product they endorse, or when a celebrity spokesperson learns of certain defects in the product but still endorses it after the merchant guarantees that there will be no potential danger, they must bear responsibility.

If the above conditions are met, celebrities who endorse false advertisements should bear the liability for infringement. However, the principle of subjective fault attribution among these four conditions is particularly important for celebrity endorsement of false advertisements. In the Tort Liability Law,

the principle of attribution is divided into the principle of fault liability, the principle of presumption of fault liability, the principle of no fault liability, and the principle of fairness. According to Article 56 of the Advertising Law, when a celebrity endorses a false advertisement that harms the life and health of consumers, regardless of whether the celebrity is subjectively at fault, the celebrity shall bear joint and several liability with other advertising entities. When celebrity endorsements do not involve consumer life and health in false advertisements, the principle of fault attribution is adopted. It can be seen that regardless of whether the scope of celebrity endorsement for false advertising involves the field of life and health, as long as the celebrity is subjectively at fault, they must bear responsibility externally. The legislative intention is to provide sufficient relief for the unspecified majority of affected consumers and protect their legitimate rights and interests. As for the issue of internal recovery rights after the celebrity takes responsibility, it is borne by the actual perpetrator of the fault.

4. THE SHORTCOMINGS AND IMPROVEMENTS OF LEGAL REGULATIONS ON FALSE ADVERTISING ENDORSED BY CELEBRITIES

The newly introduced Advertising Law has undoubtedly made a significant breakthrough compared to previous laws and regulations, filling the legal gap of false advertising endorsed by celebrities in the past. Article 38 stipulates that advertising spokespersons shall not recommend or prove products or services they have not used before, while Article 56 stipulates that if advertising spokespersons know or should know that the advertisements they endorse are false advertisements, they shall bear civil joint and several liability for compensation. Although China's laws are making efforts to regulate relevant regulations on false advertising, the efforts made by current laws are still far from avoiding the harm caused by false advertising. The relevant laws are too simple and superficial, with serious defects. Therefore, in order to avoid the greater harm caused by false advertising, it is imperative to refine the celebrity endorsement responsibility and related laws.

4.1. Unclear Legal Standards

The new Advertising Law stipulates that if an advertising spokesperson knows or should know that the advertisement they represent is a false advertisement, they shall bear civil joint and several liability for compensation. However, this only stipulates joint and several liability, but ignores practical issues. For advertising spokespersons, regardless of whether their subjective fault is significant or minor, a one size fits all approach is adopted, stipulating that they bear joint and several liability. There is no distinction between the degree of subjective fault and the degree of responsibility that should be borne. If both categories receive the same punishment, then what is the issue of fairness. The second joint liability that celebrities need to bear when endorsing false advertisements is external responsibility. If it is internal, how should the responsibility be divided between celebrities and advertisers? There is no specific standard for "knowing" and "should know", what is "knowing" and what is "should know". In short, the current laws in our country regarding celebrity endorsement for false advertising are too vague and superficial, without specific regulations, which will lead to operational difficulties in practice.

Therefore, in order to better operate in practice and avoid a one size fits all approach, we need to vary depending on the situation. For example, for false advertisements that have not yet been broadcasted, reasonable fines will be imposed on the advertiser, and celebrity endorsers will be criticized and recorded. If the offense is repeated, they will be prohibited from participating in any endorsement activities for five years. For advertisements that have already been aired and are found to be false after examination, the celebrity endorser and other advertising entities shall bear joint and several liability, and the celebrity is prohibited from participating in any endorsement activities within five

years. Corresponding judicial interpretations should be introduced to distinguish between "knowing" and "should know".

4.2. The Principle of Attribution for Celebrity Endorsement of False Advertising is Unclear

The principle of attribution of responsibility can be divided into fault liability, fault presumption, and no fault liability. However, for celebrity endorsements of false advertising, China's current laws only stipulate "knowing" and "should know" to bear joint and several liability. From this, it can be seen that celebrity endorsements of false advertising do not bear no fault liability, but it cannot be distinguished whether they are fault liability or fault presumption liability. The significance of distinguishing between fault liability and presumed fault liability is that if one assumes fault liability, false advertising spokespersons do not need to bear the burden of proof; However, if assuming the presumption of fault responsibility, false advertising spokespersons need to provide relevant evidence to prove that they do not have subjective fault. Therefore, due to the unclear provisions of the principle of attribution in China's current laws, it is often difficult to determine in practice what kind of infringement liability celebrities should bear for endorsing false advertisements.

Therefore, is it to stipulate fault liability or presumed fault liability? If the fault liability is determined, the celebrity spokesperson does not have to bear the burden of proof. However, if the fault liability is determined, the celebrity spokesperson needs to provide evidence to prove that there is no subjective fault. We use a rational and cautious adult mindset to examine this issue and conclude that, compared to the two, the principle of presumption of fault better protects the rights of consumers, as consumers, as a vulnerable group, may face difficulties in providing evidence. Additionally, due to the economic gap between consumers and celebrities, it is more reasonable to transfer this responsibility to stars in an "advantageous position". However, considering that most celebrities also lack professional technical knowledge, it is difficult to distinguish whether products are fake. We require that if celebrities fulfill their general duty of care and do not find any product problems after trial, this situation is not considered as subjective fault. Therefore, if the spokesperson of Mingxing can prove that the damage to consumers is caused by factors such as themselves, third parties, force majeure, etc., they do not need to bear legal responsibility.

4.3. Excessive Litigation Costs

When encountering false advertising, for ordinary consumers, filing a lawsuit to obtain compensation is both time-consuming, labor-intensive, and costly. To protect their rights, it is often necessary to resort to litigation in order for celebrities to bear joint liability. In addition, civil litigation procedures are sometimes too complex, and relatively speaking, consumers are a vulnerable group. The cost of protecting their rights is too high, which leads to the fact that the law on celebrity endorsement false advertising in real life cannot reflect its due value or play its due role.

For this issue, I think it is best to solve it through public interest litigation. Public interest litigation is a new system for regulating illegal behavior in recent years. Designing specialized litigation forms for false advertising is neither possible nor necessary, but in practice, overcoming the difficulty of litigation requires relevant professional talents. In recent years, public interest litigation has become increasingly popular in the field of consumer rights protection, and has been recognized by more and more people for its professionalism and public welfare. We have established the use of false advertising in public interest litigation to eliminate consumer concerns, purify the product market, safeguard the legitimate rights and interests of vulnerable consumers, and create and maintain a normal market order.

5. SUMMARY

The introduction of the new Advertising Law is certainly commendable, but if there are omissions in legal provisions and unclear legal rules, it may be difficult to exert its effectiveness in practice, and it is also difficult to use the law to protect the rights and interests of consumers. How to regulate the infringement liability of celebrity endorsements for false advertising, rebuild a healthy and sunny advertising industry, and stabilize the normal order of the advertising market is a new issue that urgently needs to be solved by legislators. I believe that soon, the legislative gap in the advertising endorsement system will be filled again, and regulations in all aspects will continue to be improved. The chaotic situation of celebrity endorsement false advertising will be curbed, and the legitimate rights and interests of consumers will be protected.

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