

MISLEADING AND ABUSIVE ADVERTISING ON SOCIAL MEDIA: CONSUMER PROTECTION AGAINST THE ACTIONS OF DIGITAL INFLUENCERS

PUBLICIDADE ENGANOSA E ABUSIVA NAS REDES SOCIAIS: A PROTEÇÃO DO CONSUMIDOR DIANTE DA ATUAÇÃO DOS INFLUENCIADORES DIGITAIS

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ABSTRACT: This article analyzes consumer protection against misleading and abusive advertising on social media, with a special focus on the actions of digital influencers. The

expansion of digital platforms has significantly modified strategies for promoting products and services, allowing advertising messages to be inserted into content of a personal, informative, or entertainment nature. This reality can make it difficult to identify the commercial nature of the message and increase consumer vulnerability, especially given the relationship of trust established between influencers and their followers. In this context, the study seeks to answer to what extent advertising by digital influencers can constitute misleading or abusive advertising and what legal instruments are available under Brazilian law to ensure consumer protection. The research adopts a qualitative approach and a deductive method, developing through bibliographic and documentary research, with analysis of the 1988 Federal Constitution, the Consumer Protection Code, specialized doctrine, advertising self-regulation norms, and jurisprudential and administrative understandings related to the matter. This study initially examines the constitutional protection of consumers and their vulnerable condition, followed by an analysis of the principles applicable to advertising activity, especially the duties of identification, transparency, information, and truthfulness. Next, it examines the particularities of influencer marketing and the challenges arising from the insertion of advertising content on social media. It argues that the evolution of forms of commercial communication does not eliminate the application of consumer protection laws, and that digital advertising must observe the limits established by the legal system to prevent practices capable of misleading consumers or hindering the identification of the commercial purpose of the message.

Keywords: Consumer Law. Misleading advertising. Abusive advertising. Digital influencers. Social media.

RESUMO: O presente artigo analisa a proteção do consumidor diante da publicidade enganosa e abusiva realizada nas redes sociais, com especial enfoque na atuação dos influenciadores digitais. A expansão das plataformas digitais modificou significativamente as estratégias de divulgação de produtos e serviços, possibilitando que mensagens publicitárias sejam inseridas em conteúdos de caráter pessoal, informativo ou de entretenimento. Essa

realidade pode dificultar a identificação da natureza comercial da mensagem e potencializar a vulnerabilidade do consumidor, especialmente diante da relação de confiança estabelecida entre influenciadores e seus seguidores. Nesse contexto, o estudo busca responder em que medida a publicidade realizada por influenciadores digitais pode configurar publicidade enganosa ou abusiva e quais instrumentos jurídicos são disponibilizados pelo ordenamento brasileiro para assegurar a proteção do consumidor. A pesquisa adota abordagem qualitativa e método dedutivo, desenvolvendo-se por meio de pesquisa bibliográfica e documental, com análise da Constituição Federal de 1988, do Código de Defesa do Consumidor, da doutrina especializada, das normas de autorregulamentação publicitária e de entendimentos jurisprudenciais e administrativos relacionados à matéria. Examina-se, inicialmente, a proteção constitucional do consumidor e sua condição de vulnerabilidade, passando-se à análise dos princípios aplicáveis à atividade publicitária, especialmente os deveres de identificação, transparência, informação e veracidade. Em seguida, são examinadas as particularidades do marketing de influência e os desafios decorrentes da inserção de conteúdos publicitários nas redes sociais. Sustenta-se que a evolução das formas de comunicação comercial não afasta a incidência das normas consumeristas, devendo a publicidade digital observar os limites estabelecidos pelo ordenamento jurídico para impedir práticas capazes de induzir o consumidor em erro ou dificultar a identificação da finalidade comercial da mensagem.

Palavras-chave: Direito do Consumidor. Publicidade enganosa. Publicidade abusiva. Influenciadores digitais. Redes sociais.

1. INTRODUCTION

Advertising occupies a prominent position in contemporary consumer relations, not limited to the simple presentation of products and services, but constituting an important instrument for bringing suppliers and consumers closer together and influencing purchasing decisions. The development of consumer society has been directly related to the expansion of mass

production, credit, and advertising activity itself, elements that have contributed to changing the way individuals relate to the market (Norat, 2026, Lesson 03).

In recent decades, this scenario has undergone even more significant transformations due to the development of communication technologies and the consolidation of social networks. Digital platforms have ceased to function solely as spaces for interaction between users and have become important commercial environments where companies, brands, and content producers promote products and services daily. In this context, the role of digital influencers stands out, as they have come to occupy a relevant position in contemporary marketing strategies.

The advertising developed by these agents presents distinct characteristics from the formats traditionally used in the media. In many situations, the promotion of a particular product or service is incorporated into the influencer's own daily content, appearing through recommendations, reviews, usage demonstrations, accounts of personal experiences, videos, or photographs. For this reason, the boundary between a spontaneous expression and a message of a commercial nature can become less evident to the consumer.

This circumstance gains special importance given the vulnerability that characterizes the consumer in the market. As highlighted by Norat (2026, Lesson 03), one of the fundamental reasons for consumer protection is the existence of a structural imbalance between the subjects participating in the consumer relationship. The consumer, as a rule, is in a different position from the supplier regarding the control of information, technical knowledge, and economic power, which justifies the existence of specific legal instruments designed to promote greater balance in this relationship.

In the Brazilian legal system, consumer protection has a constitutional basis. The 1988 Constitution of the Federative Republic of Brazil established, in its article 5, XXXII, that the State will promote, in accordance with the law, the defense of the consumer. Furthermore,

article 170, V, included consumer protection among the principles of the economic order, demonstrating that consumer protection is not exclusively an individual concern, but constitutes an integral element of the very legal organization of Brazilian economic activity. This is evidenced by the existence of collective actions that entities such as the Public Prosecutor's Office can use to defend the constitutional rights of consumers (BRAZIL, 1988).

The realization of this constitutional mandate occurred especially with the enactment of Law No. 8,078, of September 11, 1990, which instituted the Consumer Protection Code. This law established a specific protection system designed to regulate consumer relations and ensure rights compatible with the recognized vulnerability of the consumer. In this sense, the basic rights provided for by the CDC function as essential foundations for seeking greater balance between consumers and suppliers, encompassing, among other aspects, the right to adequate information, freedom of choice, and protection against abusive commercial practices (Norat, 2026, Lesson 14).

Advertising is directly integrated into the protection system provided for by the Consumer Protection Code, which imposes limits on how commercial messages can be presented to the public. Article 36 stipulates that advertising must be disseminated in such a way that the consumer can easily and immediately identify it, while Article 37 prohibits misleading and abusive advertising, especially when there is false information, omission of relevant data, or any practice capable of inducing the consumer into error (Brazil, 1990).

On social media, the situation becomes even more relevant because influencers often build a close and trusting relationship with their followers. This connection can increase the persuasive power of recommendations made on digital platforms. For this reason, advertising on social media should be analyzed not only by the content of the message, but also by how it is presented and by the consumer's ability to clearly understand that they are facing a commercial communication.

Given this scenario, this article seeks to answer the following research question: to what extent can advertising carried out by digital influencers on social media constitute misleading or abusive advertising, and what legal mechanisms are available under Brazilian law to ensure effective consumer protection?

It is assumed that advertising developed by digital influencers, when inserted within the context of a consumer relationship, is subject to the rules and principles established by the Consumer Protection Code. Therefore, the existence of remuneration, benefit, or any kind of commercial link related to the dissemination requires special attention to the duties of identification, transparency, and information. Similarly, the presentation of false, incomplete, or misleading information may constitute a violation of the rules governing advertising in consumer law.

The overall objective of this study is to analyze the legal protection of consumers against misleading and abusive advertising carried out by digital influencers on social media, verifying the application of the Consumer Protection Code and the mechanisms designed to prevent and repress these practices. To this end, the foundations of consumer protection will be examined, especially its constitutional dimension, the vulnerability of the consumer, their basic rights, and the principles applicable to advertising, with emphasis on identification, information, truthfulness, and the prohibition of misleading and abusive practices, so that consumers are able to recognize the commercial nature of the message and exercise their freedom of choice consciously.

- **Consumer protection in the Brazilian legal system.**
- The Constitutional Protection of the Consumer

Consumer protection in the Brazilian legal system finds its initial foundation in the 1988 Federal Constitution, which promoted a significant transformation in the protection of consumer relations by granting constitutional treatment to the matter. The constituent's

concern was not limited to the provision of future specific legislation, but also included consumer protection both within the set of fundamental rights and guarantees and among the structuring principles of the national economic order. In this way, consumer protection came to represent a true constitutional commitment of the Brazilian State (Norat, 2026, Lecture 07).

The first foundation is found in Article 5, XXXII, of the Federal Constitution, according to which “the State shall promote, in accordance with the law, the defense of the consumer” (BRAZIL, 1988). The location of this provision in the Title dedicated to fundamental rights and guarantees demonstrates the importance attributed to the matter by the constituent assembly. It is not, therefore, a simple power granted to the Public Authorities, but a constitutional mandate aimed at creating and maintaining legal instruments capable of ensuring effective protection for the consumer.

When analyzing this provision, Norat (2026, Lecture 07) highlights that the use of the expression “will promote” evidences the existence of a duty imposed on the State, and not a choice subject to the convenience of governments. The constitutionalization of consumer protection produces effects that go beyond the relationship between the individual and the Public Power, also reaching private relationships established in the market. In this sense, the author states that “ the constitutional protection of the consumer extends to all consumer relations “ (Norat, 2026, Lecture 07).

This relationship becomes evident in Article 170 of the Federal Constitution. In regulating the general principles of economic activity, the provision establishes that the economic order is founded on the valorization of human labor and free initiative, with the purpose of ensuring a dignified existence for all, in accordance with the dictates of social justice. Among the principles that should guide the exercise of this activity is expressly found, in item V, the protection of the consumer (BRAZIL, 1988).

The simultaneous presence of free enterprise and consumer protection in the same constitutional provision demonstrates that these values must coexist in a balanced way. The freedom granted to economic agents to develop products, services, commercial strategies, and forms of advertising does not mean authorization to act without limits. As Norat (2026, Lecture 07) observes, consumer protection constitutes one of the constitutional parameters for the exercise of economic activity, which is why free enterprise must be developed in a manner compatible with the protection of the vulnerable party in the consumer relationship.

The 1988 Constitution also expressly mandated the creation of systematized legislation aimed at consumer protection. Article 48 of the Transitional Constitutional Provisions Act established that the National Congress would draft a Consumer Protection Code, a determination later fulfilled by the enactment of Law No. 8,078, of September 11, 1990 (Brazil, 1988, ADCT). The existence of the Consumer Protection Code, therefore, does not stem merely from a legislative choice, but from the execution of a mandate established by the constitutional text itself.

This perspective is especially important for the analysis of advertising. Although the Constitution guarantees free enterprise and allows economic agents to develop different strategies for promoting their products and services, this freedom must be exercised in accordance with the constitutional protection afforded to the consumer. Thus, commercial practices that could compromise information, freedom of choice, or the conscious formation of the consumer's will cannot be justified solely on the basis of economic freedom.

In the digital environment, this conclusion takes on particular relevance. The emergence of new forms of advertising, including those developed through social networks and digital influencers, modifies the means by which commercial messages reach the public, but does not alter the constitutional foundations of consumer protection. Regardless of the platform used, the exercise of economic activity remains subject to respect for consumer rights.

Understanding this position of special protection requires, in turn, an analysis of the vulnerability that characterizes the consumer in market relations, an aspect that constitutes one of the main foundations of the system established by the Consumer Protection Code.

- Consumer Vulnerability

Vulnerability is one of the central foundations of the Brazilian consumer protection system. The Consumer Protection Code does not assume that consumers and suppliers are in equivalent conditions in the market, but expressly recognizes the existence of an imbalance between these parties. For this reason, Article 4, I, of Law No. 8,078/1990 establishes, among the principles of the National Policy on Consumer Relations, the “recognition of the vulnerability of the consumer in the consumer market” (Brazil, 1990, Article 4, I).

This recognition is of fundamental importance for understanding the very purpose of Consumer Law. The protection afforded by consumer legislation does not aim to establish an unjustified advantage in favor of one of the parties, but to offer instruments capable of reducing inequalities existing in the concrete functioning of the market. According to Norat (2026, Lecture 03), the consumer, due to their own position in the consumer relationship, is in a situation of structural disadvantage vis-à-vis the supplier, which justifies the existence of a specific legal system of protection.

Vulnerability, however, does not manifest itself in a single way. It can result from a lack of specific knowledge about a particular product or service, from a difference in economic power between the parties, from ignorance of applicable legal norms, or from the existing asymmetry regarding access to and control of information relevant to decision-making. Norat (2026, Lesson 03) identifies, in this sense, four main dimensions of consumer vulnerability: technical, factual or socioeconomic, legal, and informational.

Technical vulnerability essentially stems from the difference in knowledge between the producer or supplier of a given product or service and the consumer. The supplier, as a rule,

possesses expertise regarding the characteristics, operation, composition, limitations, and risks of what they place on the market, while the consumer depends on the information made available to them to assess the suitability of the purchase. As Norat (2026, Lecture 03) explains, this asymmetry of knowledge is present in the most diverse consumer relations and places the consumer in a position of informational dependence vis-à-vis the one who possesses specialized knowledge about the object being traded.

Factual or socioeconomic vulnerability, in turn, relates to the concrete power difference that exists between consumers and suppliers. Companies that operate professionally in the market may possess greater economic capacity, organizational structure, access to information, and legal resources, circumstances that are not normally available to the individual consumer in the same proportion. Legal vulnerability also forms part of this scenario, insofar as the average consumer does not necessarily possess sufficient knowledge to understand the complexity of the rules, contracts, and legal consequences related to the operations they carry out in the market (Norat, 2026, Lesson 03).

For the purposes of this study, however, informational vulnerability is of particular relevance. The development of digital technologies has made information one of the main elements of contemporary consumer relations. It is not enough to consider only the quantity of information available to the consumer; it is necessary to evaluate how this information is selected, presented, and used to influence their choices. Norat (2026, Lecture 03) highlights that this dimension of vulnerability has acquired special importance in the digital environment, in which platforms, algorithms, and recommendation systems are able to use information about the users themselves to target content and commercial messages.

Informational vulnerability, therefore, is not only associated with the absolute absence of information. It can also stem from the difficulty in recognizing the purpose of a message, distinguishing commercial content from seemingly spontaneous expressions, or adequately understanding the circumstances involved in the promotion of a particular product or service.

At this point, the importance of the duty of transparency in consumer relations becomes evident, since formal access to information does not necessarily mean that the consumer has the effective means to understand and use it consciously.

This issue takes on specific dimensions in the work of digital influencers. A product recommendation made by someone whose routine, opinions, and experiences are followed daily by users can have characteristics distinct from a conventional advertisement. The follower may attribute greater credibility to the message due to the relationship of trust developed with the content creator, especially when there are no sufficiently clear elements to demonstrate that the publication stems from a commercial partnership.

In this context, consumer vulnerability can be intensified by the very way advertising messages are transmitted. When personal content, entertainment, and commercial communication are presented in an integrated manner, it becomes particularly relevant to guarantee consumers the ability to distinguish a spontaneous opinion from a message linked to economic interests. Transparency regarding the nature of the message is therefore an indispensable element to ensure that freedom of choice is not compromised by insufficient information or by concealing the commercial purpose of the communication.

However, recognizing vulnerability does not mean considering the consumer incapable of making decisions or removing any responsibility for their own choices. Rather, it is about legally acknowledging that consumer relations are marked by asymmetries that justify the adoption of mechanisms designed to promote greater balance. As summarized by Norat (2026, Lecture 03), Consumer Law seeks to correct the structural imbalance inherent in consumer relations, providing conditions for the relationship between consumers and suppliers to be developed in a fairer and more transparent manner.

Vulnerability, therefore, serves as an important foundation for several existing norms in the Consumer Protection Code, especially those related to information, commercial practices,

and advertising. If the consumer is at a disadvantage regarding the knowledge and information available in the market, it becomes necessary to establish specific duties for the agents operating within it. It is precisely from this protective logic that the Consumer Protection Code is structured as an instrument intended to implement the constitutional mandates for consumer protection.

- The Consumer Protection Code as an Instrument of Protection

The implementation of the constitutional protection afforded to consumers occurred, above all, with the enactment of Law No. 8,078/1990. The Consumer Protection Code itself establishes, in its article 1, that its rules are for the protection and defense of the consumer, have a public order and social interest character, and are based on articles 5, XXXII, and 170, V, of the Federal Constitution, as well as article 48 of the Act of Transitory Constitutional Provisions (Brazil, 1990).

In this sense, the CDC represents more than an isolated set of rules aimed at resolving individual conflicts. According to Norat (2026, Lesson 08), it is a structured system of norms specifically focused on regulating consumer relations, encompassing different aspects of suppliers' market activity, such as information duties, civil liability, commercial practices, advertising, and contractual protection.

This characteristic also allows us to understand the CDC as a legal microsystem. Norat (2026, Lesson 09) explains that this qualification stems from the existence of its own principles, rules, and mechanisms organized around a common purpose of consumer protection. Therefore, the provisions of the Code must be interpreted in an integrated manner, considering values such as vulnerability, objective good faith, transparency, balance, and information.

This systematic view is especially important for the study of advertising. Protection against misleading or abusive messages should not be understood solely from the perspective of

provisions that specifically address advertising activity. It is related to the set of principles and rights established by the Consumer Protection Code (CDC), especially the right to adequate and clear information, freedom of choice, and protection against unfair commercial practices. Article 4 itself stipulates that the National Consumer Relations Policy should seek, among other objectives, transparency and harmony in the relations between consumers and suppliers (Brazil, 1990, art. 4).

For this reason, the development of new forms of commercial communication does not eliminate the application of consumer protection laws. Technological transformations may modify the instruments used to offer and promote products and services, but the legal duties imposed on agents operating in the market remain guided by the protective principles of the Consumer Protection Code (CDC).

- BASIC CONSUMER RIGHTS RELATED TO ADVERTISING

The basic rights set forth in Article 6 of the Consumer Protection Code constitute an important foundation for the legal regulation of advertising. Among them, the right to adequate and clear information and protection against misleading and abusive advertising stand out, provided for, respectively, in items III and IV of the aforementioned article (Brazil, 1990, art. 6, III-IV).

The duty to inform is directly related to the consumer's freedom of choice. For a consumer decision to be truly informed, it is not enough for some information about the product or service to formally exist; it must be presented in a clear, adequate, and understandable manner. Norat (2026, Lesson 14) emphasizes that information is an essential element for consumers to understand the characteristics of what they intend to purchase and make more informed choices.

This protection is especially relevant in the advertising field. Article 6, IV, of the Brazilian Consumer Protection Code (CDC) expressly guarantees consumers protection against

misleading and abusive advertising, as well as against coercive or unfair commercial methods (Brazil, 1990, art. 6, IV). According to Norat (2026, Lecture 14), this right acts as a protection mechanism against practices capable of distorting the consumer's perception or unduly interfering with their freedom of decision.

The relationship between information and advertising becomes even more important in the digital environment. On social media, commercial messages can be embedded within seemingly personal content, a circumstance that demands greater attention to transparency and the identification of their advertising purpose. In this scenario, the protection provided for in Article 6 of the Consumer Protection Code (CDC) is not limited to the veracity of the information transmitted, but also encompasses the need for the consumer to adequately understand the nature of the communication directed to them.

Thus, the basic rights to information and protection against illicit advertising practices serve as the foundation for the specific rules established by the Consumer Protection Code regarding advertising. Based on these rights, it becomes possible to understand why the legislation requires that commercial messages be identifiable and prohibits content capable of deceiving or exploiting the vulnerability of the consumer, aspects that will be examined in the following chapter.

- **Advertising in Consumer Relations**

- Constitutional mechanisms for containing judicial action.

Advertising is an important instrument in consumer relations, allowing suppliers to present products and services to the market and seek to arouse consumer interest. Its function goes beyond the simple transmission of information, as the advertising message has a persuasive purpose and is part of an economic strategy aimed at promoting products, services, or the company's own image. In this sense, Norat (2026, Lesson 26) characterizes advertising as a commercial activity aimed at publicizing products and services and increasing sales.

Although the terms advertising and propaganda are frequently used synonymously, there is a conceptual distinction between them. Advertising is essentially linked to commercial purposes and the consumer market, while propaganda may be aimed at disseminating ideas of a political, religious, ideological, or social nature. As Norat summarizes (2026, Lecture 26), “ advertising has a commercial character and aims at profit . “ For the purposes of this study, therefore, we are particularly interested in communication developed for marketing purposes and capable of influencing consumer decisions.

In the system established by the Consumer Protection Code, advertising also maintains a close relationship with the offer. Article 30 establishes that all sufficiently precise information or advertising, disseminated by any form or means of communication regarding products or services offered or presented, binds the supplier who disseminates it or uses it and becomes part of the contract subsequently entered into (Brazil, 1990, art. 30). This provision demonstrates that the advertising message can produce concrete legal consequences and cannot be understood merely as a commercial promotion tool devoid of binding effects.

When discussing this relationship, Norat (2026, Lesson 25) places advertising within the broader concept of offer, highlighting that advertising communication constitutes one of the ways in which products and services can be presented to consumers.

The promotion of products and services is a legitimate and relevant activity for the functioning of the market. Consumer Law intervenes because the persuasive power of commercial communication can affect the formation of the consumer’s will, especially when the message does not allow for adequate identification of its nature or presents information capable of producing a mistaken perception about the advertised product or service. For this reason, the Consumer Protection Code (CDC) does not prohibit advertising activity, but establishes limits so that it is exercised in a manner compatible with consumer protection (Norat, 2026, Lesson 26).

This understanding takes on particular importance in light of the transformations brought about by social media. The economic purpose of advertising remains even when the message no longer presents the traditional appearance of an advertisement and becomes incorporated into videos, recommendations, reviews, or testimonials produced by digital influencers. The alteration of the medium and form of communication does not change its nature when a commercial purpose is present, which is why advertising developed in the digital environment continues to be subject to the principles and rules established by the consumer protection system.

- PRINCIPLES APPLICABLE TO ADVERTISING IN THE CONSUMER PROTECTION CODE

Advertising activity, while legitimate and essential to the functioning of the market, cannot be exercised without restriction. The Consumer Protection Code establishes principles and rules designed to reconcile the freedom of commercial communication with the protection of the vulnerable party in the consumer relationship. In this context, the principles of transparency, identification of the advertising message, binding offer, truthfulness, and non-abusiveness stand out (Norat, 2026, Lesson 26).

Transparency stems from the very protective structure of the Consumer Protection Code (CDC) and requires that consumer relations be conducted in a clear manner, allowing the consumer to adequately understand the information presented to them. Article 4 of the Code includes transparency and harmony in consumer relations among the objectives of the National Consumer Relations Policy (Brazil, 1990).

The principle of identifying advertising messages, in turn, is specifically provided for in Article 36 of the Brazilian Consumer Protection Code (CDC), according to which advertising must be disseminated in such a way that the consumer can easily and immediately identify it as such (Brazil, 1990, art. 36). For Norat (2026, Lecture 26), this requirement prevents advertising from being presented in a disguised manner or confused with content of a different nature,

an issue that takes on special importance in light of the new forms of commercial communication used in the digital environment.

Another relevant principle is that of the binding nature of the offer. As established in Article 30 of the Consumer Protection Code (CDC), sufficiently precise information or advertising obligates the supplier who disseminates or uses it, becoming part of any contract entered into with the consumer (Brazil, 1990, Article 30). Thus, objective statements used as a means of persuasion do not constitute simple promotional strategies without legal consequences.

The principles of truthfulness and non-abusiveness also occupy a central position. Article 37 of the Brazilian Consumer Protection Code (CDC) prohibits all misleading or abusive advertising, regulating in paragraphs 1 and 2 the characteristics of these illicit modalities (Brazil, 1990, art. 37, §§ 1 and 2). Truthfulness requires correspondence between the message transmitted and the reality of the advertised product or service, while non-abusiveness imposes limits related to the form and content of advertising communication, especially when it exploits situations of vulnerability or affronts legally protected values (Norat, 2026, Lecture 26).

These principles do not operate in isolation. Transparency, identification, truthfulness, and non-abusiveness are part of a single protection system designed to ensure that consumers are able to recognize the commercial message, understand its content, and make informed decisions.

- THE PRINCIPLE OF ADVERTISING IDENTIFICATION

The principle of identifying advertising is one of the main guarantees aimed at preserving transparency in consumer relations. Its foundation lies in Article 36 of the Consumer Protection Code, according to which “advertising must be disseminated in such a way that the consumer can easily and immediately identify it as such” (Brazil, 1990, art. 36). The rule therefore requires that the commercial purpose of the communication be recognizable by the

recipient upon contact with the message.

The relevance of this principle stems from the need to allow consumers to evaluate advertising communication consciously. When a person knows they are seeing an advertisement, they can consider the persuasive purpose of the message when making their decision. Conversely, when the commercial nature is hidden or presented in a barely perceptible way, the consumer may attribute a spontaneity or impartiality to the content that it does not actually possess.

When addressing the topic, Norat states that “this principle prohibits three specific forms of advertising” (Norat, 2026, Lecture 26), referring to disguised, clandestine, and subliminal advertising. The first seeks to assume the appearance of informative or editorial content; the second is inserted into entertainment content without adequate identification; and the third seeks to transmit stimuli without the recipient having conscious perception of the message.

The principle of identification does not preclude the use of new marketing techniques, nor does it require that all advertising present traditional ad formats. What is required is that the creativity employed in commercial communication not be used to conceal the advertising nature of the message from the consumer. As highlighted by Norat (2026, Lesson 26), advertising techniques can be used as long as they are compatible with the duties of transparency and identification imposed by the consumer protection system.

This requirement takes on particular importance in the social media environment. In this space, advertising, entertainment, opinions, and personal accounts can be presented through the same profile and with similar visual characteristics. A commercial recommendation, for example, can be inserted into the daily content of a particular producer without assuming the conventional appearance of an advertisement. The application of Article 36 of the Consumer Protection Code (CDC), however, requires that the chosen form of dissemination does not prevent the consumer from easily and immediately recognizing its advertising nature.

Identifying the commercial message is therefore a necessary condition for preserving consumer autonomy. The legal problem lies not in the fact that advertising uses innovative formats or integrates with content produced in the digital environment, but in the possibility that this integration may conceal the economic purpose of the communication. This issue will be particularly relevant in the analysis of advertising carried out by digital influencers, in which the distinction between personal expression and sponsored content assumes central importance for consumer protection.

- The duty to inform and the principle of truthfulness in advertising.

O dever de informação constitui um dos principais instrumentos de proteção da autonomia do consumidor. O art. 6º, III, do Código de Defesa do Consumidor assegura o direito à informação adequada e clara acerca dos produtos e serviços, abrangendo elementos como quantidade, características, composição, qualidade, preço e eventuais riscos envolvidos (Brasil, 1990, art. 6º, III). A informação, nesse sentido, deve fornecer condições para que a escolha do consumidor seja realizada de maneira consciente.

Esse dever também se projeta sobre a forma como produtos e serviços são apresentados no mercado. O art. 31 do CDC determina que a oferta e a apresentação devem conter informações corretas, claras, precisas e ostensivas sobre seus principais elementos (Brasil, 1990, art. 31).

No campo específico da publicidade, o dever de informação relaciona-se diretamente ao princípio da veracidade. Segundo Norat (2026, Aula 26), esse princípio impõe que a mensagem publicitária corresponda à realidade, vedando informações falsas ou parcialmente falsas, bem como omissões capazes de conduzir o consumidor a uma percepção equivocada sobre o produto ou serviço anunciado. Essa orientação encontra fundamento no art. 37, § 1º, do CDC, que considera enganosa a comunicação publicitária inteira ou parcialmente falsa ou que, por qualquer outro modo, seja capaz de induzir o consumidor em erro (Brasil, 1990, art.

37, § 1º).

A veracidade da publicidade, portanto, não deve ser analisada apenas sob a perspectiva da existência de uma afirmação literalmente falsa. Uma mensagem pode apresentar dados verdadeiros e, ainda assim, transmitir percepção inadequada quando omite informação essencial ou apresenta os fatos de maneira incompleta. O próprio CDC reconhece expressamente a possibilidade de publicidade enganosa por omissão quando deixa de informar dado essencial do produto ou serviço (Brasil, 1990, art. 37, § 3º).

Essa compreensão possui especial importância no ambiente digital. Em publicações realizadas nas redes sociais, a comunicação comercial pode ocorrer por meio de relatos pessoais, avaliações ou demonstrações de produtos, circunstância que não afasta o dever de transmitir informações verdadeiras e suficientemente claras.

Assim, o dever de informação e o princípio da veracidade atuam de forma complementar de modo que, enquanto o primeiro assegura ao consumidor acesso adequado aos elementos relevantes para sua decisão, o segundo impede que a publicidade utilize informações falsas, incompletas ou enganosamente apresentadas. A violação desses deveres constitui justamente um dos principais fundamentos para a caracterização da publicidade enganosa, objeto do tópico seguinte.

- PUBLICIDADE ENGANOSA E ABUSIVA

The Consumer Protection Code expressly prohibits misleading and abusive advertising, treating both as forms of illegal advertising. Although they may occur simultaneously in the same message, they have distinct foundations: misleading advertising is primarily related to the ability of the communication to induce the consumer into error, while abusive advertising is characterized by the use of content or methods incompatible with legally protected values (Brazil, 1990, art. 37, §§ 1 and 2).

According to article 37, § 1, of the CDC:

Any form of advertising information or communication that is wholly or partially false, or that, in any other way, even by omission, is capable of misleading the consumer regarding the nature, characteristics, quality, quantity, properties, origin, price, and any other data about products and services, is considered deceptive (Brazil, 1990, art. 37, § 1º).

The central element, therefore, is not merely the existence of an objectively false statement, but the message's ability to produce a mistaken perception in the consumer.

Legal doctrine typically distinguishes between misleading advertising by commission and that resulting from omission. According to Norat (2026, Lecture 26), the former occurs when the message presents false or partially false statements about the product or service, while the latter results from the suppression of essential information.

The relevance of an omission must be analyzed based on its capacity to interfere with the consumer's decision. Not all missing information automatically makes advertising misleading; it is necessary that it be relevant data for understanding the offer. Norat (2026, Lesson 26) emphasizes precisely that a legally relevant omission is one related to an essential element and capable of influencing the consumer's choice.

Abusive advertising has a distinct nature. Article 37, § 2, of the Brazilian Consumer Protection Code (CDC) considers abusive, among other instances, discriminatory advertising, advertising that incites violence, exploits fear or superstition, takes advantage of a child's lack of judgment and experience, disrespects environmental values, or is capable of inducing the consumer to engage in behavior that is harmful or dangerous to their health or safety (Brazil, 1990, art. 37, § 2). The very use of the expression "among others" demonstrates that the legal enumeration does not intend to exhaust all possible situations of abuse.

The fundamental difference between the two modalities, therefore, lies in the legal good

immediately compromised by the message. In misleading advertising, the problem lies mainly in the inadequate formation of the consumer's perception of what is being advertised. In abusive advertising, on the other hand, the illegality stems from the very form or content of the communication and its incompatibility with values protected by the legal system. As Norat (2026, Lecture 26) observes, abusive advertising does not necessarily depend on the falsity of the information about the product; the same communication can be, according to its characteristics, simultaneously misleading and abusive.

This distinction is especially important in the context of social media. Dissemination of information by digital influencers can be misleading when it conveys false information or omits essential elements capable of altering the consumer's understanding. On the other hand, content can also be abusive when it uses strategies that exploit specific vulnerabilities or falls under the hypotheses foreseen in Article 37, § 2, of the Consumer Protection Code (CDC). The use of new communication formats, therefore, does not modify the essential legal criteria for characterizing these practices.

The prohibition of misleading and abusive advertising demonstrates that advertising freedom finds limits in the protection of consumer trust, information, and vulnerability. These limits would be largely ineffective, however, if the system did not establish instruments designed to demonstrate the veracity of advertising and to repress illicit practices, aspects related to the burden of proof and the legal consequences of irregular advertising.

- Burden of proof and legal consequences of illegal advertising.

The protection afforded by the Consumer Protection Code in advertising matters is not limited to the prohibition of misleading or abusive messages. The system also establishes mechanisms designed to facilitate the demonstration of irregularities and to allow the repression of the effects produced by illicit advertising. In this sense, Article 38 of the CDC expressly determines that the burden of proof of the veracity and correctness of the

advertising information or communication lies with the sponsor (Brazil, 1990, art. 38).

The legislative option is directly related to the vulnerability of the consumer and the control of information by the agent responsible for advertising. For this reason, article 36, sole paragraph, itself requires that the supplier keep in its possession the factual, technical and scientific data that support the advertising message (Brazil, 1990).

According to Norat (2026, Lesson 26), in this matter the consumer protection system assigns to those who sponsor advertising the duty to prove the veracity and accuracy of the communication. In this way, the difficult task of technically proving the falsity of information whose basis is under the control of the one who carried out or sponsored the commercial communication is not transferred to the consumer.

Illegal advertising can also have consequences in different spheres. In the administrative sphere, the Consumer Protection Code (CDC) provides for sanctions applicable to violations of consumer protection regulations, including fines and the imposition of counter-advertising (Brazil, 1990). Specifically in cases of misleading or abusive advertising, counter-advertising has a corrective purpose and must be disseminated in a way that undoes the harmful effects caused by the irregular message (Brazil, 1990).

In addition to administrative sanctions, the practice may generate liability for repairing the damages caused to the consumer, considering that the Consumer Protection Code (CDC) ensures as a basic right the effective prevention and reparation of patrimonial and moral damages, whether individual, collective, or diffuse (Brazil, 1990, art. 6, VI). The consumer protection law also provides for criminal consequences in specific cases related to illicit advertising, such as carrying out or promoting advertising that the agent knows or should know to be misleading or abusive (Brazil, 1990, arts. 67-69).

The existence of these mechanisms demonstrates that advertising regulations are effectively protective and not merely advisory in nature. The agent using commercial communication

must be able to demonstrate the accuracy of the information disseminated and may be subject to the consequences foreseen by the legal system when exceeding the limits established by consumer protection legislation.

These rules take on particular importance in light of the new forms of advertising developed in the digital environment. The use of social networks, sponsored content, and digital influencers modifies the way commercial communication is presented, but does not eliminate the duties of transparency, identification, and truthfulness examined throughout this chapter. On the contrary, the integration between advertising and personal content necessitates a specific analysis of the application of these principles to influencer marketing, especially given the relationship of trust built between influencers and consumers.

4. Advertising on Social Media and the Role of Digital Influencers

4.1 Transformation of advertising in the digital environment

The last few decades, especially since the 2010s, have been marked worldwide by the rise of social media. In their early years, these platforms were primarily focused on entertainment and user socialization, virtually connecting people who were close by, but also inaugurating a new chapter in the communications era by allowing individuals from different parts of the same country and the world to establish relationships instantly. Evidently, the formation of a large audience in a new environment, no longer limited to traditional media, would not go unnoticed by the market. Social media has thus become a fertile ground for the renewal of advertising practices.

Advertising, which for much of the 20th century was concentrated in media such as television, radio, newspapers, magazines, and billboards, has found new possibilities for dissemination and relationship with the consumer in the digital environment. Unlike traditional media, in which communication generally occurred unilaterally, digital advertising has enabled a more dynamic relationship between companies and the public. The consumer

has ceased to occupy exclusively the position of message receiver and has also begun to interact, comment, share, evaluate, and produce content related to brands.

This transformation is directly related to the very logic of how digital platforms operate. The large volume of information produced by users has allowed companies to understand their habits, interests, and consumption behaviors in greater detail. Advertising has therefore begun to use segmentation mechanisms capable of directing specific messages to specific audiences, increasing the likelihood that the content presented will correspond to the interests of each individual. Thus, digital advertising is not only characterized by a change in the space where the advertisement is displayed, but by a transformation in the very way of planning, producing, and distributing commercial communication.

In this context, the use of algorithms and data collection and analysis stand out as fundamental tools for contemporary advertising activity. Based on information generated by browsing, interactions, and content consumed by users, platforms are able to establish behavioral patterns and offer advertisers increasingly precise mechanisms for targeting advertising. Therefore, advertising is no longer designed exclusively for a broad audience but becomes directed at specific consumer profiles, considering characteristics, interests, and behaviors identified in the digital environment.

Another relevant element of this transformation is the growth of influencer marketing. The popularization of digital influencers has significantly modified the relationship between advertising and consumers, since the promotion of products and services now also occurs through individuals who have built their own audience on digital platforms. In this model, advertising is often integrated into the daily content produced by the influencer, bringing commercial communication closer to a personal recommendation. The trust established between influencer and audience, therefore, has become an important instrument for the promotion of brands and products.

Furthermore, the digital environment has allowed advertising to acquire an essentially measurable character. In traditional media, although audience measurement mechanisms existed, there were limitations regarding the precise identification of the results of a given campaign. In the digital environment, on the other hand, companies can track metrics related to views, clicks, shares, interactions, and conversions, enabling virtually instantaneous evaluation of the performance of an advertising strategy. This has contributed to making advertising more data-driven and allowing for changes in campaigns according to the results obtained.

This new reality, however, has also brought legal and social challenges. The increasing use of personal data for advertising purposes has sparked debates about privacy, transparency, and the limits of the actions of companies and digital platforms. In Brazil, the discussion gained particular relevance with the entry into force of the General Data Protection Law (Law No. 13.709/2018), which established principles, rights, and rules related to the processing of personal data. Advertising activity has thus come to be analyzed not only from the perspective of commercial efficiency, but also in light of fundamental rights related to privacy, informational self-determination, and the protection of personal data.

Thus, the transformation of advertising in the digital environment represents a structural change in the relationship between companies, consumers, and the media. Contemporary advertising has become more personalized, interactive, and driven by data analysis, while simultaneously facing new challenges related to transparency, consumer protection, and privacy. The digital environment, therefore, has not only created new channels for the dissemination of products and services but has profoundly modified the very logic of advertising communication, making an understanding of its workings indispensable for analyzing consumer relations in contemporary society.

4.2 Influencer marketing

Digital platforms such as YouTube, initially, and later other social networks, witnessed the rise of so-called “digital influencers”: personalities, previously famous, who expanded their reach on social media, or people who emerged from complete anonymity through the viral spread of digital content and/or “memes” that brought them fame.

According to Marques (2017), the figure of the digital influencer has seen its importance grow, especially in the last decade. For individuals of Generation Z (who, by 2020, will make up about 20% of the world’s workforce, further directing global consumption trends), YouTubers, bloggers, and Instagrammers have as much or more influence than personalities from TV, film, or other entertainment niches.

These personalities in the digital environment came to be called “influencers” due to the influence they exerted and continue to exert on their captive audience, setting the agenda for debates, disseminating ideas, popularizing slang and behaviors – and, from a certain point and already under the influence of the market, acting in the advertising of goods and services that remunerate their marketing.

4.3 The relationship of trust between influencer and consumer

The dynamic between the influenced (and potential consumer) and the influencer is often built and grounded in identification between them. Several factors can build this bond, including the social or regional origin of that personality, age range/generational segment, the specific theme around which the influencer’s content revolves, ideological, philosophical, or religious affinities, or even pure entertainment and humor. This identification generates a kind of “proximity” between influencers and the influenced, and this proximity often results in a “trust,” not always conscious. It is within this complex relational/psychological framework that the promotion/advertising of a particular good or service gains great appeal for the followers of that digital influencer. In the words of Torres (2019):

Social media has enormous power to shape opinion and can help build or destroy a

brand, a product, or an advertising campaign. Consumers no longer absorb product advertising as they once did. Today, they check online for information about products and services before buying. And they seek this information from the experiences of other consumers with whom they maintain a relationship through social media.

4.4 Overt advertising and covert advertising

Among the forms of advertising in the digital environment, two nuances have been conventionally identified: overt advertising and covert advertising. Overt advertising, as the name suggests, is advertising proper. The influencer makes their marketing and the propagandistic nature of their approach clear. Conversely, covert advertising is when the influencer camouflages their commercial intentions by approaching a particular good or service from a supposedly personal or suggestive perspective, favoring that product or brand, while secretly being paid for that service. The user does not immediately perceive it, but is thus induced to form a good opinion (and a possible purchase) of what is being presented. This subliminal form of advertising violates national legislation, since, according to Article 28 of the BRAZILIAN CODE OF ADVERTISING SELF-REGULATION: “The advertisement must be clearly distinguished as such, whatever its form or means of dissemination.”

4.5 Identifying the advertising nature of the content

The same legal provision states, in its article 29: “The Advertiser shall always be clearly identifiable, whether by the product brand, or by the name of the manufacturer, supplier or distributor [...]”. It is common, in the “influencer” world, for certain content to be identified for advertising purposes through the use of “hashtags” and native signaling methods of each digital platform. However, it is essential that the content itself clearly conveys the advertising nature it intends to transmit.

4.6 Self-regulation of advertising by influencers

In Brazil, the self-regulation of advertising by influencers is conducted by CONAR (National Council for Advertising Self-Regulation), which defines ethical principles through its Guide to Advertising by Digital Influencers. Among the main guidelines are transparency in communication, clear identification of sponsored content, and the joint responsibility of influencers and brands. In item 1.3 of the Guide to Marketing and Advertising by Digital Influencers, we can read the following: “Thus, advertisers and agencies must make every effort to inform influencers about the rules and precautions that should accompany the creation and dissemination of content, ensuring compliance with the rules. They should also pay special attention to product or service segments subject to restrictions” (CONAR, 2021, p. 9).

5. Consumer Protection Against Misleading and Abusive Advertising on Social Networks

5.1 The application of the Consumer Protection Code to influencer marketing

Despite being a new modality and a completely new environment, the digital world and the advertising that has developed within it must also obey the legal principles and dictates that govern advertising and consumer relations as a whole. Illegal and dishonest practices are also prohibited. We can cite Article 6, item II, of the Consumer Protection Code: “education and dissemination about the proper consumption of products and services, ensuring freedom of choice and equality in contracting.” Therefore, misleading, unfair, and even disguised advertising will find limits and sanctions under consumer protection legislation.

5.2 Liability arising from illegal advertising

Civil liability for illegal advertising extends jointly and severally to the entire advertising chain. According to Article 7, sole paragraph, of the Consumer Protection Code (CDC): “If there is more than one author of the offense, all will be jointly and severally liable

for the reparation of damages foreseen in consumer protection laws.” The platform where the illegal advertising was broadcast, the advertiser, and the influencer are jointly and severally liable.

5.3 The challenges of monitoring digital advertising

Among the main challenges for monitoring advertising in the digital environment, the high volume and volatility of information and content available on platforms stand out initially. Unlike traditional media, where advertisements can be identified and subsequently analyzed more easily, the digital environment is characterized by the continuous production and circulation of content, much of which has an extremely short lifespan. Publications can be edited, boosted, taken down, or replaced in a matter of minutes, hindering the work of the bodies responsible for monitoring and the preservation of evidence necessary to hold the agents involved accountable.

Another significant obstacle relates to so-called hidden or insufficiently clearly identified advertising. Digital advertising can appear integrated into content produced by influencers, content creators, or users, taking on the appearance of a spontaneous expression or a personal recommendation. This characteristic can make it difficult for the consumer to perceive that they are facing a commercial communication. Consequently, oversight should not be limited to analyzing the existence of the advertisement, but should also consider how the message is presented to the public and whether its advertising nature is clearly and immediately identifiable.

The hyper-personalization promoted by algorithms also represents a significant challenge. Digital platforms use data and behavioral patterns to select which content will be presented to each user, creating individualized browsing experiences. This phenomenon can contribute to the formation of so-called “algorithmic bubbles,” in which individuals are predominantly exposed to content compatible with their interests and previous behaviors. In the advertising

field, this dynamic makes oversight difficult because a particular advertisement may only be presented to a restricted group of users, without being easily seen by other individuals or by the regulatory bodies themselves. Thus, a potentially abusive advertising practice can reach a specific audience without necessarily having broad public visibility.

5.4 Consumer vulnerability in the social media environment

Consumers are always the vulnerable party in this entire marketing and digital dynamic. The existing legal limits, which do not keep pace with the evolution of the digital environment and advertising techniques, and the possibility of action by authorities and bodies responsible for content monitoring, leave consumers constantly exposed to illegal and unethical forms of advertising. For this reason, the Consumer Protection Code (CDC) established joint and several civil liability between platforms, advertisers, and influencers, recognizing the consumer as the weak link in this relationship.

5.5 Perspectives for strengthening consumer protection

If there is any “harm” stemming from the misuse of technologies, we can only combat it with the proper use of the technology we have at hand. It is essential to strengthen and update consumer protection legislation whenever necessary, always encompassing the new realities that the digital environment brings us. Returning to the technological theme, it is necessary for the public authorities to act, if necessary in partnership with private institutions, in the development of digital tools that enable the indexing of illicit advertising content, in order to restrict its reach and allow its identification and removal.

6. FINAL CONSIDERATIONS

The analysis developed in this study allowed us to understand that the expansion of social networks and influencer marketing has significantly transformed the forms of communication between suppliers and consumers, without, however, eliminating the application of consumer

protection laws. Although digital influencers use formats different from those traditionally employed by advertising, the commercial purpose of their messages remains subject to the principles and rules established by the Brazilian legal system.

It has been verified that consumer protection has a constitutional basis, especially in articles 5, XXXII, and 170, V, of the Federal Constitution, and is mainly implemented by the Consumer Protection Code (CDC). The recognition of consumer vulnerability is a central element of this system, particularly given the information asymmetry that exists in consumer relations. In the digital environment, this vulnerability can be intensified by the difficulty in distinguishing spontaneous content from commercial communications, especially when advertising is incorporated into the personal language and daily life of the influencer.

In this context, the principles of transparency, information, identification, and truthfulness play a fundamental role. Article 36 of the Consumer Protection Code (CDC) stipulates that advertising must be presented in a way that allows it to be easily and immediately identified as such, while Article 37 prohibits misleading and abusive advertising. Thus, the fact that a commercial message is disseminated through videos, photographs, reviews, recommendations, or personal accounts does not negate its advertising nature or the application of consumer protection laws.

The research also demonstrated that the actions of influencers present a relevant particularity: the close and trusting relationship built with their followers. This relationship can give greater persuasive power to the messages disseminated and increase the risk of the consumer interpreting a recommendation as a spontaneous manifestation when, in reality, there is a commercial relationship between the influencer and a particular brand. For this reason, the clear identification of sponsored content should not be understood as a mere formality, but as an indispensable instrument to ensure that the consumer is aware of the commercial nature of the message and can critically evaluate its content.

In this sense, the self-regulation promoted by CONAR contributes to establishing ethical parameters related to advertising carried out by influencers, especially regarding transparency and the identification of sponsored content. However, these guidelines should act in a complementary manner to state regulations, not replacing the obligations imposed by the Consumer Protection Code.

Regarding misleading and abusive advertising, it was found that the digital environment does not create a completely independent legal category, but it does enable new forms of expression of practices already prohibited by the Consumer Protection Code (CDC). False information, relevant omissions, concealment of commercial purpose, or strategies capable of exploiting consumer vulnerability may constitute illicit practices, depending on the circumstances of each case. The legal system also provides accountability mechanisms and sanctions designed to prevent and repress these behaviors.

Finally, the challenges related to monitoring digital advertising demonstrate the need for constant improvement of protection mechanisms. The large volume of content, the speed of information circulation, disguised advertising, algorithmic personalization, and the operation of international platforms make monitoring difficult and increase risks to consumers.

In conclusion, the effectiveness of consumer protection in influencer marketing depends on the joint action of the Public Authorities, regulatory bodies, platforms, advertisers, agencies, and the influencers themselves. Strengthening oversight, using technological tools, and improving regulatory practices can contribute to a more transparent and secure digital environment. Above all, consumers must be guaranteed the right to recognize the commercial nature of messages, receive adequate information, and exercise their freedom of choice consciously, allowing advertising innovation to advance without compromising the rights guaranteed by the Brazilian legal system.

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