



The civil liability of influencers for consumer harm from health-related product endorsements on digital platforms: comparative experience from China and Australia and recommendations for Vietnam

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Abstract

Influencers who promote health-related products on digital platforms can cause physical and financial harm that ordinary consumers can rarely trace back to a single actor. This article examines the civil liability of influencers for such harm under Vietnamese law after the 2025–2026 reforms, namely Law No. 75/2025/QH15 amending the Law on Advertising, the Law on E-Commerce No. 122/2025/QH15 and Decree No. 248/2026/ND-CP, read together with the 2015 Civil Code. Using doctrinal and comparative methods, it compares Vietnam with China, which ties joint liability to the nature of the product and the endorser's knowledge, and with Australia, whose regulator-led model targets both influencers and the brands that instruct them. The article identifies four gaps: an undefined fault standard for influencers, no differentiation between ordinary products and those affecting life and health, weak evidentiary access for victims, and limited tools for dealing with repeat endorsers. It proposes five *de lege ferenda* measures: a risk-based verification standard, a rebuttable presumption of fault for health-related endorsements, mandatory record-keeping by platforms, seller–influencer risk-allocation clauses, and graduated bans from endorsing sensitive products.

Keywords: Influencers, civil liability, health products, joint liability, consumer protection, livestream selling

Introduction

Digital platforms have changed how health-related products reach consumers. A short video claiming that a supplement “supports recovery” or that a cosmetic “repairs skin in seven days” can persuade thousands of viewers to buy, and in a livestream the sale closes at the very moment the claim is made. Unlike a banner advertisement, an influencer's recommendation borrows the credibility of a personal relationship with the audience. When the claim is false, the resulting harm may include bodily injury, delayed medical treatment and wasted expenditure, and the consumer faces a chain of actors: the seller or brand, the influencer and the platform.

Vietnam has recently built a statutory framework around these actors. Law No. 75/2025/QH15 inserted Article 15a into the Law on Advertising, setting duties for those who convey advertised products^[3]. The Law on E-Commerce No. 122/2025/QH15, adopted on 10 December 2025 with seven chapters and 42 articles and effective from 1 July 2026, regulates livestream selling and affiliate marketing; among other things it requires the seller to give the livestreamer supporting documents before a session and forbids the livestreamer from providing false or misleading information on utility, origin, quality or price^[1, 6]. Decree No. 248/2026/ND-CP, issued on 30 June 2026 and effective the next day, obliges platforms offering livestream selling to publish their operating rules, including the rights and obligations of the parties and the electronic-identification procedure^[2, 8, 9].

Most commentary on these instruments concerns administrative compliance. Much less attention has been paid to the situation after harm has occurred: who compensates the consumer, on what basis, and how responsibility is divided between seller and influencer. This

article addresses three research questions. First, on what basis and under which elements can an influencer be held civilly liable for consumer harm under current Vietnamese law, and what questions do the new instruments leave open? Second, how do China and Australia allocate responsibility among influencer, brand and regulator? Third, what reforms would make Vietnam's regime workable?

Materials and Methods

The article applies doctrinal analysis to the Civil Code 2015 (Law No. 91/2015/QH13)^[4], the Law on Protection of Consumer Rights 2023 (Law No. 19/2023/QH15)^[5], Law No. 75/2025/QH15^[3], the Law on E-Commerce 2025^[1] and Decree No. 248/2026/ND-CP^[2]. A comparative method is then used. China was selected because its Advertising Law addresses endorsers directly and distinguishes liability according to the product concerned^[10, 11, 19]; Australia because it regulates influencers through a general prohibition on misleading conduct enforced by an active regulator, a different technique from both Vietnam and China^[15, 20].

Two limitations should be stated. Foreign law was studied through the regulators' releases and professional commentary rather than through translated primary texts, so details should be checked against official sources before being relied upon. The article also does not survey court judgments, because the Vietnamese provisions examined here have only recently entered into force. Sources were accessed up to 2 October 2026.

Results and Discussion

1. How consumer harm arises in health-related endorsement

Three pathways recur. The first is the false efficacy claim: the influencer attributes to a product therapeutic or dramatic cosmetic effects that the seller's documents do not support. The second is concealed sponsorship, in which a paid message is presented as personal experience and therefore trusted more than it deserves. The third is the pressure of the livestream itself, where countdowns and claims of scarcity compress deliberation. The damage that follows may be bodily (an adverse reaction, a worsened condition), economic (the price paid, the cost of treatment) or a lost opportunity to seek proper care. In each pathway the influencer rarely manufactures the product; the influencer's contribution lies in persuading the consumer to buy and use it. This matters for the legal analysis, because liability for the influencer is liability for a communication, not for the product itself.

2. The civil liability framework in Vietnam

General rules. The Civil Code treats the infliction of damage by an unlawful act as a ground for compensation (Art. 584) and requires actual damage to be compensated fully and promptly (Art. 585). Where several persons cause damage together, they are jointly liable to the victim; the share of each is set according to degree of fault, or in equal parts if the degrees cannot be determined (Art. 587). A claim for non-contractual compensation is subject to a three-year limitation period (Art. 588) ^[4]. Liability therefore requires an unlawful act, damage, a causal link and fault.

Sector-specific duties as a standard of conduct. Article 15a of the amended Law on Advertising requires those who convey advertised products to verify the truthfulness and legality of product information, to disclose sponsored content, to provide documents on request and to bear legal responsibility where content breaches the Law's requirements ^[3]. Under the Law on E-Commerce, the seller must hand the livestreamer proof documents in advance, while the livestreamer must not give deceptive information and must cooperate with identity verification ^[1, 6]; official briefings also describe the seller as bearing primary responsibility for the goods ^[7]. These duties supply the yardstick against which an influencer's conduct will be judged. A breach is strong evidence of an unlawful act. Open questions. Four difficulties emerge. First, nothing in the new instrument's states that breach of a regulatory duty automatically gives rise to civil compensation, so victims must still prove each element under the Civil Code. Second, the level of care expected is unspecified: Article 15a requires verification, but it does not say whether a creator who checked the seller's certificates has done enough, and "should have known" is not defined for influencers.

Third, causation is hard to prove when a consumer was exposed to several messages, or when the product itself is defective. Fourth, Article 587 presupposes that several persons "cause damage together"; it is unclear whether a seller's defective product and an influencer's misleading claim, which are independent acts that converge on one harm, qualify. The seller's duty to provide documents under the E-Commerce Law cuts both ways: if the seller supplies false documents, an influencer who reasonably relied on them may lack fault, while an influencer who ignored obvious red flags may not.

3. China: liability calibrated to product risk

China's Advertising Law speaks to endorsers directly. Article 38 requires endorsements to be based on facts and bars endorsing goods or services the endorser has never used; advertisements for medical treatment, pharmaceuticals, medical devices and health foods may not use endorsers at all ^[10, 13]. Article 56 then tiers civil liability. For false advertisements concerning goods or services that affect consumers' life and health, endorsers share joint and several liability with the advertiser when consumers are harmed; for other products, joint liability attaches only where the endorser knew or should have known that the advertisement was false ^[11, 14, 19]. Authorities have issued guidelines elaborating what "use" of a product means, which had been unclear to both endorsers and regulators ^[12]. Livestream marketing is additionally governed by dedicated trial measures that likewise prohibit false or misleading descriptions ^[14].

Enforcement shows how these rules operate. In May 2022 a well-known actress received what was then the largest fine imposed under the Advertising Law, RMB 7.22 million, for health claims made in food advertising, and was barred from acting as an endorser for three years ^[13]. The Chinese model has two instructive features: the intensity of liability tracks the risk of the product, and sanctions reach the endorser's capacity to work, not only the endorser's wallet. Its weakness is that joint liability without a knowledge requirement in the health tier may be harsh on small creators relaying documents they cannot verify.

4. Australia: liability follows control of the commercial message

Australia has no influencer-specific statute. Influencers fall under the Australian Consumer Law's prohibition of misleading or deceptive conduct in trade or commerce, and a person who suffers loss from a contravention may claim damages ^[20]. Penalties of up to A\$2.5 million for individuals have been reported ^[18]. The regulator, the ACCC, has driven compliance through sweeps: in its first influencer sweep it found that 81 per cent of 118 influencers had posted content raising concerns, with fashion influencers at 96 per cent ^[15, 21]. The commonest problem was failure to

disclose brand relationships, followed by vague wording that obscured the advertising ^[17]. Industry codes require advertising to be distinguishable and recommend disclosure wherever a brand has engaged or enticed the influencer ^[15, 18].

A recent enforcement action shows where the burden falls. An online photobook business paid A\$39,600 on two infringement notices after it instructed influencers, on 107 occasions between August 2024 and September 2025, not to disclose

that they had been paid in free products. The ACCC stated that influencers, the businesses hiring them and third-party facilitators are all subject to the law ^[16]. The lesson is that liability follows control over the message: the brand that directs concealment answers directly. Australia's limits are equally clear. Penalties go to the state, not the victim; the general law gives influencers little certainty about the care they must exercise; and regulator sweeps depend on enforcement capacity.

Table 1: Civil liability of influencers – Vietnam compared with China and Australia

Dimension	Vietnam	China	Australia
Main legal basis	Civil Code Arts 584–588; Law on Advertising Art. 15a; Law on E-Commerce 2025; Decree No. 248/2026/ND-CP	Advertising Law Arts 38 and 56; livestream marketing measures; guidelines on endorsements	Australian Consumer Law (misleading or deceptive conduct; damages); industry codes
Standard for influencer fault	Verification duty stated; level of care undefined	Knew or should have known (general tier); no knowledge requirement for life-and-health products	General standard of misleading conduct; no influencer-specific test
Treatment of health-related products	No separate liability tier in influencer rules	Endorsers barred for medical and health-food ads; joint liability for life-and-health harm	No special tier; general law applies
Role of the brand or seller	Seller must give documents and bears primary responsibility for goods; civil co-liability unclear	Advertiser liable; joint liability with endorser per tier	Brand directly liable where it instructs concealment; third-party facilitators covered
Beyond compensation	Administrative handling under advertising and e-commerce rules	Large fines; multi-year endorsement ban	Penalties and infringement notices; regulator sweeps and guidance
Main lesson for Vietnam	Link regulatory duties to civil remedies	Calibrate liability to product risk	Reach the party that controls the message

Source: compiled by the author

Three comparisons stand out. China differentiates by product risk and, in the health tier, removes the knowledge requirement; Australia relies on general standards but targets the commissioning brand; Vietnam currently has neither a product-risk tier nor an express rule on the brand's co-responsibility toward the victim, although the seller's duty to provide documents under the E-Commerce Law is a useful starting point.

5. Gaps in the Vietnamese framework

An undefined fault standard. Article 15a requires verification, but there is no benchmark for what reasonable verification means for a creator. Without one, courts will rely on a case-by-case reading of "fault", producing inconsistent outcomes and chilling legitimate small creators. No differentiation by risk. A mistaken claim about a fashion accessory and one about a product taken internally are treated alike, although the potential harm differs fundamentally. China's tiered approach shows that law can respond to this difference.

Weak evidentiary access. Livestreams are ephemeral and platforms hold the logs. A consumer who cannot show exactly what was said, by whom and when, cannot prove the unlawful act or causation. The Decree's rules on platform livestream regulations do not by themselves guarantee that records are kept or disclosed to claimants ^[2, 8].

Limited tools for repeat conduct and collectability. Damages against an individual creator may be uncollectable, and the existing framework offers no proportionate consequence for creators who repeatedly endorse unsafe health products.

Recommendations for improving the law of Vietnam

The following measures are offered as recommendations de lege ferenda, not as descriptions of law in force. Most can be implemented through decrees and guiding circulars.

First, define a risk-based verification standard. A guiding document should specify the minimum steps expected of an influencer before promoting a product: obtaining the seller's proof documents under the E-Commerce Law, checking registration or licence status where the product category requires it, and refraining from any efficacy claim not found in those documents. The standard should rise with product risk, being highest for medicines, supplements and products applied to or taken into the body. An influencer who completes these steps and relies in good faith on documents later shown to be false should have a defence, with responsibility resting mainly on the seller.

Second, introduce a rebuttable presumption of fault for health-related endorsements. Rather than copying China's joint liability without knowledge, which may be disproportionate, Vietnam could presume fault where an influencer makes an efficacy claim about a life-and-health product that the seller's documents do not support, leaving the influencer to rebut by showing reasonable verification. This preserves proof of damage and causation by the victim while easing the burden on the fault element.

Third, require platforms to retain and disclose records. Platforms offering livestream selling should keep session recordings, sponsorship tags and affiliate-link data for a fixed period, for example twenty-four months, and disclose them to courts and competent authorities on request, with

safeguards for personal data. This builds on the livestream rules platforms must already publish ^[2, 8].

Fourth, allocate risk contractually and extend responsibility to the brand. Model clauses should oblige the seller to warrant the accuracy of product information, to indemnify the influencer who relied on it in good faith, and to prohibit instructions to conceal sponsorship. Following Australia's focus on the commissioning party ^[16], a seller that supplies false documents or directs misleading content should be treated as a principal wrongdoer in civil proceedings, and professional liability insurance for high-reach creators should be encouraged.

Fifth, adopt graduated bans. After a serious or repeated violation involving health products, authorities could suspend an influencer from promoting sensitive product categories for a defined period, subject to administrative and judicial review. China's three-year endorsement ban shows how this deterrent works ^[13]; in Vietnam the length should be proportionate and the measure should be reserved for serious cases.

Taken together, these measures give each actor a clear duty: the seller to supply truthful information, the influencer to verify within reasonable limits, the platform to preserve evidence, and the authorities to sanction proportionately.

Conclusion

Vietnam's 2025–2026 legislation has moved influencers from the margins of the law to the centre of duties for conveying advertised products. Yet for the consumer who has already been harmed by a health-related endorsement, the path to compensation still runs through general Civil Code rules that were not written with influencers in mind. The experience of China shows the value of calibrating liability to product risk, and that of Australia shows the value of reaching the brand that controls the message. A risk-based verification standard, a rebuttable presumption of fault for health products, mandatory record-keeping, contractual risk allocation and graduated bans would connect the new regulatory duties to effective civil remedies, protecting consumers without penalising creators who act with reasonable care.

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