

Vilnius University Faculty of Law

Daniil Zaliznyi

II study year, International and European Law Programme Student

Master's Thesis

**THE ACTIVITY OF INFLUENCERS AND CONSUMER PROTECTION
(CONSUMER PROTECTION IN THE ACTIVITY OF INFLUENCERS)**

Supervisor: Lect. dr. Stasys Drazdauskas

Reviewer: Lect. dr. Neringa Gaubienė

Vilnius

2023

ABSTRACT AND KEY WORDS

This work defines the term ‘influencer’ and ‘influencer activity’, examines the potential risks to consumers posed by the activity of influencers. The work identifies deceptive advertising and unfair commercial practices among the key risks to consumers. It also overviews the soft law instruments applicable to the influencer activity, the consumer protection and advertising EU acquis, and elaborates its applicability to the influencer activity. Finally, the work provides recommendations on improvement of consumer protection in the influencer activity.

Keywords: influencer, influencer activity, consumer protection, deceptive advertising, unfair commercial practices, EU consumer protection acquis.

TABLE OF CONTENTS

| | |
|---|----|
| INTRODUCTION | 2 |
| 1. PART 1. THE POTENTIAL RISKS TO CONSUMERS POSED BY INFLUENCER ACTIVITY | |
| 1.1 Definition of influencers and influencer activity | 4 |
| 1.2 Risks of deceptive advertising and unfair commercial practices | 7 |
| 1.3 Legal proceedings cases of influencer activity abuse | 12 |
| 2. PART 2. INTERNATIONAL SOFT LAW INSTRUMENTS AND EU ACQUIS THAT APPLIES TO INFLUENCERS | |
| 2.1 Soft law framework for influencer activity | 15 |
| 2.2 Consumer protection EU acquis applicable to influencer activity | 20 |
| 2.3 Advertising and marketing EU acquis implications as to influencer activities | 25 |
| 3. PART 3. THE CHALLENGES OF ENFORCING CONSUMER PROTECTION IN THE CONTEXT OF INFLUENCER ACTIVITY | |
| 3.1 The difficulty of monitoring and enforcing compliance | 28 |
| 3.2 The lack of transparency of the influencer activity | 30 |
| 3.3 The need for international cooperation to address cross-border concerns | 32 |
| CONCLUSIONS AND PROPOSALS | 35 |
| LIST OF REFERENCES | 37 |
| SUMMARY | 41 |
| ANNEXES | 42 |

INTRODUCTION

Influencer marketing has become a powerful tool for vendors, service providers and other businesses to reach and engage customers – consumers of their goods and services. However, the rapid rise of influencer marketing has also raised concerns about consumer protection. One may agree that influencers often have quite close relationships with their followers and admirers and act as their friends frequently referring to them even with diminutive names, which can make it difficult for consumers to distinguish between genuine recommendations that a friend provides and a paid advertising. Additionally, influencers themselves may not always be aware of the potential risks associated with the goods or services they promote either as the result of neglect or lack of resources to conduct a due study.

As a result, consumers are at risk of being misled, deceived, or harmed by influencer marketing campaigns. For example, consumers may purchase goods or services that do not correspond to what was described and promoted by an influencer, or even those posing a safety risk.

This master thesis is to examine the potential risks to consumers posed by influencer activity, and elaborate on the rules applicable to influencers. Those include international soft law instruments and general legislation on consumer protection that apply to influencers, i.e., that influencers must adhere to, in the European Union being of the biggest influencer affected markets. The thesis is also to further elaborate on advertising legislation and the extent to which it applies to influencers.

The paper is also to elaborate on the challenges of enforcing consumer protection laws and regulations in the context of influencer activity and to identify proposals to remedy the weak points.

References in this master thesis are given to scientific works of relevance, provisions of law and cases of judicial rulings, materials of authorities, releases and opinions of authorities, soft law instruments and provisions of EU acquis. Considering the modern and fast-paced subject of the work – the influencer activity, references are also given to media publications of relevance.

Purpose of the work: To examine the potential risks to consumers posed by the activity of influencers, and to identify ways to improve consumer protection in the influencer marketing industry.

Tasks to be performed:

- Define influencers and influencer activity in the modern landscape
- Identify the potential risks to consumers posed by influencer activity.
- Examine the consumer protection soft law instruments and legislation that apply to influencers.
- Elaborate on the challenges of enforcing consumer protection in the context of influencer activity.
- Provide recommendations on improvement of consumer protection in the influencer activity field.

Object of research:

The activity of influencers and the consumer protection implications thereof.

Subject of the research:

The risks to consumers posed by influencer activity, ways of improvement of consumer protection in the influencer marketing domain.

Specific research questions:

- What is the definition of an influencer and influencer activity
- What are the potential risks to consumers posed by influencer activity?
- What is the regulatory landscape of the influencer activity in the European Union?
- What soft law instruments and European Union acquis applies to influencers in the consumer protection and other fields?
- What proposals can be made to improve consumer protection in the influencer activity domain?

PART 1
THE POTENTIAL RISKS TO CONSUMERS POSED BY INFLUENCER
ACTIVITY

1.1. Definition of Influencers and Influencer Activity

First of all, in order to identify the potential risks posed by influencers activity, one should define an influencer and main characteristics of their activity. In this Chapter 1.1 several possible definitions to the influencer activity will be provided and respective characteristics outlined.

The definition of an influencer may be regarded to as a rather complicated task provided that there is a variety of influencer profiles and business strategies they employ. Therefore, in this master thesis it is to provide several possible definitions and formulate a basic and general definition based on what constitutes an influencer, as the term is not defined by law and terminology may change dependent on many aspects of the underlying business models.

One may simply define that an influencer is a popular and famous figure that extensively utilizes social media and other web-resources to communicate with the fan base, followers, admirers and so on. As the result they influence the trends, fashion and even morality. However, there is more to that and the outlined in this subchapter 1.1 approaches are to demonstrate some of the formulated approaches.

For instance, European Advertising Standards Alliance (EASA) – an association of 41 organizations committed to ensuring responsible advertising through self-regulation (*EASA, 2023a*) – defines influencers as “independent third-party endorsers who shape audience attitudes through blogs, posts, tweets, and the use of other social media”. Further, influencer marketing activity is defined with two criteria. The first criterion defined in the EASA Best Practice Recommendation on Influencer Marketing is the sponsoring brands to have dominant control of an influencer’s publication, which includes a pre-suggested message script, scenario or speech for the influencer. The second criterion defined is an influencer receiving a certain compensation for the promotion and/or endorsement either in a form of financial reimbursement established by contractual arrangements between an influencer and a brand, business, or in a form of provision free goods or services, or other reciprocal commitments (*EASA, 2023b, part 2.2*).

Table 1. **Influencer – brand legal relationship scheme under EASA’s definition**

| | |
|--|---|
| Subject of legal relationship | |
| Third party endorser (influencer) | Brand (business) |
| Objects of legal relationship | |
| Blogs, posts, tweets, other social media | Funds, goods, services |
| Parties’ obligations | |
| To endorse the brand utilizing available resources | To supply with financial remuneration or other kind of consideration |
| Parties’ rights | |
| To demand consideration | To demand endorsement of the agreed kind utilizing the resources and provided script/speech |

Source: compiled by the author.

The above table demonstrates the elements of legal relationship between an influencer and a brand. It may be concluded that it describes the nature of the influencer activity, whereas an influencer places advertisement on their platform and takes part in the advertisement itself for consideration. Therefore, an influencer and a brand enter into a mixed agreement that has both elements of advertising (marketing) services agreement and acting (for video or photo) contract. In my opinion, EASA’s definition of an influencer misses the second element of influencer-brand relationship, i.e., acting contract.

The acting element is crucial to identification of the risks posed by influencer activity (elaborated in more detail in Chapter 1.2) since the influencers establish a friend-alike relationship with their followers. Whereas influencer acting is not impersonalizing certain characters but acting to like, give preference, use casually, enjoy or act to otherwise endorse a product: goods or services, EASA’s definition misses an important characteristic of an influencer. Namely, an influencer utilizes their authority and relationship with followers and admirers, people who tend to believe them, to promote certain goods or services. This is where an influencer is beyond a traditional advertisement.

A definition proposed by Catalina Goanta and Sofia Ranchordas, in its turn, emphasizes the factor of trust between the influencers and their followers and refers to influencer activity as digital form of word-of-mouth (also known as WoM) advertising. First of all, they define influencers as a recent social media phenomenon that reflects endorsement practices by individuals with a significant social media audience, with the purpose of increasing online engagement for the endorsed product or service. Further, the influencer activity is described as a digital version of word-of-mouth (or "WOM") promotion, a marketing strategy that depends on content being endorsed by reliable people in local communities or networks as a result of regular contacts and mutual trust. A separate

attention is paid to the monetization criterion, which matches to what EASA suggests (Goanta, Ranchordás, 2019, part 2).

A valuable part of this approach is the necessity to measure the influence an individual has on their audience to conclude if the promotion activity may be deemed to be an influencer activity. Expanding upon the definition put forward by Catalina Goanta and Sofia Ranchordas, it is evident that the degree of trust that exists between influencers and their followers plays a significant role in distinguishing it from traditional advertising. Thus, a conclusion may be made that the influencer activity promotes products as well via seem-to-be-genuine and continuous involvement of the audience. Further, as to resources that influencers possess, the scope may be broaden under the Goanta and Ranchordas definition to a sizable social media following base and influencer’s authority and reputation. The said is to further be utilized to promote goods or services, ultimately raising the endorsed brand's online visibility. The influencer's reputation in their network or community, which is frequently the outcome of consistent communication and the development of mutual trust, is crucial to the success of this type activity.

Therefore, based on the above, below is the table outlining the differences and similarities between elements of legal relationship arisen under a (i) advertising/marketing agreement, (ii) acting (actor’s) contract, and (iii) influencer’s contract.

Table 2. Comparative table of obligations of contractor under (i) advertising/marketing agreement, (ii) acting (actor’s) contract, and (iii) influencer’s contract

| Advertising/marketing agreement | Acting (actor’s) contract | Influencer’s contract |
|--|---|--|
| Provision of services for consideration | Performance of works for consideration | Provision of services and performance of work for consideration |
| Placement of promotion materials on a platform | - | Placement of promotion materials on a platform |
| - | Acting (and impersonalizing) according to a provided script | Acting and impersonalizing according to a provided script |
| - | - | Utilizing own authority and reputation to promote a product |

Source: compiled by the author.

Further, in my opinion, an even broader definition is presented by Isabel Morteo. The proposed definition of an influencer states that an influencer may be defined as an individual who through their expertise in a specific topic creates original content and offers

their unbiased opinion to an audience gained through word-of-mouth communication that voluntarily has determined them to be a referent and trusts their opinion.

In the context of I. Morteo's approach, there is no definition provided for what constitutes influencer activity. However, the focus is placed on classifying influencers based on criteria. These criteria include the source of influence, the trust relationship established with consumers, the level of engagement per publication or outreach and the number of followers. The source of influence refers to whether an influencer's content is original and unbiased, a factor in determining their authenticity and credibility among their followers. Another important criterion is the trust relationship built with consumers, which influences how effective an influencer's endorsements can be. Engagement per post or outreach measures the level of interaction received by an influencers posts. Lastly, the number of followers, as a criterion indicates influencer's audience size: micro, macro or mega (*Morteo, 2018, pages 4-9*).

Therefore, summarizing the above, it may be concluded that an influencer is an individual, who publishes on their platforms, mainly social media, self-created content and personally participates in it, following a specific brand-provided script to endorse and promote a brand's product utilizing their authority and reputation in commercial purposes. Further, influencer activity involves creating and publishing personal content, primarily on social media platforms, that follows a brand-provided script to endorse and promote a brand's product. This activity leverages the influencer's authority and reputation for commercial purposes.

1.2. Risks of Deceptive Advertising and Unfair Commercial Practices

The aim of this Chapter 1.2 of the thesis is to outline the potential risks to the consumers related to deceptive advertising and unfair commercial practices as posed by the influencer activity.

In many markets, consumers lack access to comprehensive information on product quality attributes such as performance, satisfaction, durability, safety, reliability, and more. To bridge this information gap, sellers utilize advertising and various direct communication methods to educate consumers about the quality features of their products. However, sellers have a financial incentive to engage in deceptive practices by providing false or misleading information to boost their sales. While savvy consumers can evaluate the accuracy of this information by considering market signals and understanding the firms' incentives, less

experienced consumers may struggle to make informed decisions (*Gupta, 2023, introductory part*).

Deceptive advertising practices are not uncommon and can be observed across various industries. For instance, in 2009, Skechers falsely marketed their toning shoes as aiding weight loss and muscle strengthening, resulting in a sales peak of \$1 billion in 2010. Subsequent scientific testing revealed that toning shoes did not provide the claimed benefits and could even lead to injury. Federal trade Commission of the United States of America reached an administrative agreement with the Company for Skechers to pay United States Dollars 40 million to settle charges that the company deceived consumers (*Federal Trade Commission, 2012*).

In the food industry, Dannon overstated the health advantages of its Activia yogurt and DanActive dairy drink, while Kellogg's made misleading claims in 2008 about Frosted Mini-Wheats improving a child's attentiveness and in 2009 about Rice Krispies enhancing a child's immunity, claims that could not be substantiated by clinical studies.

In the automotive sector, Volkswagen falsely asserted that their diesel cars were low-emission and environmentally friendly by manipulating performance tests. Kia and Hyundai misled consumers by inflating the expected gas mileage of their vehicles (*Gupta, 2023, introductory part*).

Nowadays, companies often tend to assert superiority and advantage of their products before competitors, but these claims may not always be accurate or substantiated. Recognizing the potential for dishonesty among businesses, consumers are naturally skeptical of their statements of exceptional characteristics of advertised goods and services. Further, to safeguard consumers, regulatory authorities can impose penalties on companies that deceive consumers. In response to the concerns of consumers and regulators, businesses might make essentially true statements and claims, nevertheless, even more deceptive to consumers in order to hinder investigations.

For instance, claiming that more than 80 percent specialists recommend your product, which may be essentially true, is a well-known example of deceptive advertising. It is also known as the tactic of "9 out of 10 do recommend". In particular, in 2007, UK Advertising Standards Authority ruled that Colgate-Palmolive is to stop claiming that 80 percent of dentists recommend the toothpaste of Colgate-Palmolive production under the brand name "Colgate". The claim deceitfully implied that more than 80 percent of dentists recommend the toothpaste under the brand name "Colgate" over every other toothpaste of competitors. Furthermore, one may conclude that only the remaining 20 percent would

recommend other products of different production, under different brand names. Meanwhile, in fact, the research scripts, as ruled by the Advertising Standards Authority aimed to study hygienists' and dentists' attitudes concerning the dental product missing to make it clear to the sufficient extent that the study was carried out on behalf of Colgate-Palmolive (*Reuters, 2007*). This case brightly demonstrates how essentially true statement is deceitful to consumers. The company used semi-substantiated research as the authority to promote its goods.

Remarkably, this case may be also regarded to as a proto-influencer advertising. Of course, although, the authority that promotion is relied upon is not personalized or personally known to consumers, consumers tend to believe their dentists and often do receive recommendations and advice from them during visits. Thus, one may conclude that claiming that vast majority of dentists recommend the product was aimed, *inter alia*, at consumers to believe that their medical services provider could potentially recommend the product as well. More precisely, that they could recommend it with the 80 percent probability, which is essentially not true.

Further, this demonstrates how misuse of authority, even through generally correct claim, may deceive consumers. Similar claims from influencers very well known to a specific consumer may have even stronger effect. Hence, one may identify a potential risk for consumers: authority backed promotions of produce disguised under a genuine recommendation of an influencer. Moreover, it is important to take into account that these kinds of dishonest business activities have an effect on more than just the particular customer. It may change the dynamics of the market and provide producers an unfair advantage. Businesses that do not follow these kinds of practices can be at a disadvantage since they can't match the perceived authority and genuineness of things that influencers advocate.

Furthermore, this calls into question the morality of influencers' role in influencing customer behavior. One may argue that they should be held responsible for the veracity of their endorsements because they possess a great deal of influence over the purchasing decisions of their audience. To protect customers from possible risk, one may advocate for dedicated regulation of influencer marketing. Customers, authorities, and influencers themselves need to exercise caution to guarantee that this advertising tactic is applied morally and sensibly.

A similar case of deceptive advertising involving the same company, Colgate-Palmolive, but a more recent one (2018) is the assertion that the toothpaste brands "Colgate

Sensitive Repair" and "Colgate Sensitive Repair Prevent" can "repair teeth instantly" and "help strengthen gums, preventing sensitivity" (ASA, 2018). Six complainants contested this claim on the grounds that it was untrue and unsubstantiable. The Advertising Standards Authority determined that the evidence present was insufficient to support the claim, upholding the complaint. The Advertising Standards Authority observed that the on-screen text highlighted the claim, which related to teeth repair as a method of relieving teeth sensitivity-related pain. Further, the Advertising Standards Authority also pointed out that there were no actual tooth-repairing or gum-strengthening ingredients in the toothpaste. Advertising Standards Authority said that the toothpaste only contained arginine and calcium carbonate, which were exclusive to Colgate produce, but these ingredients did not have any proven effect on repairing enamel or reducing gum inflammation. The Advertising Standards Authority further stated that, contrary to Colgate's claims, the toothpaste did not provide a surface coating that functioned as a restorative layer on the enamel surface. The Advertising Standards Authority stated that the idea that brushing with Colgate Sensitive Repair and Prevent may address the underlying cause of sensitive teeth and return them to a healthy state was misleading and without proof (ASA, 2018).

Thus, this case illustrates how businesses might utilize ambiguous or overstated claims to convince customers to purchase some goods without giving them precise information on the advantages or efficacy of those products. If customers depend on these statements without first visiting a dentist or other medical professional, it could lead to erroneous expectations or worsen their health.

Such marketing practice may have even more adverse consequences and effect when implemented by influencers. Because of their substantial fan base and the trust they have established with their audience, influencers have a big say in what consumers buy. If they support a product that makes false claims, similar to Colgate-Palmolive 2018 case, it may cause customers to make ignorant decisions based on incorrect information. It might pose even bigger risk if unsubstantiated claims are made by the influencers themselves, claiming that a product had a positive effect for them or that they have proven it to be effective, while in reality they encountering the product for the first time for their, for instance, social media post.

A relevant case of influencer claiming the characteristics for a product that it does not possess is a recent lawsuit against F-Factor (T. Xie, 2023); (DeGregory, 2022); (K. Rosman, 2022), a low-carb, high-fiber eating plan company that, in a nutshell, sells pre-made eating plans. The plans are said to help people lose weight and improve their health.

However, no proof of safety and effectiveness of this diet was available or researched. Olivia Culpo is a famous model and TV personality who has endorsed the F-factor diet (see Annex I).

According to a lawsuit the F-factor diet is based on false and misleading claims that it can cure diseases such as diabetes, cancer, and heart disease. In addition, the lawsuit claims that the business employed dishonest marketing strategies, including bonuses, discounts, and free samples, to entice clients to purchase its goods. Whereas it is debatable if bonuses and discounts may be deemed to be dishonest practices, it is still of the interest of this thesis that Olivia Culpo is accused in the lawsuit of being one of the influencers who pushed the F-factor diet without revealing her financial relationship to the company or giving truthful information about the advantages and disadvantages of the diet.

In addition, the lawsuit claims that several clients who followed Olivia Culpo's advice and adopted the F-factor diet suffered from severe health issues. One customer, for instance, stated that six months into the F-factor diet, kidney issues started to arise. Another customer who followed the F-factor diet complained of fatigue, nausea, and headaches. The lawsuit seeks damages for the customers who suffered physical and psychological harm as a result of Olivia Culpo's endorsement.

Of course, this is not the only case of Olivia Culpo being engaged in influencer advertising. One can notice a post promoting of cosmetic substance dated 1 September 2023 on Olivia Culpo's Instagram webpage (see Annex I). The post provides for video with a text inscription: "Let's talk about Estée Lauder Advanced Night Repair Serum". The video includes the influencer applying the substance. However, it is not prompted if it is a sponsored post and looks like a genuine recommendation. The influencer being an authority in the beauty industry for many of her fans (which on Instagram only constitutes of over 5 million followers (see Annex I)) implies that she indeed uses the substances regularly and it helped her.

In this case, Olivia Culpo does not clearly indicate whether her post is sponsored by the producer and while some potential consumers question her advice being genuine (see Annex IA), one may argue that a significant number of potential consumers are at risk of making unreasonable purchasing decisions under the influence of the "recommendation/promotion".

Another example of the same influencer marketing a product disguising it under her preference is a photo on Instagram of her consuming an energy drink associating it with heaven as a comment (see Annex I). It is once again unexplicit if this is a sponsored

advertisement or a genuine advice, or demonstration of a habit and preference. Potential consumers are, therefore, unable to discern whether the endorsement is a personal preference or a paid promotion. Such a lack of transparency can lead to consumers making uninformed decisions: buying and consuming produce based on misleading or incomplete information. Moreover, the employment of highly sentimental language, such as equating the energy drink with "heaven", could be the cause of inflated expectations over the product. It suggests a degree of benefit or enjoyment that could or might not be backed up by concrete data. This may be especially dangerous if using the product in issue carries any possible health hazards. In the case of energy drinks, for example, they often contain high levels of caffeine and sugar, which may lead to health issues if consumed excessively. By promoting these products without providing this crucial information, influencers like Olivia Culpo could be inadvertently encouraging unhealthy consumption habits among their followers.

The examples discussed in this chapter reflect how unfair commercial practices and deceptive advertising may mislead consumers, especially when it concerns influencer marketing. There is a chance that consumers' health and well-being will be impacted in addition to monetary losses.

This demands enhancement and further development of dedicated regulation and requirements as to influencer activity.

1.3. Legal Proceedings Cases of Influencer Activity Abuse

This Chapter 1.3 is to elaborate on some of the most recent legal actions concerning influencer activity to outline possible risks to consumers.

The UK's Competition and Markets Authority (CMA) initiated an investigation into the practices of social media influencers, focusing on whether they are adequately declaring when they have been compensated to endorse goods or services. The investigation was launched in response to concerns that influencers' failure to properly disclose paid promotions could mislead consumers. The CMA's investigation is centered on the principle that all commercial communications must be clearly identifiable as such. This is particularly relevant in the context of influencer marketing, where promotional content is often seamlessly integrated into influencers' regular content, making it difficult for consumers to distinguish between the two. The investigation also extends to the disclosure of non-monetary compensation. The CMA has considered that there must be 'consideration with an asset value' and a definite link between the payment by that trader and that content.

Such a broad interpretation of ‘payment’ reflects the reality of advertising practices in the digital age, where influencers often receive free products, services, or other non-monetary benefits in exchange for their promotional content (*Competition and Markets Authority, 2018*).

The CMA’s investigation underscores the importance of transparency and consumer protection in influencer marketing. It serves as a reminder that influencers, like all other advertisers, are subject to consumer protection laws and have a responsibility to ensure that their promotional content is not misleading.

The Federal Court of Justice in Germany has made a significant ruling on three cases in 2021 concerning the obligations of influencers on social media platforms (*ruling of Bundesgerichtshof of 9 September 2021 in cases I ZR 90/20, I ZR 125/20, I ZR 126/20*). The court ruled on three cases concerning whether influencers violated the requirement to label their Instagram posts as advertising. The plaintiffs are associations whose main tasks include protecting the commercial interests of their members and enforcing the right to publicity. The defendants are influencers who regularly publish images on Instagram, often with short accompanying texts. In some images, they insert so-called “Tap Tags”, which appear when clicking on the images and show the names of the companies or brands that produce or offer the products shown in the images. By clicking on a “Tap Tag”, the user is redirected to the Instagram profile of the respective company. The plaintiffs argue that this constitutes unauthorized advertising and claim damages from each defendant. The lower courts have ruled in favor of the plaintiffs, while the higher courts have dismissed their appeals. The Federal Court has now decided on all three cases and ruled that influencers are indeed obliged to mark their posts as advertising if they use “Tap Tags” to direct users to their profiles or websites.

The Federal Court has based its decision on two main grounds: first, that “Tap Tags” are clearly recognizable as advertisements, as they contain information about products or services that are not otherwise available to users; and second, that “Tap Tags” create a link between users and companies or brands, which is characteristic of advertising. The Federal Court has also rejected the defendants’ arguments that they do not intend to promote any products or services by using “Tap Tags”, as this is irrelevant for determining whether they have breached their duty of disclosure.

The Federal Court’s decision has important implications for both influencers and consumers. On one hand, it clarifies that influencers who use “Tap Tags” must clearly indicate that they are doing so in order to avoid misleading or deceiving users into buying

something that may not be suitable for them. On the other hand, it also protects consumers' right to know when they are being exposed to advertising messages through social media platforms.

PART 2

**INTERNATIONAL SOFT LAW INSTRUMENTS AND EU ACQUIS THAT
APPLIES TO INFLUENCERS**

2.1. Soft Law Framework for Influencer Activity

In this Chapter 2.1 I am to elaborate on the soft law instruments and standards in place that apply to influencer activity.

One may conclude that the legal landscape lacks dedicated influencer regulations. Therefore, various organizations drawn up guidelines and recommendations to be employed by influencers and businesses that engage influencers. These guidelines often emphasize the importance of transparency and honesty in influencer marketing. Influencers are encouraged to clearly disclose their relationships with brands, and to base their endorsements on their genuine experiences and opinions. Businesses are advised to respect these principles and to ensure that their influencer marketing campaigns do not involve deceptive or unfair practices.

An instrument created by an international European organization that is worth mentioning is the EASA's "Best Practice Recommendation on Influencer Marketing Guidance" (the "EASA Guidance"). EASA – the European Advertising Standards Alliance is the association of advertising self-regulation organizations in Europe. EASA promotes high ethical standards in commercial communications by means of effective self-regulation, for the benefit of consumers and business in Europe and beyond (*EASA, 2023b*). Generally, the EASA Guidance are designed to provide support and advice to EASA's Self-Regulatory Organisations and industry members on the practice of advertising self-regulation. They are based on EASA's "Common Principles and Operating Standards of Best Practice" (*EASA, 2002a*) and EASA's "Best Practice Self-Regulatory Model" (*EASA, 2002b*).

The EASA Guidance provides for a definition of an influencer and influencer activity (as elaborated in Chapter 1.1) and sets forth three general principles (recommendations) for influencer activities.

Firstly, it is emphasized that a transparent influencer marketing should prompt for the fact of the promotion being remunerated by the producer of the product. A certain phrases, words or hyperlinks starting with "#", also known as "hashtags" may be used to indicate that a publication is indeed a paid promotion, sponsored by a brand (see Annex II).

In case such indication is not explicit or is absent, the following items may signify that a publication is a paid promotion and not a genuine advice: (i) promotion or mentioning

of products/services, or the characteristics of particular brand, omitting any reference to similar products or services of competitors, (ii) the mention of specific prices for products/services of a particular brand in the content, (iii) direct appeal to purchase the products/services of a particular brand, (iv) coincidence in the same period of time with identical or similar messages, content or hashtags in relation to a particular brand disseminated by other influencers and/or by the brand in its own media or networks or those of third parties (*EASA, 2023b*).

Further, the EASA Guidance provides that the level of control of the content by the brand shall be understood broadly. National self-regulators should ensure clear rules on the brands' control over the content: structure and/or direction of the message, for example, requests for a positive review, requests for a specific number of posts on a certain social media channel mentioning the service/product or requests to show the product in a social media post.

Sponsored promotions of influencers should possess a sufficient level of recognizability and disclosure. A key component of ethical advertising is the commercial messages' ability to be recognized. Regarding traditional media (TV product evaluations, native advertising, etc.), certain internet marketing communications—such as influencer marketing—need specific disclosure to ensure that the audience understands that it is a marketing communication rather than just pure editorial material. The International Chamber of Commerce Advertising and Marketing Communications Code (ICC AMC) may supplement this recommendation. The said provides that commercial communication should be clearly distinguishable as such, whatever its form and whatever the medium used. When an advertisement, including so-called “native advertising”, appears in a medium containing news or editorial matter, it should be so presented that it is readily recognisable as an advertisement and where appropriate, labelled as such (*International Chamber of Commerce, 2018*).

The ICC AMC, as such, does not set forth any specific rules and or recommendations that might be followed by influencers, however, its Article C20 “*Responsibility*” explicitly provides that the marketer bears ultimate responsibility for all facets of digital and direct marketing initiatives, regardless of their nature or substance. Further, it is provided that all parties concerned need to take into account that responsibility, also applies to other participants in the direct marketing and digital marketing eco-system including influencers, bloggers and vloggers.

Article 25 of the ICC AMC “*Implementation*” envisages communications practitioners or advertising agencies and other participants in the marketing eco-system, such as market influencers, bloggers, vloggers and affiliate networks should be familiar with the Code and with other relevant local self-regulatory guidelines on advertising and other marketing communications and should familiarize themselves with decisions taken by the appropriate self-regulatory body. They should ensure an appropriate means exists for consumers to make a complaint and that consumers can readily be aware of it and use it easily.

Even though, ICC AMC has no legal force as such, it plays a crucial role in guiding the behavior of all participants in the digital and direct marketing ecosystem. Its guidelines, while not legally binding, set a standard for ethical and responsible marketing practices. Despite the lack of legal force, considering the authority and the reputation of the ICC, ICC AMC serves as a valuable framework for ethical marketing practices. It encourages transparency, honesty, and responsibility, which are essential for maintaining consumer trust and promoting fair competition.

Another document worth attention is International Consumer Protection and Enforcement Network (ICPEN) Guidelines for Digital Influencers. The documents sets forth 3 key principles for digital influencers: (i) disclose clearly whether the content has been paid for, (ii) be open about other commercial relationships that might be relevant to the content and give genuine views on markets, businesses, goods or services.

A separate emphasis is given to disclosure of presence of financial relationships with the brand. Influencers should clearly indicate when their content is sponsored or paid for. This can be done through explicit disclosures, use of specific hashtags like “*#ad*” or “*#sponsored*”, or other clear indications within the content itself (ICPEN, 2016).

It is also worth noting separately the importance of influencers providing genuine feedback on goods or services. First of all, this is because they are expected to do so by their admirers. False or misleading claims about products may lead to potential consumers making unsubstantiated purchasing decisions or employing unrealistic expectations. In connection with lack of disclosure of the financial bounds between the particular influencer and a brand they promote, a consumer is left in complete deceit with practically no special remedies.

National organizations in Europe have taken action in the regard of introduction of soft law mechanisms and guidelines in the domain of influencer activity as well. While these soft law mechanisms and guidelines do not have legal force, they play a crucial role

in guiding the behavior of influencers and businesses that engage with influencers. They set a standard for ethical and responsible marketing practices, emphasizing the importance of transparency, honesty, and responsibility.

In Lithuania, the State Consumer Rights Protection Authority (SCRPA) published guidelines on the disclosure of advertising in social media in 2019 that were compiled after monitoring influencer social media accounts. The guidelines aim to ensure that consumers can recognize ads on social networks with ease and that marketers disclose the true purpose of the content they publish in an equitable and responsible manner. The guidelines include recommendations from the regulatory body for the proper disclosure of ads in social media features that have a short availability (stories), in addition to guidance regarding advertising on social media platforms like Facebook, Instagram, and YouTube. According to the guidelines, an entry must be marked as an advertising each time a good or service is referenced. Influencers are also urged to use distinct labels for audiences in Lithuania and abroad.

Further, the guidelines acknowledge both forms of consideration provided for the promotion (as elaborated in Chapter 1.1): financial remuneration and when the influencer is provided with the sponsored goods or services for free. Both these forms of consideration are equally recognized by the SCRPA (*Valstybinės vartotojų teisių apsaugos tarnybos direktorius, 2019*).

In France, the Professional Self-Regulatory Authority for Advertising (ARPP) issued the Digital Advertising Communication Code. The code outlines key principles for digital advertising and marketing communications that are, *inter alia*, applicable to influencers. In particular, as regards to influencers, it is envisaged that their collaboration, of any form, with an advertiser for publication of any content shall be in all and any cases clearly and transparently disclosed to the consumer by the influencer. It further sets forth the criteria evidencing that such collaboration shall be deemed to be advertising. Such criteria include: (i) the content being produced in the context of reciprocal commitments: the influencer's contribution is the subject of financial reimbursement or any other consideration, such as physical provision of the goods or services free of charge, (ii) advertisers reviewing or validation the content prior to its publication, and (iii) the content of the influencer being intended to promote a product through speech, visually or otherwise (*ARPP, 2022*).

Non-European Union countries have taken action in the domain of influencer soft mechanisms regulation as well. In India, The Advertising Standards Council of India

(ASCI) introduced Guidelines for Influencer Advertising in Digital Media. The instrument provides for a similar approach as introduced by the European bodies mentioned above. Firstly, it shall be disclosed should the content be paid or financially supported by a third-party. Influencers must clearly disclose whether their content has been paid for. The disclosure should be such that consumers can recognize the promotional nature of the content. Further, Influencers should be open about other commercial relationships that might be relevant to the content and not disguise or act genuine while promoting goods or services, unless it is a real feedback or comparison.

Additionally to the elaborated, the ASCI guidelines provide for obligation of influencers to execute due diligence while engaging into promotion of any goods or services. The influencers must take action to review and ensure that the advertiser is in the position to substantiate the claims made in the proposed advertisement.

Therefore, to conclude, it may be noted that national and international organizations have established soft law instruments and guidelines for ethical influencer activity. These include the European Advertising Standards Alliance (EASA), the International Chamber of Commerce (ICC), the International Consumer Protection and Enforcement Network (ICPEN), national bodies like the State Consumer Rights Protection Authority (SCRPA) in Lithuania and the Professional Self-Regulatory Authority for Advertising (ARPP) in France, and the Advertising Standards Council of India (ASCI) as set out above. These guidelines may be summed up as follows:

Disclosure of financial relationships: Influencers must clearly disclose any financial or other benefits they receive for promoting a product or service.

Genuine opinions and due diligence: Influencers should provide honest and unbiased opinions and avoid misleading claims or promoting goods or services they have never used in fact or at least conducted an adequate research.

Clear and recognizable advertising: Influencers should ensure their content is clearly identifiable as advertising, using appropriate hashtags, disclaimers, or other visual prompts.

However, such guidelines are not legally binding, and their enforcement is, therefore, practically impossible. This raises the question of whether there is a need for more formal regulations in this area. Such regulations could provide clearer rules and stronger enforcement mechanisms, which could help to prevent deceptive advertising and unfair commercial practices in influencer marketing.

Summing up, the current legal framework for influencer activity lacks legally effective and enforceable regulations specifically dedicated to influencers. This gap has been partially filled by soft law instruments and standards, developed by various organizations to guide responsible practices within the influencer ecosystem. While these guidelines are not legally binding, they play a crucial role in shaping ethical influencer activity.

2.2. Consumer Protection EU Acquis Applicable to Influencer Activity

The purpose of this Chapter 2.2 is to elaborate on the existing laws and regulations that are already in place, primarily effective in the European Union, that are applicable to influencers.

Apart from the soft regulation mechanisms outlined in Chapter 2.1, the regulatory landscape lacks influencer activity dedicated acts. At the European Union level, there is not any explicit regulation pertaining to influencer activity. However, one should note that the some currently effective acts are applicable to influencers as well considering the nature of their activity. In this Chapter 2.2 an overview of the most significant of such legal acts is provided.

The European Union has considerable authority in consumer protection in general, thus, it is important to comprehend the ways in which influencers are impacted by the EU consumer *acquis*. The Treaty on the Functioning of the European Union provides that in order to promote the interests of consumers and to ensure a high level of consumer protection, the European Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organize themselves in order to safeguard their interests. The said is to be achieved, inter alia, through approximation of laws of the member states by adopting harmonization measures (*Treaty on the Functioning of the European Union, 2012, Article 169*).

First of all, consumer protection legislation is to prohibit businesses from engaging in practices that are considered to be misleading, aggressive, or unfair. Consumers who believe they have been the victim of unfair commercial practices may have the right to take legal action against the businesses involved. Consumers are as well protected from unfair commercial practices by being informed of their rights and by being aware of deceptive marketing tactics. Consumers should also report any suspected cases of unfair commercial practices to the appropriate authorities (C. van Dam, 2005).

Generally, in the European Union, under Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (“**Unfair Commercial Practices Directive**”), Article 5(2), a commercial practice is deemed to be unfair in case (i) it is contrary to the requirements of professional diligence or (ii) it materially distorts or is likely to materially distort the economic behavior with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers (*Unfair Commercial Practices Directive, 2005, Article 5(2)*).

It is further specified, as set out in Article 5(4) that the commercial practices are deemed as unfair in case they are (i) aggressive or (ii) misleading.

Further, Article 7(2) of the Unfair Commercial Practices Directive regards the failure to disclose the commercial intent of a trader as a misleading omission, when this leads to or is likely to lead the typical consumer to make a transactional decision that they otherwise would not have made, if that is not already clear from the context. It is also a misleading omission, where a trader that hides or provides in an unclear, unintelligible, ambiguous or untimely manner material information or fails to identify the commercial intent of the commercial practice if not already apparent from the context, and where, in either case, this causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

Therefore, one may make a conclusion that there are certain provisions in the European Union acquis requiring the Member States to introduce prohibition of the unfair commercial practices and unfair omissions, in particular. Nevertheless, a question stands whether an influencer is considered to be a trader and if, therefore, the respective provisions are applicable to the influencers.

Considering the that the question stands, the Unfair Commercial Practices Directive still explicitly provides that using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial) is considered to be an unfair practice (*Unfair Commercial Practices Directive, 2005, Paragraph 11 of Annex I*). This clearly and explicitly prohibits influencers to engage in deceptive advertising practices by disguising paid promotions as unbiased editorial content. This prohibition is significant as it addresses one of the key challenges in influencer marketing: the blurring of lines between organic content and paid promotions.

Therefore, it may be concluded that according to the Unfair Commercial Practices Directive, a paid promotion must be identifiable to the customer. This includes endorsements of traders' goods or services by influencers who receive payment from them. The directive highlights that it is unfair practice to use editorial content for product promotion without disclosing that the content is a paid advertisement. This is especially important when it comes to influencer activity, since sponsored content is frequently incorporated into influencers' regular posts in such a way that it is difficult for viewers to tell them apart.

Further, the Court of Justice of the European Union practice establishes that the same rules are applicable also for not financial consideration, where there is a consideration with an asset value for the publication of editorial content (*ruling of Court of Justice of the European Union in case C-371/20, 2021*). This is particularly important as concerns influencer activity since influencer activity often involves non-financial considerations. Influencers frequently receive free products, services, or other non-monetary benefits in exchange for their promotional content. These non-financial factors are governed by the same regulations as financial considerations, according to the Court of Justice of the European Union. Influencers must therefore make sure that their promotional content is properly marked as such and disclose these factors. Influencer marketing is significantly impacted by this approach. It strengthens the necessity for transparency in influencer marketing and expands the definition of what makes a commercial relationship. Influencers cannot circumvent disclosure requirement by only taking non-monetary incentives. They have to make sure that their audience is aware of these links and reveal all types of consideration, whether or not they are monetary.

However, unless it may be definitely envisaged that influencers may be deemed as traders under the Unfair Commercial Practices Directive, the directive has only limited application as concerned influencer activities. Under the Directive, a trader is any natural or legal person who, in commercial practices, is acting for purposes relating to his trade, business, craft or profession and anyone acting in the name of or on behalf of a trader (*Unfair Commercial Practices Directive, 2005, Article 2(b)*).

The influencer may not always be traced to the trader and there is not always a clear link between them. Where an influencer is legally employed or acts as an ambassador of a trader, the definition of a trader may be broadened to such influencer, however, this is not always the case. The matter of identification of an influencer as a trader also relies on the scope of editorial control the actual trader has. It may be challenging to conclude that the

trader should be held accountable for the influencer's actions from a legal standpoint to the extent that the influencer is operating independently of the trader. However, where an influencer acts with more independence and has full or close to full control over the content, it might be more complicated to state that such influencer acts on behalf of a trader what limits the application of the Unfair Commercial Practices Directive to such influencers. Hence, while there is still room for debate on the scope of applicability of the Unfair Commercial Practices Directive to the activity of influencers (Trzaskowski, 2018), introduction of specific provisions for prohibition of unfair commercial practices as concerned the activity of influencers.

Figure 1. **Trader – Influencer – Consumer chain**



Source: compiled by the author.

The figure above demonstrates the minimum quantity of participants in the legal relations, where an influencer is engaged into promoting goods or services of a trader. However, the structure may be even more complex, making the identification of the “*last*” trader before the consumer more complicated. One may include other parties and stakeholders in the structure, such as marketing agencies that approach influencers on behalf of traders, platforms themselves, where influencers post their content and individuals/entities that are otherwise engaged into content creation.

Nevertheless, a move towards broadening the Unfair Commercial Practices Directive to be applicable is made in the European Commission notice on the “Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market” (*European Commission, 2021, 2021/C 526/01*). In particular, first of all it is stated that Compared to most other forms of online advertising, influencer marketing bears even fewer characteristics that make it possible for consumers to identify the commercial nature of the content. Even if the influencer uses disclaimers to highlight the presence of commercial communications, the average consumer, particularly children and young people, could assume that the content is presented at least partly as a personal, non-commercial endorsement rather than a direct and clearly identifiable advertisement. Further, it is provided that for the purposes of the Unfair Commercial Practices Directive an influencer would qualify as a ‘trader’ or, alternatively, as person ‘acting in the name of or on behalf of a trader’. Persons that frequently carry out promotional activities towards

consumers on their social media accounts are likely to qualify as ‘traders’, regardless of the size of their following (*European Commission, 2021, 2021/C 526/01, Paragraph 4.2.6*).

However, the Commission notice does not have a legally binding effect and is to supplement interpretation of the Unfair Commercial Practices Directive. Therefore, each situation should be evaluated independently taking into account all the relevant facts in order to determine the applicability of the directive to the activity of each individual influencer and determine whether there was a breach.

Further, from the perspective of the consumer one should consider the Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights (the Consumer Rights Directive). This directive mandates the disclosure of pre-contractual information for distance and off-premises contracts, ensuring that consumers are well-informed before entering into a contract (*Consumer Rights Directive, 2011, Articles 7 and 8*). The requirement for the information disclosure as for distance contracts would debatably apply to influencers, however, the question still stands whether an influencer may be regarded as the trader for the purposes of the Consumer Rights Directive. It is set forth that With respect to distance contracts, the trader shall give the specific information provided for in Article 6(1) of the Consumer Rights Directive or make that information available to the consumer in a way appropriate to the means of distance communication used in plain and intelligible language (*Consumer Rights Directive, 2011, Article 8*). In so far as that information is provided on a durable medium, it shall be legible. Doubtfully any influencers follow such a requirement. However, the Consumer Rights Directive provides for a different from the Unfair Commercial practices directive definition of a trader. It is envisaged that a trader is a natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession (*Consumer Rights Directive, 2011, Article 2(2)*). Therefore, one may argue that it is to the care and obligation of the business engaging the influencer for promotions to meet the requirements of the directive and ensure the consumer rights are not infringed.

Further, the Omnibus Directive (*Omnibus Directive, 2019*) introduces additional provisions on online marketplaces, in particular on additional requirements to contracts concluded on online marketplaces (*Omnibus Directive, 2019, Article 6a*). It may be argued that to certain extent this may be applied to the influencers, where the influencers are engaged into direct placement of the products. However, these are the rarer cases and, therefore, have limited relevance.

To conclude, examining the legal environment pertaining to influencers in the European Union reveals that, despite the lack of a specific regulatory framework for this emerging sector, consumer protection legislation that is in place plays a significant role and may serve as a basis for further developments. The Unfair Commercial Practices Directive, which was created to counteract aggressive and misleading marketing tactics, may be applied to some aspects of influencer activity. One such aspect is the requirement for transparent disclosure in sponsored content. However, the classification of influencers as traders within the purview of these directives remains a subject of ongoing debate, linked to the degree of autonomy influencers have in content creation and their contractual relationships with brands. Although they have differing degrees of direct bearing on influencer dynamics, the Consumer Rights Directive and the Omnibus Directive are also relevant, especially when it comes to digital markets and distance contracts. However, it is still debatable whether these instructions clearly define influencers as traders.

2.3. Advertising and Marketing EU Acquis Implications as to Influencer Activities

This Chapter 2.3 is to elaborate on the consumer protection implications of other than consumer protection European Union acts, in particular, those concerning advertising and marketing.

As for advertising legal framework in the European Union, influencer activity is not specifically addressed by any dedicated legislation. Thus, one may conclude that as well as for consumer protection, the general framework is to be considered.

First of all, certain provisions that affect influencer activity are envisaged by the Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive). Particular importance bears the term of ‘video-sharing platform service’ which is defined as a service where the principal purpose of the service or of a dissociable section thereof or an essential functionality of the service is devoted to providing programs, user-generated videos, or both, to the general public, for which the video-sharing platform provider does not have editorial responsibility, in order to inform, entertain or educate, by means of electronic communications networks and the organization of which is determined by the video-sharing platform provider, including by automatic means or algorithms in particular by displaying, tagging and sequencing. Under this

definition most of the popular social media platforms may be qualified as the video-sharing platform service and their administrators/owners as the video-sharing platform providers (*Audiovisual Media Services Directive, 2010, Article 1(1)*).

Article 28b of the Directive outlines measures for video-sharing platforms under Member States' jurisdictions to safeguard minors and the general public from harmful content. These measures encompass protection against content detrimental to physical, mental, or moral development, as well as content inciting violence, promoting hate speech, or containing criminal activities. This impact the influencers directly as the video-sharing platforms are thereby obliged to introduce adequate measures of control and self-regulation to ensure their compliance. Platforms are required to adopt appropriate measures to protect users, especially minors, from harmful content. This could impact influencers' content creation strategies, necessitating more stringent content checks and adherence to guidelines regarding incitement to violence, hate speech, or criminal activities.

Further, Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on Electronic Commerce) provides for a definition of term 'commercial communication' – any form of communication designed to promote, directly or indirectly, the goods, services or image of a company, organization or person pursuing a commercial, industrial or craft activity or exercising a regulated profession, whereas (i) information allowing direct access to the activity of the company, organisation or person, in particular a domain name or an electronic-mail address and (ii) communications relating to the goods, services or image of the company, organisation or person compiled in an independent manner, particularly when this is without financial consideration (*Directive on Electronic Commerce, 2000, Article 2(f)*). While it is debatable whether each endorsement and/or promotion of some goods or services delivered by an influencer may be deemed as a commercial communication, and each case should be analyzed separately, the 'Directive on electronic commerce' provides for certain requirements that might be applicable to certain content of influencers. In particular, Article 6 provides that commercial communication must be clearly identifiable as such as well the natural or legal person on whose behalf that commercial communication is made. Since under the scope of definition of a commercial communication also fall indirect communications promoting goods or services, this provision essentially may be also applied to influencers' content and require them to explicitly disclose the nature of their relations with the product producers on behalf of which the communication is made.

In conclusion, while the EU lacks specific legislation directly targeting influencer activities, existing directives governing audiovisual media services and electronic commerce have certain implications for influencers. These regulations demand enhanced responsibility from influencers in ensuring the transparency of their commercial affiliations and the safeguarding of users, particularly minors, from potentially harmful content disseminated through the platforms they utilize. However, the practicability mainly depends on how national governments implement the acquis and what practice they form. Thus, once again, it is evident that dedicated framework to tackle risks posed by influencer activity should be introduced for ensuring of harmonization of the respective legislation within the states.

PART 3

THE CHALLENGES OF ENFORCING CONSUMER PROTECTION IN THE CONTEXT OF INFLUENCER ACTIVITY

While Part 2 of this work elaborates on soft law instruments and European Union acquis applicable to influencers, concluding the lack of influencer dedicated legal framework, this Part 3 elaborates on further suggestions and challenges of enforcing consumer protection in the context of influencer marketing.

3.1. The Difficulty of Monitoring and Enforcing Compliance

Influencer marketing is a complex and rapidly changing field, which makes it difficult for regulators and enforcers to keep up. Influencers can operate on a variety of platforms and use a variety of tactics to promote products or services. This makes it difficult to monitor and enforce compliance with consumer protection laws and regulations.

For example, it may be difficult to determine whether an influencer's post is a genuine endorsement or a paid advertisement as elaborated in preceding Parts 1 and 2. Influencers may not always disclose their relationships with brands, or use subtle language or imagery to promote products without explicitly indicating the purpose of their publications. This makes it difficult for consumers to identify and avoid misleading or deceptive advertising.

Social media has become highly influential, with statistics showing that TikTok, one of the leading social media platforms, has over 600 million active users. The popularity of these platforms has led to a rise of "influencers" with a strong targeted audience of followers, carefully built through their online activities such as posting photographs and short videos on the platforms. As their posts attract significant attention from their followers, the influencers may, in return for commercial products being featured on their posts, receive benefits which mainly include direct financial benefits, and indirect financial benefits such as free products. Arguably, influencers exploit the trust of their fans by posting sponsored advertisement in the forms of text, photographs, and short videos on their social platforms without clearly marking them as, or directly indicating that they are, advertisement. Such content impacts the protection of consumers' rights and interests and may be perceived as misleading (*Liang, 2022, page 4*).

Social media influencers are engaged in various facets of influencer activity: filter information to target audiences, promote products and services, offer advice that have a significant impact on a wide audience. Given their large audience, influencers are very effective not only in generating online engagement for the companies that use their services,

but also in manipulating the opinion and purchasing behavior of their audiences, since the latter do not always distinguish between genuine marketing advice and sponsored ones (Boneta, 2023, pages 20-21). Although, as elaborated in Part 2, there are already certain regulatory framework as well as soft law instruments requiring influencers to explicitly indicate the promotional nature of their content, influencers appear to be ignoring these regulatory restrictions. The lack of influencer dedicated regulations that would apply to influencers specifically might be the reason thereof. In this context, ordinary users of social networks are increasingly at risk of and vulnerability before the invisible commercial interests.

Additionally, influencers may target their content to specific audiences, making it difficult for regulators and enforcers to identify and investigate potential violations. For example, an influencer may post sponsored content on their social media pages that is only visible to their followers in a particular country or region. This can make it difficult for authorities in other jurisdictions to detect and address potential violations (*Dagher, 2023, pages 743-744, 747, 771*).

Finally, the global nature of influencer activity makes it difficult to coordinate the efforts of regulators. Influencers may be based in one country but target their content to audiences in other countries. This can make it difficult to determine which jurisdiction's laws have effect over a particular case.

Specific challenges that may be faced in enforcing consumer protection in the context of influencer activity include the following:

Lack of awareness: Many consumers are not aware of their rights under consumer protection laws and regulations. This can make it difficult for them to identify and report potential violations.

Lack of transparency: Influencers may not always disclose their relationships with brands, and they may use covert language or content to promote products without explicitly saying that they are doing so. This can make it difficult for consumers to identify and avoid misleading or deceptive content (*Zulueta, 2019*).

Global reach: Influencers may target their content to audiences in multiple countries. This can make it difficult for regulators and enforcers to coordinate their efforts and determine which jurisdiction has jurisdiction over a particular case.

Limited resources: Regulators and enforcers often have limited resources to investigate and prosecute violations of consumer protection laws and regulations. This can make it difficult to hold influencers liable for their actions.

Despite these challenges, there is a number of measures that may be undertaken to improve the enforcement of consumer protection laws and regulations in the context of influencer activity:

Educate consumers: Regulators and enforcers can educate consumers about their rights under consumer protection laws and regulations. This can help consumers to identify and report potential violations and raise their overall awareness.

Promote transparency: Regulators and enforcers can promote transparency by requiring influencers to disclose their relationships with brands and to clearly identify sponsored content. Ideally, this may come as a dedicated regulation or certain additional provisions to the existent consumer protection and advertising acts.

Coordinate efforts: Regulators and enforcers from different jurisdictions may coordinate their efforts to investigate and prosecute violations of consumer protection laws and regulations. This can address the global reach of influencer activity.

Prioritize enforcement: Regulators and enforcers can prioritize the enforcement of consumer protection laws and regulations in the context of influencer activity. Currently, influencers seem to “fly under the radar”. This may send a strong message to influencers and brands that they will be held accountable for violations and lead to them introducing internal compliance standards.

By taking these measures, regulators and enforcers may further ensure protection of consumers from misleading or deceptive advertising in the context of influencer marketing.

3.2. The Lack of Transparency of the Influencer Activity

The lack of transparency in the influencer marketing industry is a major challenge for both consumers and businesses as well. In this Chapter 3.2, this issue is to be elaborated further and certain proposals are to be laid out.

Consumers often have difficulty distinguishing between genuine endorsements and paid advertisements, especially in case influencers do not disclose their relationships with brands, as elaborated earlier. This can lead to consumers being misled about the actual characteristics of goods or services they are purchasing, or make them have unsubstantiated expectations for those goods and services. For example, a consumer may be more likely to purchase a product if they see their favorite influencer endorsing it, even if the influencer has been paid to promote the product.

Transparency is a vital and fundamental element for the success of marketplaces: either online or physical as it plays a crucial role in establishing trust between all parties.

Without transparency, it becomes challenging to effectively connect purchasers and sellers or service providers within a marketplace. Businesses and brands research various social media accounts to approach potential influencers for the promotion of their goods and services. Once they identify someone, the only way to acquire information is by reaching out directly to such influencers or their manager, should they have any. Frequently, prices as well are not readily available and the market of influencer promotion is not transparent. Sponsors need to engage in individual negotiations with influencers. Extracting a price quote from an influencer requires a substantial amount of effort, including reaching out to influencers, explaining campaign details, and negotiating promotion terms, among other steps (Rannard, 2021).

Naturally, prices will vary because not all influencers are the same, leading to price differentials. For example, an influencer may have a larger following but less engagement, or they may have lower-quality content.

This situation is caused, among other factors, by lack of transparency in the influencer market. Influencers disguise their paid promotions under genuine advice and do not disclose any details of presence of their relationships with businesses.

Therefore, the respective dedicated regulations or additional provisions to the existing ones (as elaborated in Chapter 3.1) should envisage that influencers should be required to disclose their relationships with businesses. This will lead consumers to understand whether an influencer's post is a genuine endorsement or a paid advertisement and form a more transparent market.

Further, as an internal policy, businesses should develop clear and concise influencer marketing guidelines and a strategy to approach influencers. Such guidelines should outline the business's requirements for transparency and disclosure of their relationships

Social media platforms should implement features and require using them properly that enable users to identify sponsored content. For example, platforms could require influencers to use a specific label to identify sponsored content.

Brands should develop and implement clear and concise influencer marketing guidelines. These guidelines should outline the brand's expectations for transparency and disclosure.

Influencers should disclose their relationships with brands in a clear and concise manner. This can be done in the beginning, middle, or end of a post, but it should be prominent enough to be easily visible to followers.

Consumers should be critical of the content they see on social media and be aware of the potential for influencers to be biased in their endorsements. They should look for multiple sources of information about a product or service before making a purchase decision.

By taking these measures, one may achieve better transparency in the influencer activity and protect both consumers and brands.

3.3. The Need for International Cooperation to Address Cross-Border Concerns

Finally, this Chapter 3.3 elaborates on the necessity of international cooperation to address cross-border concerns. As laid-out in Chapter 3.1, influencer activity having an international nature is being one of the main concerns for its monitoring and enforcing compliance with the applicable consumer protection legislation.

The challenges of cross-border enforcement consumer protection legislation in the context of influencer activity can be broadly divided into two categories:

1. Identifying and investigating potential violations

Influencer marketing campaigns can be complex and difficult to track, making it difficult for regulators to identify and investigate potential violations of consumer protection laws and regulations. This is especially true in the context of cross-border influencer marketing campaigns, where influencers may be based in one country but target audiences in another country.

2. Taking enforcement action

Even when regulators are able to identify and investigate potential violations of consumer protection laws and regulations, they may face challenges in taking enforcement action. This is because influencers may be based in countries with weak consumer protection laws or where it is difficult to enforce judgments against them. Additionally, influencers may be able to use their social media platforms to attack regulators and deter them from taking enforcement action.

International cooperation is crucial, for enforcing consumer protection laws and regulations in the context of border influencer marketing campaigns. Regulators must be able to exchange information and coordinate their enforcement efforts across borders. Moreover, it is important to achieve harmonization of consumer protection laws and regulations on a level enabling regulators to take enforcement actions, against influencers who infringe upon these rules.

The effectiveness of legislation depends among other factors on its enforcement. The enforcement of consumer rights faces various challenges, not exclusive to influencer marketing per se. Consumers may not always be aware of their rights or may struggle to identify unlawful practices, especially when it comes to misleading omissions, where not all relevant information is disclosed, as elaborated earlier. Therefore, a special need for international cooperation is evident, considering the international nature of influencer activity.

The Consumer Protection Cooperation Network (CPC) introduced with the Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (CPC Regulation) offers opportunities for enforcing regulations on an EU-wide scale by promoting cooperation among national authorities and coordinated investigations or enforcement at the EU level (*European Commission, 2020*). This strengthens enforcement against multinational platform providers or influencers with international reach. However, it would impact the landscape much more effectively if the dedicated legislation applicable to influencers had been in place, as elaborated in Chapters 3.1 and 3.2.

An additional method to assist authorities in their monitoring efforts involves promoting the development, training, and recognition of trusted flagging organizations under the forthcoming Digital Services Act (DSA). These organizations, for example, consumer groups, can serve as valuable resources for understanding market dynamics, as well as for the development and utilization of technologies. Similar to regulatory bodies, consumer organizations require technical expertise and adequate resources to effectively fulfill their roles (Digital Services Act Proposal, 2020, Article 19). Still, as elaborated in Chapters 3.1 and 3.2 this may be insufficient to tackle influencer activity risks posed to consumers without a dedicated legal framework.

Considering the laid out, below are proposals that may be implemented in international cooperation in the context of influencer activity:

Information sharing: Regulators from different countries can share information about potential violations of consumer protection laws and regulations. This can help regulators to identify and investigate potential violations more effectively.

Joint investigations: Regulators from different countries can conduct joint investigations into cross-border influencer marketing campaigns. This can help to ensure that all relevant evidence is gathered and that all relevant parties are held accountable.

Mutual enforcement: Regulators from different countries can enter into mutual enforcement agreements. This would allow regulators in one country to enforce judgments against influencers who are based in another country.

International harmonization: Regulators can work together to harmonize consumer protection laws and regulations related to influencer marketing. This would make it easier for regulators to take enforcement action against influencers who violate these laws and regulations.

By taking these steps, regulators can improve their ability to enforce consumer protection laws and regulations in the context of influencer marketing and protect consumers from unfair and deceptive practices.

CONCLUSIONS AND PROPOSALS

Conclusions

The challenges of enforcing consumer protection laws and regulations in the context of influencer marketing are complex and multifaceted. However, three key challenges stand out:

1. Influencer may be defined as an individual, who publishes on their platforms, mainly social media, self-created content and personally participates in it, following a specific brand-provided script to endorse and promote a brand's product utilizing their authority and reputation in commercial purposes.
2. Influencer activity is the activity on creating and publishing personal content, primarily on social media platforms, that follows a brand-provided script to endorse and promote a brand's product. This activity leverages the influencer's authority and reputation for commercial purposes.
3. Influencer activity may pose risks to consumers in the field of deceptive advertising, unfair commercial practices and product safety and there are cases demonstrating the stated.
4. There is a set of international, European and national soft law instruments that may be used as a basis for introduction of influencer dedicated laws and regulations. While such instruments are practically unenforceable, they may serve well as a reference for the future more official instruments of law.
5. European Union *acquis* provides for the requirements in the field of consumer protection and advertising and marketing that may be applied to influencers. However, their applicability may be argued on a case-by-case basis. Introduction of more specific requirements addressing the influencer activity directly would be more beneficial for the protection of consumers in the influencer activity.
6. Influencer marketing campaigns can be complex and difficult to track, making it difficult for regulators to identify and investigate potential violations of consumer protection laws and regulations. This is especially true in the context of cross-border influencer marketing campaigns, where influencers may be based in one country but target audiences in another country.
7. Influencers tend to not disclose their relationships with brands, making it difficult for consumers to identify and avoid misleading or deceptive advertising. Additionally, the global reach of influencer marketing can make it difficult for regulators to identify and investigate potential violations.

8. The cross-border nature of influencer marketing campaigns makes international cooperation essential for effective enforcement of consumer protection laws and regulations. Regulators need to be able to share information and coordinate enforcement efforts across borders. Additionally, there is a need for international harmonization of consumer protection laws and regulations for regulators to take enforcement action against influencers who violate them.

Proposals

To address the challenges of enforcing consumer protection laws and regulations in the context of influencer marketing, the following proposals are made:

1. Regulators should invest in new technologies and tools to help them monitor and enforce compliance. This could include developing automated systems to identify potential violations of consumer protection laws and regulations, and using social media intelligence tools to track the activities of influencers.
2. Regulators should develop and implement clear and concise guidelines for influencers and brands on the disclosure of relationships and the promotion of products or services. These guidelines should be based on international best practices and should be tailored to the specific needs of the influencer marketing industry.
3. Regulators should work together to develop and implement international cooperation mechanisms to address cross-border concerns. This could include establishing joint enforcement task forces, sharing information about potential violations, and entering into mutual enforcement agreements.

LIST OF REFERENCES

- Treaty on European Union and the Treaty on the Functioning of the European Union dated 26 October 2012. Official Journal C 326 , 26/10/2012 P. 0001 – 0390.
- European Parliament and Council, 12 December 2017, Regulation (EU) 2017/2394 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004. OJ L 345, 27.12.2017, p. 1–26.
- European Parliament and Council, 11 May 2005, Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council. OJ L 149, 11.6.2005, p. 22–39.
- European Parliament and Council, 25 October 2011, Directive 2011/83/EU on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (L 304/64). OJ L 304, 22.11.2011, p. 64–88.
- European Parliament and Council, 27 November 2019, Directive (EU) 2019/2161 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules (the Omnibus Directive). OJ L 328, 18.12.2019, p. 7–28.
- European Parliament and Council, 10 March 2010, Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services. OJ L 95, 15.4.2010, p. 1–24.
- European Parliament and Council, 8 June 2000, Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'). OJ L 178, 17.07.2000 P. 1 – 16.
- Proposal for European Parliament and Council Regulation on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC. Internet access: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020PC0825>.

- Boneta, A. R. (2023). *Legal analysis of the activity of influencers in social networks: surreptitious advertising*. Pamplona: Universidad Publica de Navarra.
- Dagher, A (2023). *The Influencers and the Influenced: Effects of Social Media Influencers on Enforcement of Trademark Law in the U.S. and Europe* [interactive], Emory Int'l L. Rev. 741. Internet access: <https://scholarlycommons.law.emory.edu/eilr/vol37/iss4/5>.
- Goanta, C., Ranchordás S. (2019). *The Regulation of Social Media Influencers: An Introduction*. Groningen: University of Groningen Faculty of Law Research Paper Series.
- van Dam (ed.) (2005), C. *Unfair Commercial Practices*. London: British institute of International and Comparative Law.
- Morteo I. (2018). *To Clarify the Typification of Influencers: a Review of the literature*. Riverside: CLADEA 2017.
- Gupta, A. (2023). Deceptive advertising, regulation and naive consumers. *International Journal of Industrial Organization*, 91.
- Trzaskowski, J, (2018) Identifying the Commercial Nature of ‘Influencer Marketing’ on the Internet. *Scandinavian Studies in Law*, 65, pp. 81–100.
- Liang, S. (2022). *A Comparative Study of Consumer Protection Regulation in the Case of Online Influencers' Hidden Advertisement: Towards the Development of a Universal Regulatory Framework*. Chulalongkorn University Theses and Dissertations (Chula ETD), 5754.
- Bundesgerichtshof, Judgment of 09 September 2021 – I ZR 90/20, I ZR 125/20, I ZR 126/20.
- Peek & Cloppenburg* [CJEU], No. C-371/20, [02.09.2021]. ECLI: EU:C:2021:674.
- Commission Notice: Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market dated 29 December 2021. (2021/C 526/01). Internet access: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1229\(05\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1229(05)&from=EN).
- European Commission. Consumer Protection Cooperation Network (CPC). Internet access: https://single-market-scoreboard.ec.europa.eu/governance-tools/consumer-protection-cooperation-network-cpc_en.
- EASA (2023a). EASA About Us Leaflet. Internet access: <https://www.easa-alliance.org/publications/easa-about-us-leaflet-2023/>.

- EASA (2023b). EASA Best Practice Recommendation on Influencer Marketing Guidance. Internet access: https://www.easa-alliance.org/publications/best-practice-recommendation-on-influencer-marketing-guidance_v2023/.
- EASA (2002). EASA Common Principles and Operating Standards of Best Practice. Internet access: <https://www.easa-alliance.org/publications/easa-common-principles-and-operating-standards-of-best-practice/>.
- EASA (2002). EASA Best Practice Self-Regulatory Model. Internet access: <https://www.easa-alliance.org/publications/easa-best-practice-self-regulatory-model/>.
- International Chamber of Commerce (2018). ICC Advertising and Marketing Communications Code, Art. 7—Identification and Transparency. Internet access: <https://iccwbo.org/news-publications/policies-reports/icc-advertising-and-marketing-communications-code/>.
- ICPEN (2016). International Consumer Protection and Enforcement Network (ICPEN) Guidelines for Digital Influencers. Internet access: <https://icpen.org/sites/default/files/2017-06/ICPEN-ORE-Guidelines%20for%20Digital%20Influencers-JUN2016.pdf>.
- Valstybinės vartotojų teisių apsaugos tarnybos direktorius (2019). Įsakymas dėl reklamos žymėjimo socialinėje erdvėje gairių patvirtinimo. Internet access: <https://www.vvtat.lt/doclib/agrfohqpahi4j42rsxvzzk5dvuzwrucl>.
- ARPP (2022). Digital Advertising Communication Code V5. Internet access: https://www.arpp.org/nous-consulter/regles/regles-de-deontologie/digital-advertising-and-marketing-communications-code/#toc_1_2.
- Federal Trade Commission (2012). Skechers Will Pay \$40 Million to Settle FTC Charges. Internet access: <https://www.ftc.gov/news-events/news/press-releases/2012/05/skechers-will-pay-40-million-settle-ftc-charges-it-deceived-consumers-ads-toning-shoes>.
- Reuters, United Kingdom (2007). Colgate censured the advert. Internet access: <https://www.reuters.com/article/uk-britain-colgate-idUKL1654835620070117/>.
- Osborne, C. (2007). Colgate's '80% of dentists recommend' claim is under fire. Internet access: <https://marketinglaw.osborneclarke.com/retailing/colgates-80-of-dentists-recommend-claim-under-fire/>.
- ASA (2018). ASA Ruling on Colgate-Palmolive (UK) Ltd. Internet access: <https://www.asa.org.uk/rulings/colgate-palmolive--uk--ltd-a18-461847.html>.

- Xie, T. (2023). Health influencers are gaining notoriety for lies and lawsuits over deceptive marketing and claims that are too good to be true. Internet access: <https://fortune.com/2023/09/22/health-influencers-lies-lawsuits-deceptive-marketing/>.
- DeGregory, P. (2022). Women say the popular F-Factor diet gave them serious health issues: lawsuit. Internet access: <https://nypost.com/2022/10/12/new-suit-claims-f-factor-diet-causes-serious-health-issues/>.
- Rosman, K. (2022). In a Lawsuit, Eight Women Claim the F-Factor Diet Made Them Sick. Internet access: <https://www.nytimes.com/2022/10/12/style/f-factor-diet-lawsuit.html>.
- Competition and Markets Authority (2018). Celebrities and social media stars investigated for not labelling posts. Internet access: <https://www.gov.uk/government/news/celebrities-and-social-media-stars-investigated-for-not-labelling-posts>
- Zulueta Jr., R. C. (2019). The Lack of Transparency is Hindering Influencer Marketing. Internet access: <https://medium.com/paid-exposure/the-lack-of-transparency-is-hindering-influencer-marketing-cdbb04f2242e>.
- Rannard, C. (2021). An Influencer Price Calculator and How Brands Can Leverage Its Potential for Their Next Collaboration. Internet access: <https://aithority.com/technology/martech/an-influencer-price-calculator/>.

SUMMARY

The Activity of Influencers and Consumer Protection (Consumer Protection in the Activity of Influencers)"

Daniil Zaliznyi

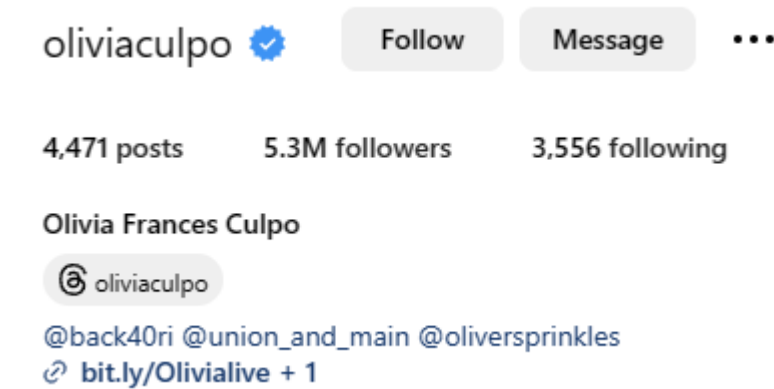
This master thesis provides analysis of the activity of influencers and the consumer protection in the context thereof (consumer protection in the activity of influencers). As the activity of influencers is the very modern phenomena, this master thesis provides for the overview of the applicable definitions of the influencers and influencer activity, offering a generic one: an individual, who publishes on their platforms, mainly social media, self-created content and personally participates in it, following a specific brand-provided script to endorse and promote a brand's product utilizing their authority and reputation in commercial purposes. The thesis further elaborates on the risks of the influencer activity as posed to the consumers, identifying as the main ones: lack of transparency and disguised advertisement that may lead to various adverse consequences for consumers.

The thesis analyzes international soft law and self-regulation instruments that may be applicable to consumers, including made by such organizations as EASA and ICC. Further, analyzed European Union consumer protection acquis is analyzed and its applicability to influencers. In addition, other acts in the advertising domain of the European Union are analyzed in respect of their applicability to influencers. The thesis outlines main concerns and the ways to remedy them: including introduction of dedicated regulations, enhancing transparency of the influencer activity and the necessity of international cooperation to tackle the risks posed by the activity of influencers in the consumer protection.

ANNEXES

Annex I: Olivia Culpo Instagram (Influencing Tool)

1. Snip of Olivia Culpo's Instagram details:



2. Olivia Culpo endorsing F-factor¹:



¹ Available at: <https://www.instagram.com/reel/CnAWSUNBeZ4/>.

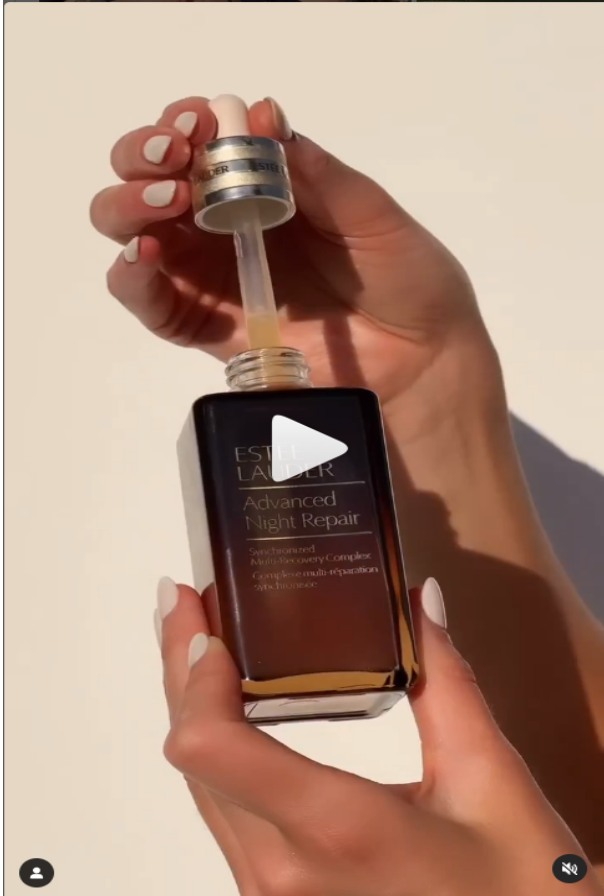
3. Olivia Culpo endorsing F-Factor:





Tanya Zuckerbrot and Olivia Culpo go beauty food shopping - Nutrition Tips

 **F-Factor**
1.64K subscribers [Subscribe](#)  26  [Share](#) 


4. Olivia Culpo promoting cosmetic substance:




 **oliviaculpo** • Follow
Original audio

 **oliviaculpo** • Let's talk about the Estée Lauder Advanced Night Repair Serum 🍷 @esteelauder #Esteepartner
14w


For you ▾


 **nadiakismet** Do you really use it or is it sponsored? I've been eyeing this and it's pricey so I'm hoping this is an honest review.
14w 24 likes Reply


— View replies (19)


 **kvoni** are those her natural lashes? 🤔👀👀👀
4w Reply





— View replies (1)

 **lucychuuu** I've been using this for years. Im in my 50's and would highly recommend
14w 9 likes Reply


 **thejeanniemai** • Love 🍷
14w Reply

 **brooksnader** • Skin goals
14w 8 likes Reply

 **magnn** Is great I been using it for 20 years and ...

27,245 likes
September 1

 Add a comment... [Post](#)

5. Olivia Culpo promoting energy drink:



Annex II: Forms of disclosure of the sponsored promotions²

Bulgarian (български)

- #реклама/ad
- #спонсорирано/sponsored
- #безплатни мостри/free samples
- #в партньорство c/in partnership with

Dutch (Nederlands)

Belgium:

- #reclame
- #advertentie
- #gesponsord
- #productplaatsing
- #publiciteit

Netherlands:

- #ad
- #spon

² EASA (2023). Best Practice Recommendation on Influencer Marketing Guidance. Available at: <https://www.easa-alliance.org/wp-content/uploads/2023/05/EASA-Best-Practice-Recommendation-on-Influencer-Marketing-Guidance.pdf>.

- Deze video bevat reclame voor ...
- Deze video bevat een betaalde samenwerking met ...
- heeft mij betaald om deze video te maken
- Advertentie
- Advertorial
- Betaalde promotie
- Betaald partnerschap met ...
- Samenwerking met @...

English

Ireland:

- #ad
- #gifted (only to be used when receiving unsolicited products or services, and the brand has not influenced the post)

United Kingdom:

- #advertising
- #ad
- #advert
- #advertisement
- Advertisement feature

French (Français)

Belgium:

- #publicité
- #placementdeproduit
- #sponsorisé

France:

- #Publicité
- #Collaborationcommerciale