



GALA
GLOBAL ADVERTISING LAWYERS ALLIANCE



Mastering International Advertising

Top Tips for Advertising in Europe, the UK, Canada & South America



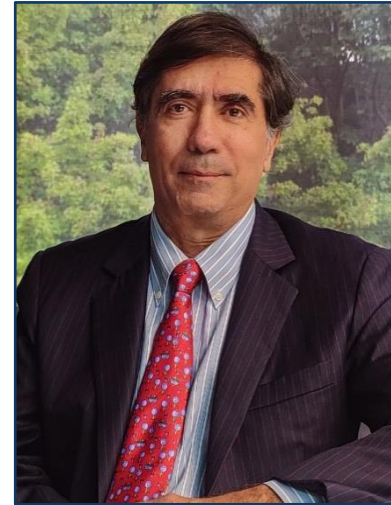
Panelists



Geraint Lloyd-Taylor



Søren Pietzcker



Juan Carlos Uribe



Kelly Harris



Regulators get Sharper Teeth

United Kingdom

- Consumer law **revolution** underway
- Main regulators
 - Advertising Standards Authority (ASA)
 - Competition & Markets Authority (CMA)
- New law
 - Digital Markets, Competition & Consumers Act 2024 (DMCC)
 - Replaces Consumer Protection from Unfair Trading Regulations 2008 (CPUT)
- Huge fines
 - up to 10% of annual global turnover
 - 1-5% daily global turnover



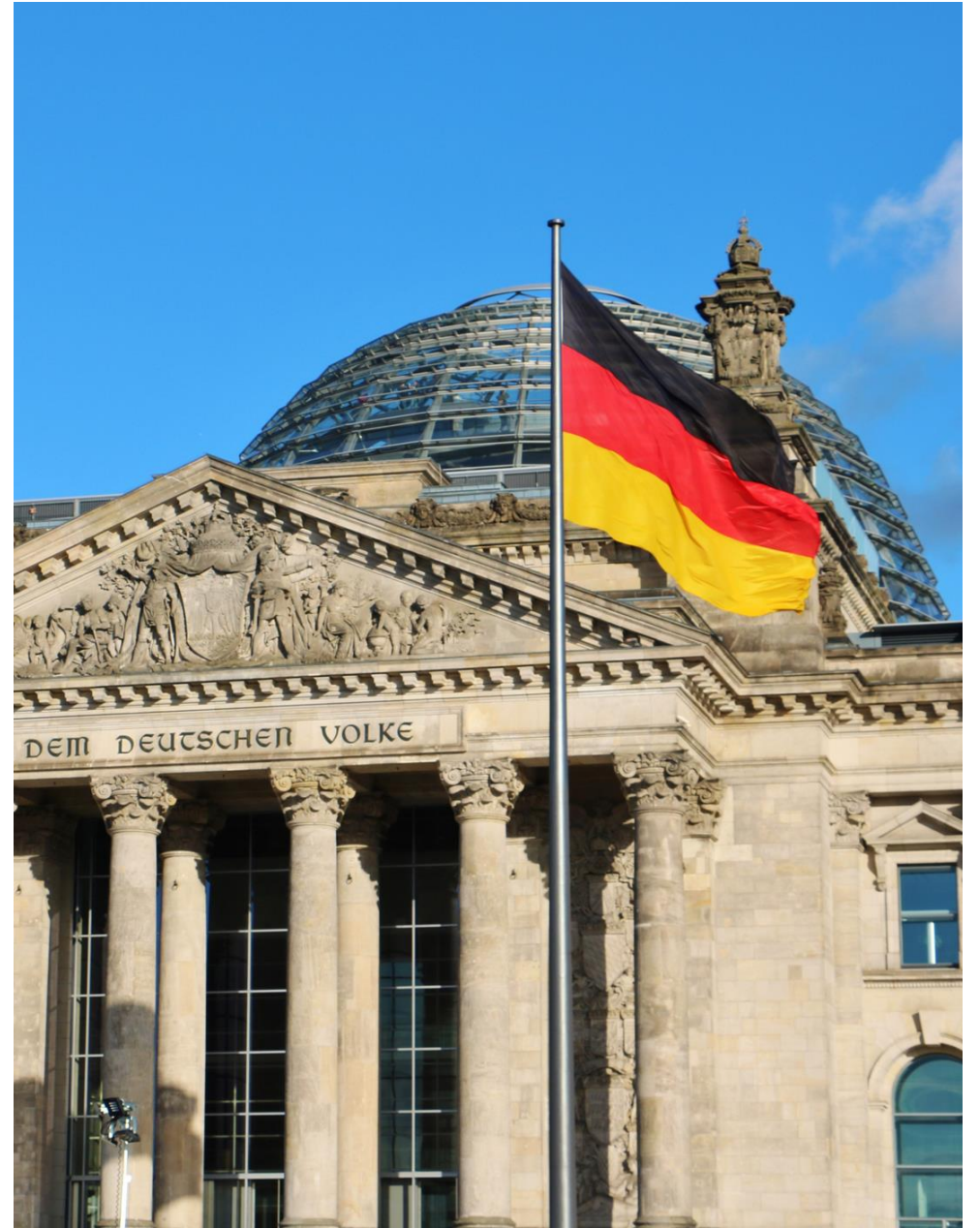
Canada



- Amendments to the Competition Act
 - Higher maximum AMPs - up to 3% turnover
 - Incoming “public interest” right of private access in June 2025
- Amendments to the Ontario Consumer Protection Act
 - Expanded “unfair practices”, including prohibiting attempts to waive class action rights or force binding arbitration on consumers
 - Administrative penalty of up to \$50,000 CAD

Germany

- No regulators in Germany, but
 - Competitors
 - Consumer Protection Associations
 - Industry Associations
 - Chambers of Commercecan and will pursue violations of advertising laws



Pricing Claims

United Kingdom



- Discount claims
 - Genuine usual selling price
 - Was £X, Now £Y
 - Duration test
 - Volume test (1:2)
- Urgency
 - Oasis – Fans look back in anger
- Subscriptions

Germany

- Price Indication Regulation (PAngV)
- Price
 - must be the final price, including VAT
- Discount claims
 - Lowest price of the last 30 days must be indicated when advertising price reductions
 - If reduced price is highlighted, must be calculated on lowest price of last 30 days – mere information about earlier lowest price not sufficient
- ECJ Judgment: Valid in the EU



Germany

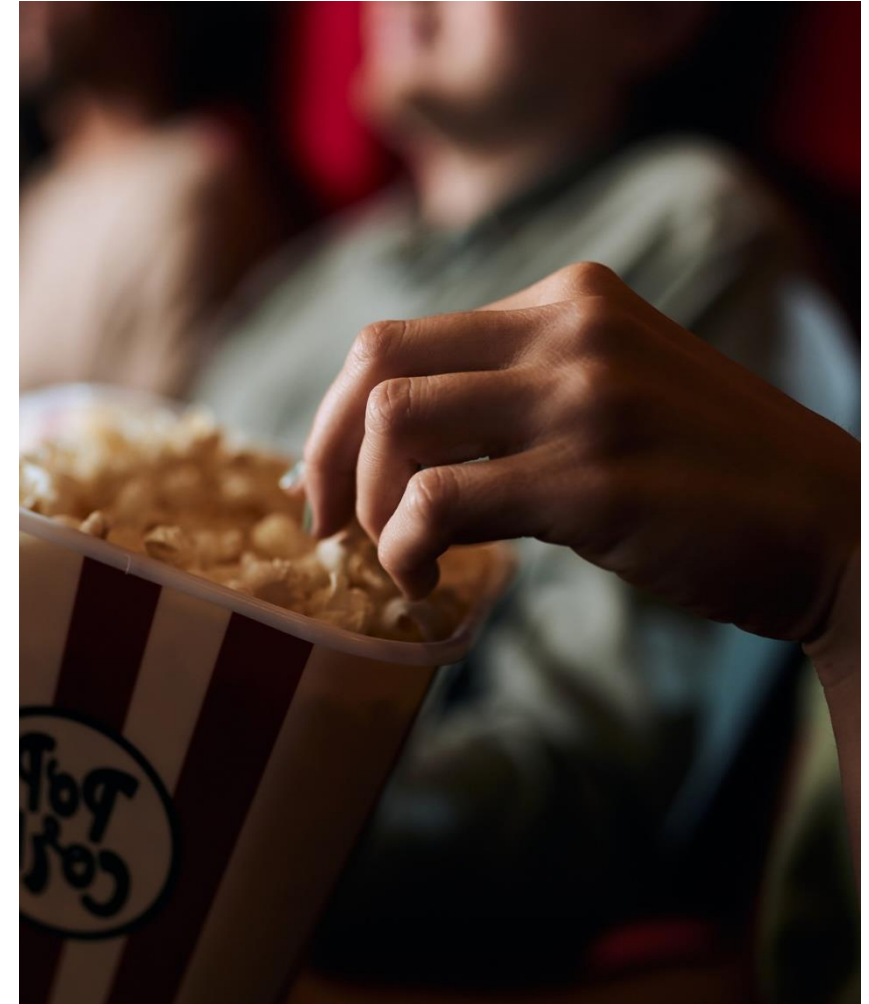


Lowest price of the last 30 days must be indicated when advertising price reductions



Canada

- Updated Drip Pricing Provisions
 - In 2022, drip pricing added as a specifically-prohibited deceptive marketing practice
 - Government fees are exempted (e.g. sales taxes)
 - Further amendment clarifies exception only applies to fees imposed on purchaser
- Cineplex Decision
 - Cineplex added \$1.50 online booking fee to advertised base ticket prices
 - Ordered to pay unprecedented \$39 million



Update on Influencer Marketing

Canada

- Ad Standards Guidelines & Decisions
 - Influencer Disclosure guidelines were published in 2023
 - 3 complaints since 2021 leading to adverse decisions for violations of clause 7 of the Canadian Code of Advertising Standards (i.e. non-disclosure of material connections)
- Competition Bureau Checklist (2018)
 - Material connection (e.g. #ad) must be clear and contextually appropriate

A purple graphic titled "Influencers' checklist" from the Competition Bureau of Canada. It features a large, faceted purple gem on the left. The text is in white and lists six items with checkmarks. The top left corner has the Competition Bureau logo and name in both English and French. The bottom right corner has the word "Canada" with a small maple leaf icon.

Competition Bureau Canada / Bureau de la concurrence Canada

Influencers' checklist

When posting reviews and opinions on social media

- ✓ Ensure that disclosures are as visible as possible: consumers won't dig around
- ✓ Disclose material connections in each post
- ✓ Use clear and contextually appropriate words and images
- ✓ Ensure disclosures are inseparable from the content so they travel together when shared
- ✓ Base all reviews and opinions on actual experience
- ✓ Avoid ambiguous references and abbreviations, such as "Thank You Company X!", "Ambassador", "Partner", "Company X", "SP", "Spon"

Canada

United Kingdom

- Influencer marketing
 - ASA is using **AI** to scan for breaches
 - Latest guidance, impact influencers
 - Influencers with a stake in the business
 - Disclosure: Ad or #Ad

**Influencers'
guide to
making clear
that ads
are ads**



United Kingdom

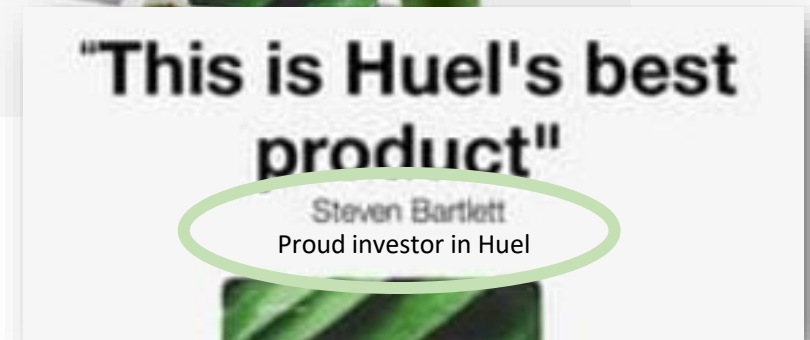


I just bought this GORGEOUS necklace from my talented friend Sarah. It's part of her new collection, and I love it! @sarahdesigns #jewellery #lovelovelove

It's the most comprehensive greens powder with 21 vitamins, minerals and wholefood-sourced ingredients

- 🌱 All the nutrients your body needs to thrive
- 🌟 Easy to fit greens into your daily routine
- 💪 Reduce tiredness and fatigue with 26 essential vitamins & minerals like iron
- 👩‍🦰 Excellent source of biotin and vitamin C to support healthy skin

Plus get a FREE T-shirt + shaker if you're a new customer!



Colombia

- **Influencer sweepstakes and contests**
 - Coljuegos, the regulatory entity for games of chance in Colombia, has issued a warning to influencers who conduct raffles and contests without authorization.
 - According to the entity, these activities are illegal and can result in sanctions.
 - Coljuegos emphasizes the importance of complying with current regulations to avoid legal issues and protect consumers.



Colombia

Elizabeth Loaiza and Covid-19



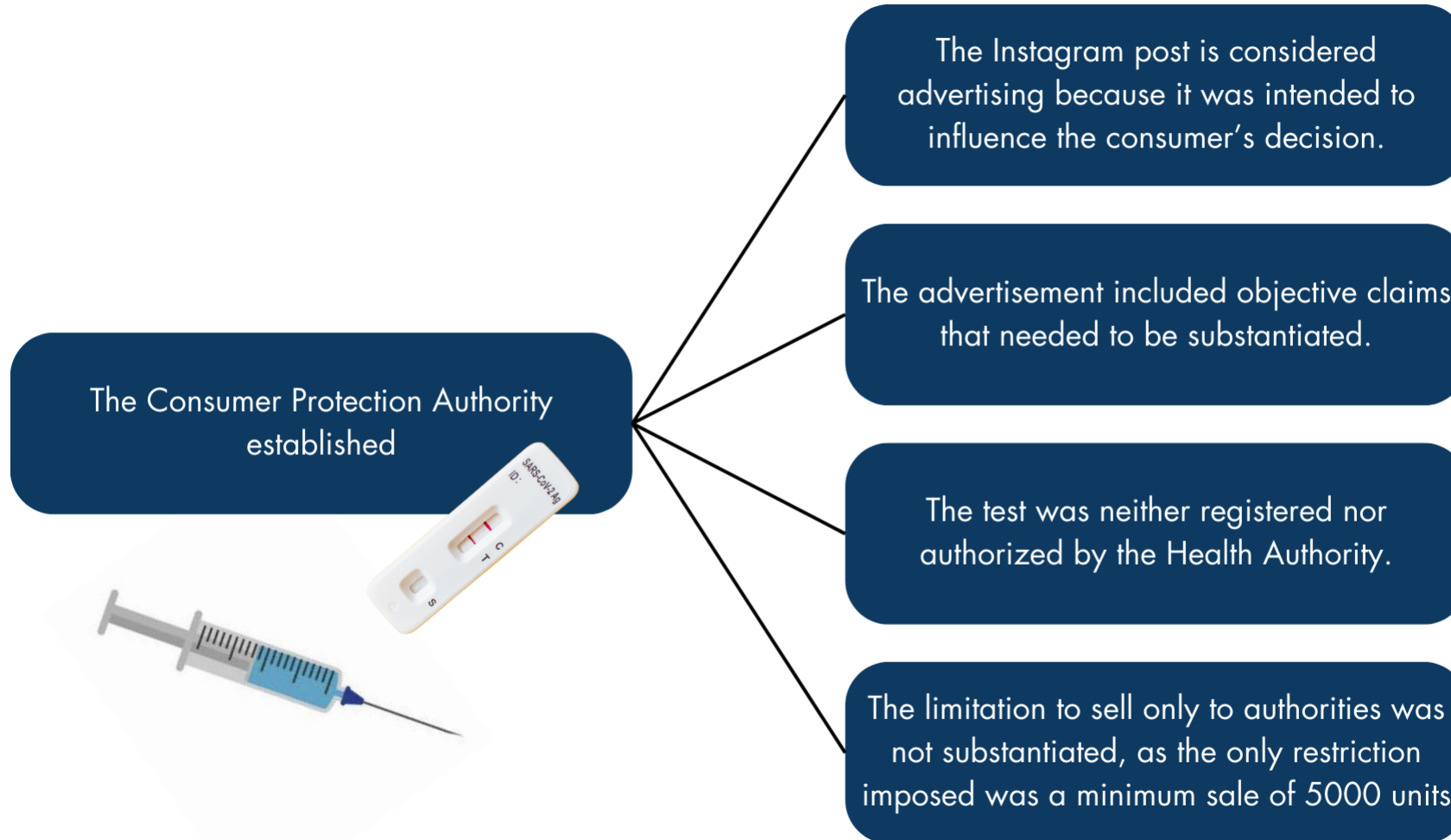
She uploaded a video on Instagram announcing a rapid COVID-19 test, with the following claims:

Test approved by the health authority

It will only be sold to authorities and clinics

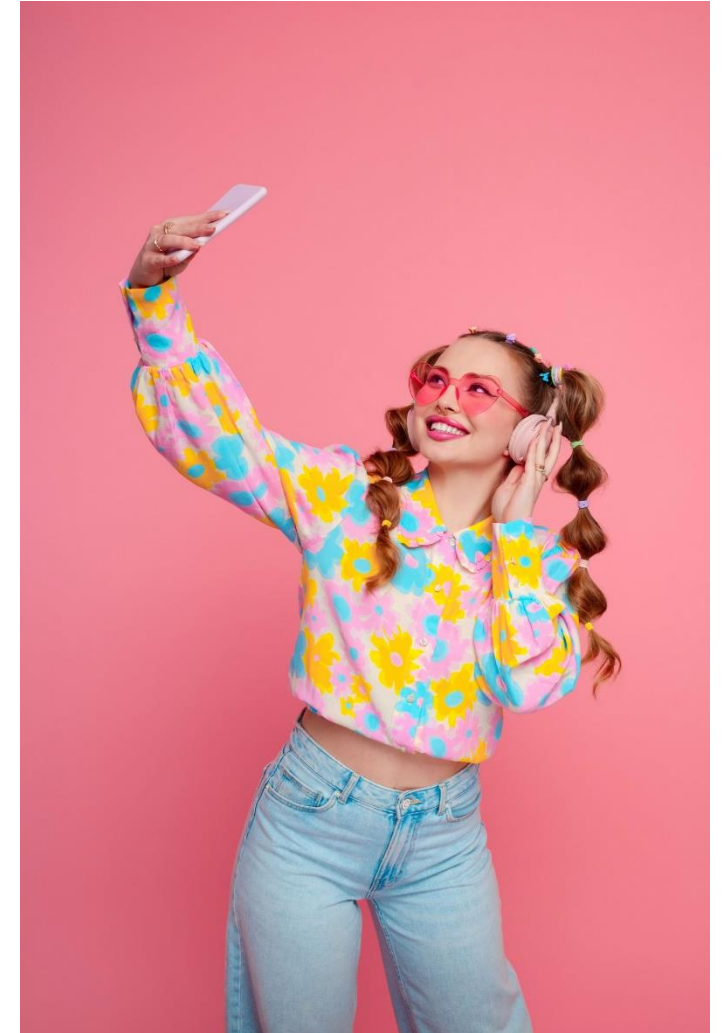


Colombia



Germany

- Many court decisions in recent years
- Require disclosure about
 - Posts being ads by indicating in German language
 - “Anzeige” (advertisement)
 - “Werbung” (advertising)
 - “Sponsored by” or similar indications are not accepted
 - Indication must not be hidden in a band of hashtags
- If posts
 - are being paid for, or
 - promote the influencer’s business, or
 - use tap tags linking to the product page



Brazil

LEGAL REQUIREMENTS

Nothing specific about digital influencers



- Consumer Defense Code

- Guarantees protection against (i) misleading and abusive advertising; and (ii) coercive or unfair commercial methods.
- Advertising must be conveyed in such a way that the consumer, easily and immediately, identifies it as such.

- Child & Adolescent Statute

- It is up to the judicial authority to discipline, through an ordinance, or to authorize, through a permit, the participation of children and adolescents in public shows and rehearsals.

Brazil

National Council for Advertising Self-Regulation (“CONAR”)

BEST PRACTICES

(Specific about digital influencers)



• Digital Influencer Advertising Guidelines

- Instructions concerning commercial content on social media, in particular, content generated by “digital influencers”.
- Content must be clearly identified as an advertisement. If this is not evident in the content, the influencer must indicate it (e.g., using hashtags or ‘paid partnership’ tag).



songofstyle

Paid partnership with volvocarusa

Brazil

- Digital Influencer Advertising Guidelines
 - Gifts received by influencers are not considered advertisements, as they do not possess commercial nature.
 - 3-Step test to verify if the influencer's post should be indicated as advertising

Promotion of the product, service, cause, or other associated sign

Compensation or commercial relationship, even if nonfinancial

Editorial control of the Influencer's post

Brazil



- Virtual Influencers

- 1 year of Digital Influencer Advertising Guidelines
- Real Digital Influencers vs. Virtual Digital Influencers
- Virtual Influencer Satiko hosted Rock in Rio 2022
- Presence at events and commercial partnerships with brands

Brazil

- Virtual Influencers

- Lu, from Brazilian retailer Magazine Luíza, has become the world's biggest virtual influencer with +50 million followers
- Partnership with famous brands like Adidas and Samsung
- Advertising identification is necessary (#publi)
- Presence in the Metaverse



Brazil



“Baby Alice”, became famous for her speaking and participation in advertisements for major brands, such as the Brazilian bank Itaú

- **Child Influencers**

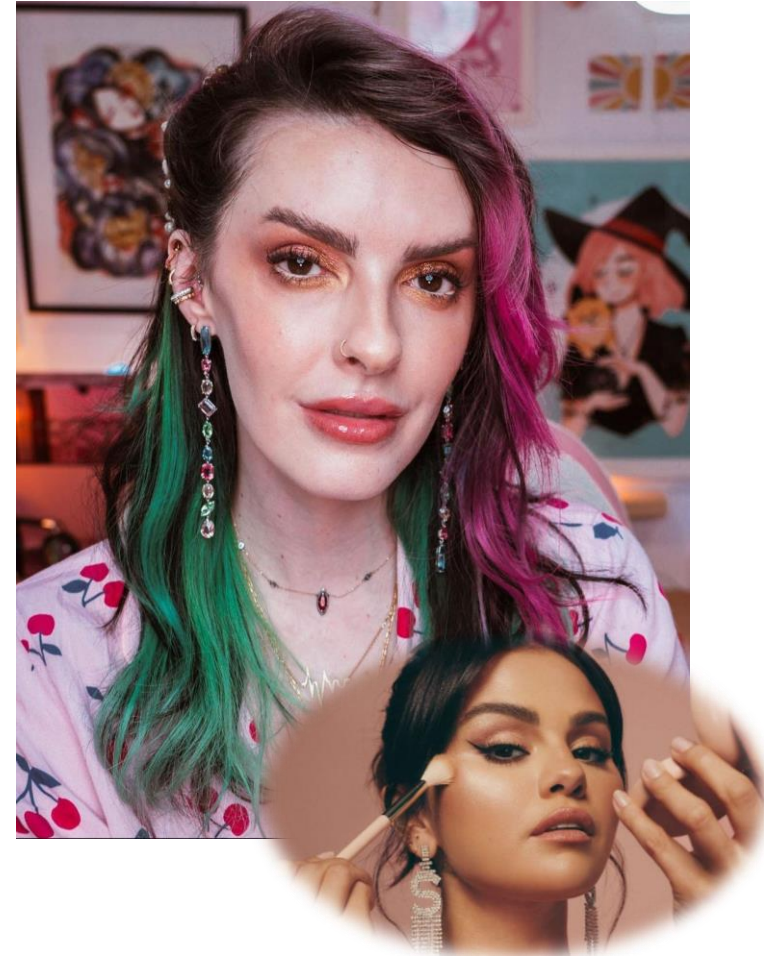
- The number of child influencers boomed in 2022, mainly because of TikTok and Instagram. Now the debate centers around the protection of their image rights.
- Participation of children in ads is permitted as long as:
 - It does not involve sensitive topics (e.g., alcohol, violence, humiliation), and
 - The rules of the CONAR and the Brazilian Child and Adolescent Statute (“ECA”) are respected.



Brazil

- DEinfluencers
 - Have been attracting attention on social media for being more "sincere" and showing "life as it really is".
 - DEinfluencers say what they really think about the product, e.g., if they think a product is not very good, they will expose their negative opinion online – mostly on TikTok

#DEinfluencer #DEinfluencing



Digital influencer (and deinfluencer) Karen Bachini. She criticized Selena Gomez's makeup brand (Rare Beauty). This trend is still new in Brazil.

Other key developments

United Kingdom



- CMA's Green Claims Code
 - NEW fashion supplement for green claims in fashion sector – including retailers
 - Now FMCGs under investigation, including Unilever
 - Those huge fines come into play soon!

Canada

- Generational Updates to Competition Act
 - Two new greenwashing prohibitions:
 - products/services
 - business/business activity and “internationally-recognized methodology”
 - How will these provisions be used with the new private right of access to the Tribunal?
 - Context of “6-person” investigations trend and increasing class actions



Colombia

- A product advertised with environmental qualities must generate real environmental benefits and comply with the Consumer Protection Statute.
- Environmental claims must be objective, verified, and based on recognized technical and scientific procedures.
- The advertising must be complete, truthful, accurate, and should not omit relevant information.
- Be clear whether environmental qualities pertain to the product, its packaging, or components.



Non-compliance may result in fines, temporary or permanent closures of establishments, or product destruction

Germany

- Consumer contracts updates
 - Subscriptions
 - Run time clause (up to two years)
 - Autorenewal (no fixed term)
 - Termination notice period
 - Termination button
 - Order button rules, must be explicit,
 - “Order now for a fee” or similar (in German)
 - Not “Pay now”, “Order now”, “Subscribe now”
 - Strict sanctions



Germany



Federal Supreme Court prohibits general claims and requires explanation on climate neutrality, i.e. whether achieved by

- CO² Reduction, or
- Compensation/offsetting

Questions?

Thank you



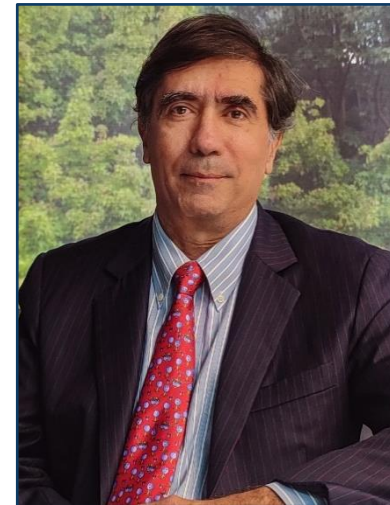
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