

LEGALLY DEFINING THE ROLE OF INFLUENCERS IN SOCIAL MEDIA ADVERTISING

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As a result of buying the promoted goods or services, consumers are being exposed to a rising amount of deceptive advertising content, which is very often promoted by influencers in social media. The quality or advantages of using these products and/or services are frequently exaggerated in these advertising statements, since today it has become very easy to manipulate images and videos with the help of applications that are widely available on the Internet. Consumers, on the other hand, are not always sure whether these are genuine personal recommendations or commissioned advertisements.

Fortunately, aware of all the problems that such misleading advertising can cause for consumers, there are many foreign government initiatives to regulate this area legally. Legislation has recently been introduced in many countries (such as France, United Kingdom, and Norway), to which influencers have an obligation to disclose any connection to the business, products, or services that are being offered (and to adequately indicate and mark paid advertisement). Also, these laws mandate that any image in which the shape, size or skin of the body has been altered by retouching or other modifications, must contain an “edited” mark. If there is a violation, influencers can face a fine or prison sentence of up to two years, or even a complete ban on their business. This obligation is emphasized in numerous rules and laws in developed countries as an effort to protect customers from unfair or deceptive activities when purchasing and using goods and services. This is certainly a path that should be followed by other countries, including the Republic of Serbia, in which, so far, little attention has been paid to this problem.

KEYWORDS: *deceptive advertising, social media influencers, consumers, influencer marketing laws.*

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INTRODUCTION

The reality is that as a society, we will depend more and more on technology (Safeddine & Baltezarević, 2016). Virtual worlds may be made to resemble the actual world thanks to modern information and communication technologies (Jovanović *et al.* 2015). Without the usage of Internet-based technologies, it is difficult to envision how a person might function in contemporary life today. Daily interactions in the digital world enable individuals to communicate, entertain themselves, and conduct business. They penetrate all aspects of society. In contrast, a big number of people are less likely to be technologically skilled and digitally literate, which increases their vulnerability to various forms of cybercrime (Baltezarević, 2022). Digital marketing and communication channels are efficient, inexpensive, and quick solutions for online marketing and promotion that don't come at a large expense to businesses (Ravić *et al.* 2022). Mass communication has emerged as a key method of information exchange, as well as a source of services that offer practical insights for daily life. Due to the mass media, knowledge about an event could be made available at the time it occurred, regardless of how far away the recipient was. The world's mass distribution networks are getting more and more international, and broadcast information is now available in a smaller area. At the same time, the media has shown itself to be a highly formidable tool for communication, one whose potential may be exploited for everyone's good as well as various sorts of manipulation (Baltezarević & Baltezarević, 2022a).

Social media influencers are best suited to broadcast product information and the latest promotions for online followers by utilizing a variety of social media platforms such as Facebook, Instagram, Twitter, and YouTube (Markethub, 2019). Recently, however, there have been more and more cases of social media influencers using deceptive ads, causing financial and emotional harm to their followers. Simply defined, deceptive advertising convinces customers to purchase a product not because it is superior to other options on the market but only because it is positioned as such. Many consumers, meanwhile, are not naïve and are capable of spotting fraud. Consumers who respond positively to deceptive advertisements, on the other hand, are more likely to suffer financial and emotional losses (Sheehan, 2013).

Today, naïve consumers who lack a certain level of digital knowledge and skills may be uncertain about whether a particular product or service is a genuine recommendation from an influencer or a paid advertisement, or whether a picture or video has been edited to make the subject or the products appear more appealing than they actually are. Influencers frequently do not disclose the nature of their relationships with brands or fail to label this commissioned content as paid advertising, which is also the situation with the Republic of Serbia. Thankfully,

there are becoming more efforts (mainly in developed nations) to regulate this area, which would primarily safeguard consumers and ensure that those who violate the set standards face appropriate legal repercussions.

1. SOCIAL MEDIA INFLUENCERS: THE FINE LINE BETWEEN TRUST AND DECEPTION

Influencers are a new form of independent third party who impact audience sentiments through blogs, tweets, and other social media in the age of the ubiquitous Internet (Freberg *et al.* 2011). In the digital context, influencers have a significant impact on consumer decision-making because their followers view them as reliable information sources, largely due to their subject-matter expertise (Baltezarević & Baltezarević, 2022b). If influencers have a strong reputation online, are well-liked by other internet users, and are charismatic, consumers will trust their recommendations (Kwiatk *et al.* 2021). Influencers frequently create videos by themselves, occasionally with the assistance of a small production staff, but the majority of the time it is a one-man show (Hrnčárová, 2017). They are broadly divided into four categories: mega-influencers (with more than one million subscribers), macro-influencers (with 100,000 to one million subscribers), Micro-influencers (with 1,000 to 100,000 subscribers), and Nano-influencers (with less than 1,000 subscribers) (Vodak *et al.* 2019).

Consumers' judgment is impacted when advertisers use deceptive advertising tactics to persuade them to trust their statements. This type of advertising either compels customers to pay more for goods or services they don't need or steers them toward unintended purchases (Kariyawasam & Wigley, 2017). According to certain interpretations, deceptive advertising refers to obfuscation or a lack of information regarding the characteristics of the product and its potential applications (Hasan *et al.* 2011). Deceptive advertising is prohibited in many countries; in fact, it is also unlawful to deceive consumers about a product's composition, production, price, or location of origin. The term "deceptive" mostly refers to the misrepresentation of information regarding a good or service and how to use it. Such incorrect information may influence consumers to use inaccurate information to make poor decisions (Doborji & Hamed, 2016).

Experts believe that deceptive ads will continue to be a big issue until efficient monitoring tools are produced and governments impose stronger controls on online advertising (Statista, 2023). Consumer-targeted marketing materials are increasingly exaggerated or twisted. There is no assurance that a celebrity would utilize or favor a good or service just because they promote it. However, the consumer's perception will probably change after such a recommendation, which largely influences their

purchasing decision (Breakaway Staff, 2022). Many customers are unaware of this type of deceptive social media advertising and interpret it for the truth rather than traps set by social media influencers. Teenagers' persistent need to fit in and adhere to social norms is evident in the internet environment. They buy all the fake products because they are literally obsessed with trying to look exactly the same as the slim individuals they see. A lot of applications today support photo modification, such as blurring and beauty filters, which are available on platforms such as Tik Tok and Instagram. Influencers use these apps to cover up the actual texture and blemishes in their skin. Furthermore, many cosmetic preparations marketed online during deceptive advertising use fogging filters to mislead buyers into believing that a certain product can provide them with an equivalent effect (Halesowennews, 2023). The Competition and Consumer Protection Commission (CCPC) found that just fifty percent of influencer posts on social media are clearly marked. Nearly 80% of respondents think it's simple to spot influencer ads. Focus group study has found that, contrary to popular belief, consumers are significantly more receptive to deceptive advertisements. According to the CCPC, nearly 70% of customers who follow influencers on social media claimed to have bought a product as a result of the influencer's promotion. From this group, 25% of respondents said they afterwards felt deceived and cheated regarding the products (Slattery, 2022).

Although the positive influence of influencers in advertising is indisputable, their unethical behavior can threaten the company's reputation, but also negatively affect the cyber security of Internet users. For many businesses, developing strategies for reestablishing consumer loyalty and creating trust is a need if they hope to remain in business. Legislative support is obviously necessary to secure cyber security, which is becoming more and more global in scope and represents a necessity in defense against cyberthreats to the states themselves that pose a menace to their economic and political stability (Baltezarević & Baltezarević, 2021).

Covert advertising (product placement) has been around for a while, most frequently showing up in movies and television shows in the past. However, it is now equally represented in both educational and entertaining content across all media. The media's situation is extremely complicated since, within the market, they are caught between the demands of significant advertisers and those of viewers, readers, and listeners (who are also customers) as well as governmental rules (Baltezarević & Baltezarević, 2019). Given the importance of this marketing communication practice, how little is known about what consumers think about covert product advertising in new media. It is still unknown how consumers react and interpret these hidden business practices in everyday life (*Ibid*). In any event, it should be noted that this strategy is gaining traction on social media and is gradually becoming one of the activities of influencers, necessitating the implementation of specific legal actions to govern this issue.

2. LEGAL REGULATION OF INFLUENCER ACTIVITIES ON SOCIAL MEDIA

The Digital Markets Act and the Digital Services Act are two regulations that have been passed in Europe to regulate digital business activities within the EU to promote accountability and fairness online. Influencers will be held more accountable for the content they publish online under the Digital Services Act as content producers. Influencers will need to make sure that their content is appropriate and is not deceptive or illegal, as online social media platforms need to be more transparent about how their content algorithms operate and are required to monitor posts and remove them (if necessary) or even suspend accounts. Both measures have been approved by the European Parliament and are awaiting formal approval by the European Union Council (Europe-consommateurs, 2022).

The proposed definition of influencers in the French law is “individuals or legal entities who, for a fee, mobilize their notoriety with their audience” to promote products and services online. The law restricts or outright forbids the sale of a number of medical equipment as well as the promotion of several procedures, like cosmetic surgery and therapeutic abstinence. Additionally, it prohibits the sale of nicotine-containing items, prohibits influencers from promoting sports forecast subscriptions, and restricts the promotion of money-investing games to platforms that are technically inaccessible to minors. Up to two years in prison and a fine of 300,000 euros are the possible consequences for non-compliance (Euronews, 2023). Influencers must disclose that their communication is the result of a partnership with a brand or merchant and that they are compensated to promote the goods they represent, in accordance with article 20 of the law on trust in the digital economy and the transposition of Directive 2005/29/CE in France. This reference may occur orally, in writing, or through tools built into social media platforms (links). If the influencer makes a verbal mention of the collaboration, such as in a video, he or she must make another mention of it in the post’s description and in the first three hashtags. Influencers in France must uphold human dignity. They must not outrage their audience’s sensibilities, or denigrate another person based on physical, radical, or religious considerations. Children and teenagers who are the target audience for the promoted content must be made aware that parental permission is required. Additionally, influencers are forbidden from engaging in unfair competition, which includes disparaging the goods or services of a rival brand or another influencer (Europe-consommateurs, 2022).

It is crucial that the user recognizes that some content is actually advertising, according to updated guidelines on influencer marketing released by the Swedish Consumer Agency. The right terms should be utilized to indicate that the content is being advertised, it is highlighted in the instructions. It is said that the word

“advertisement” is used instead because the phrase “cooperation” is not considered sufficient or unambiguous. Editorial content and ads must be treated separately under German law. In the UK, non-identifiable advertising is strictly forbidden, and there is even the possibility of prison time (in France, the punishment is up to two years). It must be identified as “sponsored content” if the brand does not have editorial control; otherwise, it is an “advertisement”. (Ekşioğlu, 2021a). In 2022, Norway passed new regulations requiring a label on advertisements using photoshopped bodies, skin, or faces, as well as on sponsored content from influencers. Violation of the new rule can lead to fines, if it is not marked that the person in the picture has been changed (retouched or edited). The legislation’s original intent, especially for children and young people, was to lessen social pressure to adhere to aesthetic standards. However, no brands or influencers have yet received fines for breaking the new legislation (Zubi, 2023).

The Influencer Marketing Code of Practice was been released by the Australian Influencer Marketing Council (AIMCO). This code is intended to reflect the organization’s guiding principles of accountability, transparency, and best practices. It was developed to have an impact on everyone involved in the influencer marketing sector, such as PR firms, talent agents, influencers, and even platform service providers. There are four sections to the Code: a) Selection and Qualification - A company or marketer must have access to an influencer’s audience information and demographics in order to verify legitimacy. b) Advertising disclosure - If the influencer uses the video platform to promote a brand, this information must be made clear within the first 30 seconds of the video. c) Contracts and briefs - It is advised that each influencer marketing campaign be accompanied by a legally binding contract between the brand/intermediary and the influencer (suggested areas include: Creation, Use, Moderation and Review of Intellectual Property Rights; Brand Reputation and Security; Compliance with Legal or by the Industrial Code; Fee. d) Metrics and reporting - To ensure consistency, both the influencer and the brand must offer metrics and the source of those metrics (Marshall, 2022).

The Federal Trade Commission (FTC) in the US has the responsibility of making it obvious to consumers which recommendations are legitimate and which are not. To safeguard the interests of all parties concerned, the FTC has developed a guideline titled “Disclosures 101 for Social Media Influencers.” The followers should be able to clearly understand the influencer’s connection to the brand. Influencers should disclose any “material connections” they may have to a brand. Therefore, even if influencers post from outside the country, American social media regulations still apply as long as it has an impact on their consumers. A hyperlink must be used in conjunction with the main content in order to be seen. For textual explanations, the disclosure must be prominently displayed and completely readable so that customers can see it without clicking “more.” The

disclosure for video content should be included in the video itself (language should be clear, calm, and geared toward the intended audience). Because not all viewers will watch the entire live stream, the brand connection should be emphasized several times during live streams (Ekşioğlu, 2021b).

Influencers that promote both domestic and international products are widely prevalent in Serbia. Certain is the need for strict regulation of this expanding industry. The status of influencers and their activities are not specifically regulated in Serbia, despite the fact that they are becoming increasingly popular. There are, however, a few acts that apply to this scenario. The Contracts and Torts acts, a general act on commercial duties, may be the most significant legal provision controlling influencer activities. Since influencers are frequently employed to “persuade” customers to buy a certain good or service, consumer protection law is also pertinent (Misojčić *et al.* 2021). The mark “paid partnership” is not required in the Republic of Serbia, despite the fact that it is crucial for the end user to know that the influencer has been compensated financially for promoting a specific product because it influences how the consumer, the end user, will feel about it. The inference that can be made is that domestic legislation are still insufficiently regulating the field of social media marketing, specifically the use of influencers for advertising, and that laws will undoubtedly be added to further govern this sector in the future. Regarding tax duties, there is currently no system in place to monitor and perhaps penalize people who use social media platforms for sales or advertising without registering their activity and without paying taxes in connection with those sales or advertisements (Nikolić, 2022). The Law on Advertising is also a part of this series of laws, and it lays forth general and particular guidelines for sponsorships, the substance of advertising messages, and locations of advertisements. One must consult the Law on Contracts and Torts because there is presently no specific law in Serbia that governs the legally binding connection with influencers. Contracts for the provision of services are governed by this law, among other things. Influencer engagement on the basis of so-called “Master Influencer Agreements,” which are not recognized by Serbian law, is becoming more widespread in international practice. The scope of the influencer’s activity is outlined in these contracts in clear and precise detail. They also specify the social media channels, the timing, and the manner in which the influencer will showcase the person, object, event, or place. This agreement also describes conflicts of interest and the necessary steps to be taken if they arise, as well as how copyright and intellectual property issues should be handled (Misojčić *et al.* 2021). It is significant to note that, despite the existence of some monitoring methods, they are still difficult to put into practice on the Internet, which is where influencers naturally congregate. No matter where new activities occur, the law must find a means to govern and control them through its protection and control mechanisms (*Ibid.*). Article 45 of the Law on

Advertising defines online advertising as “advertising on an internet presentation, social network, application, i.e., through another form of internet communication, when the content of the advertising message unmistakably shows that it is aimed at the recipients of the advertising message from the Republic of Serbia and that the advertised goods or services can be purchased.” How far the law may be applied to novel online advertising formats is the real question, though. The law against advertising is not inapplicable, but enforcing it daily while also trying to keep up with all the new kinds of online expression that emerge is quite challenging (Sharefoundation, 2019).

3. INFLUENCERS’ ROLE IN CYBERBULLYING PREVENTION

It is crucial to note that influencers, in addition to their daily activity on social media, can be an essential factor in resolving the cyberbullying problem. Because of their prominence and the trust that their followers have in them, they can not only contribute to anti-cyberbullying campaigns, but also communicate directly with their followers about these incidents. In today’s social media, cyberbullying might be viewed as a disease that is spreading. Text messages, online forums, chat rooms, and social networking sites are all examples of digital communication mediums where cyberbullying occurs. Cyberbullying, in contrast to bullying that occurs in person, takes advantage of the internet’s anonymity and the ability to instantly disseminate rumors, gossip, images, or (mis)information to huge audiences (Dixon, 2023).

Facebook and social apps for mobile devices were often used for cyberbullying (Redmond *et al.* 2018). According to statistics, nowadays, Instagram is the platform where people have experienced the most cyberbullying and cyberstalking; according to a survey, approximately 42% of those surveyed experienced this kind of harassment. Cyberbullying victims may experience a variety of unfavorable mental health outcomes, including anxiety, depression, and suicidal thinking. It can also harm a person’s online reputation, having long-term consequences in both their personal and professional lives (Singh, 2023).

Cyberbullying, also known as online bullying, is a problem that many children and teenagers face. Influencers have the potential to successfully educate their young followers about bullying prevention. They might spread these ideas by sharing a personal experience with bullying (Tilburguniversity, 2023). Influencers frequently receive negative comments online, that are strongly judgmental and provocative in nature (Campbell-Smith & Bradshaw, 2019). Since Twitter allows for open communication between the target market and influencers, direct attacks on

them are more common on this social media site (Bastos & Mercea, 2018). Narrative techniques of influencers, which delicately weave responses to cyberbullying into a personal journey and expose the cold, hard truths of cyberbullying in the anti-bullying campaigns they support, successfully capitalize on influencers' allure to draw in young audiences. Influencers are able to turn cyberbullying incidents into educational moments by launching discussion and action through appealing and relatable personal confessions (Johnston, 2017). Influencers have proven to be very useful in anti-cyberbullying campaigns. They serve as inspirational role models who offer recommendations and solutions to reduce cyberbullying. Using influencers to change the behavior of bystanders and bullies is becoming increasingly popular across a number of social media platforms (Nickerson *et al.* 2016).

Studies showed that social media had a favorable effect on adolescents' behavior (Smit *et al.* 2020) and mental health (Nesi, 2020). Influencers post a lot of content on social media, but if that content includes specific personal information and details, their self-disclosure is strong, which might give their followers a sense of perceived similarity. It entails voluntarily disclosing sensitive personal information to another person, such as feelings, ideas, values, and beliefs (Leite & Baptista, 2021). Influencers can urge others to modify their behavior by using motivating words that focus on a specific problem and offer ideas to overcome such situations (Koinig, 2022). In the case of cyberbullying, such comments can serve as a preventive step, but influencers can also speak directly with the victim, at the time of the incident, and report the cyberbullying act to the appropriate institutions (ConnectSafely, 2020).

CONCLUSION

Consumers frequently come across influencers in the digital world whose content is deceptive, connections to the businesses whose brands they recommend are unclear and graphical representations of people, products, and services are embellished by the use of a variety of applications (for video and image manipulation). When customers realize they have been duped after buying the product, this can lead to both financial and emotional problems. To protect consumers and ensure that those who violate these laws are suitably penalized, there has recently been an international effort to legally regulate such activities.

Given that there is potential for internet influencers to be viewed as advertisers in a legal sense, the Republic of Serbia needs to respond to any potential criminal activity they may be performing in connection with online advertising and educate them in that area. Given that consumers ultimately pay the price for

any illegal and unethical influencers' behavior in advertising, it should be given some thought to outlawing certain types of online advertising, including new forms of advertising (through affiliate marketing, advertorials, etc.). This will encourage the use of legal behavior. Product placement and covert advertising in children's media should receive special attention, and violators should face harsher penalties. It is undoubtedly a good thing that, once this area is legally regulated in Serbia in the near future, there will be a plethora of laws and practices from various foreign nations that will serve as useful guidelines for legislators in passing the most effective laws that will regulate the business of influencers and the protection of Serbian consumers.

Finally, although influencers' activities are frequently debated, it is indisputable that they can contribute to the eradication of cyberbullying due to their popularity and the trust that their followers place in them. They can play a major role in the suppression of cyberbullying because they themselves are frequently victims of such phenomena on the Internet. By sharing their experiences, taking part in anti-cyberbullying campaigns, educating others and providing specific advice in open forums or direct messages to a follower who is experiencing this problem, as well as by reporting such acts to the relevant authorities, they can play an essential role in resolving these challenging issues.

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PRAVNO DEFINISANJE ULOGE INFLUENSERA U OGLAŠAVANJU NA DRUŠTVENIM MREŽAMA

Kao rezultat kupovine promovisane robe ili usluga, potrošači su izloženi sve većoj količini obmanjujućih reklamnih sadržaja, koje vrlo često promovišu influenseri na društvenim medijima. Kvalitet ili prednosti korišćenja tih proizvoda i/ili usluga često se preuveličavaju u tim reklamnim izjavama, pošto je danas postalo veoma lako manipulirati slikama i video zapisima uz pomoć aplikacija koje su široko dostupne na Internetu. Potrošači, s druge strane, nisu uvek sigurni da li su to stvarne lične preporuke ili naručene reklame.

Na sreću, svesni svih problema koje ovakvo obmanjujuće oglašavanje može da izazove potrošačima, postoji mnogo inicijativa stranih vlada da ovu oblast pravno

regulišu. To je nedavno urađeno u mnogim zemljama (kao što su Francuska, Ujedinjeno Kraljevstvo i Norveška), a u kojima influenceri imaju obavezu da otkriju svaku vezu sa poslovanjem, proizvodima ili uslugama koje se nude (i da na odgovarajući način naznače i označe da je u pitanju plaćena reklama). Takođe, ti propisi nalažu da svaka slika na kojoj je oblik, veličina ili koža tela promenjena retuširanjem ili drugim modifikacijama mora da sadrži oznaku da je slika preuređena. Ako prekrše propise, influenceri se mogu suočiti sa novčanom kaznom ili zatvorskom kaznom do dve godine, pa čak i potpunom zabranom njihovog poslovanja. To je propisano kako bi se potrošači zaštitili od nepoštenih ili obmanjujućih aktivnosti prilikom kupovine roba i korišćenja usluga. To je svakako put koji bi trebalo da slede i druge zemlje, uključujući i Republiku Srbiju, u kojoj se ovom problemu do sada posvećivalo malo pažnje.

KLJUČNE REČI: varljivo oglašavanje, influenceri u društvenim medijima, potrošači, zakoni o marketingu influensera.