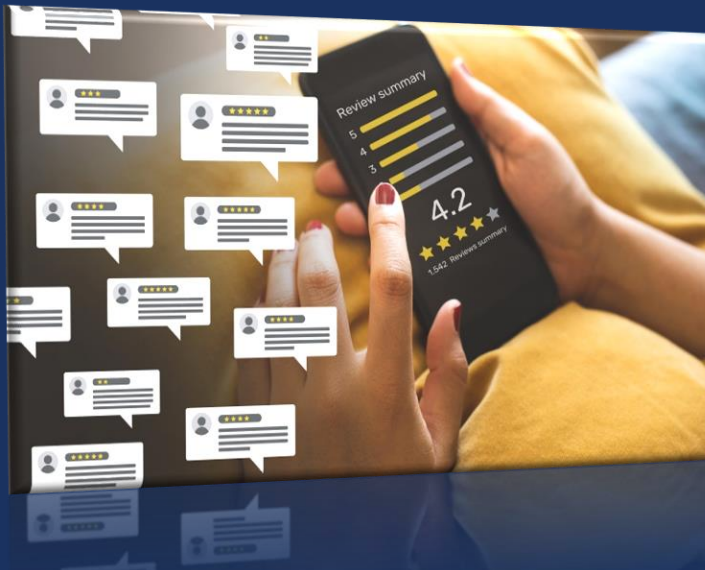


UNFAIR COMMERCIAL PRACTICES IN THE DIGITAL ENVIRONMENT: THE IMPACT OF RATINGS, REVIEWS AND INFLUENCER MARKETING ON CONSUMER BEHAVIOUR



RUTE COUTO
rute@ipb.pt

18th Conference of the International Association of Consumer Law
“Challenges and Unanswered Questions of Consumer Law”
Hamburg, 19.07.2023

OPPORTUNITY

- European Consumer Agenda 2020-2025: **digital transformation** is one of the 5 priority areas
- Portuguese Charter of Human Rights in the Digital Age (Law 27/2021): increased security and confidence in commercial transactions, from a consumer protection perspective
- Transposition of the *Omnibus Directive* (Directive 2019/2161): strengthening consumers' rights online and increasing **transparency** of information



CONSUMER DECISION MAKING



- Factors influencing purchases: in some markets, external influences include as top 3 factors:
 - **reviews/comments online** (e.g. holiday accommodation 71%)
 - **internet search result rankings** (e.g. airline services 61%)
 - **recommendations from bloggers/influencers** (e.g. electronic products 25%)

https://commission.europa.eu/system/files/2021-03/mms-overview-report-19-20_en.pdf

CONSUMER DECISION MAKING

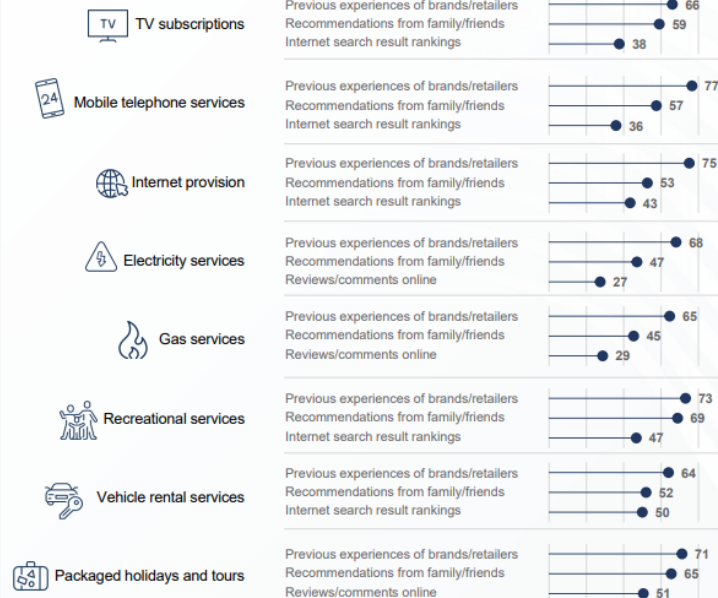
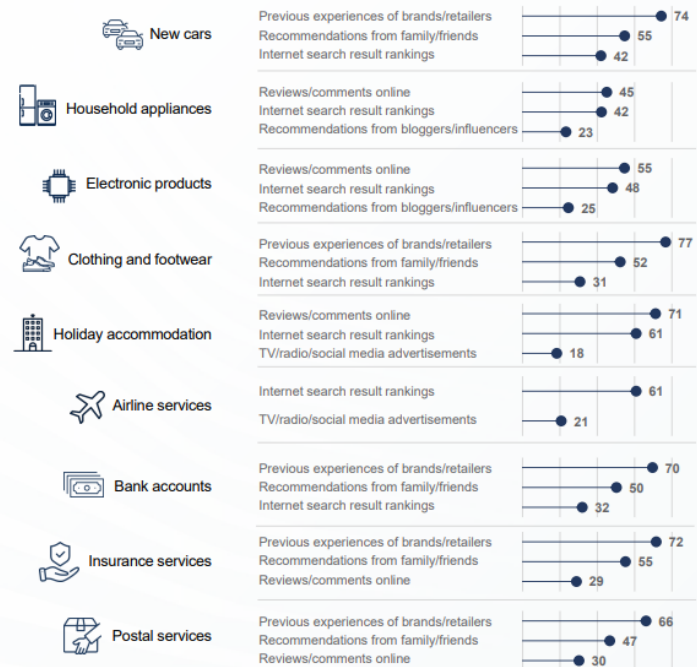


Market Monitoring Survey



And how important to you were each of the following?

Very important / fairly important (%)



Base: adults (aged 18+)
 This question was not surveyed in the following markets: products for children, cosmetics, house and garden maintenance products, furniture and furnishings, loans, credit and credit cards.
 Only the top 3 factors (or top 2 if only 2 factors were surveyed) are shown here. Full results per market and per factor can be found in the MMS microsite and market slide libraries.

CONSUMER DECISION MAKING

- Information on **search results**: +115% probability of choosing the product
- Consumer **review, rating, and endorsement systems**: +200% probability of choosing the product
- Information about criteria for presenting search results was important in their decision and made them more confident and trusting (70%)
- Information about who is included in user reviews was important in their decision (83.9%) and made them more confident and trusting (85.9%)



https://commission.europa.eu/system/files/2018-04/transparency_of_platforms-study-final-report_en.pdf

OMNIBUS DIRECTIVE: UNFAIR COMMERCIAL PRACTICES



- Amendments to **Directive 2005/29/EC** (UCP)
- Widening of the scope of the regime and addition of new definitions
- Inclusion of new practices in the list of misleading actions
- Additional requirements for information considered substantial
- New requirements on **rankings and reviews**
- *Individual* contractual remedies

RANKINGS

- 80% of consumers only look at the first page of search results and of top-ranking offers:
“Consumers’ propensity to select top-ranked links, called “ranking effect” or “position bias” (Gabriela Hiwatashi dos Santos)
- Providing consumers with the possibility to search for products in the form of a keyword, phrase or other input
- **Ranking:** *“the relative prominence given to products, as presented, organised or communicated by the trader, irrespective of the technological means used for such presentation, organisation or communication”* (art. 2 Omnibus)
- Including resulting from the use of algorithmic sequencing, rating or review mechanisms, visual highlights, or other saliency tools, or combinations thereof (Recital 19 Omnibus)



RANKINGS

- **Misleading** commercial practice in all circumstances considered unfair: *“Providing search results in response to a consumer’s online search query without clearly disclosing any paid advertisement or payment specifically for achieving higher ranking of products within the search results”* (Annex I – I 1a UCP)
- Indirect payment can consist, e.g. of the acceptance by a trader of additional obligations towards the provider of the online search functionality of any kind, increased commission per transaction or different compensation schemes (Recital 20 Omnibus)
- General information on the **main parameters determining the ranking of products** presented to the consumer as a result of the search query and the relative importance of those parameters shall be regarded as material (Art. 7 – 4a UCP)



RANKINGS

Paris: 1,024 properties found

Show on map

Sort by: Our top picks

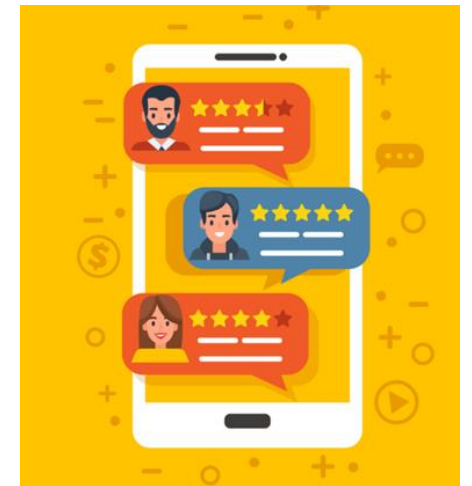
i 83% of places to stay are unavailable for your dates on our site. ×

Commission paid and other benefits may affect an accommodation's ranking. [Find out more.](#) ×

- An Accommodation's ranking can also be influenced by other things - for example, how much commission they pay us, how quickly they usually pay it, whether they're part of our Genius programme or Preferred Partner(+) Programme, and in certain places*, whether we organise their payments. If you're signed in, your search history on our Platform (if any) will also be a factor.

REVIEWS

- *“Information, experiences, and opinions shared by users on the Internet generates a reputation that is highly valued by potential consumers since it may offer impartial feedback about the goods or services they are interested in”* (Juan María Martínez Otero)
- **Manipulation** to improve the reputation of the traders' own goods or services, or to denigrate the reputation of those of their competitors
- Fake reviews and endorsements include ‘likes’ on social media, commissioning others to do so or publishing only positive reviews and deleting the negative ones (Recital 49 Omnibus)



REVIEWS

- **Misleading** commercial practice in all circumstances considered unfair (Annex I – 23b/c UCP):
 - “*Stating that reviews of a product are submitted by consumers who have actually used or purchased the product without taking reasonable and proportionate steps to check that they originate from such consumers*”
 - “*Submitting or commissioning another legal or natural person to submit false consumer reviews or endorsements, or misrepresenting consumer reviews or social endorsements, in order to promote products*”
- Information about how the trader ensures that the reviews **originate from consumers who have actually** used or purchased the product shall be regarded as material (Art. 7 – 6 UCP)
- Due diligence measures by the online *marketplace* provider



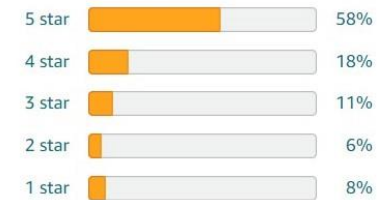
REVIEWS



Customer reviews

★★★★☆ 4.1 out of 5

10,399 global ratings



^ How customer reviews and ratings work

Customer Reviews, including Product Star Ratings help customers to learn more about the product and decide whether it is the right product for them.

To calculate the overall star rating and percentage breakdown by star, we don't use a simple average. Instead, our system considers things like how recent a review is and if the reviewer bought the item on Amazon. It also analyzed reviews to verify trustworthiness.

[Learn more how customers reviews work on Amazon](#)

CONCERNS

Majority of platforms violate EU law with fake reviews

Fake Reviews Make Nearly All Lose Brand Trust

Five Star Fakes: Small business owners feel big impact from fake online reviews

Trade in fake reviews still 'thriving' on Facebook, says Which?

Scammers Are Leaving One-Star Google Reviews to Extort Restaurants

CPC NETWORK SWEEP

PAGE CONTENTS

[2022 – sweep on dark patterns](#)

[2022 - Sweep on Black Friday sales](#)

[2022 - mini-sweep on car rental intermediaries](#)

[2021 – sweep on online consumer reviews](#)

[2021 – mini-sweep on consumer credit](#)

[2020 – sweep on misleading sustainability claims](#)

[2020 - sweeps on consumer scams related to the COVID-19 pandemic](#)

[2019 - sweep on delivery and right of withdrawal](#)

[2018 - sweep on price transparency and drip pricing](#)

[2017 / 2018 - Telecommunication and other digital services](#)

2021 – sweep on online consumer reviews

Consumers often rely on reviews when they make purchasing decisions as shown in the Market Monitoring Survey 2020. For example, 71% of consumers consider reviews as important when choosing holiday accommodation. Authorities decided to carry out their annual sweep in 2021 into misleading practices in relation to online reviews in which authorities of 26 Member States, Iceland and Norway checked 223 major websites for misleading consumer reviews.

Almost two thirds of the online shops, marketplaces, booking websites, search engines and comparison service sites analysed, triggered doubts about the reliability of the reviews: In 144 out of the 223 websites checked, authorities could not confirm that these traders were doing enough to ensure that reviews are authentic, i. e. that they were posted by consumers that actually used the product or service that they reviewed.

Other findings of the screening of websites on online reviews:

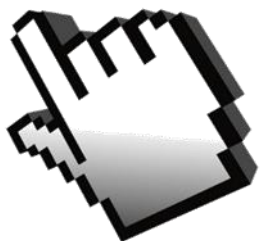
- 104 out of the 223 of the websites examined do not inform consumers how reviews are collected and processed. Only 84 websites make such information accessible to consumers on the review page itself, while the rest mention it in "small print", for example in their legal terms and conditions.
- 118 websites did not contain information about how fake reviews are prevented. In these cases consumers have no possibility to verify whether reviews were written by consumers that actually used the product or service.
- 176 of the websites do not mention that incentivised reviews (e.g. resulting from a monetary reward) are prohibited by their internal policies or if not how they ensure they are flagged as incentivised.

Consumer protection authorities concluded that at least 55% of the checked websites potentially violate the Unfair Commercial Practices Directive which requires that truthful information is presented to consumers to allow an informed choice. Authorities also had doubts for a remaining 18%.

- 223 websites checked
- 104 do not inform how reviews are collected and processed
- 118 do not inform how fake reviews are prevented
- 176 do not mention that incentivised reviews are prohibited or how are they flagged from the others

CHALLENGES

- Misleading: untruthful (contains false information), deceiving (including by the overall presentation) or by omission (lack of material information or if it is provided in an unclear, unintelligible, ambiguous or untimely manner)
- Informing the consumer is not just about having the information available, it should be provided in a **clear and comprehensible manner**
- Too much information misinforms, especially if it is not accompanied by *consumer literacy* and empowerment
- How to ban “dark patterns” and safeguard vulnerable consumers?
- **Right to be informed or obligation to be informed?:** harmful *transfer of responsibility* from the trader to the consumer...



INFLUENCER MARKETING



- “People influence people. Nothing influences people more than a recommendation from a trusted friend. A trusted referral influences people more than the best broadcast message. *A trusted referral is the Holy Grail of advertising.*” (Mark Zuckerberg)
- Personalities with **notoriety** in the cultural, artistic, sporting fields or **creators of content** on social networks, who participate in the dissemination of advertising messages
- Consumers transfer the trust they place in the influencer to the advertised good or service: *credibility and attraction* (Alan Liberman) / *suggestion, imitation and empathy* (Armando Sant'Anna) / *condition of guarantor* (Samy Garson)

INFLUENCER MARKETING

- Digital media (such as websites and social networks) as advertising media: need for unambiguous identification of the promotion of goods or services made as if it were a personal recommendation
- Advertising principles: *lawfulness, identifiability, truthfulness and respect for consumer rights*
- The **liability for the dissemination of unlawful advertising** must be extended to those who contribute to the dissemination of the message, in exchange for a pecuniary or non-pecuniary benefit




INFLUENCER MARKETING

- A publication is considered a commercial communication when there is a commercial relationship that implies the payment of a monetary value, it includes gifts, samples, discounts or other benefits (even if there is no financial compensation) or the content promotes specific products or services and contains links or discount codes
- **Good practices** in commercial communication in the digital media:
 - Identify at the beginning of the publication the existing business relationship (#ad, #sponsorship, #partnership, #offer)
 - Ensure that influencers statements are not false or misleading
 - Adopt a *standard of responsibility* (in particular in matters involving financial issues, health claims, minors, games and betting, etc.)



FROM “LAW IN THE BOOKS” TO “LAW IN ACTION”





*"The digital transformation is radically changing consumers' lives, providing them with more opportunities and a wider choice of both goods and services. At the same time, it can make it harder for them to make informed choices and safeguard their interests. (...) Commercial practices that **disregard consumers' right to make an informed choice, abuse their behavioural biases, or distort their decision-making processes, must be tackled.**"*

(European Consumer Agenda 2020-2025)

Thank you

Rute Couto

rute@ipb.pt

