

# *Research on the Problems of Undue Influence in Web Influencer Live Streaming Marketing*

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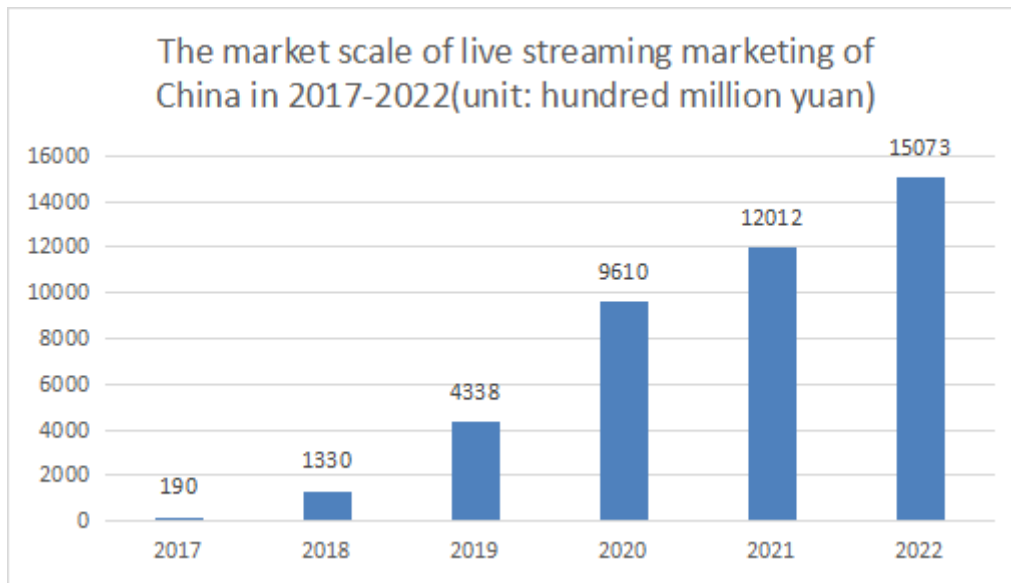
**Keywords:** Web Influencer, Live Streaming Marketing, Undue Influence, Fraud

**Abstract:** Web influencer live streaming marketing is a new prevalent E-commerce channel in China. It developed at an appalling speed in such a short period that the Chinese law lags behind. It is found that a lot of illegal practices occur in the live streaming rooms, among which, undue influence is a neglected problem. Undue influence occurs between the live streamers and their fans because there is a relationship of trust between them. Undue influence, unlike fraud, frequently occurs in a concealed manner, covered by a seemingly legal veil. It is neglected because there is no conventional fraud in the live streaming marketing. Through personal participation in live streaming marketing and long-term observation, the legal constitution of undue influence is analyzed. In order to create a clean and clear online shopping environment, some suggestions are given to regulate undue influence in live streaming marketing. The rules on undue influence in common law is suggested to be adopted in Chinese law.

## **1. Background**

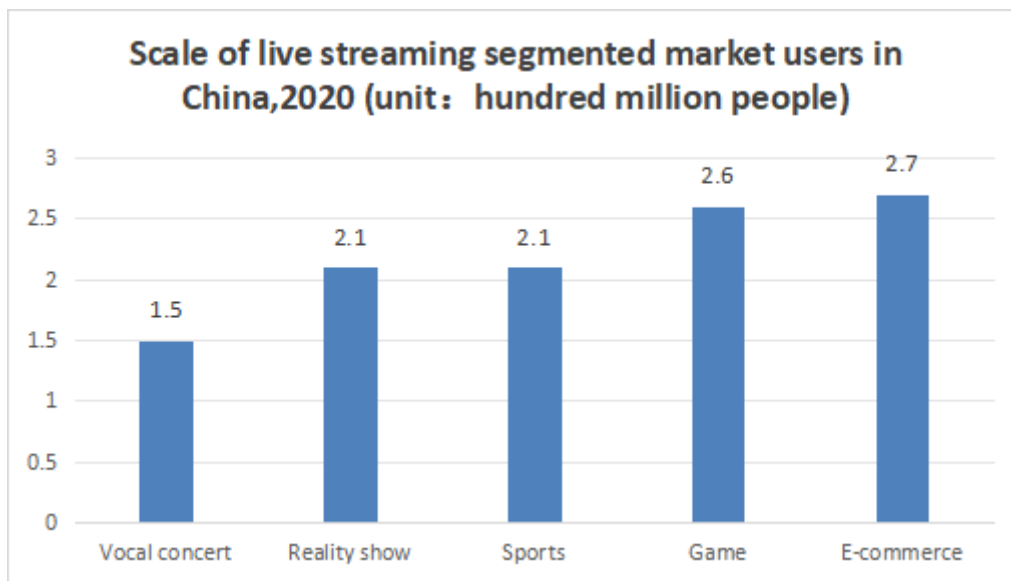
Due to the impact of epidemic control measures in the year between 2020-2022, many traditional trading channels were blocked, which gave rise to the explosion of online economy, especially the live streaming marketing. Live streaming marketing is characterized by instant interaction, vivid description by multimedia, and high efficiency,<sup>[1]</sup> therefore, it has attracted a huge number of traditional businesses to sell their goods by major influential live streaming platforms, such as Douyin, Kuaishou and Taobao.

Having started no earlier than 2015, live streaming marketing has been developing at an astonishing speed. Figure 1 shows that since 2018, live streaming marketing started to rise at an explosive rate and reached the peak in 2022. In 2020, when the epidemic attacked the economy both at home and abroad devastatingly, the scale of live streaming marketing increased 121% than the previous year. Shopping in live streaming rooms has been a dominant way of consumption for modern people.



Data source: www.askci.com

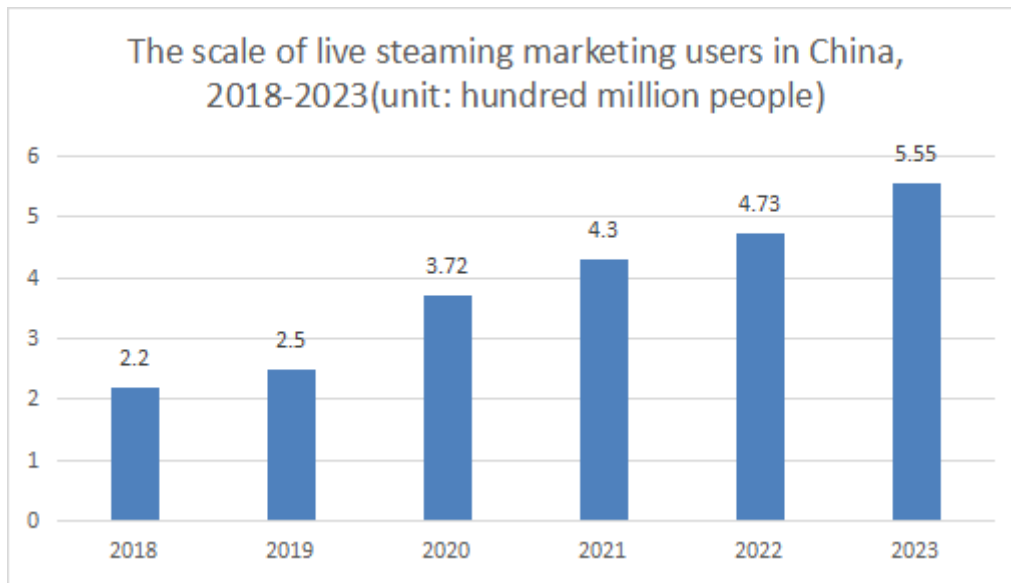
Figure 1: The market scale of live streaming marketing of China in 2017-2022. (unit: hundred million yuan)



Data source: www.askci.com

Figure 2: Scale of Live Streaming Segmented Market Users in China, 2020. (unit: hundred million people)

Up to March, 2020, the number of Chinese netizen was 9.04 hundred million. Short videos and live streaming are very popular for people to surf online. Figure 2 shows the number of E-commerce live streaming users is 2.7 hundred million, which accounts for 29% of all netizen. Shopping in live streaming rooms has become a prevalent way for modern people. Live streaming marketing has attracted a lot of web influencers or celebrities to join the team of endorsers who in turn boost the live streaming marketing. What is noteworthy is that apart from live streaming marketing, the other types of live streaming, like concert live streaming or game-playing live streaming, also involve live streaming marketing if they have attracted certain amount of fans.

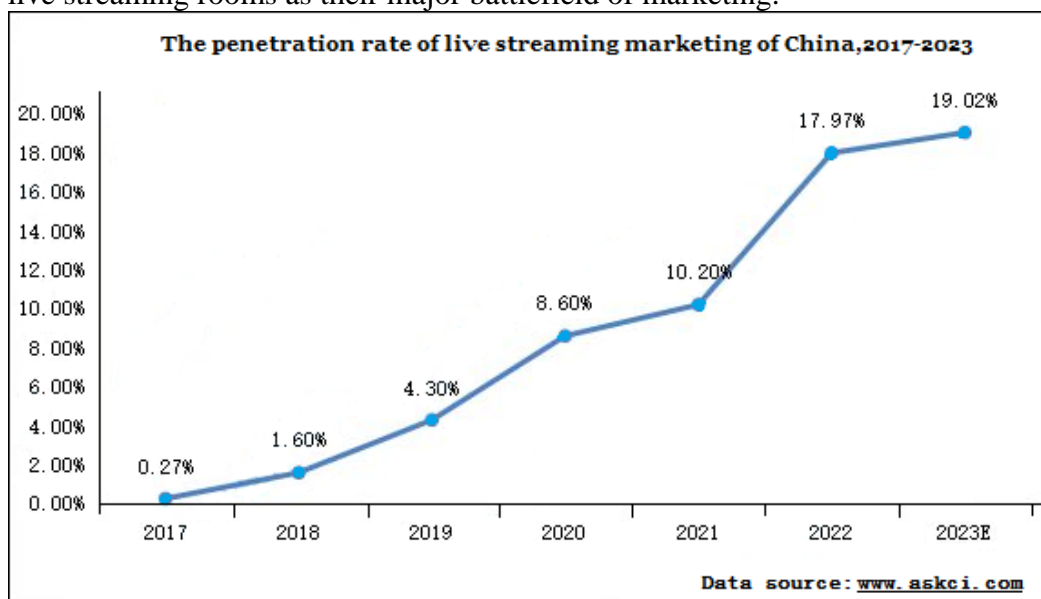


Data source: [www.askci.com](http://www.askci.com)

Figure 3: The scale of live streaming marketing users in China, 2018-2023.(unit: hundred million people)

From figure3, we can see, the number of live streaming marketing users started to explode since 2018, and the increasing speed showed a leap-frog since 2020. It is estimated that almost half of Chinese netizen consume in live streaming rooms in 2023.

The prosperous development of live streaming marketing is rooted from the massive Chinese netizen. The number of Chinese netizen has reached 904 million in 2020, 61.95% of whom (560 million) are live streaming users. The users of live streaming marketing have been increasing steadily lately. In 2021, the users of live streaming marketing have reached to 430million, and the number increased to 473million in 2022, while the number is predicted to reach 555million in 2023. Live streaming users constitute such a gigantic market that a large number of businesses sell their goods in live streaming rooms as their major battlefield of marketing.



Data source: [www.askci.com](http://www.askci.com)

Figure 4: The penetration rate of live streaming marketing of China, 2017-2023

As the hottest channel of online shopping, live streaming marketing gradually expands to various items. [2] Everything that can be sold online has been sold online. Goods from daily consumption to bulk commodities such as cars, houses, tourism routes and insurance are sold by web influencers in live streaming rooms. As is shown in figure4, the penetration rate has reached 19.02% in 2023, while this number was no more than 0.27% in 2017. Undoubtedly, live streaming marketing has been a phenomenal economic growth point in China. Live streaming marketing promoted the emergence of a brand new occupation--- live streamer, which numbered 1.23million, and behind whom there is a big team which has reached 10 million in 2021. The number of relevant practitioners increased at the speed of 8.8% per month, which covered the users of 800 million. [3] A great number of live streamers, after accumulating certain numbers of fans, stepped into the live streaming marketing field.

## 2. Problem Statement

What cannot be denied is that the live streaming marketing is in a rampant growth. A lot of problems arise. According to Diansubao, an online consumption complaining platform, in July,2023, the top ten nationwide online consumption complaints are as follows: refund(29.80%) quality problem(10.97%) fraud (7.31%) after-sale service(6.58) delivery(6.40%)false promotion (6.22%) overlord clauses(6.22%), fake commodities(5.67%) return of goods(4.02%) inconsistency with samples(3.11%)[4]

With increasing laws and regulations being issued, and live stream platforms playing the role of supervisors, these problems have attracted more attentions. Therefore, the apparent illegal practices gradually decrease, but not disappear; on the contrary, they turn into hidden and disguised forms. The above mentioned issues have been discussed by many scholars, but the problem of undue influence has not caught enough attention. Since fraud or misrepresentation is strictly sanctioned by law or e-commerce platforms, undue influence has become a popular means for the live streamers to earn money from their fans. And seemingly, the fans buy the goods promoted by their idols or their favorite live streamers not by coercion or cheating, and they buy the goods “by will”, this practice is like an “edge ball”. Its hidden feature makes it neglected by both consumers and law-enforcement departments.

## 3. Findings

### 3.1. Undue Influence

Undue influence occurs when an individual is able to persuade another's decisions due to the relationship between the two parties. Often, one of the parties is in a position of influence over the other due to elevated status, higher education, or emotional ties. The more powerful individual uses this advantage to persuade the other individual into making decisions that might not be in their long-term best interest.

Undue influence is an equitable doctrine of common law that involves one person taking advantage of a position of power over another person. This inequity in power between the parties can vitiate one party's consent as they are unable to freely exercise their independent will. In exerting undue influence, the influencing individual is often able to take advantage of the weaker party. In contract law, a party claiming to be the victim of undue influence may be able to void the terms of the agreement.

Undue influence, originated from English law, is classified into two types. One is actual undue influence; the other is presumed undue influence.

Actual undue influence is not based on certain special relationship. The victim has to prove:

firstly, the other party has a position of influence over him; secondly, the other party actually gives him or her kind of pressure; thirdly, the pressure is not fair or proper; and finally, the victim enters a contract against his real intention due to that pressure.

Presumed undue influence occurs between parties who have certain relationship of high trust. The two parties have established relationship of trust during long-term association. One party is inclined to trust whatever the other party declares. This relationship is more likely to occur between live streamers and their fans. Some live streamers have obtained respect, trust, love and even obsession from their fans. Whatever they sell, their fans will support them without second thought. It is not rare that a lot of fans buy piles of goods without necessity. Even if the goods are fake or inferior in quality, the fans will not take actions for the sake of their idols. In this way, the fans express their unconditional support to their trusted live streamers.

### **3.2. Undue Influence and Fraud**

Fraud in marketing means that the presenter deliberately gives false statement or conceals some material facts regarding the goods, which gives the consumers a misunderstanding about the goods, and induces them to contract against his true intention. Fraud in marketing online has been a prominent problem and has been sanctioned strictly by the authority; therefore, it is fairly under control.

The majority of online businesses dare cheat consumers barely; however, some alternative means of illegitimate marketing have been invented. In some live streaming rooms, the live streamers invent a story and “play or act” to mislead their fans that they are selling the goods at a price lower than any others. Some live streamers use the fans’ sympathy and trust to buy goods that they don’t need or want. And quite a lot of live streamers successfully create a hot and crazy atmosphere that the goods are extremely cheap and good and they try any means to persuade the fans to rush to purchase otherwise the goods may be out of stock.

Apparently, the fans buy goods “willingly”, they are not buying out of duress or fraud, however, they will not buy those goods if there is no relationship of trust between them and the live streamers. They consume beyond reasonable limit just because they trust the live streamers. The live streamers have a power of influence over their loyal and passionate fans. They “brainwashed” the fans and give the fans a psychological pressure. Only by consuming in the live streaming room can the fans express their love and support to their live streamers. Although the statements that the live streamers make are not all false, they induce the fans to make contracts against their real intention by their position of influence over their fans.

In case of fraud, there is no special relationship between the two parties, but in case of presumed undue influence, there is special relationship of trust. It is common that some businesses pay high commission to pop stars or celebrities or experts as live streamers to promote their goods. The consumers are quite likely to trust these live streamers and often the sales volume is appalling.

### **3.3. The Legal Identity and Liability of Web Influencers**

The web influencers who sell goods in their live streaming rooms are fairly new phenomena. So far in China there is no specific law regulating the web influencers’ way of marketing in live streaming rooms. The web influencer earns commission from the owner of the goods, and they are neither the party to the contract of sale nor the employee of the businesses.

They shall be identified as the advertising endorsers for the goods they sell.[5] The Advertisement law of China, article 2 specifies the definition of endorser. Article 38 stipulates that an endorser shall, based on facts, recommend or certify goods and services in advertisement in accordance with the relevant laws and administrative regulations, and shall not recommend or

certify any goods that has not been used or service that has not been received by the endorser.

The reason why live streaming marketing is so popular is that the goods sold in the live streaming rooms are very low in price and quality. In many cases, goods owners hire billionaire celebrity to promote some goods of negligible value, and the celebrity may sell a large quantity of various types of goods in a few hours. It is therefore impossible for the web celebrity to use all the goods in person. The consumers will buy the goods only because they trust or try to support their favourite live streamers.

Article 4 of Advertisement law of China stipulates that advertisements shall not have any false or misleading content or defraud or mislead consumers. The advertisement law of China only has prohibitive provision on false advertisement, which is not enough to cover the new alternative illegitimate practice.

Article 56 stipulates the liability of endorsers: where a false advertisement on a good or service involving the life or health of consumers causes any damage to consumers, the advertising agent, advertisement publisher, and endorser of the false advertisement shall assume joint and several liabilities with the advertiser. Where a false advertisement of a good or service other than one as mentioned in the preceding paragraph causes any damage or consumers, if the advertising agent, advertisement publisher, or endorser of the false advertisement knew or should have known that the advertisement was false but still designed, produced, served as an agent for, or published the advertisement or provided recommendation or certification, it shall assume joint and several liability with the advertiser.

The current Chinese law only specifies the endorser's liability for false advertisement when the goods cause damage to consumers' life or health. There are no rules concerning undue influence. The rules regarding undue influence in common law should be adopted by Chinese law, otherwise, the massive consumers' interest is damaged but they have no legal basis to make complaint against the live streamer's improper practice.

## **4. Recommendations**

### **4.1. Undue Influence of Common Law Is Worthy of Use for Reference**

There are diversified ways of marketing in live streaming rooms, some of which have been invented to evade the law. Our legislation should be up-to-date and makes response to new phenomenon. Live streaming marketing managed to reach the peak in such a short period that the law lags behind.[6] Those ostensible illegitimate practice are covered by law, but those hidden illegitimate practices in disguised forms which have produced great adverse impact on the life of the public are neglected by law. China has promulgated E-commerce law in 2018, and it mainly regulates the practice and liability of the online platforms, but the live streaming marketing is not covered. The E-commerce law of China should be amended timely to put live streamers' marketing in a legal framework.

### **4.2. The Threshold for Live Streamers Should Be Enhanced**

So far in the major live streaming platforms, anyone can start live streaming and there is no requirement to be a live streamer. A large number of live streamers are not professional. It is suggested that the threshold for live streamers be raised. The live streaming applicants shall receive basic training about how to live stream legally, especially if they intend to sell goods in the live streaming rooms. They should know the relevant laws on false advertisement, contract law, product liability law, E-commerce law, intellectual property rights law, competition law, marketing law and consumer protection law, etc.

### 4.3. Platforms Shall Strictly Supervise the Live Streamers

The major platforms effectively prohibit some illegal live streaming practice involving violent, vulgar and fraudulent contents. However, it is difficult to recognize and take actions against the hidden and disguised forms of illegal practice—undue influence. It is not easy to tell that the live streamers are “acting” to give their fans an improper influence. “Acting or playing a story” has become a prevalent marketing practice in many influential live streaming rooms. This practice is not intervened by law or platforms just because there are no rules on undue influence in Chinese law. Everyone feels something is wrong but they cannot find the rules against it. Concerning its wide influence, the platforms should take special action to intervene this practice.

## 5. Conclusion

Web influencer’s live streaming marketing has become a dominant way of online marketing in China. Since it is a fairly new practice, a lot of problems arises, among which ---undue influence has become a prevalent problem in live streaming marketing. Undue influence is quite likely to occur between the celebrity live streamers and their passionate and loyal fans. Their fans trust their idols so much that they would buy whatever their idols sell. The celebrity live streamers use the trust of their fans and make them buy a huge amount of unnecessary stuff. Undue influence is not regulated because there is no rule on it in the current Chinese law. The rules on undue influence in common law is suggested to be adopted in China. In order to create a clear and clean environment for live streaming marketing, we should raise the threshold to be a live streamer, and the major platforms should strictly supervise the live streamers.

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