



IMPACT OF INFLUENCER MARKETING AND CONSUMER PROTECTION

Madhu Mati A; B.A. LLB. (HONS.); SASTRA University; Thanjavur; Tamilnadu, India

ABSTRACT: An influencer may be described as a person who has acquired a considerable number of followers, subscribers, or audience on a social media platform, and creates a variety of content depending upon his interests or ideas, which may also be commercial in nature, and is capable of impacting his audience to purchase goods/ services that he endorses or advertises through his contents. In recent times, many businesses have started to engage influencers as a tool for advertising their brand or products on social media, to a very large extent. The influencers may be classified on a variety of bases, like the number of followers or subscribers they have, the type of content they create, or the business model they adopt, etc. Regardless, their impact on the market preferences, consumer attitudes, and behaviors has hiked in recent years, especially after the COVID-19 pandemic. However, there are no clear statutory bodies or regulatory authorities to regulate the activities of influencers and promote the safety of consumers in influencer marketing. The status of social media influencers seems to be vague and ambiguous in legal aspects, which makes it difficult to determine the extent of their liabilities and duties upon them in complaints of consumer rights violations.

KEYWORDS: Influencer, Influencer Marketing, Social media, Consumer Protection

INTRODUCTION

Social media is a pool of internet-based communication channels, which promote sharing of information, interests, ideas, and other forms of knowledge or expression in general, through interactive channels. It is a platform on which people across the globe can connect instantly with millions of other people, for both personal purposes, as well as for professional or commercial purposes. Social media includes podcasts, photo-sharing sites, social networking sites, blogs, video blogs, messaging sites, and a lot more. The most popular examples are Instagram, Facebook, YouTube, Twitter, TikTok, etc., in which almost 90% of the world population is constantly active. In the recent times, the commercial side of the social media has gained so much power in the world economy, that almost all the businesses, ranging from giant MNCs to the small businesses and startups, use social media as their go-to form of initial brand advertising and eventually, as one of their marketing platforms in the long run. During the COVID-19 pandemic, social media usage hiked to newer heights, and most of the products that were originally bought in the market or over a face-to-face transaction were bought from social media vendors. Influencers have played a significant role in such hiked usage of social media and commercialization of various social media platforms. Having about a minimum of 5,000 followers/ subscribers/ people as an audience, the influencers are capable of creating a significant impact on the consumer behavior and attitudes towards a variety of goods and services that they endorse or advertise for.

Consumers rely upon and engage with the influencers voluntarily for the purchase of a product or for hiring a service, and are exposed to a vast market. This reliance is solely based on the relationship between the consumer and the influencer, and not based on any contract or guarantee. Yet, there appears to be hardly any clarity regarding the extent of influencers' liability in such advertising and marketing, and the protection available for the consumers in such transactions.

This paper aspires to understand the term 'Influencer', and closely analyze their impact on advertising on social media platforms like Instagram, and consumer protection. Further, this study aims to:

- Define influencers and lay down the criteria for one to be known as an influencer;
- Observe and analyze the role of influencers as market actors from a consumer perspective;
- Bring out the risks a consumer might face while engaging in influencer marketing;
- Study the existing statutory regulations for the market-related activities of influencers;
- Provide recommendations that could be imposed as regulations.

INFLUENCERS - MEANING AND DEFINITION

An influencer can be described as a content creator on social media platforms, with commercial intent, who advertises/ promotes/ endorses a brand name, by which they shape the interest of the people who follow him/ her on the social media, eventually aiming to make them buy the product. The influencers can be anyone, meaning there is no specific standard or qualifications for a person to be known as an influencer. There exists a lot of different profiles and heterogeneous sets of business models of the influencers, which makes it quite difficult to define the term “influencer”. Besides, there has hardly been any attempt to have a statutory definition for the term. So, this paper has attempted to capture a few successful and meaningful attempts to define and analyze the term, through a literature review.

The European Advertising Standards Alliance (EASA) is the pre-eminent regulatory authority for advertising in Europe, which promotes self-regulation. EASA has published several top-rated practice recommendations and guidelines regarding influencer marketing. The definition provided successfully demarcates the scope and nature of the term, encompassing its commercial nature and the key feature, content creation. However, it is not broad enough to incorporate the long-term economic relationship and benefits yielded by the influencers, when they act as ‘ambassadors’ for a particular brand. Also, this does not include the influencers marketing or advertising their products, whose legal implications and regulations are completely different from mere advertising or endorsement of others’ products. So, let's consider another study that emphasized the legal perspective of influencer marketing. It focussed on developing the characterization of influencers and the significance of influencers in social media marketing. The inference of the study brought out the legal status of social media influencers, by laying down the criteria to distinguish between them based on the type of business model pursued by them. Thus, influencers can be categorized into those with companies, those with the legal status of freelancers, and those who are still consumers themselves. However, this study also failed to bring out the whole idea of the impact of influencers on the market.

Another way to understand the degree and extent of the impact of influencers on the market is by categorizing them based on the number of their audience or followers, the kind of profiles influencers, and the type of content they create. A paper published in 2017 excellently provided the definition and classifications of influencers in this regard. The definition provided in this paper is broad enough to capture the key features of a person who is known to be an influencer. The key features include unbiased and original opinions about the brands or products that they advertise and the formation of a trust-based relationship with followers or audience. Also, the number of followers has been specified in this study. The study terms those with more than a million followers as ‘mega influencers’, those with less than a million followers but more than 10,000 followers as ‘macro-influencers’, and those with less than 10,000 followers as ‘micro-influencers’. However, the aspect of specification of the number of followers may not be applicable in all cases, as practices like having or even creating fake followers are quite popular.

Thus, in conclusion, an influencer can be defined as “a content creator on any social media platform who engages with commercial actors online based on trust and authenticity-based relationship, having a commercial intention, through various business models for monetization purposes.” The key features of an influencer can be deduced from the definition itself, as follows:

- Operates on a social media platform
- Is a content creator
- Gains followers or audience based on trust and authenticity-based relationship
- Driven by a commercial intent
- Functions for monetary purposes

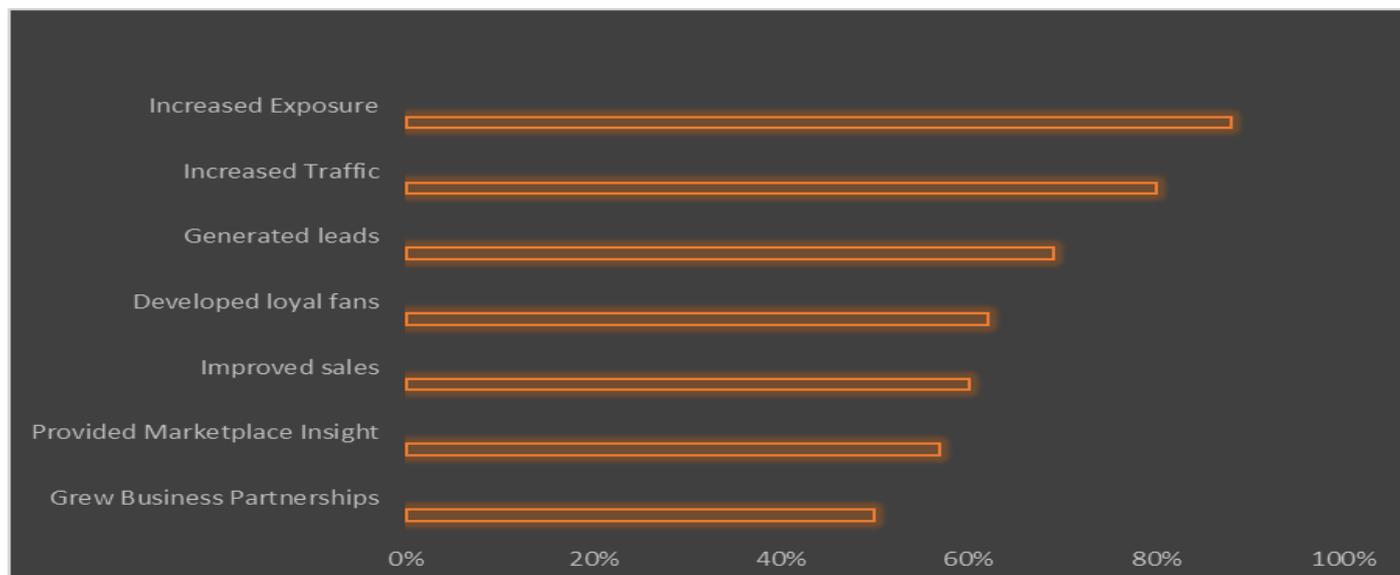
ROLE OF INFLUENCERS IN THE MARKET

Although there are few consistent and comparative statistics due to the novelty of these market trends, economic data indicate that the influencer sector has expanded dramatically in recent years. Influencer marketing has grown to be one of the most popular and efficient forms of online marketing, according to statistics from the Influencer Marketing Hub. With a 700% increase since 2016, its global market value has more than doubled since 2019 and has reached 13.8 billion US dollars in 2021.

With the rise of many ways to engage followers on platforms and through online communities, influencers are now able to advertise to and interact with their audience in ways that go beyond influencer marketing. Additionally, companies have begun employing marketing consultancies to find influencers that can connect with particular audience segments. In terms of business strategies, creators are expanding their sources of income and are frequently financed directly by their followers. Around social media platforms, new business models have appeared, including tokenization, subscription/crowdfunding, add revenues, and direct payments.

On the consumer side, perceived familiarity, authenticity, and trust define the relationship between influencers and consumers. Consumer attitudes regarding brands are influenced by both influencer-follower relationships and influencer-brand relationships. Consumer purchase decisions are influenced by influencer marketing. Influencer marketing poses a significant risk to children and consumers with low levels of education and/or money. Compared to other media (such as fashion/lifestyle journals),

influencer marketing's unique characteristics—most notably the perceived genuineness and lack of management and monitoring—exacerbate these vulnerabilities. In this situation, the COVID-19 epidemic has likely increased online usage and, consequently, exposure to influencer marketing. Social media platforms that enable influencer marketing by facilitating collaboration between brands and creators, and enabling them to reach out to an entirely unexpected pool of customers have been one of the primary boosters of this movement. In 2027, it's anticipated that platforms like Instagram, Facebook, and TikTok would have a combined worldwide market value of US\$370 billion. Additionally, YouTube has a major role because its revenue is increasing dramatically and it is the subsidiary of the Alphabet, the parent company, with the fastest growth rate. Some of the top paid influencers in the industry are creators who became well-known on TikTok and YouTube. According to the Social Media Examiner's 2021 Social Media Marketing Industry Report, social media influencers are frequently used as a marketing tool to increase brand awareness: 88% of the marketers surveyed said their social media efforts had increased brand awareness for their company, while nearly 80% mentioned increased traffic and 69% mentioned an increase in leads generated.



Source: Social Media Examiner, 2021, 2021 social media marketing industry report, how marketers are using social media to grow their businesses.

These numbers correspond to the rising prices of sponsored content on a variety of websites, including Facebook, YouTube, Twitter, and Instagram. IZEA's data shows that between 2014 and 2019, the price of a sponsored Instagram photo surged by a factor of 12, while the cost of a sponsored Facebook status update increased by an average of 49 times between 2014 and 2019. According to AdLift, a digital marketing firm, the Indian influencer market is currently worth \$75–150 million. Also, as India's data costs continue to be among the lowest in the world, an increase is anticipated.

It is quite clear from the above statistics that influencer marketing in social media has a very strong impact on the global population from a consumer perspective, and the role of influencers is simply inadmissible in this.

RISKS TO CONSUMERS DUE TO INFLUENCER MARKETING

The aforementioned data bring out how much impact the influencers have over their followers (i.e.,) the consumers. With such a strong impact, come a few risks and threats as well. As such, there are no alarming or major complaints against the influencers in their marketing. The reason may be the absence of regulatory tools, authorities, or statutory bodies regarding this, and the lack of consumer awareness to identify the violation or breach of consumer rights in influencer marketing. Some of the major risks to consumers due to influencer marketing are discussed in this paper:

- A. Misleading content
- B. Lack of transparency
- C. Setting the vulnerable consumer groups as targets

A. MISLEADING CONTENT

Misleading content means messages about goods/services that the influencers sponsor or advertise or market for, which are false and give a wrongful or different opinion about the goods/ services to the consumers. It includes misleading flattery about the quality/ quantity/ purity/ ability/ durability of the goods/ services, false trademarks, and omissions of relevant information about the goods/ services. This happens quite often, through false and inaccurate reviews of goods/ services, where the influencer posts wrong/ ambiguous/ exaggerated information. One complaint in Belgium concerned the exploitation of false information by an influencer to promote a Nestlé beverage product. The complainant cited that the marketing claimed that the drink's components assisted with "postnatal illnesses" on the one hand. The assertion, however, could not be validated because it was unclear which conditions were intended. Contrarily, it was asserted that the same components "boost the immune system". The complainant

said that this was an unsubstantiated claim and that there was no proof that particular foods or substances might have any negative effects on the immune system.

B. LACK OF TRANSPARENCY

Here, transparency is about the contractual relationship of the influencer with the brand endorsed by him/ her. When in fact the influencers have entered into a contractual relationship with the brand that they endorse, they are required to disclose it clearly and fully to the followers or subscribers with visible, clear labels and tags. Lack of transparency also includes the cases where there is no actual formal contract between the influencer and the endorsed brand, but there exists a commercial interest behind the posts shared or content created, which was not appropriately disclosed. The relationship between the influencers and their audience is based on trust and authenticity, which mandates them to be completely transparent about their activities.

A French Instagram influencer's post was one blatant illustration of the lack of transparency. The mega-influencer (with 6.9 million followers) mostly produces material about parenthood, the home, and fashion and beauty. Women are the intended audience. She compliments a Phillips Trainer cleaner in multiple Instagram stories and one post. To purchase the product, the influencer provides her followers with a discount code. The Instagram stories include a hashtag for the Philips brand as well as a link to the product on the company's website. However, neither in the verbal description nor in the written statement that the publication is sponsored, is there any indication of the advertising character of the publications and the commercial relationship with the company. Since the discount code is linked to the influencer profile, which then receives a portion of the sales based on how many people followed the link, offering discount codes is seen as affiliate marketing.

C. VULNERABLE CONSUMER GROUPS AS TARGETS

This is a very common phenomenon in social media, as almost the entire users of social media are the youth or inexperienced people, who use social media as mere entertainment. They become easy prey to influencers, as they could be easily captured and induced to buy a product, even if they do not need it. Children and technologically-challenged elderly people are the best examples of this.

A fascinating case study involves a German influencer with 3,100 followers who mostly use YouTube but also uses TikTok and Instagram. His target demographic is teenagers, and he writes content on topics like beauty, gaming, and lifestyle. Due to the target audience being teenage followers, his posts on alcohol consumption present a dilemma. As an illustration, he encourages drinking while participating in a drinking game in one of his videos. In some videos, the influencer has also asserted that "having a good party" is superior to working.

REGULATIONS FOR INFLUENCERS

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (Intermediary Rules 2021) under Section 87 of the Information Technology Act, 2000 has quite a relevance on social media in an oversight aspect. However, to protect the consumers from any unfair trade practices or misleading advertisements by the influencers, the aforementioned legislation is not so relevant. It has to be understood that not all the activities done by the influencers fall under the category of advertisements as such because there are still a few influencers who indulge in brand advertising for a particular brand, without a formal contract, but get paid or incentivized in some ways by the brand. Since these are disguised endorsements, the consumer protection law was silent on this area up until the enactment of the Consumer Protection Act, 2019. Another notable regulatory body is the Advertising Standards Council of India (ASCI), a self-regulatory industry body, whose objective is to promote authenticity, honesty, and quality in the content of the advertisements by generating a set of codes. It has developed a Code for Self-Regulation of Advertising Content in India as well as guidelines for specific categories of advertisements, including Guidelines for Influencer Advertising in Digital Media. According to the guidelines, influencers are required to disclose when their content is an advertisement. When there is a material relationship between a brand and an influencer, including monetary remuneration as well as other advantages and incentives like free stuff, discounts, contests, trips, etc., this disclosure is necessary. The guidelines also emphasize that the disclosure must be made in a way that is obvious enough for the average consumer to see it, such as by using labels like "ad," "promo," or "sponsored." The ASCI's Consumer Complaints Council serves as the industry's watchdog, for instance by reporting misleading advertising, including those of well-known companies like Unilever, Uber, or Hindustan Petroleum. However, ASCI is neither a regulator nor is empowered by the law to formulate rules for public or relevant industries, making these codes lack the force of law.

The Consumer Protection Act of 2019 is one of the first steps of the country toward having a legislative framework for consumer protection, including the advertising and marketing activities done by the influencers on social media. The new act has augmented the definition of 'misleading advertisements', and has also formulated provisions for imposing penalties for the publication of the same. According to Section 2(28) of the Consumer Protection Act, 2019, 'misleading advertisements' include those advertisements, which describe a product or service falsely; give a false guarantee, or mislead the consumer as to the nature/ quality/ quantity/ substance of the product/ service; convey an express or implied representation which would constitute an unfair trade practice; deliberate concealment of the necessary information. According to Section 2(47)(f) of the Act, to make a false or misleading representation regarding the need or usefulness of a product or service is an unfair trade practice. Those who indulge

in the publication of false or misleading advertisements, which are prejudicial to the consumers' interests or rights, shall be punished with imprisonment up to two years and with a fine extending to Rs. 10 Lakhs. In case of a subsequent offense of the same nature, the imprisonment may be extended up to five years and the fine amount may be increased up to Rs. 50 Lakhs. Also, the endorser/ the influencer may be prohibited from such endorsement activities for a period of one to three years.

Apart from this, the Act has provided for the constitution of Consumer Protection Councils and Consumer Protection Authority, at central, state, and district levels, empowered to take up cases on false and misleading advertisements by *suo moto*, if it finds it necessary, to conduct an investigation and prohibit its further publications, for the protection of consumer rights.

CONCLUSION

Social media influencers have indeed created a significant impact on the global market and consumer attitudes. The risks consumers take while purchasing a product, or hiring a service due to the endorsement of such influencers is greater than what is actually perceived. Despite the recognition of the risks and harm caused due to influencer marketing, the lack of an express legislative framework in this regard is quite disappointing. While the provisions under the Consumer Protection Act seem to have an all-inclusive scope, it definitely is not the complete solution or the appropriate regulation for the diverse activities of the social media influencers. Unless there is separate legislation or a set of codes for the regulation of the commercial activities of the influencers, the consumers are not completely safe.

This paper puts forward the following recommendations in light of the above observations, discussion, and findings:

- Finding the right balance between protecting consumer interests and enabling the Single Market for commercial activities as well as for (online) social interaction and the creation of non-commercial material.
- Relying on and broadening currently enacted consumer protection laws, is typically the best course of action when addressing influencer marketing.
- Assisting national authorities in creating and utilizing digital tools that make it easier to monitor influencer marketing operations and enforce consumer rights.
- Offering advice and information to help consumers understand their rights and recognize influencer marketing tactics, as well as to assist influencers in adhering to any applicable laws.
- Ensuring that market actors, who don't just comprise influencers but also businesses and platforms, are aware of their responsibilities and behave in a mature, responsible manner.

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