

## MISLEADING AND ABUSIVE ADVERTISING FROM THE PERSPECTIVE OF ADVERTISING, MARKETING AND DIGITAL INFLUENCER<sup>1</sup>

### MISLEADING AND ABUSIVE ADVERTISING FROM THE PERSPECTIVE OF ADVERTISING, MARKETING AND DIGITAL INFLUENCE

Luara Cristina Bento BRITO<sup>2</sup>

Ricardo Alexandre Rodrigues GARCIA<sup>3</sup>

#### SUMMARY

This study analyzes consumer vulnerability to advertising practices misleading and abusive in the digital environment, highlighting the responsibility of digital influencers. Advertising, despite its economic relevance, can induce consumers into error, creating false expectations about products and services. The methodology applied was bibliographic research, using the deductive method, based on the Constitution Federal Law of 1988, in the Consumer Protection Code and in the Code of Ethics for Professionals Advertising. The main objective is to raise consumer awareness about their rights and encourage you to report illegal practices to the competent authorities. It is concluded that, despite the legislative evolution, it is still necessary to expand consumer education and oversight in digital environment, ensuring balance in consumer relations.

**Keywords:** Misleading advertising. Abusive advertising. Digital influencer. Consumer rights. consumer. Civil liability.

#### ABSTRACT

This study analyzes consumer vulnerability in the face of misleading and abusive advertising practices in the digital environment, highlighting the responsibility of digital influencers. Advertising, despite its economic relevance, can mislead consumers by creating false expectations about products and services. The methodology applied was bibliographic research

<sup>1</sup> Final course work, presented to the Law course at the Santa Fé do Sul University Center - SP, to obtain the degree of Bachelor of Law.

<sup>2</sup> Student of the 10th Semester of the Law course at the Santa Fé do Sul University Center, UNIFUNEC.

<sup>3</sup>

using the deductive method, based on the 1988 Federal Constitution, the Consumer Protection Code, and the Code of Ethics for Advertising Professionals. The main objective is to raise consumer awareness of their rights and encourage them to report illegal practices to the competent bodies. It is concluded that, despite legislative advances, it is still necessary to expand consumer education and strengthen oversight in the digital environment, ensuring balance in consumer relations.

**Keywords:** False advertising. Abusive advertising. Digital influencer. Consumer law. Civil liability.

## 1 INTRODUCTION

Excessive consumerism characterizes contemporary capitalism and reflects the need for circulation of goods on a large scale. To do so, it is not enough to simply understand the consumer desires; it is necessary to promote products and services strategically, using advertising, which often takes on greater importance than quality itself of the product or service offered.

However, advertising, although essential for market development, can be harmful when used dishonestly. Human creativity should not be stifled, but must be guided by common sense and ethics, recognizing advertising as a tool vital to society, as long as current regulations are respected. Despite this, There are companies and professionals who resort to abusive and deceptive practices, promoting products that do not always meet established technical standards and quality standards.

These practices not only harm the legitimate interests of consumers, but also negatively affect other companies in the sector and violate the principles of free competition, causing distortions in the market and compromising the interests of the State itself, which seeks promote a competitive and healthy environment. Furthermore, it is found that the development technological and the expansion of digital marketing have significantly increased the complexity of consumer relations, making it even more difficult for the average consumer to identify illicit practices.

In the digital age, transformations in the advertising and marketing landscape have been intensified, especially with the advent of social media and the rise of digital influencers, who began to play a prominent role in promoting products and services. These influencers, often without adequate technical training, take on the role of mediators between brands and consumers, attributing their personal credibility to campaigns advertising, which increases both the reach and impact of advertising messages.

However, technological advances have brought new challenges, especially with regard to control misleading and abusive advertising. Such illicit practices cause significant harm to consumer, who, misled, creates false expectations regarding products or services that you intend to purchase. Consumers, often vulnerable and lacking technical knowledge,

end up being an easy target for unrealistic promises and misleading offers, perpetuating a cycle of consumption that is harmful to the community.

The problem of this research lies in the analysis of the impact of misleading and abusive advertising in consumer relations and the civil liability of digital influencers, which have expanded the reach of advertising, but also increased the damage caused by practices fraudulent. The role of consumer protection agencies, as well as self-regulation advertising, becomes fundamental in this context, aiming to guarantee a consumer environment more balanced and transparent.

Given this scenario, the present study has the general objective of discussing ways of raise consumer awareness of their rights, encouraging them to seek out the relevant agencies competent to report illegal practices and demand compensation for damages. As objectives specific, the aim is to analyze the historical and legal process of consumer protection; discuss the role of digital influencers in contemporary consumer relations; and present to the consumer the damages that may arise from exposure to advertising practices misleading or abusive.

The research will be developed through bibliographic review and documentary analysis, using the deductive method, based on the Federal Constitution of 1988, the Consumer Protection Code and the Code of Ethics for Advertising Professionals. The purpose is to contribute to the construction of a more transparent, ethical and responsible, protecting consumers against abuse and promoting loyalty in relationships consumption. Furthermore, it seeks to foster academic and social debate on ethical limits of digital advertising, encouraging the creation of more effective monitoring mechanisms and punishment for abusive practices in the virtual environment.

## **2 HISTORICAL PROCESS AND CONSTITUTIONAL PROCEDURE CONCERNING THE CONSUMER LAW**

4

In Antiquity, the consumer relationship was established directly between the producer and the consumer, characterized by close, personal contact. Artisans not only produced and also marketed their products, creating relationships based on trust and mutual knowledge. With the advent of the Industrial Revolution, this relationship was

transformed: small producers were unable to compete with large industries, that came to dominate the market through mass production and intensive use of machines, shifting the focus from artisanal quality to quantity and industrial efficiency (MELO, 2024).

As a result, the consumer lost proximity to the producer, becoming an agent unknown in the production and negotiation process. Direct negotiation was replaced by practices standardized commercial practices, in which the supplier began to impose the purchasing conditions and sale. Consumer vulnerability worsened, as they no longer had the possibility of personally verify the quality of the product or negotiate your interests directly. In this context, advertising emerged as a link between industrial production and consumer sales final, being used not only to inform, but also to influence and persuade (MORAIS, 2024).

Faced with this new reality, it became necessary to create standards capable of balancing the relationship consumption and protect the most vulnerable party: the consumer. Although consumer protection may seem like a modern phenomenon, its origins date back to ancient times. The Code of Hammurabi, for example, it established clear rules for professionals such as architects, doctors and barbers, providing for obligations and responsibilities in relation to the people who contracted their services. Similarly, the Code of Manu in India, the Constitution of Athens in Greece and, already in the 20th century, the Declaration of Consumer Rights, presented by John F. Kennedy in the United States, in addition to UN Resolution 39/248, which formalized the principle of consumer vulnerability at the international level.

In Brazil, consumer rights did not have specific legislation until the end of the 20th century. The existing rules were scattered throughout the Civil Code, which prioritized asset protection and the market economy, but did not satisfactorily meet consumer needs as a vulnerable party in the legal relationship. Over time, important standards have emerged, such as **Law No. 7,347/1985**, which established the Public Civil Action. However, the broad and specific protection was only achieved with the creation of the **Consumer Protection Code (CDC)**.

The CDC was the result of a democratic process that involved public hearings and broad participation of organized civil society, which called for adequate consumer protection.

The original bill was subject to criticism, amendments, and even presidential vetoes. In 1989, Senator Jutahy Magalhães presented the final project, which was approved in August 1990, becoming the **Law**

**Federal Law No. 8,078/1990**, sanctioned by then-president Fernando Collor de Mello. The Code came into force on March 11, 1991, establishing a new milestone in the protection of Brazilian consumers.

The creation of the CDC represented a great civilizing advance in the legal system national. Before its validity, consumer relations not resolved in the civil sphere were often treated as police matters, due to the absence of specific mechanisms for protection and redress. The CDC introduced innovative devices in the civil spheres, administrative and criminal, offering effective consumer protection instruments. These achievements allowed the consolidation of a balanced and functional system.

The interpretation of the CDC must be carried out in harmony with the principles constitutional, such as the dignity of the human person, national sovereignty, citizenship, equality and free enterprise. These principles guide the application of consumer standards, seeking to ensure protection for the weaker party in the relationship (BRAZIL, 1990). Rizzatto Nunes (2009) states that constitutional principles play an essential role in legal system, acting as superior parameters for the interpretation and application of standards. Similarly, Sérgio Cavalieri Filho highlights that, although the principles grant a certain margin of interpretation, impose limits and mandatory guidelines on the interpreter legal.

Among the fundamental principles of consumer law, the following stand out: the right to information clear and adequate, the right to be heard, the right to choose and the right to safety. Furthermore, include the principle of objective good faith, which governs contractual relations, and the principle of vulnerability, recognizing the consumer's disadvantageous position in the market.

In order to guarantee the implementation of these principles, the **National System of Consumer Protection (SNDC)**, regulated by Decree No. 2,181/1997. The SNDC brings together several bodies and entities, such as state and municipal Procons, Police Stations Consumer Protection Agency (Decon), the Public Prosecutor's Office, the Public Defender's Office, the Small Claims Courts Civil Specials and civil consumer protection organizations, working in a network to protect and guide consumers.

Procon , created in 1976 by the Government of the State of São Paulo, was the first agency Brazilian municipal government dedicated exclusively to consumer protection. Since then, it has been

promoting balance in consumer relations through activities such as customer service to the public, conciliation, supervision, repression of abusive practices and educational actions.

Despite the importance of Procon, other agencies complement this protective network. The Police Station Consumer Protection Agency (Decon), for example, specialized in combating crimes in consumer relations consumption, has jurisdiction provided for in articles 63 to 80 of the CDC, but is still little used by the population. In general, consumers prioritize Procon and Special Courts in search of quick and restorative solutions, leaving aside the criminal sphere.

In the field of advertising, the role of the **National Council of Advertising Self-Regulation (CONAR)**, created in 1980. It is an entity civil, non-profit, responsible for applying the Brazilian Self-Regulation Code Advertising, monitoring and sanctioning advertising practices that contradict the principles of ethics, truthfulness, and transparency. When it detects misleading or abusive advertising, CONAR may recommend changing or suspending the display of the advertisement, contributing to a more ethical and responsible advertising environment.

Thus, it is clear that consumer protection in Brazil is built on pillars solid legal and institutional frameworks, guided by constitutional principles and control mechanisms social, being continually challenged by new market and technological realities.

## 2.1 Misleading and Abusive Advertising

Misleading advertising is characterized by presenting false, distorted or misleading information. incomplete information that misleads the consumer, creating an expectation that will not be corresponded to the reality of the product or service offered. This is a dishonest practice, whose objective is to obtain profit by deceiving the consumer. Abusive advertising, in turn, has a discriminatory character, or exploits elements of fear, threat or violence, which makes it even more harmful from an ethical and social point of view. This definition is widely covered in article 37, §§1º and 2º of the Consumer Protection Code (BRAZIL, 1990), as well as in Bill No. 2,442/2019, which aims to expand the regulation of abusive advertising in the digital context.

In contemporary consumer relations, digital influencers and celebrities take on a central role in promoting products and services. They not only advertise, but also

lend their image and credibility, acting as true guarantors of quality than they promote. This relationship of trust establishes a psychological bond with their followers, who often interpret the recommendations as legitimate and safe (NEVES, 2017). When the qualities attributed to these products or services are not confirmed, the impact on the consumer is even more negative, constituting a violation of the principles objective good faith and legitimate trust.

Furthermore, these practices may characterize more serious forms, such as fraud. advertising, in which the advertisement is used not only to promote a product, but also to intentionally mislead the consumer with the aim of obtaining a financial advantage illicit.

Considering the vulnerability of the consumer, the CDC establishes **responsibility objective** of suppliers and distributors of products and services, based on the theory of risk, also provided for in Article 927 of the Civil Code. This theory advocates that anyone who carries out profitable economic activity assumes the risks arising from it and, therefore, is responsible for the damages caused, regardless of fault.

Article 7, sole paragraph, of the CDC reinforces this logic by providing for **liability solidarity** of all those involved in the supply chain and communication of the product or service, including influencers, digital platforms, and advertising agencies. This means that everyone is equally responsible for repairing damages caused to the consumer.

Tartuce and Neves (2017) defend the application of **appearance theory** in the context of civil liability of influencers and celebrities. According to them, the principle of good faith objective governs these relationships, since the consumer trusts the information transmitted by public figures, giving them credibility, especially when the content disclosed has a persuasive character and seeks to promote sales (NEVES, 2017).

Thus, digital influencers assume, consciously or unconsciously, the risk of veracity of the information they transmit. From the moment they publish content advertisers, shall be held liable objectively and jointly for any damages that may arise misleading information may cause to consumers.

In Brazil, several concrete cases illustrate this problem. In 2019, Ambev was warned by **CONAR** due to the Skol Beats “Fire & Frost” campaign, whose promises



sensory aspects did not correspond to the actual consumer experience, characterizing advertising misleading (CONAR, 2020). In 2021, digital influencers were criticized for promote **slimming teas** without scientific support, with promises of weight loss quickly and effortlessly, putting consumers' health at risk (ALVES; SOUZA, 2020).

In 2023, another case gained national attention, involving influencer **Carlinhos Maia**, accused of disclosing investments in cryptocurrencies and financial platforms without inform the risks involved, which resulted in financial losses to thousands of followers. The episode drew attention to the need for regulation of digital advertising in financial sector (G1, 2024).

Similarly, **online betting companies** began to be promoted by influencers in 2023 and 2024, without due clarification of the risks inherent to the practice, primarily reaching a young and vulnerable audience. The Ministry of Justice and Security The Public Prosecutor's Office launched investigations and recommended measures to restrict this type of advertising. aimed at minors (G1, 2024).

In the context of professional ethics, the **Code of Ethics for Professionals Propaganda**, created in 1957 and periodically updated, which guides the conduct of advertisers, agencies, and media outlets. Although the market has evolved technologically, the fundamental principles of truthfulness, transparency and accountability continue to be essential pillars for consumer protection and for building a ethical advertising environment (APPBRASIL, 2023).

Historically, advertising and publicity have undergone significant changes. While advertising, in the 1950s, had a more ideological bias, linking itself to causes and values social, commercial advertising sought to promote products and services through strategies persuasive and widely disseminated. Today, digital advertising involves social media, videos on YouTube, sponsored Instagram posts, website banners, podcasts, and other forms of content aimed at building brands and increasing sales.

Philip Kotler, one of the leading marketing theorists, defines practice as both the science and the art to explore and create value for the market, meeting the needs and desires of the target audience profitable way. For Kotler, efficient marketing identifies unmet demands and seeks



innovative solutions to satisfy them, promoting economic and social development (KOTLER, 2017).

Despite its positive aspects, advertising also promotes harmful phenomena, such as excessive consumerism and **planned obsolescence**, a practice in which products are deliberately developed with a reduced lifespan, forcing the consumer to replace them in a short space of time. This practice contributes to the increase in electronic waste and unnecessary consumption of natural resources.

Therefore, it is essential to educate society about conscious and sustainable consumption, highlighting the environmental and social impacts of unbridled consumption. It is essential include the topic of consumer education in schools, in addition to promoting public policies and media campaigns that encourage environmental and social responsibility in the market consumption.

On the other hand, advertising plays a positive role in stimulating healthy competition between companies, promoting the improvement of the quality of products and services and, consequently, benefiting the consumer with better options and fairer prices.

## 2.2. The Rise of the Digital Market and the Role of the Digital Influencer

The internet was responsible for creating a culture and became part of our daily lives. It brought countless opportunities to work and interact with the digital, adapting the physical to the virtual in a profitable and efficient way. Examples include online courses and sales of various products and services, entertainment on social networks, among others. Because entering the digital market is keep up with technological advances that grow year after year. The digital market is vast ecosystem where people provide solutions with just one click. And the best part is that in this In the field, everyone has the opportunity to excel and grow. The tools used in the market digital, has the option of free or paid use, but with a much lower cost than the means of traditional communication.

Digital advertising is an instrument that helps the digital market and brands, thus making it easier for consumers to purchase products and services. However, Consumer behavior has changed a lot with the digital market. Digital influencers are people who came out of anonymity and through charisma, creativity, credibility in areas

specific, gain thousands of followers on social media and become models for a new generation, a model to be followed.

“Digital influencers” are people who, through the creation of their content, are capable of forming and influencing other people's opinions. They are one of the main bridges between brands, companies and customers. They can become the face of a brand or a company, thus increasing its relevance. Suppliers are considered by equivalence, are a reference. They convey trust and credibility.

They create trends, influence behaviors, act as a source of information and directly influence decisions, opinions, lifestyles and especially consumption of followers. They have an engaged and loyal audience. With this power of influence in purchasing decision-making of their followers, these people, when they recommend products and Internet services have civil responsibilities and are part of the legal consumer relationship. When a digital influencer recommends a product or service, their trustworthiness increases. persuasion of consumer behavior, instilling confidence in the quality of the product or of the recommended service.

Thus, the influencer assumes the role of guarantor for products and services specified. A parenthesis is opened to cite here some examples of when a viewer, on their social networks, comes across posts by influencers, with a product weight loss, or a beauty product for nails, hair or skin, proposing and offering “miraculous” results like “magic”. Often there is no need for consumption in the moment, however, due to the influencer's persuasion, the consumer gives in and buys such product. When using the product, the consumer is faced with the false effect and is outraged by the deception, leaving him with the losses.

Or, the viewer watches the influencer giving tips on how to make money with “amazing” betting games. Many times, when watching the advertisement, this consumer is completely tempted to test the veracity in the hope of “making a lot of money betting little”, and with that, he loses even what he doesn't have at that moment, all because of reliability and the way of persuading that influencer.

On the other hand, the consumer, most of the time, ends up at a loss because not having the discernment and understanding of their rights as a consumer. Not having this notion of where to resort to the damages suffered, ends up leaving aside and with that the companies and influencers continue in the digital market, “reigning” in quotation marks and profiting, harming countless consumers. We also have the example of influencers who promote a product for the sale of clothing, footwear, accessories, etc., without the correct specifications and without due

value of the product, with the famous call me "via direct", that is, if you want to know you have to ask, which is embarrassing and disrespectful to the vulnerable party, consumer.

The CDC in its article 37 paragraphs 1, 2 and 3 states that advertising must be clear without omitting information, without subliminal messages, with the appropriate characteristics, quality, quantity, origin and price, or any other product data. In these cases, If a consumer falls for misleading or abusive advertising, they must attach the documents that prove payment, complaints made, and contact the protective agency consumer protection agency, Procon, and register the incident. This means that a imprisonment penalty of 3 months to 1 year, in addition to the payment of a fine, with the victim being guaranteed refund or exchange, as provided for in article 67 of the CDC.

The CDC employs principles in preparing advertisements to protect the weakest link in the relationship with the consumer, the consumer. The principles are distributed, and in terms of the protection provided to consumers. That is, freedom must not be confused granted to the applier of the standard in view of the general clauses and legal concepts indeterminate, with discretionary judgment because the principles will condition the activity of the interpreter imposing directions and limits that cannot be contradicted.

An offer is information or advertising, a massive form of transmission of information conveyed in a sufficient and precise manner to generate objective expectations in consumers, creating desire. If the information is communicated accurately, it means that the supplier must strictly comply with it, and the information communicated will become part of the contract, even if implicit.

To this end, it must be clear, precise, and obvious in Portuguese. Example: there is damage moral if the retailer refuses to fulfill an offer to supply a product or service and obliges the consumer to resort to the courts to enforce the obligations under the terms of the offer. Non-compliance with an offer is the situation in which a product or service is not provided to the consumer as presented or disclosed by the supplier.

Bill 2630/2020, known as the "Fake News Bill", represents a important step in the fight against misinformation and misleading advertising on the internet. establish stricter rules for the dissemination of news and information, as well as the obligation of digital platforms to verify the authenticity of the content and its users, the project can discourage the spread of false and misleading information.

Or terminate the contract, receiving a refund of the amounts paid and monetarily updated, as well as obtain the cancellation, if applicable, of any

installments, without prejudice to any losses and damages. Furthermore, there is an urgent need to raise public awareness about the problem of misleading and abusive advertising. This can be achieved through information and education campaigns that target not only the consumers, but also businesses and digital influencers. By providing everyone with relevant actors the tools and information needed to identify and prevent these practices, we can work towards a fairer and more transparent market.

### **3 ANALYSIS OF MISLEADING AND ABUSIVE ADVERTISING PRACTICES: CASE STUDIES**

Misleading and abusive advertising practices constitute contemporary challenges in digital marketing environment, mainly due to the growing role of influencers digital, which have come to play a decisive role in promoting brands and services. As highlighted by Rossi and Goulart (2020), misleading advertising is characterized by dissemination of false, incomplete or exaggerated information that distorts the perception of consumer and compromise their ability to make informed choices.

These practices undermine public trust not only in brands advertisers, but also to the influencers themselves, who act as intermediaries in consumer relationship. Bertotti and Prado (2021) observe that the consequences of these actions will beyond the immediate commercial relationship, reaching the general credibility of the digital environment and consumer market.

Below, some emblematic cases will be presented that exemplify situations of misleading or abusive advertising, addressing its legal, social and commercial effects.

#### **3.1. Case 1: "Skol Beats Fire & Frost" – Exaggerated Communication of Effects**

In 2019, Ambev launched the Skol Beats "Fire & Frost" line of drinks, promoted as a unique sensory experience, which would offer the consumer the sensation of heating and cooling when ingesting the product. However, consumers began to question the veracity of these promises, claiming that such effects were practically imperceptible. As Santos (2022) highlights, "the use of sensory information to attract the consumer can induce him to an experience that, in fact, does not materialize, characterizing deceitfulness" (SANTOS, 2022, p. 45).

In response, the National Advertising Self-Regulation Council (CONAR) notified the company and demanded changes to the campaign's communication, advising Ambev to clarify that the sensations mentioned were subjective and not guaranteed (CONAR, 2020). This episode generated criticism on social media, in which the brand was accused of practices misleading and exaggerating the effects of the product to attract consumers. As Silva argues (2021), "cases of exaggerated or misleading advertising tend to compromise credibility of the brand and customer loyalty" (SILVA, 2021, p. 32), which highlights the importance of transparent communication in today's marketing.

### **3.2. Case 2: Digital Influencers and "Slimming Tea"**

The promotion of rapid weight loss products, such as detox teas, also represents a significant problem in the field of digital marketing. Several influencers digital platforms have been criticized for promoting these products, claiming health benefits and weight loss without scientific support. According to Alves and Souza (2020), many influencers "they exaggerate their promises or fail to inform about the risks, which could constitute misleading advertising and directly affect the health of consumers" (ALVES; SOUZA, 2020, p. 67).

In 2021, influencers with large audiences on Instagram and YouTube began to be questioned by their followers, who felt deceived by the lack of results promised. In response, Instagram implemented policies to limit the promotion of these products and demanded greater clarity in advertisements (INSTAGRAM, 2021). According to Bertotti and Prado (2021), "new regulations on digital platforms reflect a need for protect consumers and restore trust in influencer-led campaigns" (BERTOTTI; PRADO, 2021, p. 88). The image of the influencers involved, as well as the trust of his followers, was directly damaged, demonstrating that practices misleading affect not only brands, but also those who promote such products.

### **3.3. Case 3: Betting Companies and Irresponsible Disclosure**

In 2023 and 2024, several online betting companies began sponsoring influencers Brazilian digital platforms, which promoted gaming and betting platforms without informing the risks involved in the practice. Many of these influencers had an audience made up of young people and teenagers, a particularly vulnerable group.

The Ministry of Justice and Public Security, together with the National Secretariat of Consumer, initiated investigations into these campaigns, for possible violations of the CDC and

Statute of Children and Adolescents (ECA), considering that advertising of gambling may constitute an abusive and irresponsible practice (G1, 2024).

Additionally, the Instagram and TikTok platforms announced the expansion of their policies restriction on online gambling advertising, requiring that sponsored content be clearly marked and banning campaigns aimed at minors. These cases demonstrate the complexity of the digital environment, where oversight still faces limitations given the speed at which new advertising practices emerge.

### **3.4. Consequences of Misleading and Abusive Advertising in the Relationship with the Consumer**

These cases highlight how the practice of misleading advertising can harm not only the reputation of the brands involved, but also that of the digital influencers who participate in campaigns. Studies show that the modern consumer values transparency and is increasingly aware and critical of the promises made by brands and influencers (SANTOS, 2022). Once broken, trust is difficult to restore, impacting consumer loyalty and brand positioning in the market (RODRIGUES, 2020).

These examples highlight the importance of regulation and self-regulation in the digital advertising sector, especially in a scenario where influencer marketing plays a fundamental role in building the image of brands and products. Respect to legislation and the adoption of ethical practices are essential to avoid penalties and maintain a relationship of credibility with the public (CONAR, 2020).

## **4. LIABILITY OF SOCIAL MEDIA PLATFORMS**

Social media platforms like Instagram, YouTube, and TikTok play a key role in an essential role in regulating digital advertising. They implement policies to ensure greater transparency and prevent advertising-related abuses. Instagram and YouTube, for example, requires content creators to flag sponsored posts through specific labels, such as "Advertising" or "Sponsored". TikTok follows a similar approach, but with a greater focus on short videos.

However, the effectiveness of these measures is still a matter of debate. Although there is requirement of signaling, many influencers and users circumvent the rules, using less transparent marketing strategies (SOUZA, 2020). The lack of more control

strict allows products such as controlled substances or harmful behaviors are promoted without proper oversight. Furthermore, the transparency policies of platforms, such as the provision of information about sponsors, are not yet sufficient to prevent abuse. The need for greater oversight to ensure integrity and ethics of digital advertising is clear, since, even with signage, the content advertising can be disguised in a misleading way.

## CONCLUSION

The historical and constitutional evolution of consumer protection demonstrates that consumer relations, since antiquity, have undergone transformations that required new forms of legal and social balance. With the advent of the Industrial Revolution and, later, with the exponential growth of the digital market, consumer vulnerabilities became even more evident, demanding specific and updated regulations.

In the digital environment, advertising has taken on new formats, and influencers digital began to act as central agents in the promotion of products and services, creating a relationship of trust with their followers. However, as demonstrated throughout the present work, the lack of transparency and the adoption of misleading advertising strategies and abusive actions by some of these influencers put the consumer in a situation of risk, both financial and emotional.

The cases analyzed, such as the Skol Beats campaigns, the promotion of teas weight loss products and the promotion of online betting and financial investments by influencers, highlight how the practice of misleading advertising not only compromises the consumer confidence, but also affects the credibility of brands and the people themselves influencers. Such situations reinforce the need for joint action between the agencies supervisors, such as Procon, the Ministry of Justice and CONAR, and digital platforms, like Instagram, TikTok and YouTube, which must take responsibility for regulating and monitor advertising content published in their environments.

Brazilian consumer legislation, especially the Consumer Protection Code, Consumer, already offers important instruments to curb these practices, such as objective and joint liability of the agents involved and the provision of civil penalties,

administrative and criminal. However, there are still challenges regarding the effective application of these standards in the digital environment, given the dynamism and complexity of the virtual market.

Therefore, it is concluded that combating misleading and abusive advertising requires not only strengthening legislation and supervision, but also consumer education conscious, especially in the digital environment. The consumer needs to be empowered to recognize illicit practices and seek the protection of their rights, as suppliers, influencers and platforms must act ethically and socially responsibly, ensuring a more transparent, fair and balanced market.

## REFERENCES

ALVES, M.; SOUZA, L. Digital advertising and influencers' responsibility: a study on the promotion of weight loss products. **Cesumar Law Journal**, v. 19, n. 1, p. 67-90, Jan./Apr. 2020. Available at: <https://revistacesumar.com.br>. Accessed on: Jul. 15, 2024.

APPBRASIL. **Code of Ethics for Advertising Professionals**. Association of Advertising Professionals. Available at: <https://appbrasil.org.br/servicos-e-manuais/code-of-ethics/>. Accessed on: July 15, 2024.

BERTOTTI, A.; PRADO, M. Advertising practices in influencer marketing: challenges and perspectives. **Brazilian Journal of Communication**, v. 23, n. 2, p. 80-97, 2021.

BRAZIL. **Law No. 8,078 of September 11, 1990. Consumer Protection Code**. Daily Union Officer, Brasília, DF, 12 set. 1990. Available in: [http://www.planalto.gov.br/ccivil\\_03/leis/l8078.htm](http://www.planalto.gov.br/ccivil_03/leis/l8078.htm). Accessed on: July 22, 2024.

CONAR – National Council for Advertising Self-Regulation. **Ethical Processes: Skol Beats Fire & Frost**. São Paulo, 2020. Available at: <https://www.conar.org.br>. Accessed at: July 15, 2024.

G1. Government investigates online betting platforms promoted by digital influencers. **G1 Economy**, 10 May 2024. Available in: <https://g1.globo.com/economia/tecnologia/noticia/2024/05/10/apostas-online-influenciadores-investigacao.ghtml>. Accessed on: June 20, 2024.



INSTAGRAM. **Paid content and advertising policies on digital platforms.** Meta Platforms, Inc., 2021. Available at: <https://transparency.meta.com/policies/br/advertising/>. Accessed on: July 15, 2024.

KOTLER, Philip. **Marketing Management: Analysis, Planning, and Control.** 14th ed. São Paulo: Pearson, 2017.

MELO, Nehemias Domingos. The principles of the CDC: vulnerability, good faith, and balance in consumer relations. **Jus.com.br**, 2024. Available at: <https://jus.com.br/artigos/87774>. Accessed on: July 22, 2024.

MORAIS, Lecimar. The constitutional protection of consumer rights. **Real Law**, 2024. Available at: <https://direitoreal.com.br/artigos/a-protecao-constitucional-do-direito-do-consumer>. Accessed on: July 5, 2024.

NUNES, Luis Antonio Rizzatto. **Consumer Law Course: with exercises.** 4th ed. New York: Routledge, 2009.

RODRIGUES, Carolina. Credibility in digital marketing and the impact of misinformation. **Consumer Law Journal**, São Paulo, v. 29, n. 117, p. 220-245, 2020.

ROSSI, L.; GOULART, S. Misleading advertising and its impact on consumer perception: challenges in the digital age. **Law and Society Journal**, Porto Alegre, v. 13, n. 2, p. 98-120, 2020.

SANTOS, Amanda. Ethics in sensory advertising: a study of the Skol Beats Fire & Frost case. **Brazilian Journal of Advertising**, Belo Horizonte, v. 14, n. 1, p. 41-56, 2022.

SILVA, João. Transparency and responsibility: the role of brands in advertising misleading. **Marketing & Consumption Magazine**, Curitiba, v. 10, n. 3, p. 30-50, 2021.

SOUZA, Antonia D'Avila Timbo de. Abusive advertising and its effects on the consumer. **Jus.com.br**, 2020. Available at: <https://jus.com.br/artigos/52126>. Accessed on: July 27, 2024.

TARTUCE, Flávio; NEVES, Daniel Amorim Assumpção. **Manual of Law of Consumer.** São Paulo: Method, 2017.