

Unfair competition and unfair commercial practices of influencers: Legal analysis in the Slovak and comparative context

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Unfair competition and unfair commercial practices of influencers: Legal analysis in the Slovak and comparative context. Influencer marketing has become a dominant and highly effective form of digital advertising, fundamentally changing traditional communication strategies. Its rapid, often unregulated growth poses significant legal challenges in the areas of unfair competition and consumer protection. This article provides a comprehensive legal analysis of influencer misconduct, including hidden advertising, misleading claims, buying fake followers, and writing fake reviews. The article systematically maps and evaluates the Slovak legal framework, covering private law regulation of unfair competition and public law regulation of unfair commercial practices. The methodology includes analysis of relevant Slovak and Czech legislation, doctrine, and application practice. An in-depth, comparative analysis of the German Federal Court of Justice, Spanish and Czech case law offers valuable interpretive guidance. The paper also assesses national self-regulatory mechanisms and gives recommendations *de lege ferenda* to strengthen legal certainty and protection for all in the digital market.

Key words: influencer marketing, unfair competition, unfair commercial practices, hidden advertising, consumer protection

Introduction

Digital transformation has radically changed how entrepreneurs communicate with customers.¹ In the past decade, influencer marketing has become one of the most significant and dynamic marketing phenomena. The Council of the European Union concludes that influencers have an inherent impact on individuals, communities, society and the media ecosystem.² This form of social media marketing, using influencers to place products and services in online communities, is now a strategic pillar among companies' digital tools. Economic importance is growing exponentially, with global influencer marketing spending in the billions of euros per year, and forecasts show

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¹ YE, G., HUDDERS, L., DE JANS, S., DE VEIRMAN, M.: The Value of Influencer Marketing for Business: A Bibliometric Analysis and Managerial Implications. *Journal of Advertising*, 50(2), pp. 160–178., [online], 2021, [cited 13 October 2025]. Available online: <<https://doi.org/10.1080/00913367.2020.1857888>>

² Council of the European Union: Council conclusions on supporting influencers as creators of online content C/2024/3807 of 23 July 2024, [online], 2024, [cited 20 November 2025]. Available online: <https://eur-lex.europa.eu/legal-content/SK/TXT/PDF/?uri=OJ:C_202403807>

continued growth.³ Influencer marketing rises due to new platforms, new audience interaction models, and increased advertising investment.⁴ This area now covers more than cosmetics or clothing; it increasingly affects finance and banking via finfluencers.⁵ Social networks have gradually replaced traditional media. Now, we turn to Instagram, YouTube, TikTok, and other platforms daily, rather than traditional news channels.

This rapid development is outpacing legislative and regulatory responses. It creates a legal environment of uncertainty and risk. Followers often feel close to their favourite influencers, trusting them more than traditional celebrities in advertising. However, this authenticity is often a commercial construct, which can lead to legally problematic practices.⁶ Influencers' posts, such as blogs, reviews, videos, and stories, often seem like authentic recommendations but hide their commercial nature. This results in hidden advertising. Other issues include unsubstantiated product claims, fake follower purchases to inflate market value, misleading reviews, and aggressive practices targeting vulnerable groups, especially children and youth. These harm consumer confidence and distort competition, hurting honest competitors.⁷ In Slovakia, legal practice and doctrine have barely addressed the regulation of influencer professional services. The article's basic premise is that the rise of influencers requires a legal framework for balance in the audiovisual ecosystem, subjecting all participants to clear rules. In Spain, for example, increased influencer activity led to the Royal Decree 444/2024. Under certain economic

³ APPEL, G., GREWAL, L., HADI, R., STEPHEN, A. T.: The future of social media in marketing In: *Journal of the Academy of Marketing Science*; New York Vol. 48, Iss. 1, 2020, pp. 79-95., [online], 2020, [cited 13 October 2025]. Available online: <<https://doi.org/10.1007/s11747-019-00695-1>>

⁴ A study by IAB Spain on investment in digital media advertising in 2024 shows a 23.9% increase in investment in online influencer marketing compared to last year's figures, with investment reaching €79.2 million in 2023. This increase is the highest in percentage terms alongside television and digital audio. The same study from 2023 recorded an increase of 22.8% compared to 2022 figures, confirming the sustainability of this growth. See more: *Estudio de Inversión Publicitaria en Medios Digitales*, [online], 2024, [cited 13.10.2025]. Available online: <<https://iabspain.es/estudio/estudio-de-inversion-publicitaria-en-medios-digitales-2024/>> and *Estudio de Inversión Publicitaria en Medios Digitales*, [online], 2023, [cited 13.10.2025]. Available online: <<https://iabspain.es/estudio/estudio-de-inversion-publicitaria-en-medios-digitales-2023/>>

⁵ Finfluencers' answers to specific questions or comments may be considered investment advice, which can only be provided with the appropriate authorisation from the financial market supervisory authority, e.g. the NBS in Slovakia. Investment advice is an individualised recommendation to a client regarding trading in specific financial instruments. It differs from general advice and investment recommendations in terms of its degree of personalisation, and in the context of finfluencers' activities, investment advice may take the form of responses to comments from specific commentators. According to Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse, an investment recommendation is any public communication that includes advice or opinions on the purchase or sale of financial instruments (e.g. shares, bonds, investment fund units or derivatives) or on how to create model portfolios or propose an investment strategy. In the case of audiovisual formats, this information must be available at least by means of a link to a place where it is publicly accessible. For more details, see: National Bank of Slovakia: Warning – Beware of investing according to finfluencers. [online], [cited on 13 October 2025]. Available on the internet: <<https://nbs.sk/aktuality/upozornenie-nbs-pozor-na-investovacie-podla-finfluencerov/>>

⁶ e.g. “bloggers”, “vloggers”, “youtubers”, “instagrammers”, “tiktokers” and/or “streamers”.

⁷ Slovak Trade Inspection: Results of an inspection campaign concerning influencer posts on social networks, [online], 2024, [cited 13 October 2025]. Available online: <<https://www.soi.sk/sk/informacie-preverejnost/vysledky-kontrolnej-akcie-tykajúcej-sa-prispevkov-influencerov-na-socialnych-sietach.soi>>

and audience conditions (creators with annual sales of € 300,000 or more, with 1 million followers on a single video-sharing platform, or 2 million for their entire business), it treats influencers as users of particular importance under Act No. 13/2022 on the general audiovisual communication, mainly for advertising obligations.⁸

This scientific article contends that the Slovak legal framework for regulating unfair competition and unfair commercial practices by influencers is currently insufficient and requires systematic improvement. It provides a comprehensive legal analysis by mapping and critically evaluating this framework – covering private law (the Commercial Code) and public law (the Consumer Protection Act, Advertising Act, and Media Services Act). The article compares these regulations with foreign approaches, focusing on case law from the German Federal Court of Justice and relevant Spanish and Czech decisions as interpretative guidance for online contexts. Influencer marketing in these jurisdictions is expanding annually, aligning with global trends. Chapter one defines the legal status of influencers and key terms. Chapter two analyzes unfair competition from a private law perspective. Chapter three examines unfair commercial practices affecting consumers. Chapter four gives a comparative analysis of foreign case law. Chapter five evaluates both regulatory and self-regulatory mechanisms in Slovakia. The conclusion summarizes key findings and presents *de lege ferenda* recommendations to strengthen legal regulation and enforcement.

1. Legal status of influencers and definition of basic terms

To understand influencer marketing liability, we must clearly define influencers and related parties. This chapter examines the influencer’s legal definition, status as an entrepreneur or competitor, and position under specific laws.

The English term “influence” is rarely translated into Slovak, and “influencer” has become a common part of the vocabulary. From a marketing perspective, an influencer is a person who, through their activity on social networks, has built a community of followers whom they can influence and shape in shaping their opinions and purchasing behaviour. Conceptually, influencers can be defined as “individuals who have the ability to influence consumer behaviour much more effectively than traditional advertising, which is why marketers and brands turn to them to promote their products and services.”

Influencers have a significant impact on the public. They interact daily with thousands of followers on social media and digital platforms. This creates a “parasocial relationship”, making it easier for recipients to access information about certain products or services these individuals offer. However, our research shows that influencers often conceal the advertising nature of their digital content, misleading or deceiving followers. Influencers can influence consumers – followers and subscribers – in a more professional, subtle, and personal way than traditional advertising.

However, from a legal perspective, this general definition is insufficient. The main document for legal qualification is *the Commission Guidelines interpreting*

⁸ The influencers concerned must be registered with the Registro Estatal de Prestadores Audiovisuales and ensure that advertising content is clearly disclosed.

Directive 2005/29/EC on unfair commercial practices (“Guidelines”). The Guidelines define an influencer as a natural person or virtual entity with above-average reach on a platform who can assess their influence. Crucially, the Guidelines classify influencers, regardless of follower count, as “traders” under the Directive or as persons representing a trader.

This classification is groundbreaking because it directly applies the entire consumer protection regime to influencers, including the requirement for professional care. This is not just a formal definition; it is a critical legal trigger that activates the entire apparatus of consumer law. This creates a significant gap between an influencer’s self-perception as a “creator” or “personality” and their legal reality as a regulated business entity. This mismatch is one of the main causes of widespread non-compliance. An individual who starts their activity on social networks as a hobby and gradually gains followers becomes, *de facto*, a “trader” – a professional, from a legal point of view, at the moment of accepting their first commercial cooperation (e.g., even barter).⁹ In doing so, they take on a whole range of obligations of which they are probably unaware, in particular the obligation to act with professional care, which includes knowledge of and compliance with the laws and codes of ethics in the sector. Statistics from a Europe-wide inspection campaign, which show that up to 78% of influencers engage in commercial activities but only 36% are formally registered as entrepreneurs, provide empirical evidence of this profound discrepancy between action and understanding of one’s own legal status.¹⁰ According to studies, 9 out of 10 Spanish fashion influencers are unaware that their posts contain advertising content.¹¹ The role of influencers has grown recently, especially in industries such as fashion, cosmetics, food, and tourism. They promote not only products but also services. They have also gained a foothold in the audiovisual sector, for example, on platforms such as YouTube and TikTok.

⁹ According to IMCO, the defining characteristics of an influencer include, *first*, content creation or a specific service provided by influencers; *second*, a commercial intent that is accelerated by direct income (monetary and non-monetary), income from audience engagement, or rewards from social media platforms; *ad tertium* monetisation (generating income through various business models and new trends, such as live shopping), *ad quartum* trust and authenticity (a parasocial relationship of trust with the audience that can be used to influence consumer purchasing behaviour). See more: European Parliament: The impact of influencers on advertising and consumer protection in the Single Market, [online], 2022, [cited 20.11.2025]. Available on the internet: <[https://www.europarl.europa.eu/RegData/etudes/STUD/2022/703350/IPOL_STU\(2022\)703350_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/703350/IPOL_STU(2022)703350_EN.pdf)>

¹⁰ *Texfash: Most Influencers In EU Fail to Admit Advertising; Fashion is Top Concern, Finds Survey*, [online], 2024, [cited 13 October 2025]. Available online: <<https://texfash.com/update/most-influencers-in-eu-fail-to-admit-advertising-fashion-is-top-concern-finds-survey>>

¹¹ Specifically, this 2020 study reported that 93% of Instagram posts from the 25 most relevant Spanish influencers in the fashion sector do not clearly indicate that they are sponsored content. Research shows that nine out of ten of these influencers use this misleading advertising, passing off these sponsored posts as personal recommendations. See more: SIXTO-GARCÍA, J., and ÁLVAREZ-VÁZQUEZ, A.: Influencers en Instagram y publicidad engañosa: la necesidad de regular y autorregular. In: *Estudios sobre el Mensaje Periodístico*, 26(4), pp. 1611-1622, [online], 2020, [cited 28 November 2025]. Available on the internet: <<http://dx.doi.org/10.5209/esmp.66921>> and SEGARRA-SAAVEDRA, J. and HIDALGO-MARÍ, T.: Influencers, women’s fashion and Instagram: the power of influence in the 2.0 era. *Revista Mediterránea de Comunicación/Mediterranean Journal of Communication*, 9(1), pp. 313-325, [online], 2018, [cited 28 November 2025] Available online: <<https://www.doi.org/10.14198/MEDCOM2018.9.1.17>>

Although marketing theory divides influencers into categories based on the number of followers, such as nano-influencers (up to 5,000 followers), micro-influencers (5,000–30,000), macro-influencers (30,000–500,000) and celebrities (over 500,000), this division is not explicitly enshrined in law. Nevertheless, it has indirect legal significance. The size of the audience is directly related to the potential to cause harm, which is a key feature of the general clause on unfair competition under Section 44 of the Commercial Code. By its very nature, the actions of a mega-influencer have a greater capacity to cause extensive harm. Conversely, in the case of micro-influencers, whose influence is based on perceived authenticity and trust, failure to label advertising may be considered a more serious breach of professional care, as the average consumer expects personal recommendations rather than paid promotion.¹²

In applying commercial law standards, in particular unfair competition regulations, it is crucial to assess whether the influencer's activity falls within the characteristics of business or dependent work. According to Vidal Beros, one of the most widely accepted theories today is the interpretation that the business model (professional activity) of influencers is based on the provision of services, as they promote certain products and services through their image and personal accounts on digital platforms and social networks, thereby becoming another advertising channel for that product.¹³ Ultimately, influencers provide their image in exchange for remuneration, which may be monetary or in kind (barter). *In general*, their content corresponds to service provision contracts and, in rare cases, *they* may be subject to employment relationships under the Labour Code.¹⁴ Spanish courts went even further in the case of the influencer “Roxana”, concluding that she could not invoice through her sole proprietorship.¹⁵ The influencer paid taxes through her sole proprietorship. In 2017 and 2018, the company reported income from advertising services. However, the tax office concluded that this income should have been attributed to the natural person as income from economic activity,

¹² ZLOCHA, L., STRÉMY, J. Public and private law regulation of influencer marketing. In: *Food Law 2024: conference proceedings from the international scientific conference Food Law 2024*, 1st ed. – Trnava: Trnava University in Trnava, 2024, pp. 84-99

¹³ VIDAL BEROS, CH.: Advertising and influencers: sustainability through regulation. In: Cuadernos Del Centro De Estudios De Diseño Y Comunicación no. 154, 2022, pp. 195-210., [cited 28 November 2025]. Available online: <<https://doi.org/10.18682/cdc.vi154.6757>>

¹⁴ In judgment 445/2021 of the High Court of Justice in Madrid, the court dealt with a case in which an influencer, a content creator on YouTube who was registered with RETA, performed work for a fashion giant, managing the company's YouTube channels and promoting the company's products and services through his personal YouTube channel. As a result, as a self-employed person (entrepreneur), he issued invoices to the commercial company for work performed in the field of social media management and promotion. “*The boundary between an employment contract and other similar relationships [in particular the performance of work and the hiring of services] governed by civil or commercial law is unclear in doctrine, legislation and social reality...In any case, dependence should be understood as a situation in which the worker is subordinate, albeit in a flexible and not strict manner; the organisational and managerial sphere of the company, and independence consists in the preliminary transfer of income or property benefits from the worker's work to the employer, who in return assumes the obligation to pay wages regardless of the achievement of profit. The independence that an influencer demonstrates in providing their professional services to an entity or natural person will therefore determine the type of legal regulation of influencers' professional services.*”

¹⁵ Judgment: El Tribunal Superior de Justicia de Madrid: Sentencia n.º 445/2021 of 18 July 2024.

rather than to the commercial company, as the latter did not add any significant value beyond serving as a means of redirecting her income.

According to Section 2(1) of Act No. 513/1991 Coll. Commercial Code (hereinafter referred to as “Commercial Code”), business means a systematic activity carried out independently by an entrepreneur in their own name and on their own responsibility for the purpose of making a profit. The activities of most professional influencers cumulatively meet the following criteria:

- a) continuity (it is not a one-off or occasional activity, but the regular publication of content and conclusion of collaborations)
- b) independence (the influencer acts on their own judgment and decisions, even though they may be partially bound by the client’s instructions)
- c) in their own name and on their own responsibility (the influencer acts under their own name or pseudonym and is responsible for the content they publish)
- d) The purpose of making a profit (remuneration for promotion, whether in the form of cash, barter or commission on sales – affiliate marketing, is the primary motive for the influencer’s commercial activity).

By subsuming influencers into the category of entrepreneurs, they are also subject to the status of “competitor” within the meaning of Section 41 of the Commercial Code. Case law interprets the competitive relationship, and it is sufficient if there is competition between entities for customers. Influencers participate in economic competition on at least two levels: i) they compete with other influencers for the favour of advertisers and the attention of the audience, and ii) their activities directly interfere with competition between advertisers and their competitors.¹⁶

1.1. Influencers in the context of the Advertising Act and the Media Services Act

Specific obligations for influencers also arise from media legislation. According to Section 2(1)(c) of Act No. 147/2001 Coll. on Advertising (hereinafter referred to as the “Advertising Act”), an “advertising distributor” is a natural or legal person who distributes advertising. An influencer who publishes commercial content on their profile undoubtedly meets this definition and, together with the advertiser, becomes responsible for ensuring that the advertising complies with the law. In addition to hidden marketing, another recent issue has been the promotion/sale of potentially harmful products by influencers promoting artificial nutrition, which can negatively affect mothers’ efforts to breastfeed.¹⁷ Advertising for breast milk substitutes is subject to specific conditions (similar to advertising for medicines, alcohol or cigarettes).

A new dimension of regulation was brought about by Act No. 264/2022 Coll. on media services, which transposed the European Audiovisual Media Services Directive.

¹⁶ HAJN, P.: Competitive behaviour and anti-unfair competition law. 1st ed. Brno: Masaryk University, 2000, 329 p.

¹⁷ WHO: Scope and impact of digital marketing strategies for promoting breast-milk substitutes. Geneva: World Health Organization, p. 36, [online], 2022, [cited 13 October 2025]. Available on the internet: <<https://www.who.int/publications/i/item/9789240046085>>

This Act introduced regulations for video-sharing platforms and on-demand audiovisual media services (AVMS). An influencer who operates a channel on a platform such as YouTube may fall under the definition of an AVMS provider if they meet the legal criteria (Section 26 of the Media Services Act). These criteria include the economic nature of the service, the main purpose of providing programmes to the public, and the provider's editorial responsibility. If an influencer meets these criteria, they are subject to a range of obligations, including transparent labelling of commercial communications, protection of minors¹⁸ and compliance with other content regulations.

1.2. Unfair competition vs. unfair commercial practices

For the correct application of the law, it is necessary to distinguish between two key concepts: unfair competition and unfair commercial practices. Although they often overlap in practice¹⁹, their legal bases and purposes of protection differ.

Unfair competition is regulated by the Commercial Code (Section 44 et seq.) and constitutes a private law offence. Its primary purpose is to protect *competitors* and *competition* as such from unfair methods of competition. Although consumer protection is also explicitly mentioned here, historically it has been secondary. The regulation applies to both B2B (business-to-business) and B2C (business-to-consumer) relationships.

Unfair commercial practices are regulated by Act No. 250/2007 Coll. on Consumer Protection (from 1 July 2024 in Act No. 108/2024 Coll. on Consumer Protection) and constitute a public law offence. Their sole purpose is to protect consumers' *economic interests* in B2C relationships.

This duality leads to what is known as subjective fragmentation of the legal framework. This means that one and the same action by an influencer, such as publishing unmarked advertising, can be punished in parallel by two different regimes:

- i. as unfair competition (e.g. misleading advertising) under the Commercial Code, where protection can be sought by a competing entrepreneur or another influencer through legal action.

¹⁸ Klíma and Beneš point to a specific problem with influencer marketing, namely the fact that influencers often target people under the age of 18 with their activities and describe this influence as significant, referring to the conclusions of a study by the Faculty of Social Sciences of Charles University in Prague, according to which influencers influence children's opinions more than other celebrities, by up to 31%. The research also addressed the issue of hidden advertising, as children are only able to identify hidden advertising in 10% of cases. For more details, see: KLÍMA, T., BENEŠ, J.: Promotion of products and services through influencers in light of (not only) the amendment to consumer law, In: *Jurisprudence 1/2023*, pp. 27-34.

¹⁹ "Although unfair commercial practices are regulated in our legal system by the Consumer Protection Act and the purpose of this legislation is primarily to protect consumers, unfair commercial practices may be the subject of legal action within the meaning of Section 44 of the Commercial Code." For more details, see: VOZÁR, J.: Law against unfair competition. Bratislava: VEDA, 2013, p. 104. The concept of unfair commercial practices is considered to be a broader range of conduct than unfair competition. Unfair commercial practices under the Consumer Protection Act may also constitute unfair competition under the Czech Civil Code. For more details, see VÝTISK, M. § 2976 [Basic provisions]. In: PETROV, J., VÝTISK, M., BERAN, V. et al.: *Civil Code, 2nd edition (1st update)*. Prague 2022. Marg. nos. 16 to 18, [online], 2022, [cited on 13 October 2025]. Available on the internet: <<https://www.beck-online.cz/>>.

ii. as an unfair commercial practice (e.g. misleading omission) under the Consumer Protection Act, where supervision is carried out, and sanctions (fines) are imposed by the Slovak Trade Inspection (SOI).

This dichotomy complicates legal practice but, at the same time, provides broader possibilities for punishing unlawful conduct.²⁰

2. Unfair competition by influencers

Private law protection against unfair practices by influencers is primarily enshrined in the provisions on unfair competition. In the Slovak legal system, the core of the regulation is § 44 et seq. of the Commercial Code, while in the Czech Republic, the equivalent regulation is § 2976 et seq. of Act No. 89/2012 Coll., the Civil Code (hereinafter referred to as the “OZ ČR”). Comments on the Czech regulation provide valuable interpretative guidance for Slovak practice as well.²¹

2.1. Application of the general clause on unfair competition (Section 44 of the Commercial Code of the Slovak Republic; Section 2976 of the Civil Code of the Czech Republic)

The general clause is a fundamental and universal tool for punishing unfair practices that are not explicitly regulated in specific factual circumstances. Its flexibility is key to regulating the dynamic environment of influencer marketing. According to Section 44(1) of the Commercial Code, unfair competition is any conduct in economic competition that is contrary to good competitive practices and is capable of causing harm to other competitors or consumers. In order for conduct to be classified as unfair competition, the following three conditions must be cumulatively met:

- a) *Conduct in economic competition – as analysed in the previous chapter, the activity of an influencer generally fulfils this condition. The competitive relationship is interpreted extensively by case law, and the existence of competition for customers or the favour of business partners is sufficient.*
- b) *Contradiction with good competitive practices – this vague legal term must be interpreted in the context of the specific industry and its customs. Good competitive practices represent an unwritten set of ethical rules and principles of fair business conduct. In the context of influencer marketing, practices based on deception and misrepresentation are particularly contrary to fair competition practices. An objective measure for defining “fair practices” in this area can be found in self-regulatory documents such as the Influencer Marketing Code²² or the Advertising*

²⁰ STRÉMY, J., ZLOCHA, L.: Unfair competition or the fine line between green marketing and greenwashing? In: *New technologies, the internet and intellectual property*. Product labelling. 1st edition. – Trnava: Typi Universitatis Tyrnaviensis, 2024, pp. 87-99.

²¹ ONDREJOVÁ, D.: Unfair competition in the new Civil Code. Commentary § 2972-2990. C. H. Beck, 1st edition, 384 p.

²² Influencer Marketing Code, [online], [cited 13 October 2025]. Available on the internet: <https://kodex-influencermarketingu.sk/wp-content/uploads/2022/09/KO%CC%81DEX_INFLUENCER_MARKETINGU_final.pdf>

*Council's Code of Advertising Practice.*²³ An example is the purchase of fake followers or artificial "engagement" (likes, comments). Such conduct is in direct conflict with the principle of competition based on quality and performance. The influencer artificially inflates their perceived market value, thereby deceiving advertisers about their actual reach and influence. This is conduct that undermines the very foundations of fair competition between influencers.

- c) *Capacity to cause harm – the law does not require that harm actually occur; it is sufficient that the conduct is capable of causing harm (threatening offence). The purchase of fake followers is capable of causing harm to at least three groups of entities:*
1. other competitors (honest influencers) – they are at a disadvantage in the competition for advertising contracts because their organically gained reach appears less attractive than the artificially inflated numbers of a dishonest competitor.
 2. advertisers – they are directly harmed because they pay for promotion to a fictitious audience, which leads to inefficient spending of marketing budgets and distorted campaign results. This is direct financial damage.
 3. Consumers are misled about the influencer's popularity and credibility, which may unjustifiably increase the persuasiveness of their recommendations and influence their purchasing decisions.²⁴

2.2. Selected specific elements of unfair competition

In addition to the general clause, the Commercial Code in Sections 45 to 52 demonstratively lists the most common forms of unfair competition. Several of them are directly applicable to influencers' practices.

- a) *Misleading advertising (Section 45 of the Commercial Code of the Slovak Republic; Section 2977 of the Civil Code of the Czech Republic)*

Misleading advertising is advertising that misleads or may mislead the persons to whom it is addressed or to whom it reaches, and which, due to its misleading nature, may influence their economic behaviour. In the case of influencers, misleading advertising can take several forms:

- Hidden advertising: Failure to disclose the commercial nature of a post is the most common form of misleading advertising in this environment. By concealing that they have received compensation for recommending a product, influencers create a false impression of an independent, personal recommendation, which is

²³ Advertising Council: Code of Ethics, [online], 2019, [cited 13 October 2025]. Available on the internet: <<https://rpr.sk/sk/eticky-kodex/>>

²⁴ ZLOCHA, E., STRÉMY, J.: Unfair competition: general clause, less traditional cases and foreign legal regulations. 1st ed. Bratislava: C. H. Beck, Beckova edícia – Právne inštitúty, 2023. 357 p.

misleading about the circumstances under which the advertisement is disseminated.²⁵

- False or exaggerated reviews: making false or exaggerated claims about the characteristics, effects or quality of a product. This also includes unsubstantiated health and nutrition claims (so-called “health claims”), which are particularly strictly regulated. However, an influencer who has been provided with consideration may still conceal advertising behind a seemingly “objective review”. Hidden advertising would thus be committed not only by the disseminator but also by the person who commissioned it.
- Misleading and inaccurate information about terms and conditions: false information about discount codes, their validity or the limited availability of a product.

b) Creating a risk of confusion (Section 47 of the Slovak Commercial Code; Section 2981 of the Czech Civil Code)

This offence protects competitors’ identities. In the context of social media, this may include:

- Using a trade name, pseudonym, or logo that is interchangeable with another, already established influencer or brand.
- Imitating the overall visual style, graphics, video format or typical communication style of another successful influencer in order to parasitize on their reputation and confuse the audience or clients.

c) Parasitizing on reputation (Section 48 of the Commercial Code of the Slovak Republic; Section 2982 of the Civil Code of the Czech Republic)

Parasitism is the exploitation of another competitor’s reputation, products, or services to gain an advantage for one’s own business that the competitor would not otherwise have achieved. An influencer may commit parasitism, for example, by:

- Using the logos or products of renowned brands in their content without reason and without consent in order to artificially increase their own prestige and credibility.
- Organizing competitions (so-called “giveaways”) for products of a well-known brand that were not provided to them for this purpose, with the aim of quickly gaining new followers at the expense of the brand’s reputation.

d) Disparagement (Section 50 of the Commercial Code of the Slovak Republic; Section 2984 of the Civil Code of the Czech Republic)

²⁵ VESELÁ, N.: Hidden advertising by influencers, [online], 2022, [cited on 13 October 2025]. Available on the internet: <<https://www.pravniprostor.cz/clanky/ostatni-pravo/skryta-reklama-influenceru>>

Defamation is the publication or dissemination of false information about the circumstances, products or performance of another competitor that is likely to cause them harm. Defamation may also include the dissemination of true information if it is capable of causing harm and the competitor was not compelled to do so by circumstances (legitimate defence). In the online environment, the line between permissible criticism (protected by freedom of expression) and unfair defamation is very thin. While factual and reasonable reviews, even if negative, are permissible, publishing false, offensive or gratuitous attacks on a competing influencer or brand with the aim of damaging their reputation will constitute disparagement.

3. Unfair commercial practices of influencers in relation to consumers

Consumer protection is crucial in the context of influencer marketing, as its business model is based on directly influencing purchasing behaviour. The legal regulation of unfair commercial practices, contained in Act No. 250/2007 Coll. on consumer protection (and from 1 July 2024 in Act No. 108/2024 Coll.) and in Czech Act No. 634/1992 Coll. on consumer protection, provides a basic framework for punishing dishonest practices by influencers.

3.1. General prohibition and requirements of professional care

The general clause in Section 7 of the Consumer Protection Act prohibits unfair commercial practices. A commercial practice is unfair if it is contrary to the requirements of professional diligence and significantly distorts or is likely to significantly distort the economic behaviour of the average consumer. In the case of influencers, professional care means the obligation to know and comply with the legal and ethical rules of their industry, in particular the obligation to be transparent. As professionals, influencers cannot argue ignorance of the law on the obligation to label advertising.

The average consumer in the online environment is perceived as reasonably attentive and cautious, but their ability to critically evaluate content is influenced by the nature of social networks, which blur the boundaries between personal and commercial content. Vulnerable consumers, especially children and young people, enjoy special protection. If advertising is targeted at this group, its admissibility is assessed from the perspective of the average member of this group, who has a significantly lower ability to recognize commercial intent. This fundamentally changes the standard of care required of influencers and brands. Practices that might be acceptable when targeting adults may become illegal when targeting children.

3.2. Hidden advertising (misleading omission)

The most common unfair commercial practice by influencers is hidden advertising, which legally falls under the category of misleading omission. This is a situation in

which an influencer conceals or provides essential information in an unclear manner, leaving consumers unable to make an informed commercial decision. The commercial nature of a post is undoubtedly such essential information. The factual basis of this practice can thus be fulfilled by most of the influencer's activities, including, for example, unboxing products sent by a trader and published by the influencer.

This practice is also explicitly prohibited in the so-called "blacklist" of practices that are considered unfair in all circumstances, contained in Annex I to Directive 2005/29/EC:

- Point 11 of Annex I prohibits "the use of editorial space in the media to promote a product when the trader has paid for the promotion without this being explicitly explained in the content, image or sound". An influencer's profile on a social network can undoubtedly be considered a modern form of 'editorial space' where the influencer acts as a content creator.
- Point 22 of Annex I prohibits "making false claims or creating the impression that the trader is not acting for the purposes of their business... or falsely presenting themselves as a consumer". This provision directly applies to influencers who promote a product while pretending to be ordinary, independent consumers sharing their personal experiences.

3.3. Misleading conduct

Deceptive practices include providing false information that may mislead consumers. In the context of influencer marketing, this mainly concerns:

- Fake reviews: Publishing fake positive reviews, whether created by the influencer themselves or on commission, is explicitly prohibited as a misleading commercial practice. The amendment to Directive (EU) 2019/2161 (Omnibus) introduced strict rules on transparency and verification of consumer reviews.
- Misleading product claims: Spreading unsubstantiated claims about product effects (e.g., "this cream will make you look 10 years younger") is deceptive, especially in sensitive areas such as health and cosmetics. This also includes spreading false information about discount codes or the limited availability of products to create artificial demand.

3.4. Aggressive commercial practices

Aggressive commercial practices use harassment, coercion, or undue influence to restrict consumers' freedom of choice. Although less common in influencer marketing, they can take the following forms:

- Directly encouraging children to buy: Point 28 of Annex I to Directive 2005/29/EC expressly prohibits "the inclusion in advertising of a direct exhortation to children to buy or persuade their parents or other adults to buy the advertised products". An influencer who says in a video, "You have to tell your parents to buy you this new game!" is engaging in an aggressive commercial practice that is prohibited *per se*.

- Creating a false sense of urgency: Using statements such as “this exclusive offer is only valid today” or “only a few items left” when this is not true, in order to put pressure on consumers and force them to make an immediate decision.

4. Comparative analysis of foreign case law and approaches

Legal uncertainty in influencer marketing is not specific to Slovakia. Many European countries face similar challenges, with judicial practice playing a key role in interpreting vague legal concepts. The case law from Germany, Spain and the Czech Republic is particularly inspiring in this regard.

4.1. German case law – landmark decisions of the Federal Court of Justice (BGH)

On 9 September 2021, the German Federal Court of Justice (Bundesgerichtshof, BGH) issued a series of landmark rulings that fundamentally clarified the rules governing the labelling of advertising on social networks.²⁶ These decisions were based on lawsuits filed by the Verband Sozialer Wettbewerb, an association that has long fought against hidden advertising in the online environment. In its rulings, the BGH established a differentiated approach based on the existence of consideration and the degree of advertising character of the post.

Comparative table of decisions of the Federal Court of Justice (BGH) of 9 September 2021:

File number	Influencer	Existence of consideration (Gegenleistung)	Key argument of the BGH	Outcome of the decision
I ZR 90/20	Luisa-Maxime Huss	Yes (for the jam contribution)	If there is consideration, the commercial purpose must be acknowledged. Failure to disclose this constitutes unfair competition under Section 5a(6) UWG.	Prohibition confirmed.
I ZR 125/20	Leonie Hanne	No (unproven)	Without consideration, labelling is only mandatory in cases of “excessive advertising character” (werblicher Überschuss). “Tap Tags” alone are not sufficient. Special media legislation (MStV, TMG) applies, which links advertising to consideration.	Action dismissed.
I ZR 126/20	Cathy Hummels	No (unproven)	Same reasoning as in I ZR 125/20. The commercial purpose for the influencer’s own business is evident from the circumstances.	Action dismissed.

Two key principles emerge from these decisions:²⁷

²⁶ Bundesgerichtshof: Bundesgerichtshof zur Pflicht von Influencerinnen, ihre Instagram-Beiträge als Werbung zu kennzeichnen, Urteile vom 9. September 2021 – I ZR 90/20, I ZR 125/20, I ZR 126/20, [online], 2021, [cited 13 October 2025], 2021, [cited 13 October 2025]. Available online: <<https://www.bundesgerichtshof.de/SharedDocs/Pressemitteilungen/DE/2021/2021170.html>>

See also: Bundesrechtsanwaltskammer: Influencer: What is paid for must be labelled. [online], 2021, [cited 13 October 2025]. Available on the internet: <<https://www.brak.de/newsroom/news/influencer-was-bezahlt-wird-muss-gekennzeichnet-werden/>>

²⁷ LEY, F.: Legally compliant and successful: How to succeed in influencer marketing, [online], 2025, [cited on 13 October 2025]. Available on the internet: <https://www.taylorwessing.com/de/insights-and-events/insights/2025/04/05_nl_madewe>

a) Existence of consideration (Gegenleistung)

If an influencer receives any consideration for publishing a post, whether monetary or non-monetary (e.g. free products, payment of travel expenses), the post is commercial in nature and must be clearly labelled as advertising. In this case, it is considered inadmissible hidden advertising under Section 5a(6) of the German Unfair Competition Act (UWG) if the designation is missing.

b) Absence of consideration and “excessive advertising character” (werblicher Überschuss)

If the influencer does not receive any consideration for the post (e.g. they purchased the product themselves), the obligation to label it as advertising only arises if the post has an “excessive advertising character”. This means that the post disproportionately, without critical distance, highlights the product’s advantages and goes beyond the scope of normal informational or editorial activity. According to the BGH, the mere use of so-called “Tap Tags” (brand labelling in an image) does not automatically constitute such a character. On the contrary, a direct link to the manufacturer’s e-shop is generally considered overly promotional.

This narrows the application of the general law against unfair competition. This case law provides a balanced, differentiated approach that protects consumers from hidden advertising while allowing influencers to share authentic, genuine experiences. This case law provides a balanced, differentiated approach that protects consumers from hidden advertising while allowing influencers to share authentic, unpaid recommendations.²⁸ Also worth mentioning is the legislative amendment to Article 5a(4), sentence 3, of the UWG from 2022, which creates a rebuttable presumption of consideration/remuneration for the influencer for communication with commercial intent, unless the influencer proves otherwise. In Germany, influencers acting as entrepreneurs are also subject to the obligation to provide provider labelling/imprint (e.g. according to § 5 DDG).

4.2. Czech judicial and administrative practice

In the Czech Republic, there is currently no comprehensive case law of the Supreme Court directly concerning influencers. However, it is possible to draw on decisions of the Supreme Administrative Court of the Czech Republic that addressed hidden advertising in traditional media. In a landmark ruling of 31 March 2010, ref. No. 6 As 47/2009-49,²⁹ the court defined hidden advertising in television and radio broadcasting by means of three cumulative conditions: (1) the presentation pursues an advertising objective, (2) this

²⁸ BGH: Grundsatzurteile zum Influencer-Marketing. [online], 2021, [cited on 13 October 2025]. Available on the internet: <<https://www.noerr.com/de/insights/bgh-grundsatzurteile-zum-influencer-marketing>>

²⁹ Judgment of the Supreme Administrative Court of the Czech Republic, ref. no. 6 As/ 47/ 2009 – 49 of 31 March 2010, [online], 2010, [cited on 13 October 2025]. Available on the internet: <<https://www.zakonyprolidi.cz/judikat/nsscr/6-as-47-2009-49>>

objective is pursued intentionally, and (3) the presentation is capable of misleading the public. Intentionality is derived from the “excessive conspicuousness” of the presentation, which results, for example, from repetition or the manner of presentation of the product. These criteria are also applicable by analogy to the assessment of influencer content.

4.3 Spanish case law

The Provincial Appeal Court of Madrid, no. 19239/2023 of 5 December 2023, declared unfair advertising by a chain of dental clinics, consisting of a series of testimonials by well-known personalities promoting the clinics’ dental treatments on the clinics’ social networks. The Court of Appeal agreed with the court of first instance and noted that the opinion expressed by influencers in the defendant’s campaign, which used reviews by influential personalities, was clearly promotional in nature. It also pointed out that the advertising nature was not disclosed to the consumers to whom the advertising was directed and concluded that such advertising must be considered unfair. Under Spanish Act No. 3/1991 on unfair competition, the inclusion of communications with commercial intent by influencers (advertising posts) on platforms and social networks, without this advertising being clearly specified in the content, constitutes a hidden commercial practice. Hidden advertising is illegal because it is misleading. However, some authors also refer to these practices as “subliminal publicidad” (author’s note: in our country, this is known as subliminal advertising).³⁰ If influencers do not state in their posts that they are offering a product and/or service, they are in breach of Spanish legislation, specifically Act No. 34/1988 on advertising, Act No. 13/2022 on audiovisual communication, Act No. 3/1991 on unfair competition, and Act No. 34/2002 on information society services and electronic commerce.

5. Regulation and self-regulation of influencer marketing in Slovakia

In Slovakia, the legal framework for influencer marketing comprises both public regulation and self-regulatory initiatives. While laws set binding rules and sanctions, self-regulation plays an important role in defining ethical standards and best practices.

5.1. Public regulation

Two main bodies and relevant laws play a key role in regulation:

- a) Act No. 264/2022 Coll. on Media Services

As already mentioned, this Act applies to influencers whose activities (especially on platforms such as YouTube) meet the criteria for on-demand audiovisual media services.

³⁰ GARCÍA D. F. M.: *Ley de influencers* In: *Boletín Mercantil no. 129*, [online], 2024, [cited 13 October 2025]. Available on the internet: <<https://elderecho.com/la-mal-llamada-ley-de-influencers>>

These influencers are required to ensure that any form of commercial communication (advertising, sponsorship, product placement) is easily identifiable and does not directly encourage minors to purchase products or services.

b) Slovak Trade Inspection (SOI)

The SOI is the main supervisory authority for compliance with the Consumer Protection Act. As part of a Europe-wide sweep targeting influencers, in which the SOI also participated, it was found that up to 97% of the influencers checked published commercial content, but almost 80% did not label it as advertising or did so inadequately. Up to 38% did not use standardized platform tools (e.g. “paid partnership”) and resorted to vague labels such as “collaboration”. These findings confirm the widespread nature of the problem and highlight the need for more active supervision and enforcement by the SOI.³¹

5.2. *Self-regulatory mechanisms*

In response to the absence of detailed legislation and the need to cultivate the market, important self-regulatory initiatives have emerged in Slovakia. Their significance lies in the fact that, although they are not legally binding, they define standards of “professional care” and “good competitive practices”. Violations of these codes of ethics can thus serve as a strong argument in court or administrative proceedings when proving a violation of the law.

Influencer Marketing Code (IAB Slovakia and ADMA): Introduced in 2022, this code is the first comprehensive self-regulatory document for influencer marketing in Slovakia. Its aim is to establish clear, transparent rules for all actors – influencers, agencies, and advertisers. The code explicitly defines what constitutes commercial cooperation and provides specific recommendations for its labelling (e.g., using the “paid partnership” function or clear hashtags such as #advertisement or #cooperation at the beginning of the description). Although the Code does not impose sanctions, its signatories publicly commit to adhering to ethical principles, which increases their credibility.³²

Advertising Council (RPR): The RPR is a long-established body for ethical self-regulation of advertising in Slovakia. Its Code of Ethics for Advertising Practice contains general provisions on truthfulness, decency and the prohibition of hidden advertising, which are fully applicable to influencer marketing. The RPR Arbitration Commission decides on complaints about unethical advertising. Its practice includes well-known

³¹ Slovak Trade Inspection: Results of an inspection campaign concerning influencers’ posts on social networks, [online], 2024, [cited on 13 October 2025]. Available online: <<https://www.soi.sk/sk/informacie-preverejnost/vysledky-kontrolnej-akcie-tykajucej-sa-prispevkov-influencerov-na-socialnych-sietach.soi>>

³² HAPÁK, P.: The first Slovak code of influencer marketing: What do influencers themselves think about it? [online], 2022, [cited on 13 October 2025]. Available on the internet: <<https://marketeris.sk/clanok/prvy-slovensky-kodex-influencer-marketingu-co-nanho-samotni-influenceri>>

findings concerning influencers, such as the case of “Leto s @gymglamour_sk” (Summer with @gymglamour_sk), in which the commission assessed the designation of commercial cooperation. The RPR’s activities thus contribute to the development of ethical standards and provide important market feedback.³³

Compared to the situation in the Czech Republic, where several initiatives (Advertising Council, SPIR, Fair Influencer project) exist, the Slovak Influencer Marketing Code appears to be an effort to create a uniform, comprehensive standard for the entire industry. In Germany³⁴ and Spain³⁵ self-regulation plays an inherent role in influencer marketing. These codes should serve as a basis for discussion among all entities in the field of commercial communication and advertising that address ethical issues in influencer communication, which should be *ad primum* in accordance with the relevant legislation.

Conclusion and considerations de lege ferenda

The present analysis confirms that influencer marketing, despite its undeniable economic benefits, poses a significant risk to fair competition and consumer protection. The most common unfair practices, such as hidden advertising, misleading claims and artificial inflation of popularity, are punishable under applicable Slovak law, namely under the dual regime of private unfair competition and public consumer protection. Responsibility for compliance with the rules lies not only with the influencer themselves, but also jointly and severally with the advertiser. We therefore conclude that the simplest measure to eliminate the private and public law risks for the advertiser associated with an influencer’s involvement is to properly set up the contractual relationship with the influencer. Some authors also point to the correct setting of sanction mechanisms, e.g. contractual penalties.³⁶

The key finding is that although the legal framework exists, its effectiveness is limited by insufficient enforceability and low legal awareness among market players. Currently, on the initiative of the EU platform, national regulatory authorities and other competent authorities are making efforts to inform influencers about the relevant legislation and monitor their compliance with applicable laws, e.g. audiovisual regulatory authorities, in our case, the Media Services Council, monitor compliance with regulatory provisions, consumer protection authorities and other relevant authorities monitor compliance with EU consumer protection legislation. While in Germany the judiciary plays a key role in

³³ Advertising Council: Code of Ethics, [online], [cited on 13 October 2025]. Available on the internet: <<https://rpr.sk/sk/eticky-kodex/>>

³⁴ Bundesverband Influencer Marketing e.V.: Der Ethikkodex Influencer-Kommunikation, [online], [cited on 15 October 2025]. Available on the Internet: <<https://www.bundesverbandinfluencermarketing.de/ethik-kodex>>

³⁵ Asociación para la Autorregulación de la Comunicación Comercial : Código de Conducta de publicidad a través de influencer, [online], 2025, [cited 2 December 2025]. Available online: <<https://www.autocontrol.es/app/uploads/codigo-de-conducta-de-publicidad-a-traves-de-influencers-2025.pdf>>

³⁶ KLÍMA, T. BENEŠ, J.: Promotion of products and services through influencers in light of (not only) the amendment to consumer law. In: *Jurisprudence 1/2023*, 2023, pp. 27-34

clarifying the rules, in the Czech Republic the administrative authorities are becoming active, and in Slovakia law enforcement in this area is still in its infancy. The idea that in Spain there is a selective (discerning) and rigorous framework is also a future consideration for the legislator. Self-regulatory initiatives such as the Influencer Marketing Code are a welcome step towards professionalizing the market, but without the real threat of sanctions from state authorities, their impact remains limited. We note that the German Influencer Marketing Code was developed based on research by the University of Leipzig, led by Borchers, in the white paper “Ethikkodex Influencer-Kommunikation”³⁷, which should also serve as inspiration for other member states.

Based on the analysis, the following recommendations *de lege ferenda* can be formulated:

1. Strengthening and specialization of supervisory authorities: It is essential that the Slovak Trade Inspection Authority and the Media Services Council systematically and proactively monitor the online space and consistently enforce the law. The creation of a specialized department focused on digital platforms and influencer marketing could significantly streamline their activities.
2. Introduction of co-regulation mechanisms: Inspiration could be drawn from a model in which self-regulatory bodies, such as the Advertising Council, would be given a more formal status. Their expert opinions and arbitration findings could be considered relevant evidence in administrative or judicial proceedings when interpreting vague terms such as “good competitive practices” or “professional care”.
3. Explicit enshrinement of new practices: In view of developments, the legislator should consider explicitly including certain modern unfair practices, such as the purchase of fake followers or the use of misleading filters, in the demonstrative calculation of the elements of unfair competition or unfair commercial practices. This would increase legal certainty and simplify the burden of proof.
4. Raising legal awareness: Extensive education for influencers, marketing agencies, and advertisers is essential. State authorities, in cooperation with self-regulatory and professional organizations, should develop and disseminate clear guidelines and best-practice manuals.³⁸

Cultivating the influencer marketing environment requires the joint efforts of legislators, regulators, courts, self-regulatory bodies and market players themselves. Only a combination of clear rules, effective enforcement and a high degree of ethical responsibility can ensure that this innovative marketing tool works transparently and fairly for consumers and competitors alike. Developments in this area will be interesting to watch *in the future*, also in view of the European Commission’s legislative initiative,

³⁷ Enke, N., & Borchers, N. S., Auksutat, P., Bühler, L., Göbel, S., Maus, S., Pröttsch, M., Schmiech, Y., & Virgil, F. Whitepaper Ethikkodex Influencer-Kommunikation. Leipzig: Universität Leipzig, 2019, [cited 15 October 2025]. Available online: <www.bvim.info/ethik>

³⁸ European Commission: Influencer Legal Hub, [online], 2023, [cited 13 October 2025]. Available online: <https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/influencer-legal-hub_en>

which, in response to dynamic technological developments and increased tracking of online behaviour, which enables traders to more effectively persuade consumers online to make a commercial transaction decision, has decided to prepare a “Digital Fairness Act”³⁹, with the aim of preventing fragmentation of regulation in individual Member States and ensuring effective enforcement of EU consumer law, including in the digital space (the EU digital rulebook, the Digital Services Act). *In addition to* the topics discussed in the area of digital services (behavioural profiling, AI-driven manipulative tactics, dark patterns, difficulties with managing digital subscriptions, addictive design of digital services), it will also target problematic commercial practices of influencers on social networks, as some of these practices are contrary to existing EU consumer law. Transparency thus remains one of the most important factors in ethical market behaviour.

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³⁹ European Digital Fairness Act proposal is expected by mid-2026.

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