

# THE PRICE OF INFLUENCE: HUMAN RIGHTS, DIGITAL ADVERTISING, AND THE HIDDEN RISKS OF SOCIAL MEDIA MARKETING

*Exploring the Ethical Implications and Legal Challenges in the Intersection of Human Rights and Digital Advertising.*

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3.1. The influencer as an advertising agent; 4. Criminal Responsibility of Influencers; 5. The Need for Regulation in Brazil; 6. Conclusion.

**Abstract:** Have you ever scrolled through Instagram or TikTok and encountered your favorite influencer—or even a random one suggested by the algorithm—promoting a product or service? And suddenly, out of nowhere, you found yourself wanting it? If your answer is no, you might be overlooking the impact of globalization, where the most powerful form of advertising now takes place on social media, through influencer marketing. This phenomenon has reshaped consumer behavior, particularly after the COVID-19 pandemic, making platforms like Instagram and TikTok key drivers of economic influence. In today's digital economy, investing in influencer marketing is no longer optional for brands seeking growth—it has become essential. By leveraging the trust and aspirational lifestyles of influencers, businesses can reach vast audiences with unprecedented efficiency. Albeit, what once was merely entertainment has evolved into a structured business model, raising critical legal questions. As with any other form of advertising, influencer marketing must comply with regulatory frameworks, requiring formal contracts that establish the legal relationship between the parties involved. Nevertheless, this new momentum in our history makes us reflect on the advertisement's transparency, the limits of influencers' and brands' responsibility, as well as the urgent need for legal regulation to ensure consumers' rights. Taking this into account, this paper aims to analyze the interface among digital publicity, citizenship, and culture, looking into how the influence brought by digital content creators affects social and economic relationships. In addition, this research discusses the civil liability and criminal responsibility of the influencer who promotes services and products and, in doing so, assesses whether current Brazilian legislation is enough to deal with many challenges faced, such as veiled advertising, abusive contractual clauses, and respect for consumer rights. To sum up, digital advertisement is not only an economical way but also a cultural and social phenomenon. This study will contribute to the discussion about the need for clearer and efficient rules. Yet, it will propose some recommendations to strengthen the clarity and morals in this environment, guaranteeing a balance between digital innovation, freedom of expression, and consumer protection. Following this path, the analysis highlights the digital influencers' impacts in this digital era and their relevance in the 21st-century context of citizenship and consumer affairs.

**Keywords:** digital influencers; social media; digital marketing; consumer rights; cultural transformation.

## 1. INTRODUCTION

Have you ever bought something based on an influencer's recommendation? If so, you've experienced the power of influencer marketing. If not, you might not fully realize just how influential it can be. Social media now plays a major role in shaping our purchasing decisions, fashion choices, and even our worldview. Influencer marketing has evolved into a major business, but with its growth come paramount legal and ethical concerns. Can influencers be held accountable if a product they promote causes harm? Is Brazilian law equipped to address this emerging reality?

According to Gallucci (2021), influencing is the act of exerting psychological influence or ascendancy over someone. The influencer, in turn, has the power to impact behaviors, create trends, and influence the purchasing decisions, lifestyle, and opinions of their followers. In the digital environment, digital influencers are those with a loyal and engaged audience, which gives them civil responsibility when recommending products and services, given the impact their actions can have on followers' consumption choices.

Considering this, it is clear that the most powerful way to influence people to acquire products and services is through social media, such as Instagram, Facebook, TikTik, and the like. This awakens people's craving for that thing or service because they unconsciously believe that by buying what is being advertised, they will at least be closer to the advertisers. In addition, many influencers do not make it apparent that they are being paid to recommend a product or a service, thereby making the public guess that the recommendation is sincere, when there is a contract behind it indeed.

Moreover, there is a lack of commitment to the truth of what has been promoted, as many publicized products do not test or guarantee that they really work, which is especially harmful in the case of cosmetics, food supplements, and financial investments. Last but not least, there are scams: It is not uncommon for influencers to promote fraudulent schemes, such as financial pyramids, harming thousands of followers who trust their word.

According to Silva, Silva, and Silva (2024), the current regulation is still fragmented, despite progress towards greater legalization and control, which will depend on an endless debate and the implementation of strong policies. In terms of enforcement, online gaming platforms face significant challenges, as many sites operate outside of Brazil, making it difficult to enforce local laws and compromising consumer protection and market integrity.

Thus, this paper will explore how influencers are reshaping advertising, the legal risks they may encounter, and why there is an urgent need for clearer regulations to protect consumers and ensure transparency in digital marketing.

## **2. DIGITAL INFLUENCE AND THE ADVERTISING MARKET**

### **2.1. The power of influence on social media**

Social media has completely changed consumer behavior. In the past, people relied on TV commercials or friends' recommendations. Nowadays, it is trusted by influencers who seem 'just like us.' This sense of intimacy makes it easy to forget that people are being influenced by publicity. Once an influencer inherently introduces a product, without it seeming like an advertisement, the message becomes more persuasive than a traditional commercial.

The credibility of the influencer is directly proportional to the perceived credibility of the message they are transmitting to the public (ALMEIDA, 2023). This is to say that when information relayed from a source is credible, it finds an easy way through acceptance and at the same time has a substantial impact on consumers' attitudes and behavior

(WEISMUELLER et al., 2020; MABKHOT et al., 2022). This explains the fact that according to Kim and Kim (2021), highly credible parties will make statements that are extremely persuasive and dramatically change the perspective of the audience as compared to relatively unreliable parties.

Through the paragraph above, it can be seen that the connection between influencers and their followers has an impact on consumer purchases because they give credibility, which makes their supporters believe in the word of the person who is promoting the product or service since the Internet has the power to bring people together, even those who have never seen each other or even exchanged a message.

Needless to say, social media users feel as if the person they follow is a family member or a close friend. Because of that it is easier to convince them that some product or service actually works. Albeit it is not a big issue if this one really delivers what is promised, the problem is if it does not succeed, or even worse, if it is harmful.

## **2.2. The lack of transparency and risks for consumers**

But intimacy has its problems. Many influencers do not explicitly reveal that they are there to praise a product. This, in turn, makes knowledge about the product pass off as authentic when a business is involved. Nonetheless, the responsibility deficit comes from the veracity of the presentation. A good proportion of influencers advertise products without even getting their hands on them to see how they work as claimed. This growing concern is especially true of cosmetics, dietary supplements, or investing in financial options.

Ekinci, Dam and Buckle (2025) discuss how the increasing popularity of influencers on social media has been leading to practices that are

misleading and regulatory issues. They point out that as influencers get involved in partnerships with brands, the frontiers between legitimate promotion and commercial motivation can be harder to distinguish, creating significant ethical challenges, mainly when misleading practices are not clearly made known to the consumer.

Even though it is not explicitly stated in Brazilian law when the influencer promotes a product or service, Brazilian jurisprudence has been strengthening the application of the principle of good faith in the dynamic between influencers and their consumers (ITTO; MELO, 2024). Thus, when something comes from paid advertising it must be communicated, in light of making public that this is a consumer relationship, to give the opportunity to customers to be aware that there is a contract between supplier and influencer.

### **3. LEGAL RESPONSIBILITY OF INFLUENCERS**

#### **3.1. The influencer as an advertising agent**

As mentioned above, there is no doubt that influencers emerged with the aim of reshaping the market and consumption, directly impacting advertising strategies and the way consumers make purchasing decisions.

With the rise of social media, these content creators began to play a fundamental role in building brand identities and connecting with the public, which can be dangerous and pose some risks, and it is necessary for them to be duly responsible in case of harm to consumers, or as they are known, their followers (SOUZA; CARAM, 2017, p. 160).

According to Santos, Silva, and Santos (2016), the significance of digital influencers stems from the strong connection their audience has with the content they create. Their followers engage with them on a deeper level, forming a niche community within the digital landscape. This audience is not

just about numbers but represents a qualitative engagement, built across social media platforms, websites, and blogs, shaping a targeted consumer base within the online ecosystem.

That means that social media doesn't just influence what we buy—it also affects our tastes, opinions, and even perspectives on the world, as well as discussing basic functionalities in everyday life, such as food, clothing, and safety. As this industry continues to expand, it raises important legal and ethical questions that need to be discussed and analyzed to prevent consumers from being harmed by abusive or fraudulent practices (SOUZA; CARAM, 2017, p. 166).

With this in mind, this means that if an influencer is promoting a product, they are advertising and must follow the same rules as a company. In other words, it needs to be clear that it is an advertisement and ensure that the information provided is true (SILVA; CAMPOS, 2021, p. 8-9).

This approach involves creating specific content for these opinion leaders to promote brands, products or services on their digital platforms. On Instagram, for example, it is common for influencers to receive products accompanied by a detailed briefing about the campaign, allowing them to share their impressions and highlight the benefits of the offer to their audience (SOUZA; CARAM, 2017, p. 169).

In this sense, it is worth noting that the Influencer Advertising Guide, published by CONAR (National Advertising Self-Regulation Council), establishes criteria to define when content produced by digital influencers constitutes advertising.

According to its guidelines, a publication is considered advertising when it meets three cumulative requirements: the promotion of a product, service or associated cause; the existence of compensation or commercial relationship between the influencer and the advertiser, even if it does not

involve direct payment; and the advertiser's interference in the published content, known as editorial control (CONAR, 2021).

This last element characterizes a contractual relationship, formal or informal, in which the advertiser guides or suggests aspects such as content, time, frequency or format of the influencer's posts, thus configuring the advertising intention of the message.

Therefore, this new consumption dynamic brought regulatory challenges. In Brazil, the Consumer Protection Code (Law No. 8,078/1990) establishes that advertising must be clear and not mislead the consumer.

Furthermore, the National Advertising Self-Regulation Council (CONAR) reinforces the need for transparency in advertising actions, recommending that influencers signal when content has an advertising nature.

In addition to the Consumer Protection Code (Law No. 8,078/1990) and the guidelines established by the National Advertising Self-Regulation Council (CONAR), Brazil has other legal provisions that reinforce the need for transparency in advertising carried out by digital influencers.

The Brazilian Internet Civil Framework (Law N° 12.965/2014) establishes principles such as consumer protection in digital environments and ensures the right to clear and accurate information (BRAZIL, 2014). Likewise, the General Law for the Protection of Personal Data (LGPD – Law N° 13.709/2018) imposes obligations on companies and influencers regarding the collection and use of consumers' personal data, especially in targeted advertising campaigns (BRAZIL, 2018).

Additionally, the Decree N°. 10.887/2021, which regulates certain aspects of digital advertising, determines that advertisements must be easily identifiable as such by the consumer (BRAZIL, 2021). This reinforces the

obligation of influencers to disclose partnerships, sponsorships, or any form of remuneration received for the promotion of products and services.

Therefore, although the power of influence on social networks is undeniable, it is essential that advertising practices follow regulations to ensure consumer protection and ethics in digital advertising.

In addition, if an influencer promotes a product that doesn't deliver what it promises, they can be held responsible for misleading advertising. This happens, for example, when an influencer claims that a cream eliminates wrinkles in 10 days without any scientific proof (SILVA; CAMPOS, 2021, p. 10).

The Consumer Protection Code safeguards people from such practices. If a consumer feels deceived, they can take legal action for a refund or even damages. There are already cases in Brazil where influencers have been sued for this. Beyond financial consequences, misleading advertising can also damage an influencer's credibility, affecting their reputation and future brand partnerships. Therefore, influencers must be diligent in verifying the authenticity of the products and services they promote (SANTOS; SILVA; SANTOS, 2016).

Another important aspect is the contracts between influencers and brands. Many influencers accept partnerships without carefully reading the terms and end up bound by unfair obligations.

On the other hand, there are also cases where influencers fail to fulfill contracts. If an influencer gets paid to promote a product but later decides not to post about it, they could be sued by the brand.

Moreover, the Brazilian Civil Code (Law N° 10.406/2002) regulates contractual obligations, reinforcing those agreements must be honored in good faith. The General Law for the Protection of Personal Data (LGPD –

Law N° 13.709/2018) may also be relevant if the influencer collects or processes consumer data as part of the campaign.

Given these complexities, many influencers now seek legal advice before signing contracts to ensure their rights and responsibilities are well understood, reducing the risk of future conflicts.

#### **4. CRIMINAL RESPONSIBILITY OF INFLUENCERS**

Digital influence, although born of a technological phenomenon, does not escape the rules of liability within Brazilian law. Far from being a “free territory” for unrestrained rhetoric or questionable commercial practices, social networks have become a stage for violations that clearly fall under criminal legislation, especially regarding offenses against honor, consumer protection, and economic order.

To begin with, crimes against honor set out in Articles 138 (slander), 139 (defamation), and 140 (insult) of the Penal Code become more serious when committed online due to the rapid spread and irreversible nature of a post or “story.”

It was precisely to acknowledge this magnified impact that Law No. 13,964/2019, by adding §2 to Article 141 of the Penal Code, established that “if the crime is committed or disseminated by any means of social media on the World Wide Web, the penalty shall be tripled.” Thus, baseless accusations, inflammatory insults, and claims of fictitious crimes face harsher punishment, reflecting the need to curb damage multiplied by instant user engagement.

In the realm of consumer relations, the Consumer Protection Code (Law No. 8,078/1990) provides a range of provisions directly applicable to advertising content posted by influencers. Article 66 prescribes imprisonment from three months to one year for “making false or misleading statements, or

omitting relevant information about the nature, characteristics, quality, quantity, safety, performance, durability, price, or warranty of products or services.” Article 67 holds liable those who promote misleading or abusive advertising, while Article 68 sanctions any publicity inducing risky behavior that might harm a consumer’s health or safety.

The gist of these provisions is clear: whenever a false impression of advantage is created or essential information is withheld, a criminal offense may occur—particularly if the influencer, collaborating with the brand, deliberately encourages the deception. Article 75 of the CDC reinforces that anyone involved in the criminal act can be punished, in proportion to their culpability.

Nor should one underestimate the power of digital metrics manipulation. Purchasing followers, artificially inflating engagement, or masking audience statistics are methods frequently used to mislead brands and sponsors. If such an artifice results in financial loss for a company or anyone else who believed in these fraudulent numbers, the crime of fraud may be committed. According to Article 171 of the Penal Code, fraud is defined as “obtaining an illicit advantage for oneself or another, to the detriment of a third party, through an artifice, trick, or any other fraudulent means.”

Additionally, using bots or unauthorized software that violates software copyrights opens the door to liability under Law No. 9,609/1998, further complicating the web of possible responsibilities in the online environment (BRAZIL, 1998).

The popularity of financial pyramid schemes promoted by influencers is another modern challenge, criminalized by Article 2, IX of Law No. 1,521/1951. The allure of easy profits—unbacked by any real product—found a perfect recruiting tool in social media for less cautious investors (BRAZIL, 1991).

Although this offense is currently considered less serious, legislative initiatives such as Bill No. 3,706/2021 aim to stiffen penalties by placing the new offense in the Law on Crimes Against the National Financial System (Law No. 7,492/1986). Meanwhile, liability still arises from the existing legal framework and may even overlap with fraud where it is proven that deceptive tactics were used to gather funds from followers who truly believe in unrealistic promises of profit (BRAZIL, 1986).

This entire scenario invites reflection on the precise point at which innocent advertising turns into a criminal offense. According to Article 66 of the CDC, it suffices that a “false or misleading statement” is made or “relevant information” is omitted, whether intentionally or through negligence.

Overstating qualities, inventing warranties, or promising extraordinary results (for instance, in health or weight loss) can cross the line separating regular ads from a crime. Here, the influencer’s proactive effort to test and understand what they promote ceases to be just a marketing strategy and becomes a legal safeguard.

In short, analysis of the criminal risks associated with influencer marketing highlights a constellation of acts that could qualify as fraud, misleading advertising, and abusive practices under the CDC, along with pyramid schemes and crimes against honor. What is new is the convergence between massive public exposure and the apparent informality of social networks, leading many to underestimate how existing norms also apply to the virtual world.

Yet lawmakers remain attentive to these abuses, reinforcing that, while the medium may be modern and the technology advanced, there is no shield for those who act with intent or gross negligence to harm others.

Hence, freedom of expression and the ability to influence thousands must coexist with observing legal precepts, as the digital dynamic—capable of

massive engagement and viral reach—also carries enforcement tools and penalties commensurate with its impact.

## **5. THE NEED OF REGULATION IN BRAZIL**

As noted above, despite the existence of consumer protection laws, the lack of targeted regulations and enforcement mechanisms allows these deceptive practices to persist with minimal consequences.

To address these challenges, Brazil must implement more robust regulatory measures that enhance transparency and accountability in influencer marketing. First, it is imperative to establish legally binding requirements for the clear and unequivocal identification of sponsored content (SOUZA; CARAM, 2017, p. 175).

Influencers should be required to use standardized disclosure labels that leave no ambiguity regarding the nature of their endorsements. Second, there must be stricter enforcement mechanisms to hold influencers accountable for the accuracy of the claims they make, particularly when promoting products that impact consumer health and financial stability.

Regulatory bodies should be empowered to impose fines and other penalties on influencers who engage in misleading advertising practices. Finally, a more rigorous legal framework is needed to combat financial scams promoted through influencer marketing. This includes stricter penalties for fraudulent endorsements and the implementation of oversight mechanisms that prevent deceptive financial schemes from being disseminated through digital platforms (SILVA; CAMPOS, 2021, p. 12).

The continued growth of influencer marketing necessitates an urgent and comprehensive regulatory response. Strengthening legal and ethical standards in digital advertising will not only protect consumers from deceptive

practices but also contribute to the credibility and sustainability of the influencer marketing industry.

By establishing clearer guidelines, enforcing accountability measures, and implementing stricter penalties for fraudulent activities, Brazil can create a safer and more transparent digital marketplace that benefits both consumers and content creators alike.

## **6. FINAL CONSIDERATIONS**

The rise of influencer marketing has significantly transformed the advertising landscape, shaping consumer behavior and redefining traditional marketing strategies. Social media platforms such as Instagram, TikTok, and Facebook have become powerful tools for digital influencers, who leverage their credibility and engagement with followers to promote products and services.

However, this evolution raises critical legal and ethical concerns, particularly regarding transparency, consumer protection, and the responsibility of influencers in advertising, both in civil and criminal terms.

This study has highlighted the dual nature of digital advertising as both a commercial and cultural phenomenon, emphasizing the need for clearer legal frameworks to regulate influencer marketing. The lack of transparency in promotional content, instances of misleading advertisements, and even the promotion of fraudulent schemes demonstrate the necessity of more stringent oversight. While Brazilian law has made progress in addressing these challenges, existing regulations remain fragmented and insufficient to ensure adequate consumer protection.

The findings of this research underscore the importance of establishing well-defined legal obligations for influencers, advertisers, and

agencies. Influencers must be held accountable for the content they promote, especially in cases where misleading claims result in financial or physical harm to consumers. Additionally, brands and agencies should implement stricter guidelines to ensure compliance with ethical advertising standards.

Moving forward, the digital marketing industry requires a balanced approach that fosters innovation while safeguarding consumer rights. This includes mandatory disclosure of paid partnerships, increased enforcement against deceptive advertising, and educational initiatives to inform consumers about their rights in the digital marketplace. By implementing more comprehensive regulations and ethical standards, it is possible to create a fairer and more transparent digital advertising environment that benefits both businesses and consumers.

Ultimately, influencer marketing will continue to play a vital role in shaping economic and cultural trends. However, its sustainable growth depends on the establishment of responsible practices that prioritize consumer trust, legal accountability, and ethical advertising. Strengthening regulations and ensuring greater transparency in digital marketing will be key to maintaining the integrity of this evolving industry.

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