

## *Original Paper*

# On the Legal Issues and Solutions in the Promotion of "Amateur Influencers"

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### ***Abstract***

*With the rapid development of social media, "amateur influencers" who quickly attract consumers' attention with their uniqueness have become a high-profile role in today's marketing strategies. However, the emergence of new things is bound to bring new problems. In their promotion, "amateur influencers" may have legal issues such as unclear definition of legal identity, implicit advertising promotion, false propaganda of products, and unfair competition behaviors like following trends to promote purchases. In addition, there may also be issues regarding the legality of platform promotion mechanisms. To solve the above legal problems, we should clarify the legal identity of "amateur influencers", regulate their illegal acts, clarify the legal obligations of platforms, guide consumers to enhance their legal awareness in the process of online consumption, and actively promote the healthy development of the influencer economy in accordance with the law, so as to reduce the existence of vicious competition and ensure the healthy and orderly development of the network environment.*

### ***Keywords***

*amateur influencers, promotion behavior, legal issues, solutions*

## **1. Introduction**

Due to the transformation of consumption patterns and habits, consumption has gradually become personalized. The emergence of the influencer economy is a new breakthrough in the business field. Before purchasing goods, people will actively search for and choose products recommended by bloggers they trust, among which amateurs are mostly more trusted. Compared with big influencers, "amateur influencers" may have fewer fans, but they have established strong trust and brand awareness among specific target audiences. With the development of social segmentation, the point-to-point connection is becoming more and more detailed, and the unique "linking power" of amateurs will become more and more important. However, the emergence of "amateur influencers" may also bring many legal problems:

in what capacity do "amateur influencers" carry out promotion behavior? Will their promotion infringe on the legitimate rights and interests of consumers? Does the platform promotion mechanism have illegal circumstances? And what countermeasures should be taken to solve these problems? The following will discuss the above problems.

## **2. Legal Issues in the Promotion of "Amateur Influencers"**

The promotion of "amateur influencers" has a great impact on e-commerce marketing. Relying on their own advantages, they publish original content on social media platforms to share and recommend products, attract fans to buy products, and thus form a unique influencer marketing model with brand commercial cooperation, promoting the prosperous development of the online sales market. However, driven by various interests, there are problems such as unclear legal identity of "amateur influencers", false propaganda, and illegal platform promotion mechanisms in the promotion of "amateur influencers".

### *2.1 Unclear Definition of the Legal Identity of "Amateur Influencers"*

Regarding the legal identity definition of "amateur influencers", the academic circle does not have an accurate positioning. Some scholars believe that they should be advertising endorsers, while others believe that they are sales personnel under the e-commerce transaction model. Although specific cases have particularity, the different legal definition standards reflect the huge differences in the definition of influencers' identities in practice (Wang Tingqi, 2021).

#### *2.1.1 Whether the Legal Identity of "Amateur Influencers" Is an Advertising Endorser*

"Natural persons, legal persons or other organizations who recommend and certify specific goods or a certain service to the public in their own name or image in advertisements." The Advertising Law defines advertising endorsers as such. Traditional advertising endorsers are summarized into three categories: celebrities, experts, and typical consumers, which affect consumers' purchase of specific goods or services with their attractiveness, professionalism, and identity similarity and reliability (Hong Jiaojiao, 2021).

Consumers' purchase of products is affected by the promotion of "amateur influencers", which seems to conform to the definition of "advertising endorser" in the Advertising Law, but when exploring its essence, first, "amateur influencers" emphasize amateurs, referring to ordinary people who release daily life and recommend products on social media platforms. Their behavior is partially similar to that of ordinary consumers sharing product usage feelings online and attracting other consumers to buy products. Second, even "amateur influencers" who have reached commercial cooperation with brands often use the form of implicit advertising in product promotion, reducing advertising transparency, so that consumers accept product promotion without being able to judge whether it is advertising endorsement, so as to obtain public trust.

To sum up, it is not tenable to generally classify the legal identity of "amateur influencers" as advertising endorsers in the Advertising Law.

### 2.1.2 Whether the Legal Identity of "Amateur Influencers" Is a Promoter

Because the common ground between "amateur influencers" and promoters is that they use their own advantages to promote products to consumers, "amateur influencers" bringing goods is like moving offline shopping guides to online platforms, which is no different from offline. But looking at the relationship carefully, "amateur influencers" usually use their own appeal to influence consumers to buy products and form a "fan economy", while promoters only promote products in offline shopping malls and do not have the so-called "fan economy".

Therefore, there is also some controversy in classifying the legal identity of "amateur influencers" as promoters.

## 2.2 *Illegal Acts in the Promotion of "Amateur Influencers"*

### 2.2.1 Suspected Violation of the Advertising Law

In order to achieve their set interest goals in promotion, "amateur influencers" often have some extreme illegal acts in promotion means. On the whole, "amateur influencers" mainly have two types of acts suspected of violating the Advertising Law: implicit advertising and false propaganda.

### 2.2.2 "Amateur Influencers" Promotion Implies Indistinguishable Implicit Advertising

"Amateur influencers" often carry out promotion in the identity of ordinary people on self-media platforms, which should essentially be consistent with the behavior of ordinary consumers sharing favorite products in the circle of friends and driving friends to buy products. The content published by "amateur influencers" is normally a sharing of their personal life and should be regarded more as a way of information communication. However, driven by interests, many fake "amateur influencers" who cooperate with brands, under the cloak of recommendation and promotion, insert a large number of implicit advertisements in the content of sharing good things. This will lead consumers to be unable to distinguish whether "amateur influencers" spontaneously recommend good things or imply implicit advertising.

Article 14 of the Advertising Law clearly stipulates that "advertisements should be identifiable so that consumers can identify them as advertisements." The promotion of "amateur influencers" implies implicit advertising, which makes the implicit advertising without identification cut off the path for consumers to distinguish advertising information, infringing on the legitimate right to know and the right to independent choice of consumers.

### 2.2.3 False Propaganda of "Amateur Influencers"

When "amateur influencers" cooperate with brands and implant brand advertisements in original content, "amateur influencers" may, under the temptation of interests, not pay attention to product quality or use Internet technical means to beautify products or services in order to make profits, so that inferior products show a "perfect" form in promotion. In addition, they may use exaggerated effects or distorted product effects to mislead consumers. This leads to the existence of defective and inferior products in the market, and consumers will ignore the identification of products recommended by "amateur influencers" based on the "fan economy".

Article 4 of the Advertising Law stipulates that "advertisements shall not contain false or misleading content, and shall not deceive or mislead consumers." When "amateur influencers" no longer purely share products in promotion but carry out advertising push and carry out a lot of false propaganda for interests, it will seriously affect consumers' consumption decisions.

### *2.3 Suspected Violation of the Anti-Unfair Competition Law*

When "amateur influencers" accept advertising promotion, based on maximizing the promotion of advertised products, they often involve unfair competition issues. For example, when "amateur influencers" cooperate with brand operators, in order to attract more fans' attention, they may hire "water army" to brush browsing volume or brush popularity in the comment area, tamper with the data of published content, fake network traffic, and send small gifts to fans to make them brush positive comments for promoted products in the comment area and other unfair competition behaviors.

Article 8 of the Anti-Unfair Competition Law stipulates that "operators shall not make false or misleading commercial propaganda on the performance, function, quality, sales status, user evaluation, obtained honors, etc. of their goods, so as to deceive or mislead consumers." "Amateur influencers" cooperate with brand operators to make false commercial propaganda on the sales status, user evaluation, etc. of promoted products, which 破坏了 (destroys) the fair competition of the market.

#### *2.3.1 Illegal Acts of Platform Promotion Mechanisms*

For the media platforms connecting "amateur influencers" and consumers, when using the platform's big data promotion mechanism to recommend content to consumers, there is a phenomenon of pushing the content containing illegal acts published by "amateur influencers" to consumers, which helps "amateur influencers" to infringe on the legitimate rights and interests of consumers.

#### *2.3.2 Platform Personalized Algorithm Promotion Is Suspected of Violating the Intellectual Property Law*

When platforms recommend content to platform users, they usually adopt personalized algorithm recommendations. The decision-making process of personalized recommendation algorithms has the characteristics of professionalism, dynamics, complexity, and comprehensiveness (Jiang Hui & Xu Haoyu, 2022), so that platforms have a certain control over algorithm recommendations, and consumers cannot independently choose the recommended content, resulting in the legal risk of illegal works dissemination when platforms carry out algorithm recommendations. In order to obtain traffic, "amateur influencers" usually create videos according to information hotspots, but they may not notice that they have infringed on the intellectual property rights of others. When the platform knows or should know that such infringement exists and does not take relevant measures, the recommendation service provided by the platform will help the infringement.

#### *2.3.3 Platform Promotion Content Is Suspected of Violating the Personal Information Protection Law*

In the review, facing the content published by a large number of accounts, the platform cannot be foolproof, and there may be a phenomenon of agreeing to "amateur influencers" publishing content containing other people's personal information. Some "amateur influencers" even directly use other people's photos for commodity propaganda. The platform's restrictions on the publication of illegal

content are incomplete. When relevant content is reported, it cannot verify the situation in time or delete it in time when there are indeed illegal acts. Therefore, there are also legal issues of suspected violation of the Personal Information Protection Law in platform content promotion.

### **3. Causes of Legal Problems in the Promotion of "Amateur Influencers"**

#### *3.1 Different Standards for Positioning the Legal Identity of "Amateur Influencers"*

##### **3.1.1 Consumers Have Different Cognitions of Their Identities**

Consumers are the trading parties in online shopping and the relative parties who directly receive the information transmitted by "amateur influencers" and realize communication and interaction. In recent years, the frequent problems in the hot online shopping consumption, but only about one-third of consumers complain, which is largely due to their inability to accurately recognize the role played by "amateur influencers" in online shopping. Clarifying the legal status of influencers is the primary and necessary measure to standardize the online shopping market and protect the legitimate rights and interests of consumers.

##### **3.1.2 Different Ways of Defining Behavioral Norms**

In recent years, "amateur influencers" have developed rapidly, and many amateurs have developed e-commerce live broadcast recommendations and carried out commercial cooperation with businesses. For the promotion behaviors, live broadcast behaviors, etc. included in the development process of "amateur influencers", many departments such as the advertising industry association and the market supervision and management department have put forward classification and specification methods, and the legal status of anchors can be explained with obviously different positions in different documents. At the same time, some regulations advocate treating anchors and platform operators as a whole.

##### **3.1.3 Lack of Standards and Basis in Law and Adjudication**

The existing laws have not clearly stipulated the legal status and obligations of "amateur influencers", which has also caused the situation where different administrative norms and autonomous norms go their own way. In fact, the law does not lack the existing concepts and obligation types corresponding to the identity of anchors. The clearly defined different activity subjects in the law may also have compatibility and new characteristics under the new behavior mode, and the judicial practice is still in the exploration stage, and the clear case basis has not yet been formed.

#### *3.2 Drive for Illegal Interests in the Promotion of "Amateur Influencers"*

##### **3.2.1 Low Personal Quality**

Many "amateur influencers" have substandard personal qualities, obtain profits in illegal ways without understanding relevant regulations, and are driven by high-profit thinking in their personal comfort zone, resulting in illegal profit-making behaviors. Some attract attention with various swear words or language violence, trample on public order and good customs, which greatly affects the three views of children. Moreover, some influencers pay attention to communication and conform to public emotions, which reduces the intelligence of netizens and is not conducive to netizens' in-depth thinking and judgment on

social events.

### 3.2.2 Using Illegal Means to Obtain Profits for High Traffic

The influencer economy has brought huge benefits to itself and families, but it also has encouraged the greed of some people. They may start from unknowingly violating the law, gradually test the legal bottom line, and finally drill legal loopholes or use regulatory rules to blatantly obtain illegal profits. For example, the online celebrity Xiucui became popular by taking advantage of the emotional needs of the elderly. The video live broadcast account used the name and image of the famous actor Jin Dong to carry out emotional deception on middle-aged and elderly fans. Based on the implementation of online fraud, he cheated a large amount of cash and was finally investigated and dealt with by relevant departments.

## 3.3 Unreasonable Setting of Platform Promotion Mechanisms

### 3.3.1 Low Threshold for Entry

The threshold for becoming an "amateur influencer" is low, and no training or relevant legal knowledge is required, so illegal acts are prone to occur. Secondly, the platform supervision is not in place, the review is not passed, and there are loopholes in the governance regulations. Default the chaos of self-media for the sake of more economic benefits, which is prone to the spread of illegal and disciplinary content.

### 3.3.2 Weakening Algorithm Promotion Standards to Improve Platform Heat

In order to meet their own needs for heat, further improve the platform user scale and stickiness, platforms lower the access threshold, turn a blind eye to illegal content in order to increase the number of platform users, lack strict norms in the face of illegal and tortious acts, and blindly focus on users' preferences to carry out personalized algorithm promotion, but do not pay attention to the legalization of promotion content, which is prone to the generation of pornographic, violent, malicious rumors and other hype information to deceive attention.

## 4. Solutions to Legal Problems in the Promotion of "Amateur Influencers"

### 4.1 Clarifying the Definition of the Legal Identity of "Amateur Influencers"

Nowadays, "amateur influencers" bringing goods has become a very common marketing method, which well combines the two marketing advantages of influencers' popularity and commodity display, but it also brings a series of legal problems. For example, what is the identity of "amateur influencers" in the process of promoting products? How to hold them accountable and to whom to claim compensation if the promoted products have quality problems? If there are quality problems or exaggerated propaganda in the promoted products, how should consumers safeguard their own rights and interests? The definition of the legal identity of "amateur influencers" is the key to explaining these problems, which should be screened according to specific circumstances.

### 4.2 "Amateur Influencers" Are Advertising Endorsers

The Advertising Law stipulates that the term "advertising endorser" as used in this Law refers to a natural person, legal person or other organization other than the advertiser who recommends or certifies a commodity or service in his own name or image in an advertisement. In the new sales model, compared

with the traditional "purchase on demand", some people think that this is "trust purchase", that is, consumers purchase the recommended goods out of trust in "amateur influencers".

#### *4.3 "Amateur Influencers" Are Sellers of Goods*

At present, most influencers adopt the form of promoting goods on the platform and selling goods at the same time. At this time, the identity of "amateur influencers" is not only an advertising endorser but also a seller of goods. The mainstream view is that when an influencer signs a labor contract with a brand, it is only an innovation of the sales form. When an "amateur influencer" signs a cooperation agreement (sales service agreement) with a brand, provides the brand's link to consumers, and the consumer clicks on the brand's link to enter, submits the order and pays, and concludes a sales contract with the brand, it is not an "amateur influencer". But such a distinction is too simple and procedural, and it is also a seller of goods. The reasons are as follows:

The promotion content of "amateur influencers" displays goods in the fixed section of the online store in the form of text, pictures, videos, etc., and consumers also participate in transaction activities in the store. The brand's link is only the "warehouse" of influencers. Therefore, it can be considered that a commodity sales contract is concluded between consumers and "amateur influencers", that is, the two parties to the sales contract are consumers and "amateur influencers".

There is an obvious difference between "amateur influencers" bringing goods and traditional e-commerce, and the content of the sales contract in traditional e-commerce cannot be directly applied. Its promotion content is also the content of the sales contract.

Although the agreement signed between the "amateur influencer" and the brand is named a cooperation agreement or a sales service agreement, it is actually a distribution agreement, and the "amateur influencer" is a distributor of the brand.

Therefore, "amateur influencers" are sellers of goods, not just simple promotion services. Then, they should bear the legal responsibilities of sellers. "Amateur influencers" use network platforms and their own popularity to promote products, which is the same as businesses selling goods, except that one is online and the other is in real life.

#### *4.4 Solutions to Illegal Acts in the Promotion of "Amateur Influencers"*

In the big market environment, the main body of "amateur influencers" is facing increasing interest temptations, and more and more "amateur influencers" begin to have illegal acts in promotion. Aiming at the legal problems existing in promotion, we analyze and explore from two aspects: suspected violation of the Advertising Law and suspected violation of the Anti-Unfair Competition Law.

##### *4.4.1 Regulating the Implicit Advertising Behavior in the Promotion of "Amateur Influencers"*

Implicit advertising always tries to hide in the content of each platform to conceal its "advertising" identity. Its characteristic is that in the case of hiding the interest relationship, it blurs the advertising form and promotes to consumers, so that they unconsciously accept the product promotion. This causes trouble to consumers who trust "amateur influencers", and consumers' cognition and understanding of products are controlled by "amateur influencers", and they cannot master the true information of products.

To solve this problem, first of all, it is necessary to clearly define the three behaviors of implicit advertising, personal subjective comments, and negative promotion of goods. Not all comments and recommendations on products are identified as implicit advertising. The condition for the establishment of implicit advertising is that "amateur influencers" can obtain substantial benefits in the promotion, that is, there is a transaction relationship with the brand or business, including promotion fees, sales dividends, sample gifts, etc. Personal subjective comments are only "amateur influencers" sharing their views or recommendations on products in the form of a circle of friends, and there is no interest relationship in the process, so they should not be identified as implicit advertising. Negative promotion of goods is the non-recognition of other stores or goods, but there is no clear direction of recommendation, and this behavior also has no interest relationship and is not identified as implicit advertising.

Secondly, when implicit advertising is integrated into the promotion behavior of "amateur influencers", there should be clear and clear identification. In accordance with the provisions of the Advertising Law on advertisements, "amateur influencers" must actively fulfill the obligation to identify the received advertisements when carrying out commercialized promotion behaviors, and make different identifications according to the different interest relationships between them and the brand or business. Finally, China's Advertising Law has currently regulated online media advertisements, but there are no laws and regulations for implicit advertisements, which should be improved. We should pay attention to the risks caused by implicit advertising and specify the transparency standards of implicit advertising.

#### 4.4.2 Regulating the False Propaganda Behavior in the Promotion of "Amateur Influencers"

When promoting products, "amateur influencers" often have false propaganda behaviors, including deliberately exaggerating product effects, false descriptions, etc., in order to package the promoted products more perfectly and attract more consumers to buy products. This causes certain damage to the interests of consumers.

To solve this problem, first of all, the most important thing is to cut off the illegal idea of false propaganda of "amateur influencers", strengthen the professional quality of "amateur influencers", and promote the construction of a healthy and orderly network platform order. With the rise of the self-media era, the number of influencers has increased, and the threshold for influencers has been reduced. Many "amateur influencers" do not understand the legal regulations related to influencer marketing, resulting in them not paying attention to the legality of the means used when promoting products.

Secondly, although the law has regulated false propaganda behaviors, due to the quite scattered and large number of false promotion accounts, the platform sometimes cannot find out the "amateur influencers" of false propaganda one by one, and thus cannot carry out corresponding punishment. This requires the law to more accurately define the false propaganda behavior of "amateur influencers" and increase the intensity of punishment. The platform also needs to strengthen the supervision of such behaviors, establish and improve the platform's complaint mechanism, so that platform users can timely complain or report when they find illegal behaviors, and carefully identify and review the published content to prevent the publication of illegal content.



Finally, as the receivers of the promotion behavior of "amateur influencers", consumers should improve their awareness of rights protection, enhance their ability to distinguish various information, take the initiative to learn relevant legal knowledge, understand the legitimate rights and interests enjoyed by consumers in the Consumer Rights Protection Law, and actively exercise the right of supervision, the right of accusation and the right of complaint granted by the law in the face of illegal acts (Xu Minzhi, Zhang Shaofeng, & Yan Di, 2022).

#### 4.4.3 Regulating Other Unfair Competition Behaviors in the Promotion of "Amateur Influencers"

In the new media era of "traffic is money", the more fans an influencer has and the higher the heat of the published content, the higher the promotion fee, profit dividend, etc. they obtain. Some "amateur influencers" carry out illegal acts such as traffic fraud and brushing in promotion in order to increase their own traffic and obtain higher profits, such as using technical means to change background traffic data or using relevant software to recharge money for brushing. In addition, when promoting similar products, there are behaviors such as stepping on and comparing.

We should speed up the improvement of laws and regulations regulating unfair competition behaviors in virtual network promotion. At the same time, strengthen platform supervision and industry self-discipline, such as making clear regulations on the content published by "amateur influencers", and adopting a point deduction system for "amateur influencers". The more times of violations detected by the platform, the greater the punishment. In addition, some scholars have mentioned that Internet platforms can also establish an integrity evaluation system for the promotion of "amateur influencers", include fan evaluations, user reports, regulatory penalties and other information in the evaluation system, or establish a blacklist system for the promotion of "amateur influencers", and directly list "amateur influencers" with serious illegal and 违规 (irregular) problems and many taint information into the blacklist (Liu Yu, 2020).

#### 4.5 Improving the Platform Promotion Mechanism

"Amateur influencers" meet their own economic needs through new network platform transaction methods. With the accelerated development of network platforms, the scale of platform economy has increased accordingly. In order to prevent the situation that the platform big data promotion mechanism is not strictly supervised and illegal content is widely pushed, and to ensure the maintenance of a good platform operation mode. It is particularly important to clarify the legal obligations of the platform in the promotion process.

##### 4.5.1 Platform Personalized Algorithm Promotion Should Preset Correct Value Orientation to Maintain Intellectual Property Rights

When the platform knows or should know that "amateur influencers" have infringed intellectual property rights and do not take relevant measures, it will aggravate the infringement of the rights and interests of intellectual property right holders, which is obviously contrary to the socialist core values. The platform should establish a correct upward value orientation in the algorithm preset, pay attention to the principles of harmony and friendship, fairness and justice, inclusiveness and sharing, and respect for privacy. In the

algorithm design and development, it should take morality as the main line, comply with legal regulations, strengthen the social moral requirements for the algorithm preset from the source, prohibit the personalized promotion of illegal content published by "amateur influencers" to other platform users, or detect and standardize illegal content before communication, so as to fundamentally put an end to the spread of content suspected of violating intellectual property laws.

#### 4.5.2 Platform Promotion Content Should Establish a Strict Supervision System to Protect Personal Information

On the one hand, strict review should be taken before "amateur influencers" publish content, reporting measures should be taken after publishing content, and rapid processing means should be taken after reporting. Gradually reduce the possibility of exposing others' privacy in platform content promotion. On the other hand, for the purpose of dividing subject responsibilities, the responsibilities of "amateur influencers" and platforms suspected of violating the Personal Information Protection Law should be clarified to ensure that network platforms can achieve development and innovation in a healthy way.

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