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# Interrogating the Legal Landscape of Influencer Marketing and Consumer Rights in Nigeria

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## ABSTRACT

*There is often a pull between aggressive marketing of products and protecting the rights of consumers in a competitive economy. In dealing with the dilemma, a lot of legal issues arise and governments around the world are caught in the web between free advertising and marketing and over regulating. This study, which is doctrinal, seeks to discuss the issues (risks) that influencer marketing bears on consumer's purchase decisions, as well as appraise the legal framework regulating the influencer marketing landscape, its bearing on the protection of consumer's rights and its implication on ethical advertising. This study reveals that there exist a body of regulations in place to checkmate as well as guide the activities of influencers in product promotion. However, the challenges lie in the consumer's ability to identify influencer marketing as a product marketing strategy, as well as recognise issues of misleading advertising, data privacy breach and intellectual property breach. The paper recommends that by strengthening existing legal frameworks on influencer marketing, promoting transparency in influencer-brand relationships and promoting ethical practices through awareness campaigns, a more stable and predictable environment for all stakeholders will be achieved.*

## KEYWORDS

*Legal Landscape, Influencer, Influencer Marketing, Advertisement, consumer rights.*

### 1.0 INTRODUCTION

A consumer is an individual who obtains, through a transaction, products or services for personal, family, or household purposes.<sup>1</sup> To make a purchase, the consumer is faced with a wide range of products to choose from in the marketplace, hence the need for product awareness. The creation of awareness of a product's offering could range from information bordering on the products' composition, production pattern, durability, price and other factors..<sup>2</sup> Thus, for businesses to remain active in the market, they must find ways to reach their target audience by communicating their products' offerings.<sup>3</sup> Smith, realised this fact when he stressed that "*consumption is the sole end of production and the interests of the producer ought to be attended to only so far as it may be necessary for promoting those of the customer.*"<sup>4</sup>

To this end, businesses assiduously employ a variety of promotional strategies to wit; sales promotion, personal selling, point – of – sale publicity, public relations and, chiefly, advertisements, to communicate their product offerings and reach their target audience.<sup>5</sup> The goal of employing these promotional/marketing strategies is to circulate, speedily, effective information required for markets<sup>6</sup> to promote their products, accelerate distribution, increase the consumers' knowledge of the product's offering, and ultimately assist consumers make informed consumption decision thereby reducing irrational choices and purchases.<sup>7</sup>

With the rise of digital infrastructures and the internet, new avenues of businesses communicating the existence of their

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<sup>1</sup> 'Who is the Consumer?' <<https://www.aseanconsumer.org>> accessed 30 April, 2025.

<sup>2</sup> Robert H. Haveman and Kenyon A. Knopf, *The Market System: An Introduction to Microeconomics* (4<sup>th</sup> edn John Wiley and Sons, New York 1981) 39

<sup>3</sup> William F. Arens, *Contemporary Advertising* (7<sup>th</sup> edn Irwin McGraw-Hill 1999) 44

<sup>4</sup> Adam Smith, *Wealth of Nations*, (Modern Library Edn Random House, New York 1937) 16. Emphasis added.

<sup>5</sup> Warren K. Agee, Philip H. Ault and Edwin Emery, *Introduction to Mass Communications* (6<sup>th</sup> Edn John Wiley and Sons, Chichester 1986) 350

<sup>6</sup> Seller, buyer, retailers, middlemen and so forth

<sup>7</sup> George E. Belch, Michael A. Belch and Keoo Purani, *Advertising and Promotion: An Integrated Marketing Communications Perspective*, (7<sup>th</sup> Edn Tata McGraw Hill Education Private Limited, New Delhi 1997) 823

product and its offering to the consumers speedily has arisen.<sup>8</sup> Influencer marketing as a digital advertising medium is employed to create product awareness and promotion of a product's offerings.<sup>9</sup> It leverages social media platforms<sup>10</sup> to engage consumers in more personalized ways. Influencer marketing leverages the reach and credibility of individuals who have a substantial following on social media platforms.<sup>11</sup> The Influencers with strong social media presence, regularly create and share content, promote brands and their products and have become trusted sources of information and recommendations for consumers.<sup>12</sup>

Interestingly, influencer marketing has sparked concerns regarding consumer's rights and ethical advertising, particularly in cases of non-disclosure of affiliation with brands they promote, false and/or misleading advertising, data privacy breach as well as intellectual property breaches. These practices impair consumers' judgement in making informed choices, which is antithetical to the consumer's rights in the marketplace and unethical. Consumer's rights constitutes the fundamental entitlements individuals have when engaging in economic transactions, which are very crucial for maintaining a fair and ethical marketplace.<sup>13</sup> The consumer's protection is premised on a number of grounds, namely: economic efficiency, individual rights, distributive justice and right to development amongst others.<sup>14</sup> These rights enable consumer's make informed choices and are saved from misleading practices that could ruin their financial, physical and emotional well-being. Thus, the goal of regulating the market and protecting consumer's rights is in addressing the disparities found in the consumer-influencer marketer relationship, which include, bargaining power, knowledge and resources. Hence, this article on "Interrogating the

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<sup>8</sup> New avenues like

<sup>9</sup> Dotts Media House, 'The Rise of Influencer Marketing in Nigeria: Navigating the New Age of Digital Influence' (2024) <<https://www.linkedin.com>> accessed 10 March, 2025. Luena Collini, Frithjof Michaelsen, Cecile Jacob, Catalina GOANTA, *Et al* (2022), 'The Impact of Influencers on Advertising and Consumer Protection in the Single Market' <<https://www.researchgate.net>> accessed 15 March, 2025.

<sup>10</sup> Facebook, Instagram, YouTube, TikTok and so forth

<sup>11</sup> Laura Hartley, 'Influencer Marketing: Advertising and marketing on social media in the UK: How brands can suffer reputational damage (2020) <<https://www.cliffordchance.com/>> accessed 12 January, 2024.

<sup>12</sup> Hanadi Salhab, 'Social media marketing – Rise of social media influencer marketing and Instagram' (2024) 8(8):3783 *Journal of Infrastructure Policy and Development* <<https://www.researchgate.net>> accessed 10 March, 2025.

<sup>13</sup> Etefia E. Ekanem, 'Institutional Framework for Consumers Protection in Nigeria' (2011) 2(1&2) *International Journal of Advanced Legal Studies* <<https://www.icdr.org.ng>> accessed 10 March, 2025.

<sup>14</sup> Haveman and Knopf (n 2)

## Legal Landscape of Influencer Marketing and Consumer Rights in Nigeria.”

This work, sets out to analyse the issues in influencer marketing and its effect on consumer rights in advertising. To achieve this objective, the concept and regulatory framework for influencer marketing and consumer rights are addressed. The work x-rays the role of ethical advertising practices in fostering trust and accountability between brands, influencers and consumers. The work further contributes to the ongoing dialogue on balancing innovation in digital marketing with the goal to protect consumer’s interests in the digital economy.

### **2.0 THE CONCEPT OF INFLUENCER MARKETING**

Influencers are individuals with strong social media presence who regularly create and share content with their followers, hence becoming trusted sources of information and recommendations.<sup>15</sup> By virtue of the “influence”<sup>16</sup> they exert over their large social media followings, brand owners often engage and collaborate with them to create sponsored content to promote their products and/or services, which often come across as personal recommendations. Thus, making them more trustworthy and impactful. This collaboration could be by way of monetary payment (Paid endorsements), benefits in kind (Barter arrangements) or a commission-based structure (Affiliate marketing). These brand collaborations constitute a form of advertising.<sup>17</sup> In a survey by Sprout Social,<sup>18</sup> it was found that three quarters of consumers will rely on social media when making purchasing decisions and a reliable influencer can reach thousands or millions of heterogeneous audiences. Thus, every form of influencer marketing must be disclosed to prevent misleading the followers (consumers and potential consumers).<sup>19</sup>

The benefits of influencer marketing include: enhanced credibility and trust in the product’s effectiveness as well as

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<sup>15</sup> Daniel Belanche, Luis Vicente Casalo Arino, Marta Flavian, Sergio Ibanez Sanchez, ‘Understanding Influencer Marketing: The role of congruence between influencers, products and consumers’ (2021) 132 (2) *Journal of Business Research* 186-195 <<https://www.researchgate.net>> accessed 10 March, 2025.

<sup>16</sup> Such as personal connections and perceived authenticity

<sup>17</sup> Diederich Bakker, ‘Conceptualising Influencer Marketing’ (2018) 1 (1/2018) *Journal of Engineering Trends in Marketing and Management* <<https://www.researchgate.net>> accessed 12 March, 2025.

<sup>18</sup> Sprout Social, ‘Social media marketing: What it is and how to build your strategy’ (2025) <<https://www.sproutsocial.com>> accessed 10 March, 2025

<sup>19</sup> Ayush Chandra, ‘The Impact of Influencer Marketing on Consumer Rights and False Advertising’ (2025) < <https://www.legalonus.com>> accessed 27 January, 2025.

targeted marketing and cost-effectiveness. However, though influencer marketing offers numerous benefits, it also has its challenges. As it relates to this work, Influencers can exaggerate on a product's testimonials not just to make sales, but to retain the endorsement deal with the brand and enjoy the financial benefit that accrues therefrom.<sup>20</sup>Also, the problem of non-disclosure of relationship with a brand by the influencer may create confusion in the minds of the consumer in that a consumer may assume that an influencers' pitch about a product is borne out of use of the product and its effectiveness. Another significant issue with influencer marketing is on intellectual property rights. In this case, brands must ensure they have the right to use any content influencers create, such as photos or videos.<sup>21</sup>Also, on the issue of consumer's data privacy, influencer's must seek their follower's consent before sharing their data with brands.

### **3.0 THE CONCEPT OF CONSUMER'S RIGHTS**

Brands often tap into an influencers' large followings to promote their products and services, often blending these promotions with their everyday content to make them feel more authentic. But this raises a crucial question: Are consumers always aware that they are viewing paid advertisements? Is it ethical to influence a consumer's purchasing decisions without clear disclosure? Consumers have a legal right to make informed purchasing decisions, the right of protection from deceptive advertisements, and a right of redress. For these rights to be fully protected, there must be a clear distinction between commercial content (advertising) and non-commercial content (personal promotions). When these lines are blurred by marketing practices, it may result in consumers being misled, thus violating consumer protection laws designed to prevent deceptive or unfair practices.<sup>22</sup>This is backed by the fact that a consumer's perception of a product begins with the awareness of a product which is often formed based on marketing research. Thus, manipulated testimonials and unsubstantiated claims about a product, undisclosed relationship with brands can misguide consumers when making a product choice and/or purchase decision.<sup>23</sup>

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<sup>20</sup> TOGWE, 'The Role of Influencer Marketing in Modern Advertising' (2024) <<https://www.togwe.com/>> accessed 12 January, 2024.

<sup>21</sup> Hanson Cheng, 'The Challenges of Influencer Marketing for Business Campaigns' (2023) <<https://www.freedomtoascend.com/>> accessed 15 January, 2025.

<sup>22</sup> Bullshark, 'Influencer Marketing & Consumer Rights: The Importance of Clear Disclosure' (2024) <https://www.bullshark.digital.com> > accessed 15 December, 2024.

<sup>23</sup> Alicia Barroso, 'Advertising and Consumer Awareness of a New Product' (2007) <[AliciaBarroso.pdf](#)> accessed 16 February, 2025.

It has been rightly observed by Akhigbe *et al*,<sup>24</sup> that consumers are at a clear disadvantage in terms of information about a product's offering, negotiating power, product safety, quality and pricing. This is attributed to the advancement in technology which is believed has made consumer products more complex. Cranston<sup>25</sup> noted that "expert knowledge is essential to appreciate the features of many modern products which fall below the threshold of perception of the ordinary consumer." This also is supported by Ben- Shahr<sup>26</sup> that "lack of information is the bane of consumer's problem." Hence the need for consumers to be informed of a products offering(s) in clear and unambiguous terms cannot be over-emphasized, being the right of a consumer.

Consumer rights constitutes the fundamental entitlements individuals have when engaging in economic transactions, which are very crucial for maintaining a fair and ethical marketplace.<sup>27</sup> This entitlement is premised on a number of grounds, namely: economic efficiency, individual rights and distributive justice, amongst others.<sup>28</sup> The premise of consumer rights is to safeguard consumers' interests and protect them from exploitation by businesses, ensuring fair treatment and access to information for informed decisions and choices about the product and services they purchase. Thus, consumer rights are crucial for a healthy market economy, as they promote fair competition and ensure businesses are held accountable for their actions.<sup>29</sup>

President Kennedy in his landmark speech on March 15, 1962 to the Congress of the United States on Protecting the Consumer Interest,<sup>30</sup> stated that:

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<sup>24</sup> Emmanuel E. Akhigbe, Dennis O. Ejere, Abdulhakeem Abdulhaad Tijani, 'Hopelessness of the King of Production in Nigeria: The Consumer Protection Council, a Savior or a Mirage?' (2015) 12 *US-CHINA Law Review* 719.

<sup>25</sup> Ross Cranston, *Consumer and the Law* (Weildenfield and Nicolson, London 1978) 234

<sup>26</sup> Omri Ben-Shahar, 'The Myths of Consumer Protection Law' being a paper presented at the Annual Ronald H. Coase Lecture for First Year Students of University of Chicago Law Faculty on February 29, 2009 <<http://www.UChicago.edu/faculty/ben-shahar>> accessed 10 January 2019

<sup>27</sup> Etefia E. Ekanem, 'Institutional Framework for Consumers Protection in Nigeria' (2011) 2(1&2) *International Journal of Advanced Legal Studies* <<https://www.icdr.org.ng>> accessed 10 March, 2025.

<sup>28</sup> Haveman and Knopf (n 2)

<sup>29</sup> Ebitu, Ezekiel Tom, 'Consumer Rights, Consumer Protection and Public Policy in Nigeria: A Critical Review' (2014) 7 (12) *International Business Research* 120, 125

<sup>30</sup> John F. Kennedy, 'Special Message to the Congress on Protecting the Consumer Interest (1962)' <<https://www.presidency.ucsb.edu>> accessed 10 March, 2025.

Consumers, by definition, include us all. They are the largest economic group in the economy, affecting and affected by almost every public and private economic decision. Two-thirds of all spending in the economy is by consumers. But they are the only important group in the economy who is not effectively organized and whose views are often not heard....Fortunate as we are, we nevertheless cannot afford waste in consumption any more than we can afford inefficiency in business or Government. If consumers are offered inferior products, if prices are exorbitant, if drugs are unsafe or worthless, if the consumer is unable to choose on an informed basis, then his dollar is wasted, his health and safety maybe threatened, and the national interest suffers.

President Kennedy asserted that legislative and administrative actions were required if Government is to meet its responsibilities to consumers in the exercise of their right.<sup>31</sup> Indeed, one of the essential characteristics of an industrialized economy is the presence of a well regulated business atmosphere where manufacturers/producers and suppliers of services are not at liberty to swindle the investing public by providing them with products that fall short of expectations.<sup>32</sup> The Consumer Right Theory and the Consumer Expectation Theory<sup>33</sup> generally advance the underlying need for a coordinated conscious regulation of the market and the protection of consumers. The Consumer Right Theory emphasizes that it is the right of the consumer to be protected in commercial transactions due to the vulnerable position he occupies in the relationship with the product's producer. It also provides the basis and justification for the intervention of the state (government) in bridging the unfair gap

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<sup>31</sup> These enumerated rights include;

- a) The right to safety – to be protected against the marketing of goods which are hazardous to health or life;
- b) The right to be informed – to be protected against fraudulent, deceitful, or grossly misleading information, advertising, labelling, or other practices, and to be given the facts one needs to make an informed choice;
- c) The right to choose – to be assured, wherever possible, of access to a variety of products and services at competitive prices; and in those industries in which competition is not workable and Government regulation is substituted, an assurance of satisfactory quality and service at fair prices; and
- d) The right to be heard – to be assured that consumer interests will receive full and sympathetic consideration in the formulation of Government policy, and fair and expeditious treatment in its administrative tribunals.”

<sup>32</sup> John Cioffi, 'Corporate Governance Reform, Regulatory Politics, and the Foundations of Finance Capitalism in the United States and Germany' (2006) 7 (6) *German Law Journal* 533 <<http://www.germanlawjournal.com>> Accessed on 28/2/2016.

<sup>33</sup> Ifedayo Akomodele, 'Consumer Protection Law in Nigeria: Myth or Reality' (2010) 4 *University of Ado-Ekiti Law Journal* 1.

between the two parties in the chain of production. The state intervenes through the instrumentality of the Law and Regulatory institutions.<sup>34</sup>

Ekanem and Eseyin<sup>35</sup> agree with the state intervention for the protection of consumers who may lack the sophistry in technology and resources to match the producers and providers of goods and services. However, the writers also observed that with the level of corruption in Nigeria, with government (Security and Regulatory) agencies being portrayed as the major culprits, it is doubtful how effective government regulations can serve consumer's needs, intervene in the economic processes or even determine the extent to which the concept of freedom of contract should be subject to a hand-off approach, as in *laissez-faire* markets.

The Consumer Expectation Theory reflects anticipated behaviour. It holds that consumer behaviours are predictive, indicating expected product or service attributes. If a product outperforms expectations, post-purchase satisfaction result will occur. If a purchased product falls short of expectation, the consumer is likely to be dissatisfied. Expectation serves as the comparison standard to evaluate performance and a formed judgement.<sup>36</sup> Characteristically, the consumer expects to receive value for money paid, looks forward to having a fair deal for his or her bargain regarding the price, quality and safety of products purchased.<sup>37</sup> However, unscrupulous and unfair trade practices has negated the consumer's expectations, leaving them frustrated, unsatisfied and distrustful of the system. It is the researcher's view that having raised the consumer's expectations, it is only fair that the provider of such product be held liable for any dissatisfaction that may occur. Thus, the implied terms (conditions and warranties) in a sale of goods contract are justified by this theory.

The effect of influencer marketing on consumer rights is mostly pronounced in the right to information, the right of protection from deceptive advertisements and right to redress. These rights enable consumers make informed choices and are saved from misleading conduct that could ruin their financial, physical and emotional well-being. Thus, the goal of regulating the market and consumer protection is in addressing the disparities found in the consumer- influencer (business) relationship, which

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<sup>34</sup> Akomodele (n 28) 1-5

<sup>35</sup> EE Ekanem and Mojisola Eseyin, 'Who protects the Consumer: Self or the State?' (2013) 1 *Imo State University Journal of Private and Property Law*, 83.

<sup>36</sup> Akomodele (n 28) 7

<sup>37</sup> Ekanem and Eseyin (n 30) 84.

include; bargaining power, knowledge and resources.<sup>38</sup> To this end, legislative frameworks have been put in place to regulate both influencer marketing and the attitude of businesses in upholding the framework as well as the attitude of courts to issues bordering on consumer protection.

#### **4.0 REGULATING INFLUENCER MARKETING**

Governments the world over recognize the importance of regulating influencer activities to safeguard consumers and ensure transparency of promotional activities.<sup>39</sup> This part of the article identifies and compares influencer marketing laws or regulations in the United Kingdom, the United States, the People's Republic of China and Nigeria. Some of the aspects regulated are discussed below.

##### ***Regulating Disclosures and Transparency***

Disclosure and transparency in influencer marketing is paramount to ensure that consumers are aware of any sponsored content or paid partnerships. In the United States, the Federal Trade Commission (FTC) has implemented guidelines to ensure transparency and fairness in influencer marketing. The FTC guidelines require disclosure by influencers of any material connection, which includes, for example, payment of free products, to be clearly and conspicuously disclosed whenever making an endorsement, including social media posts. The FTC's guidance states that these disclosures, example, #ad or #sponsored, should appear before a consumer has to click any link, including the "more" button in Instagram captions.<sup>40</sup> Thus, the FTC Guidelines<sup>41</sup> mandates the use of informative hashtags/specific phrases such as #ad or #sponsored to disclose paid partnerships and requires influencers to be explicit in stating their brand sponsorship or their terms of product ownership thereby enabling consumers make informed choices.<sup>42</sup>

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<sup>38</sup> Kingsley Igweike, 'Consumer Protection in a Depressed Economy: The Challenges in the New Millennium, 13<sup>th</sup> Inaugural lecture at the University of Jos, delivered on March 13, 2001 pp 16-20.

<sup>39</sup> Bianca Ascolese, 'Regulating Influencer Marketing: A Comparative Analysis of Laws across the World (2023) <<https://www.foley.com>> Accessed 20 March, 2025.

<sup>40</sup> Melanie A. Conroy, Kasey Boucher Pierter, 'Revolve Faces \$50M Class Action Alleging Undisclosed Influencer Relationships' (2025) XV(124) National Law Review <<https://www.natlawreview.com>> accessed 30 April, 2025

<sup>41</sup> Library of Congress, 'Influencer Marketing: A Research Guide' < Regulations - Influencer Marketing: A Research Guide - Research Guides at Library of Congress (loc.gov)> Accessed 12 January, 2025.

<sup>42</sup> Hogan Lovells, 'Influencer Marketing – Instagram, Tap-Tags and more: when to label advertising and what comes next? (2022) <<https://www.hoganlovells.com>> Accessed 10 March, 2025.

Regrettably, the existing Guidelines do not have stringent penalties to deter infringers, although some companies have faced fines. For example, a settlement was reached requiring a maker of detox teas to refund \$1 million to consumers after the rapper Cardi B did not disclose paid endorsements.<sup>43</sup> In February 2025, two consumer class actions were filed in the United States. In *Bengoechea et al. v. Shien et al*<sup>44</sup> and *Dubreu v. Celsius Holdings, Inc. et al*,<sup>45</sup> both cases target brands and influencers alike for allegedly failing to disclose paid endorsements. Also in *Negreanu v. Revolve Group, Inc., FWRD LLC, Alliance Apparel Group, Inc., Cindy Melo, Tika Camaj Nienke Jansz and Eminent, Inc. doing business as Revolve Clothing*,<sup>46</sup> the lead plaintiff (on behalf of herself and other similarly situated consumers who purchased Revolve Products in the US from March 2021 through present) claims that Revolve allowed influencer endorsements to be posted on social media without adequately disclosing the relationship with Revolve, and that this alleged omission misled customers into purchasing products that they would not have if they had known about the undisclosed relationship. The complainant also claimed that Negreanu and Revolve shoppers nationwide believed the undisclosed endorsements were honest and uncompensated reviews, which induced shoppers to pay a “premium” for products that “proved to be of a lower value than the price paid,” and the plaintiffs believe the “difference in price can be attributed exclusively to the undisclosed endorsements.” Although, at the material time, the cases were yet to be heard conclusively, they underscore the need for disclosures and transparency in influencer marketing

In the United Kingdom, the requirement for disclosure and transparency in Influencer marketing is regulated by the Code of Non-broadcast Advertising and Direct & Promotional Marketing (CAP Code). Section 2 of the CAP Code provides that all advertising must be obviously identifiable and consumers adequately notified

<sup>43</sup> Mark Jackson, ‘FTC Regulations and Influencer Marketing’ (2024) <<https://www.meltwate.com>> accessed 10 March, 2025.

<sup>44</sup> *Bengoechea et al. v. Shien, Bianca Anastasia Arcori, Abby Bagley, Manuela Brit, Tala Golzar, Anastasia Karanikolaou, Cydney Moreau and Cindy Prado*. No. 1:25-cv-01402 (N.D.III., Feb.10, 2025)

<sup>45</sup> *Dubreu v. Celsius Holdings, Inc., Devon Barbara, Emily Tanner and Erika Wheaton* No. 5:25-cv-00180 (C.D. Cal., Jan. 22,2025). It is claimed that the Defendants deceptively marketed the brand’s products by posting photos and videos that appeared to reflect genuine, unpaid enthusiasm – without disclosing that the endorsements were actually paid promotions. If any disclosures were included, they were ‘buried’ or presented in a way that made it “almost impossible” for users to discern that the post was sponsored. Plaintiff would not have purchased Celsius products, or paid as much for them, had she known the posts were sponsored.

<sup>46</sup> 2:2025cv03186 <<https://www.pacermonitor.com>> accessed 30 April, 2025.

if a piece of content is an advertisement before they engage with it. The Advertising Standards Authority (ASA) enforces the CAP Code rules by requiring Influencers to clearly disclose any partnerships with labels, such as: Ad, Advert and Advertisement and avoid labels such as: “Thanks to (brand) for making this possible, @brand, Gifted, Spon/Sponsored/Sponsorship, Affiliate.” More so, consumers should not need to click “see more” to reveal “@Ad” hidden amongst other tags.<sup>47</sup> Thus, Influencers and brands are to maintain transparency, fairness and truthfulness in all promotional content. Regrettably, the only punishment for failure of influencers to disclose their affiliation with a brand in a marketing campaign is “naming and shaming.”<sup>48</sup> Some argue that the “naming and shaming” tactic is not sufficiently effective to deter disobeying parties. However, the ASA believes that the negative publicity generated by a complaint may produce enough bad press in the short term to promote compliance, thus, brand's failure to adhere to regulations may also be the first thing shoppers see on search results.<sup>49</sup>

In China, influencer endorsement is mainly regulated under her Advertising Law. Article 14 of China's Advertising Law, provides a general duty to display advertisements in a way that distinguishes them from other information and in a way that enables consumers to identify them as such and prevent misinformation. The Internet Advertisement Measures, 2016, further provides that internet advertisements must be recognisable and marked with the word ‘advertisements’ in a very prominent way to enable consumers identify it as an advertisement.<sup>50</sup> Failure to disclose advertisements as such may result in administrative penalties, such as: correction of the violation, as well as the imposition of a fine.<sup>51</sup>

In Nigeria, there are no specific laws on influencer marketing. However, there are several laws in Nigeria regulating advertising which can be relied on. For example, the Cybercrime

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<sup>47</sup> Robert Turner and Sophie Stoneham, ‘Influencer Marketing in the UK –The Regulator is Watching’ (2022) <<https://www.twobirds.com>> accessed 23 January, 2025.

<sup>48</sup> Social Law Co, ‘Disclosure Requirements For Influencer Marketing Campaigns In Australia, U.S. And The UK’ (2023) <<https://sociallawco.com.au/>> accessed 19 January, 2025.

<sup>49</sup> Kolsquare, ‘Regulation over Reputation? The UK's Approach to Influencer Marketing Laws (2024) <<https://www.kolsquare.com/>> accessed 14 January, 2025.

<sup>50</sup> Measures on the Administration of Internet Advertising 2016, Article 9. Practical Law China, ‘SAIC issues final version of internet advertising measures’ <[https://uk.practicallaw.thomsonreuters.com/0-631-1005?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/0-631-1005?transitionType=Default&contextData=(sc.Default)&firstPage=true)> accessed 21 July, 2021.

<sup>51</sup> The People's Republic of China Advertising Law, 2018 Article 59.

(Prohibition, Prevention, etc.) Act, 2015 addresses fraudulent activities online, including deceptive advertising by influencers. The Act prohibits computer-related fraud in the form of misrepresentation of facts online that cause damages or loss to another person upon reliance on the misrepresented facts.<sup>52</sup> In the same vein, the Federal Competition and Consumer Protection Act, 2018 prohibits business practices/conducts that are misleading, fraudulent, unconscionable or generally anti-competitive. Some of such conducts include the following, amongst others: issuing a false or wrong advertisement; giving false, erroneous, misleading or likely to be misleading in any material respect, fraudulent or deceptive representations concerning any material fact for the purpose of promoting or marketing a product.<sup>53</sup>

### ***Misleading Advertising and False Claims***

In the United States, the Federal Trade Commission (FTC) Act prohibits unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.<sup>54</sup> Under the FTC Act, it is unlawful for any person, partnership, or corporation to disseminate, or cause to be disseminated, any false advertisement having an effect in commerce, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in or having an effect upon commerce, of food, drugs, devices, services, or cosmetics.<sup>55</sup> Thus, the FTC requires influencers to truthfully represent their experiences with products or services when endorsing or promoting products or services and to be responsible for ensuring the accuracy of their claims made in their advertisements, especially regarding product performance or benefits. The Act imposes penalties for a contravention of its provisions. If such violation is with intent to defraud or mislead, the offender shall be guilty of a misdemeanour and, upon conviction, shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than six months, or by both such fine and imprisonment.<sup>56</sup>

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<sup>52</sup> The Cybercrime (Prohibition, Prevention, etc.) Act 2015, Section 14 (2)

<sup>53</sup> The Federal Competition and Consumer Protection Act (FCCPA), 2019 Section 17-18. The failure of an Influencer to disclose his/her affiliation with a brand while promoting the brand's product tantamount to deceptive advertising.

<sup>54</sup> Federal Trade Commission Act, 2013 15 U.S.C. section 45 (1)

<sup>55</sup> Federal Trade Commission Act, 2013 15 U.S.C. section 52 (a)-(b)

<sup>56</sup> Federal Trade Commission Act, 2013 15 U.S.C. section 54 (a)

Sections 2(a), (5), (6), and (7) of the Uniform Deceptive Trade Practices Act (UDTPA), 1964, makes it a deceptive trade practice if a merchant:

Represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have; represents that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or second hand; [or] represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

The primary remedy for violation of the Uniform Act is an “injunction.”<sup>57</sup> Section 3(c) of the Uniform Act preserves concurrent remedies for conducts which run afoul of the Act. Thus, merchants can generally recover damages and profits attributable to wilful deception at common law and consumers can also recover damages with respect to calculated misrepresentations in tort or with respect to both guileless and calculated misrepresentations on a breach. To Kunin<sup>58</sup>, there are several reasons why the relief under the Uniform Act is limited to an injunction. In the first place, plaintiffs are likely to care more about ending the unlawful acts than collecting damages, which may be difficult to prove even in the best of circumstances. To Handler<sup>59</sup>, limiting legal control of false advertising to misrepresentations of fact is a “serious defect” as the skillful advertiser can mislead the consumer without misstating a single fact. The shrewd use of exaggeration, innuendo, ambiguity and half-truth is more efficacious from the advertiser's standpoint than factual assertions. Handler's illustrations demonstrate, however, that it is a literal ban on misstatements of fact that he condemns, and there is no reason that the Uniform Act should be so interpreted. Buyers who can be misled by glittering generalities that are shorn of even implicit factual misrepresentations need education, not legal tutelage.

To the Researchers, the Uniform Act complements other legislation forbidding deceptive advertising since the method of enforcement is more effective than that provided by most existing laws. Traditional deceptive advertising statutes carry criminal penalties, which could be time-consuming and are often to be

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<sup>57</sup>Uniform Deceptive Trade Practices Act (UDTPA), 1964 section 3 (a)

<sup>58</sup> Loius Kunin, *Erieantompkinitis: The Malady and its Cure*, ABA Section of the Patent, Trademark and Copyright Law Proceedings (1961) 276, 281.

<sup>59</sup>Milton Handler, *Cases and Materials on Trade Regulation* (3d edn The Foundation Press, Inc. Chicago 1937) 982.

invoked in all but extreme cases. In contrast, the Uniform Act authorizes injured merchants to bring private actions, and affected consumers to bring class actions to enjoin every deceptive trade practice which adversely affects them or those whom they represent.

Additionally, lawsuits are being explored against various brands and influencers for potentially misleading consumers by making unrealistic claims on product's performance. In *Skechers USA, Inc., Case*,<sup>60</sup> Skechers heavily marketed its Shape-ups as shoes that could help wearers lose weight, tone muscles and improve overall fitness – just by walking in them. The company drafted celebrities like Kim Kardashian and Brooke Burke as Influencers to market their products. The FTC filed formal charges against Skechers for violating federal advertising laws. Skechers agreed to pay \$40 million to settle the charges. The money was used to refund customers who purchased Shape-ups, Tone-ups, Resistance Runners, or Toners. Skechers were also banned from making any future health claims about their toning shoes without reliable scientific evidence, as well as prohibited from misrepresenting research or clinical studies in their ads.

In the United Kingdom, the Consumer Protection from Unfair Trading Regulations, 2008 (CPRs) prohibits misleading and false claims. In the CPRs, a commercial practice is a misleading action if: it contains false information and is therefore untruthful in relation to - the existence or nature of the product, to the main characteristics of the product, to the extent of the trader's commitments, to any statement or symbol relating to direct or indirect sponsorship or approval of the trader or the product, to the price or the manner in which the price is calculated (the existence of a specific price advantage),<sup>61</sup> if it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise.<sup>62</sup>

Chapter 3 of the Code of Non-broadcast Advertising and Direct & Promotional Marketing (the CAP Code),<sup>63</sup> deals with Misleading Advertising. It provides that marketing communications must not materially mislead or be likely to do so, with the exception of obvious exaggerations ("puffery") and claims

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<sup>60</sup> Federal Trade Commission, 'Skechers Will Pay \$40 Million to settle FTC Charges That It Deceived Consumers with Ads for "Toning Shoes" (2012) <<https://www.ftc.gov>> accessed May 1, 2025.

<sup>61</sup> Consumer Protection from Unfair Trading Regulations, 2008 Regulations 5 (2)(a)

<sup>62</sup> Consumer Protection from Unfair Trading Regulations, 2008 Regulations 5 (2) (b)

<sup>63</sup> <<https://perma.cc/964P-5GGQ>> Accessed 8 August, 2021.

that the average consumer is unlikely to take literally.<sup>64</sup> Thus, whenever complaints that an advertisement misleads consumers are made, the Advertising Standards Authority (ASA) takes into consideration factors identified in the CPRs and the CAP Code to decide whether the advertisement breaches the Regulation and Code. ASA may also take compliance action in the absence of complaints or during an investigation. The form of sanction imposed for non-compliance include; adverse publicity, denial of media space, withholding of trading privileges and recognition, pre-publication vetting, amongst others. The ASA can also issue rulings, warnings, and even sanctions against non-compliant influencers. For example, ASA recently announced a watershed ruling against Instagram influencers that use image-altering filters while being paid to promote beauty products. ASA determined that social media adverts containing filters that could exaggerate the results of the product being marketed to the audience were misleading, and that brands and influencers found in breach moving forward would be reprimanded.<sup>65</sup>

In China, under her Advertising law, advertisements shall not have any false or misleading content or defraud or mislead consumers, and advertisers shall be responsible for the veracity of the contents of an advertisement.<sup>66</sup> Accordingly, advertisers, advertising agents, and advertisement publishers are to abide by laws and regulations, be honest and trustworthy, and compete in a fair manner in advertising activities.<sup>67</sup> Thus, where the advertised good or service does not exist or where information regarding the good's performance, functions, place of production, uses, quality, specification, ingredient, price, producer, term of validity, sales condition, and honours received, among others, is inconsistent with the actual circumstances, and which has a material impact on purchases, or where any scientific research result, statistical data, investigation result, excerpt, quotation, or other information is fabricated or forged or cannot be validated has been used as a certification material, the results of using the good or receiving the service are fabricated, consumers are

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<sup>64</sup> United Kingdom Code of Non-broadcast Advertising and Direct & Promotional Marketing Rule 3. Also under the Code, Marketing communications must not mislead consumers by exaggerating the capability or performance of a product; must not present rights given to consumers in law as a distinctive feature of the marketer's offer; and Marketing communications must not suggest that their claims are universally accepted if a significant division of informed or scientific opinion exists- Rules 3.11-3.13 of the United Kingdom Code of Non-broadcast Advertising and Direct & Promotional Marketing

<sup>65</sup> Kate Lancaster, The UK has Banned the Use of Misleading Instagram Filters in Influencer Ads for Beauty Products. But Let's not Oversimplify an Industry-Wide Issue' <<https://www.graziomagazine.com>> accessed 1 May, 2025.

<sup>66</sup> The Advertising Law of the People's Republic of China, 2018, Article 4

<sup>67</sup> The Advertising Law of the People's Republic of China, 2018, Article 5

otherwise defrauded or misled with any false or misleading content, such circumstances amounts to a false advertisement under the Act.<sup>68</sup>

However, influencers and other endorsers may not advertise medical treatments, pharmaceuticals or medical devices, advertise health food, recommend or demonstrate products or services that they have not used, and may not commit false advertising or otherwise mislead consumers.<sup>69</sup> Influencers are required to show their appropriate qualifications to talk about and promote products in fields such as law, medicine, education and finance.<sup>70</sup> Where a false advertisement is published in violation of the Law to defraud or mislead consumers, causing any damage to the lawful rights and interests of consumers who purchase goods or receive services, the advertiser shall assume civil liability in accordance with the law and make compensation. In some cases, joint and several liability for false advertisement may be assumed between the advertiser and influencer.<sup>71</sup> For example, a Chinese e-commerce livestreamer, Xinba, on the short video app “Kuaishou” was exposed for hyping a bogus nutritional drink he claimed contained bird’s nest soup. Both the broadcasting company and the brand owner were fined RMB 0.9 million and RMB 2 million respectively by the Guangzhou market regulatory department for violation of Article 8 (1) of the PRC Anti-Unfair Competition Law.<sup>72</sup>

In Nigeria, the Nigerian Code on Advertising Practice, Sales, Promotion, and Other Rights/Restrictions on Practice (6th Edition)<sup>73</sup> mandates that all advertisements, excluding public service announcements, goodwill messages, obituaries, and vacancy announcements, must be vetted to ensure compliance with the provisions of the Act and Code and approved by the Advertising Standards Panel (ASP) before exposure.<sup>74</sup> Thus, advertisers<sup>75</sup> and agencies must obtain an Advertising Standard

<sup>68</sup> The Advertising Law of the People’s Republic of China, 2018, Article 28

<sup>69</sup> The People’s Republic of China Advertising Law, 2018 Articles 16 - 38

<sup>70</sup> African Marketing Confederation, ‘Influencers Chinese Government Moves to Limit the Power of some Influencers’ <<https://www.linkedin.com>> accessed 6 March, 2025.

<sup>71</sup> The Advertising Law of the People’s Republic of China, 2018, Article 56

<sup>72</sup> Sven-Michael Werner and Grace Zhao, ‘Opinion Leaders, Endorsers and other influencers: legal risks in digital marketing’ (2021) <<https://www.twobirds.com>> accessed 1 May, 2025.

<sup>73</sup> The 6th Edition of the Nigerian Code on Advertising was introduced to repeal the 5th Edition of the Nigerian Code on Advertising

<sup>74</sup> Article 24(a) Nigerian Code of Advertising 2021

<sup>75</sup> Section 63 defines an “advertiser” to mean a person, private or public organisation that causes, requests, directs, or pays for an advertisement, advertising or marketing communications ideas to be created, developed, produced, executed, expose or that takes benefit of advertisement, advertising,

Panel (ASP) Certificate of Approval before exposing such content. Failure to comply with these pre-exposure approval provisions attracts penalties.<sup>76</sup> Furthermore, to enforce the provisions of the Code, a minimum fine of ₦500,000 (Five Hundred Thousand Naira) is imposed on violators including agencies, advertisers, media houses, advertising practitioners, and advertising practitioners in media houses who publish an advertisement without an ASP Certificate of Approval.<sup>77</sup> The aim of obtaining the Certificate of Approval is to ensure that claims made in an advert are substantiated and verified as truthful, to uphold ethical advertising practices, for the protection of consumers, as well as ensuring the content is not misleading or harmful and for the prevention of penalties.<sup>78</sup>

The provisions in the ARCON Act have been criticised as burdensome and unnecessary. For example, the obligation on social media platforms to obtain the approval of the Standards Panel of ARCON before exposure of its ads to the Nigerian market or audience on its platforms. It is submitted that, although the provisions of the ARCON Act seems to be straightforward, the implementation of its provisions might pose a challenge to ARCON as it is not clear how ARCON may vet and approve advertisement requests timeously from different persons and entities in Nigeria as well as online entrepreneurs outside Nigeria directing advertisements to the Nigerian market.<sup>79</sup>

### ***Protecting Intellectual Property***

Influencers often create unique content, including photographs, videos, or written material which must be protected. Thus, intellectual property protects the rights of creators, safeguards creative works from unauthorized use and fosters a climate of creativity and innovation.<sup>80</sup> Intellectual property encompasses copyright, trademarks, and patents. However, these partnerships bring forth a myriad of legal complexities, particularly in areas of image rights and trademark usage and disclosure requirements. For example, when an influencer collaborates with a brand, they provide more than just the

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and marketing communication services;

<sup>76</sup> Advertising Regulatory Council of Nigeria Act 2022 (ARCON ACT0, Section 54 and Nigerian Code of Advertising 2021, Article 145.

<sup>77</sup> Nigerian Code of Advertising 2021, Article 145.

<sup>78</sup> The Advertising Regulatory Council of Nigeria, 'About Us' <<https://www.apcon.gov.ng>> accessed 1 May, 2025.

<sup>79</sup> Gbolahan Elias, 'Advertising Law: 2022 Federal Legislation and Social Media' (2023) <[Advertising\\_Law\\_2022\\_Federal\\_Legislation\\_and\\_Social\\_Media.pdf](#)> accessed

<sup>80</sup> Katie Charleston Law, 'How Influencers can and should protect their content with intellectual property' (2024) <<https://www.katiecharlestonlaw.com>> accessed 12 March, 2025.

audience, they provide their likeness. Volvo was sued by a photographer and the model he used for copyright violation, unfair competition and misappropriation of the model's likeness when it publicly posted pictures taken by them and shared to their Instagram Story without obtaining their permission.<sup>81</sup>

In the United States, the specifics of trademark infringement are found in Chapter 15 of the United States Code, and the Lanham Act, 1946. Under the Lanham Act, trademarks are designs, words, expressions or signs that differentiate one product from another. Sections 32<sup>82</sup> and 43<sup>83</sup> of the Lanham Act<sup>84</sup> serves as the statutory basis for a trademark infringement claim. The Lanham Act provides holders of marks, with a cause of action to protect their marks from infringement. Infringement occurs when an entity other than the senior mark holder uses a mark in connection with goods or services in a manner likely to cause confusion with respect to the senior mark.<sup>85</sup> As a threshold to this cause of action, the senior mark must itself be protectable.<sup>86</sup> In order to be protectable, "a mark must be capable of distinguishing" one mark user's goods or services from another's—in other words a mark must be sufficiently "distinctive."<sup>87</sup>

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<sup>81</sup> Nicole Jaiyesimi, *Influencer Marketing and IP Rights: Navigating Collaborations and Endorsements* (2023 - 2024) NYU Journal of Intellectual Property and Entertainment Law <<https://www.jipel.law.nyu.edu>> accessed 2 May, 2025

<sup>82</sup> Section 32 of the Lanham Act empowers trademark owners to sue for unauthorized use that causes consumer confusion. It allows recovery of damages, including profits and attorney fees, enhancing trademark enforcement. Remedies under Section 32 include injunctions to prevent further infringement and monetary compensation for losses incurred.

<sup>83</sup> The Lanham Act Section 43(a) serves as a critical framework for addressing false advertising and unfair competition in the marketplace. This section provides robust legal recourse against misleading representations that can harm businesses and consumers alike. It specifically targets false endorsements, where a product is falsely attributed to an individual or entity, misleading consumers about its origin or quality. Such misrepresentations can lead to significant economic harm and erode consumer trust. Moreover, Section 43(a) also encompasses the concept of trademark dilution, which occurs when the distinctiveness of a famous mark is impaired by subsequent use that may not necessarily cause confusion but still diminishes its uniqueness. By addressing both false endorsements and trademark dilution, the Lanham Act seeks to maintain fair competition and protect brand integrity, ensuring that consumers receive accurate information about the products they choose.

<sup>84</sup> codified in 15 U.S.C. Sections 1051 to 1127

<sup>85</sup> *Kellogg Co. v. Toucan Golf, Inc.*, 337 F.3d 616, 623 (6th Cir. 2003)

<sup>86</sup> *Zatarains, Inc. v. Oak Grove Smokehouse, Inc.*, 698 F.2d 786, 790 (5th Cir. 1983)

<sup>87</sup> *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 768–69 (1992)

Section 1114 and 1125 of the United States Code, creates civil liability for any person who, without the consent of the registrant of a trademark, reproduce, copy, or otherwise imitate the mark in a manner that is likely to cause confusion or mistake for customers. To address modern technological trends such as digital marketing, the sections also imposes civil liability for cyber piracy, prohibiting trademark infringement when the trademark is used in the domain name of an unaffiliated person or entity in a manner likely to cause confusion or dilution. In defining these causes of action, the statute expressly excludes fair use, including comparative advertising, parody, news reporting, and non-commercial use. Under the code,<sup>88</sup> victims of trademark infringement may recover any profits generated by the infringement, any damages sustained by the registrant because of the infringement, and, in some cases, attorney's fees and the cost of the action itself.

Under the Copyright Law of the United States,<sup>89</sup> copyright in a work protected vests initially in the author or authors of the work. The authors of a joint work are co-owners of copyright in the work.<sup>90</sup> In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.<sup>91</sup> Anyone who violates any of the exclusive rights of the copyright owner is an infringer of the copyright or right of the author, as the case may be<sup>92</sup> and may be sued civilly or criminally. The remedies that accrue to the copyright owner for a civil action includes: injunction,<sup>93</sup> seizure of infringing articles,<sup>94</sup> damages and profits,<sup>95</sup> and costs and attorney's fees.<sup>96</sup> In *Sony Music Entertainment, Inc., Et Al., v. Dantreal Daevon Clark-Rainbolt*,<sup>97</sup> Sony sued a popular TikTok rapper Trefuego for impermissibly sampling Sony's copyrighted song, resulting in the creator being ordered to pay over \$800,000 in damages.

In China, her Advertising Law specifically mandates

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<sup>88</sup> 15 United States Code, section 1117.

<sup>89</sup> The United States Code, Chapter 5 Title 17 Section 501 <<https://www.copyright.gov/>> Accessed 10 January, 2025.

<sup>90</sup> The United States Code, Chapter 2 Title 17 Section 201 (a)

<sup>91</sup> The United States Code, Chapter 2 Title 17 Section 201 (b)

<sup>92</sup> Copyright Law of the United States, Title 18 Section 501 (1)

<sup>93</sup> Copyright Law of the United States, Title 18 Section 502

<sup>94</sup> Copyright Law of the United States, Title 18 Section 503

<sup>95</sup> Copyright Law of the United States, Title 18 Section 504

<sup>96</sup> Copyright Law of the United States, Title 18 Section 505

<sup>97</sup> 4: 23-cv-00275-P <<https://www.digitalmusicnews.com>> accessed 3 May, 2025.

advertisers or advertising agencies to secure prior written consent before using an individual's name, image or mark.<sup>98</sup> For trademarks, it is an offence for another to use the registrant's registered trademark, unregistered well-known trademark without authorisation. If such usage misleads the public and causes unfair competition, same shall be disposed according to the Anti-unfair competition law of the People's Republic of China.<sup>99</sup> Where it is established that there was an infringement of the registrant's mark, the administrative authority shall order the infringer to immediately stop the infringing act, confiscate and destroy the infringing goods and tools specially used for the manufacture of the infringing goods and for counterfeiting the representations of the registered trademark, and impose a fine.<sup>100</sup> In *Wuhan Douyu Network Technology Co. Ltd v China Music Copyright Association*,<sup>101</sup> the Beijing Intellectual Property Court on appeal ruled that the unlicensed use of a song by an influencer during a live influencer broadcast infringed the copyright holder's exclusive right of network dissemination.

In the United Kingdom, the Copyright, Designs and Patents Act, 1988 gives creators of dramatic, musical, literary, sound recordings, artistic works, films, broadcasting, typographical arrangement of the published editions, and the right to control how their material should be used. Under the Act, Copyright is infringed by: making copies of the work; making available copies of the work to the general public; renting/lending the copyrighted work to the general public; performing, showing, or playing the copyrighted work in public without permission from the owner; communicating the work to the general public; adapting the work in some form or doing any of the above to an adaptation; authorizing any of the aforementioned acts in any manner to the copyrighted work.<sup>102</sup> Furthermore, civil and criminal liability<sup>103</sup> may be imposed on those who knowingly deal with infringing copies of a copyrighted work in the course of trade.<sup>104</sup> Copyright infringement remedies include; injunction,<sup>105</sup> damages,<sup>106</sup> delivery up, seizure,<sup>107</sup> forfeiture, prevention of importation, and in some cases, cost of attorney's fees.

<sup>98</sup> The People's Republic of China Advertising Law, 2018 Article 2

<sup>99</sup> Trademark Law of the People's Republic of China (2013), Article 58

<sup>100</sup> Trademark Law of the People's Republic of China (2013), Article

<sup>101</sup> <<https://subsites.chinadaily.com.cn/>> accessed 17 January, 2025.

<sup>102</sup> Copyright, Designs and Patents Act 1988, Sections 16-21

<sup>103</sup> Copyright, Designs and Patents Act of 1988, Section 107

<sup>104</sup> Copyright, Designs and Patents Act of 1988, Section 96

<sup>105</sup> Copyright, Designs and Patents Act 1988, Section 97A

<sup>106</sup> Copyright, Designs and Patents Act 1988, Section 97

<sup>107</sup> Copyright, Designs and Patents Act of 1988, Section 100

In *Gifford et al v Sheil et al*,<sup>108</sup> though still on trial, the question arises “can one really own an aesthetic?” The Plaintiff Sydney Nicole Gifford an influencer accuses another influencer, Alyssa Sheil of copying both her posts and her style. The plaintiff describes how she uses social media and e-commerce platforms, including TikTok, Instagram, Amazon Storefront to foster her “unique brand identity,” establish trust with followers, and curate and promote thoroughly – researched and “thoughtful lists” of products she recommends. Gifford accuses Sheil of adopting the same “neutral, beige, and cream aesthetics” that comprises her brand, featuring many of the same products, and copying her style and captions. The complaint includes a number of side-by-side comparisons of Gifford and Sheil’s posts. Thus, while influencers take inspiration from each other, the case has generated wide coverage as to its possible outcome.

In trademarks, section 1 of the Trades Mark Act, 1994 defines a trade mark as any sign (words, designs, letters, numerals, the shape and packaging of goods, symbols, colour shades and a combination of any) that is capable of being represented graphically and is further capable of distinguishing goods or services of one undertaking/enterprise from those of other undertakings/enterprises. Upon the registration of a trade mark, many exclusive rights are available to the trade mark owner, such as; right to be identified as author or director, right to object to derogatory treatment of work, right to privacy of certain photographs and films.

Trade mark infringement occurs when a sign is used by a third party in the course of trade involving goods or services where: the sign being used by the infringer is identical to the registered trade mark and is being used for identical goods or services to those that are a subject of the trade mark registration; or the sign used is identical to a registered trade mark that has a reputation in the market and the use of such a sign takes unfair advantage and is injurious to the originality or reputation of the mark, as well as consumers. Civil and criminal remedies are granted under the Act. The civil remedies available are: Interim injunctions (in combination with a cross-undertaking in damages) and injunctions; damages or accounts of profits; delivery up of infringing goods, and removal of marks from infringing goods.

In Nigeria, the Copyright Act, 2022,<sup>109</sup> the Patents and Designs Act, and the Trademarks Act, 1965 govern intellectual

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<sup>108</sup> Alexandra J. Roberts, Does IP Law Protect Influencers’ Aesthetics? – Gifford v. Sheil (Guest Blog Post) (2024) <<https://www.blog.ericgoldman.org>> accessed 5 May, 2025

<sup>109</sup> The Copyright Act 2022 < <https://www.lawglobalhub.com/>> accessed 17 January, 2025.

property rights. Section 2 (1) of the Copyright Act, 2022 provides for works protected by copyright subject to some exceptions. They include; (a) Literary works (b) Musical works (c) Artistic works (d) Audiovisual work (e) Sound recordings (f) Broadcasts. The author of a work in which copyright subsists has the right to - claim authorship of his work, object and to seek relief in connection with any distortion, mutilation or other modification of, and any other derogatory action in relation to his work, where such action would be or is prejudicial to his honour or reputation, and/or object to a work being falsely attributed to him as the author.<sup>110</sup> He also has the right to remuneration for broadcasting or sound recording<sup>111</sup> and share in proceeds of sale.<sup>112</sup>

A Copyright is infringed by any person who without the authorisation of the owner of the copyright in respect of the whole or a substantial part of the work either in its original form or in any form recognisably derived from the original does or causes any person to do an act, which constitutes a violation of the exclusive rights conferred under this Act, or performs or causes to be performed for the purposes of trade or business or the promotion of a trade or business, any work in which copyright subsists, amongst others.<sup>113</sup> Under the Act, infringement of copyright is actionable at the instance of the owner, assignee or an exclusive licensee of the copyright. The plaintiff shall be entitled to reliefs such as damages, injunction, and accounts, order for inspection and seizure, forfeiture of infringing copies. The Act also imposes criminal liability. From the above, it is apparent that the new Copyright Act expands the rights of authors, raises the sanctions for criminal infringements and more adequately addresses the challenges posed by digital and online use of copyright works.

### ***Protecting Data Privacy***

Influencer marketing is powered by consumer data to achieve optimal goals. Influencers often collect and handle personal data of users such as, age, gender, location and interest, as well as email addresses and engagement metrics to find and target specific demographics. Accurate and thorough data collection and analysis practices are essential to online marketing success – deliver a positive user experience, connecting viewers with content that's most relevant to their likes and needs, which in turn, helps brands increase the effectiveness of their campaigns

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<sup>110</sup> The Copyright Act, 2022, Section 14

<sup>111</sup> The Copyright Act, 2022, Section 15

<sup>112</sup> The Copyright Act, 2022, Section 17

<sup>113</sup> The Copyright Act, 2022 Section 36

and Return on Investment.<sup>114</sup> However, with consumers demanding transparency about how and when their data is used, there arise the need to ensure that individuals have control over their data and are able to protect it from unauthorized access or misuse. Thus, brands and influencers must ensure that explicit consent is obtained for data collection and processing and ensure the secure handling and storage of personal information.

In the United States, various federal and state laws cover different aspects of data privacy, like health data, financial information or data collected from children. The United States Privacy Act, 1974,<sup>115</sup> as well as the Children's Online Privacy Protection Act of 1998 requires that explicit consent (personal or guardian) of subject is obtained for data collection and processing and ensure the secure handling and storage of personal information. In China, the Cybersecurity Law (CSL), 2017 along with its supplementary measures, provides that individuals or organizations must not steal or use other illegal methods to acquire personal information of users and must not unlawfully sell or unlawfully provide others with personal information.<sup>116</sup> In the United Kingdom, under the General Data Protection Regulation, 2018<sup>117</sup> it is required that while personal data be processed lawfully, fairly and in a transparent manner in relation to the data subject, a subject's data should be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes, save for certain purposes.<sup>118</sup> The controller is to ensure compliance with processing of personal data<sup>119</sup> by ensuring the data subject has given consent to the processing of his or her personal data for specific purposes.<sup>120</sup>

## **5.0 THE IMPACT OF REGULATIONS ON INFLUENCER MARKETING**

The impact of regulations on influencer campaigns is multifaceted, affecting various stakeholders from influencers to the brands they partner with, and ultimately, the consumers. For influencers, the regulations can be both positive and negative. From the positive perspective, regulations provide a framework that legitimizes their profession, ensuring that they are

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<sup>114</sup> Allegiant Media, 'Why data Privacy is essential to Influencer Marketing Success' (2024) <<https://www.allegiantmedia.com.au>> accessed 5 May, 2025.

<sup>115</sup> U.S. Department of the Treasury, Privacy Act, <<https://www.home.treasury.gov>> accessed 1 January, 2025

<sup>116</sup> Article 44 of China's Security Cyber Law, 2017

<sup>117</sup> <<https://gdpr-info.eu/>> Accessed 10 August, 2021.

<sup>118</sup> General Data Protection Regulation, 2018 Article 5(1)

<sup>119</sup> General Data Protection Regulation, 2018 Article 5 (2)

<sup>120</sup> General Data Protection Regulation, 2018 Article 6 (1) (a)

compensated fairly and their rights are protected. For example, failing to disclose paid relationships or meet transparency standards can result in penalties. However, strict rules such as the need to obtain copyright permission from the author of a work used by an influencer, can limit their creative freedom and the authenticity of their content, which is the cornerstone of their influence.<sup>121</sup>

For brands, influencer marketing regulations help in maintaining a level playing field with influencers and protect brands from potential backlash associated with undisclosed or misleading endorsements. However, they also necessitate a more rigorous vetting process for influencer partnerships and can increase the complexity of campaign management. Thus, brands must ensure the influencers they collaborate with understand their disclosure obligations.<sup>122</sup> For consumers, influencer marketing regulation provides protection from non-disclosure of affiliation with brand, deceptive advertising and false claims about a product's offering, data privacy abuse as well as protection from intellectual property abuse by influencers. It also helps in distinguishing between genuine recommendations and paid endorsements, allowing for more informed purchasing decisions.<sup>123</sup>

## **6.0 CHALLENGES ENCOUNTERED IN REGULATING INFLUENCER MARKETING IN NIGERIA**

Some of the core challenges identified with regulating influencer marketing in Nigeria are discussed below:

### ***1. Difficulties in Identifying Misleading Advertisements***

One of the core challenges in regulating influencer marketing is distinguishing between genuine content and paid promotions. The covert nature of influencers blending advertisements into their content so subtly may mislead followers as it is challenging to distinguish commercial from editorial content as well as genuine from sponsored brand endorsements, which often leads to post-purchase dissatisfaction and distrust in the brand. More so, misleading advertisements may not always be

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<sup>121</sup> Emma Woollacott, 'How new rules on influencer marketing impact UK Businesses' (2023) <<https://www.raconteur.com>> accessed 5 May, 2025.

<sup>122</sup> Melanie A. Conroy, Kasey Boucher Pierter, 'Revolve Faces \$50M Class Action Alleging Undisclosed Influencer Relationships' (2025) XV(124) National Law Review <<https://www.natlawreview.com>> accessed 30 April, 2025

<sup>123</sup> Faster Capital, 'Influencer regulation: The Role of Influencer Regulation in Shaping Marketing Strategies' (2024) <<https://fastercapital.com/>> accessed 4 March 2025.

obviously false; they may take up the form of exaggerated claims on the effectiveness of a product or omissions of vital information about a product's offering, making it difficult for regulatory bodies to track violations swiftly in such a volatile industry.<sup>124</sup>

## ***2. Difficulty in ensuring Influencers' Compliance***

Ensuring influencers comply with advertising standards poses an arduous task as influencers operate in a borderless digital space, and jurisdictional issues become complex. Many influencers may not be concerned with the legal obligations associated with sponsored content or disregard disclosure guidelines due to the desire to maximize their earnings. Influencers often operate in fast-paced social media environments, where they may not always adhere to ethical standards, especially when penalties for non-compliance are not immediate or substantial.<sup>125</sup>

## ***3. Balancing Government Oversight with Effective Influencer Marketing***

The reliance on voluntary compliance by influencers is often insufficient because of the gain they stand to achieve. Government's involvement through regulations and laws have a more authoritative force of enforcement. Excessive regulation and control are prone to abuses as they could unduly scare away healthy influencers from doing their jobs. Moreso, the influencer industry is highly volatile with new influencers entering the market with new strategies which could circumvent existing laws and it may be difficult to identify and monitor the activities of the social media influencers.<sup>126</sup>

## ***4. Poor knowledge of the law on influencer marketing and lack of know how to detect the ills.***

Influencer marketing, especially in the digital space is still a novel issue and a lot of law enforcement agents, lawyers and judges still lack the knowledge and skills required to both detect, enforce and do justice to cases in this regard.<sup>127</sup>

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<sup>124</sup> Liselot Hudders, 'Influencer Marketing: A growing sector with evolving challenges' (2023) <<https://www.adassoc.org.uk>> accessed 6 May, 2025.

<sup>125</sup> Hudders (n 124)

<sup>126</sup> Liselot Hudders and C. Lou, 'The rosy world of influencer marketing? Its bright and dark sides, and future research recommendations' (2023) *International Journal of Advertising* <<https://www.doi.org/10.1080/02650487.2022.2>> accessed 6 May 2025.

<sup>127</sup> Lawfinity Solutions, "Social Media Influencer Marketing and Deceptive Practices: Legal Strategies for Startups", available at [Social Media Influencer Marketing and Deceptive Practices: Legal Strategies for Startups - Lawfinity](#)

## 7.0 CONCLUSION

This work has highlighted the fact that influencer marketing is gaining momentum globally as governments strive to create a fair, transparent, and accountable landscape through its regulations. The influencer regulations in the United Kingdom, the United States, China, and Nigeria share common goals of protecting consumers and fostering a responsible influencer marketing environment. By addressing disclosures, misleading and false advertising, intellectual property abuse and data privacy, these countries strive to ensure a balance between promoting influencer creativity, commercial activity and safeguarding consumer rights. The influencer industry in Nigeria is still at its teething stages and this work has identified core challenges that must be addressed for a holistic output that is beneficial to the stakeholders. Thus, as the influencer marketing industry continues to evolve, it is vital for governments to adapt and update their regulations to address emerging challenges and ensure a sustainable and trustworthy influencer marketing landscape.

## 8.0 RECOMMENDATIONS

To enhance the legal landscape of Influencer marketing and consumer rights in Nigeria, the following recommendations are proffered:

1. To challenge the rising threat of misleading advertisement, non-disclosures and transparency, data privacy abuse, as well as abuse of intellectual property in influencer marketing, the existing Legal frameworks regulating influencer marketing should be strengthened and the consumer protection laws expanded and refined to explicitly include influencer advertising. This can be achieved by clearly defining what constitutes misleading claims as well as clearly spelling out the mandatory disclosure requirements for influencers and imposing stricter penalties for non-compliance. Regulatory bodies should also be granted more resources to ensure more effective advertising standards.<sup>128</sup>
2. Influencers and consumers should be better informed and awareness created on the ethics of advertising through campaigns. These campaigns should focus on the practices of transparency, truthfulness, and consumer protection in influencer's marketing. There

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[Solutions](#), > accessed 10 May 2025

<sup>128</sup> Hudders and Lou (n 126).

should be collaboration between consumer protection organizations and industry bodies, for enhanced resources on their responsibilities, while also informing the consumers of their rights and how to discover misleading content. All the campaigns should aim at promoting a culture of ethical advertising, thereby engendering responsibility within the digital marketplace.<sup>129</sup>

3. To ensure and foster creativity within the influencer industry, intellectual property regulations across countries should be harmonized. A unified approach and consistent guidelines should also be provided for influencers and brands engaging in cross-border collaborations, thus creating a more stable and predictable environment for all stakeholders.<sup>130</sup>
4. There is a dire need for continuous collaboration between influencers, brands, regulators and consumers to ensure that ethical standards are maintained, and deceptive practices are highly curtailed and eventually eradicated.

Because influencer advertising is a developing area of law, especially in the digital space, law enforcement agents, lawyers and judges need to be trained on how best to deal with cases of this nature in order to guarantee proper adjudication on such issues.

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<sup>129</sup> Sony Music Entertainment, Inc., Et al., v. Dantreal Daevon Clark-Rainbolt (n 97)

<sup>130</sup> [Bianca Ascolese](#), 'Regulating Influencer Marketing: A Comparative Analysis of Laws Across the World' (2013) < <https://natlawreview.com/>> accessed 3 March 2025.