

Digital Deception Under the Law: Strict Liability for Influencers, Content Creators and Platforms

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Author's Quote

“Strict liability is not a burden on innovation, but a safeguard against exploitation in the digital marketplace.”

-Dr. Murangira B. Thierry-

Abstract

The rise of sensationalized content in Rwanda's digital marketplace presents significant consumer protection challenges. Clickbait, fake testimonials, manipulative design patterns, and undisclosed influencer marketing compromise consumer autonomy and expose individuals to financial, health, and privacy risks. While Rwanda has consumer protection laws and policies, these remain poorly adapted to digital markets, and enforcement is limited by the requirement to prove intent in deceptive practices.

This paper argues for adopting a strict liability regime to regulate commercial sensationalism and digital deception, drawing on international examples such as the EU's Digital Services Act and the U.S. Federal Trade Commission's practices. Under strict liability, content creators, influencers, and platforms promoting unverified remedies, fraudulent investments, or misleading digital services would be accountable based on harm caused, regardless of intent. This shifts the focus from proving intent to preventing actual harm, incentivizing evidence-based claims, risk disclosures, and proactive content monitoring and removal.

The revised Competition and Consumer Protection Policy of 2023 provides a foundation for implementing such a framework in Rwanda, ensuring fairness, safety, and accuracy while curbing harmful marketing practices. The paper also highlights tax compliance gaps among digital actors, including influencers and platforms, suggesting coordinated enforcement by the Rwanda Revenue Authority alongside consumer protection measures. Comparative analysis shows that jurisdictions such as the EU, USA, and South Africa successfully integrate strict liability, disclosure obligations, and tax enforcement within digital consumer protection frameworks, offering practical lessons for Rwanda.

Keywords: Clickbait, Content Creators, Commercial Speech, dark patterns, Digital Deception, fabricated testimonial, Influencers, Strict Liability, undisclosed influencer marketing.

INTRODUCTION

Rwanda's digital transformation has created significant opportunities for innovation, e-commerce, and financial inclusion, positioning the country as a rising hub in Africa's knowledge economy (World Bank, 2022). At the same time, the rapid growth of digital platforms has introduced new risks for consumers. Practices such as clickbait headlines, fabricated endorsements, algorithmically designed dark patterns, and undisclosed influencer marketing exploit information asymmetries, manipulate consumer behavior, and expose individuals to financial loss, health risks, and privacy violations (Helberger, 2016). The speed and reach of online platforms amplify these risks, allowing misleading content to spread rapidly across borders and eroding trust in the digital marketplace.

Rwanda has enacted several statutory instruments to protect consumers, including the Competition and Consumer Protection Law No. 36/2012, the Law No. 60/2018 on the Prevention and Punishment of Cybercrime, and the Data Protection and Privacy Law No. 058/2021. However, these laws remain largely tailored to traditional markets, cybercrimes and rely heavily on proving subjective intent, which is difficult to establish in digital environments characterized by anonymity, algorithmic manipulation, and high-velocity dissemination (UNCTAD, 2021). As a result, harmful digital practices often escape meaningful accountability, undermining the protective purpose of consumer law.

This article argues for adopting a strict liability regime to address commercial sensationalism digital practices that misrepresent, manipulate, or conceal material information to influence consumer behavior. Shifting legal focus from proving intent to assessing objective misrepresentation and consumer harm enhances compliance, mandates transparency, and strengthens safeguards without impeding innovation or free expression. Comparative frameworks, including the European Union's Digital Services Act, U.S. Federal Trade Commission enforcement, and regulatory approaches in the United Kingdom, India, and South Africa, illustrate the practical effectiveness of strict liability.

The proposed framework for Rwanda would hold creators, influencers, and platforms accountable for misleading content while preserving freedom of speech and expression. Key measures include mandatory disclosure rules for influencers, platform liability for harmful design features, and accessible remedies for consumers. By integrating strict liability into Rwanda's legal system, this approach aims to close enforcement gaps, rebuild consumer trust, and promote fairness and accountability in the country's evolving digital economy.

Objectives of the Research

The rise of sensationalised digital content has created pressing challenges for consumer protection, particularly in emerging economies such as Rwanda where digital markets are rapidly expanding. While statutory instruments exist, their effectiveness is limited by enforcement gaps and evidentiary burdens. Against this background, it becomes necessary to define the specific aims of this research, which seeks to contribute both theoretically and practically to the regulation of deceptive online practices. The objectives of this research are therefore to:

- Analyze the risks posed by sensationalised content to consumer protection in Rwanda.
- Assess the adequacy of Rwanda's current legal frameworks in addressing deceptive digital practices.
- Evaluate comparative experiences with strict liability in digital consumer protection.

- Propose a strict liability regime for creators, influencers, and platforms in Rwanda.
- Recommend legal and regulatory reforms to strengthen accountability in digital markets.

Legal Research Problem

The central legal research problem addressed in this paper arises from the absence of explicit legal provisions in Rwanda that impose strict liability on content creators, influencers, and digital platforms for sensationalised or deceptive content, regardless of intent. Current consumer protection, cybercrime, and data privacy laws require regulators to establish fault or intent before liability can be imposed. This evidentiary burden significantly weakens enforcement, particularly in the fast-moving digital environment where harmful content can reach millions of consumers within minutes.

As a result, content creators and influencers can evade accountability by claiming lack of intent, while platforms act merely as intermediaries despite benefiting commercially from the amplification of sensationalised content. The absence of a strict liability regime leaves consumers vulnerable to economic exploitation, health misinformation, privacy breaches, and loss of digital trust. This gap leaves consumers vulnerable to fraud, economic exploitation, misinformation, health issues and privacy breaches, undermining trust in Rwanda's digital transformation agenda. Addressing this gap is essential if Rwanda is to develop a coherent framework that balances accountability, consumer protection, and innovation in the digital economy.

Research Questions

The complexity of regulating sensationalised content in the digital era necessitates a clear set of guiding questions to shape the scope and direction of this study. Given the rapid growth of Rwanda's digital marketplace and the inadequacy of traditional consumer protection mechanisms, it is essential to cross-examine both the risks posed by deceptive practices and the potential of strict liability as a regulatory solution. Against this background, the research is guided by the following three questions:

1. How does sensationalised content undermine consumer protection in Rwanda's digital marketplace?
2. What are the limitations of Rwanda's current legal framework in addressing deceptive practices by creators, influencers, and platforms?
3. How can a strict liability regime, informed by comparative international experiences, enhance accountability without hampering freedom of expression and innovation?

Scope of the Research

This research concentrates on the most affected domains of digital consumer protection in Rwanda, with particular emphasis on deceptive advertising of medicines and fraudulent investment schemes that threaten public health and financial security. These areas represent the most critical manifestations of commercial sensationalism, where clickbait, fabricated endorsements, undisclosed influencer marketing, and manipulative testimonies and dark patterns are used to mislead consumers. The study critically examines Rwanda's Competition and Consumer Protection Law (2012), assessing its effectiveness in addressing these emerging risks.

In order to develop a robust analytical framework, the research also draws on comparative insights from the European Union, United States, United Kingdom, India and South Africa, highlighting regulatory

models that could inform Rwanda's approach. The scope deliberately excludes political sensationalism, media freedom disputes unconnected to consumer harm, and forms of advertising limited to offline contexts, to maintain focus on digital practices with the most direct impact on consumer safety and economic well-being.

Research Methodology

This study adopts a doctrinal legal research methodology, which is most appropriate for analysing statutory frameworks, judicial decisions, and regulatory approaches to digital consumer protection. The doctrinal approach allows for a systematic examination of primary sources, including Rwanda's Competition and Consumer Protection Law and policy, the Law on the Prevention and Punishment of Cybercrime, the Data Protection and Privacy Law, and relevant case law, as well as statutory and regulatory guidelines from comparative jurisdictions.

This study combines doctrinal and comparative legal analysis to examine gaps in Rwanda's consumer protection framework for digital markets. It draws on secondary sources, including academic literature, policy reports from bodies such as the OECD, UNCTAD, and the African Union, as well as scholarly commentaries on consumer law and digital regulation. The research compares Rwanda's legal provisions with international frameworks, including the EU's Digital Services Act (2022), U.S. Federal Trade Commission enforcement, UK Advertising Standards Authority rulings, and India's Consumer Protection Act (2019), and South Africa Consumer Protection Act 2008, to identify best practices. A case study approach is also used to illustrate the real-world harms of digital deceptive practices. The doctrinal method is chosen because the issue is fundamentally legal and normative, requiring a critical assessment of Rwanda's laws, their enforcement weaknesses, and the potential for adopting a strict liability regime suited to the digital economy.

Significance of the Research

The author argues that; this research is significant as it presents a novel legal framework for addressing deceptive practices in Rwanda's rapidly growing digital economy. It highlights how tech-savvy individuals exploit gaps in existing law, particularly through social media and online platforms, emphasizing the need for Rwanda to stay proactive rather than reactive in regulating digital commerce. Importantly, the measures proposed are not unique to Rwanda but reflect international best practices, demonstrating that the country can adopt globally recognized approaches while tailoring them to local realities.

The findings provide practical guidance for policymakers, offering a roadmap for aligning national law with international digital consumer protection standards and ensuring effective enforcement. Implementing these reforms would enhance consumer trust, safeguard market integrity, and support Rwanda's Vision 2050 strategy of building an inclusive, knowledge-based economy. From an academic perspective, this research contributes to scholarship by extending the application of strict liability to consumer protection in the digital context, filling a notable gap in existing literature and providing a foundation for future legal studies and policy development in Rwanda and the broader African region.

LITERATURE REVIEW

The digitalisation of trade, communication, and social interaction has significantly increased consumer vulnerability. According to Helberger (2016), digital markets are marked by information irregularity,

where consumers cannot easily verify claims, understand algorithm-driven recommendations, or judge the reliability of online endorsements. This weakens consumer autonomy and supports the case for stronger regulation. Stucke and Grunes (2017) similarly argue that algorithmic curation and behavioral targeting give platforms and content creators greater power to manipulate consumer decisions, creating risks of financial loss, misinformation, and invasion of privacy.

In consumer protection law, Howells and Weatherill (2017) note that traditional legal frameworks often fail when proving intent is required, particularly in cases of deceptive digital marketing and influencer advertising. The focus on intent leaves gaps in enforcement, making consumers more vulnerable to sophisticated manipulation that exploits psychological biases and unequal access to information. To close these gaps, many scholars advocate for strict liability regimes, where liability is based on proof of harm or misrepresentation rather than proving the trader's state of mind.

Developing countries face additional difficulties in regulating digital markets. UNCTAD (2021) highlights that weak regulatory capacity, fragmented laws, and limited resources make enforcement challenging, especially in cases involving cross-border digital deception. OECD (2022) further notes that global practice is shifting towards platform liability and mandatory disclosure rules for influencers, recognising the central role of intermediaries in spreading misleading content. These frameworks aim to hold both content creators and platforms accountable, preventing situations where they profit from sensationalised or misleading content while consumers bear the risks.

Research also shows that influencers and social media marketing often spread misleading content. Marwick (2015) explains that influencers shape consumer perceptions but do not always disclose commercial incentives. The U.S. Federal Trade Commission (FTC, 2016), in the case against Lord & Taylor, showed how undisclosed influencer promotions misled consumers and avoided traditional remedies. Similarly, in the UK, the Advertising Standards Authority (ASA, 2021) sanctioned influencers for failing to disclose sponsorships, showing that enforcement challenges exist even in advanced legal systems.

From a legal theory perspective, Howells and Weatherill (2017) argue that strict liability is a more effective response in digital markets where proving intent is difficult. This approach shifts attention to evidence of harm or misrepresentation, which is especially important in fast-moving, algorithm-driven, and cross-border digital transactions. In Africa, and specifically in Rwanda, research on strict liability in digital consumer protection is limited. Most studies focus on cybercrime, data protection, or general consumer rights in traditional market, but not specifically on the intersection of sensationalised content, influencer marketing, platform accountability, and regulatory reform (UNCTAD, 2021; OECD, 2022).

The literature also stresses the need to balance stronger regulation with the protection of freedom of expression and innovation. Helberger, Pierson, and Poell (2018) argue that regulatory measures must be carefully designed to prevent abuse of power while effectively addressing manipulation. The European Union's Digital Services Act (DSA, 2022) illustrates this balance by imposing transparency and accountability duties on platforms without limiting legitimate expression. These comparative lessons suggest that Rwanda could adopt a strict liability model that strengthens consumer protection while supporting democratic values and digital innovation.

TERMINOLOGY AND KEY CONCEPTS

▪ **Clickbait**

Clickbait refers to digital content that uses misleading or sensationalized headlines or thumbnails to attract users to click, often exaggerating the actual content to manipulate engagement or generate revenue (Chen et al., 2015). In legal discourse, clickbait can constitute a deceptive trade practice under consumer protection frameworks when it intentionally misleads consumers about products or services. In digital markets, clickbait is strategically used to increase web traffic, maximize advertising revenue, or boost product visibility (Blom & Hansen, 2015).

From a legal perspective, clickbait raises significant concerns because it blurs the line between persuasive advertising and deceptive commercial practice. Consumer protection frameworks, such as the U.S. Federal Trade Commission Act (15 U.S.C. §45), prohibit “unfair or deceptive acts or practices,” which can encompass misleading headlines or claims that materially affect consumer decisions. Similarly, under the European Union’s Unfair Commercial Practices Directive (2005/29/EC), practices that mislead consumers about the nature of a product or service are unlawful, suggesting that clickbait tactics may constitute violations when they distort consumer choice.

The legal risk lies not in the use of catchy headlines per se, but in whether the headline creates a materially false impression that harms consumer autonomy or financial interests. Thus, clickbait is more than a marketing trick; it is a potentially unlawful practice when it manipulates consumer behavior through misinformation, undermining the principles of transparency, fairness, and truthfulness that consumer law seeks to protect.

▪ **Commercial Sensationalism**

Commercial sensationalism in the context of digital marketing refers to the use of exaggerated, misleading, or emotionally manipulative claims to attract consumer attention and drive sales. Unlike ordinary advertising, sensationalism often involves distortion of facts, overstatement of benefits, or the creation of artificial urgency, such as “miracle” health claims, fake scarcity tactics, or manipulated testimonials, which can mislead consumers into making decisions they would not otherwise make (Chen, Conroy, & Rubin, 2015; Helberger, 2016). Legally, such practices fall under consumer protection frameworks that prohibit false or deceptive commercial speech (Federal Trade Commission, 2016; UNCTAD, 2021).

▪ **Commercial Speech**

Commercial speech refers to any expression or communication that proposes, promotes, or is directly related to a commercial transaction. In the context of the digital marketplace, this encompasses advertising, influencer endorsements, sponsored content, marketing campaigns, comparative claims, or any online communication aimed at persuading consumers to purchase goods or services. Unlike purely private expression or political/journalistic speech, commercial speech is primarily motivated by economic gain and is subject to consumer protection rules to prevent deception, unfair practices, and harm to public welfare.

The legal basis for regulating commercial speech in the digital marketplace can be traced across international, regional, and domestic frameworks.

At the international level, the UN Guidelines for Consumer Protection (2015, revised) urge states to safeguard consumers from misleading or deceptive marketing and unfair business practices, recognizing such regulation as an essential part of controlling commercial speech. Similarly, Article 19 of the International Covenant on Civil and Political Rights (ICCPR) guarantees freedom of expression but permits restrictions that are provided by law and necessary for the protection of the rights of others, including shielding consumers from harmful or deceptive digital content.

At the regional level, the European Court of Human Rights (ECHR) has consistently distinguished commercial speech from political and journalistic expression, granting it a lower level of protection under Article 10 of the European Convention on Human Rights and thereby allowing states greater discretion in regulating advertising and consumer-related communications.

Comparative domestic jurisprudence also reinforces this approach. In the United States, the Supreme Court in *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council* (1976) defined commercial speech as “expression that does no more than propose a commercial transaction,” and while recognizing it under the First Amendment, subjected it to regulation against false, misleading, or harmful claims, further clarified in *Central Hudson Gas & Electric Corp. v. Public Service Commission* (1980).

- **Content Creators**

Content creators are individuals or entities who produce and publish material (text, images, video, audio) for digital platforms. Legally, content creators may be held liable for misrepresentation, defamation, or consumer harm if their content intentionally or negligently misleads or harms consumers (Howells & Weatherill, 2017).

- **Dark Patterns**

Dark patterns are user interface designs intentionally structured to manipulate users into taking actions they might not otherwise take, such as signing up for services or sharing personal data (Brignull, 2010). In the legal context, these can constitute unfair commercial practices under consumer protection law, as recognized in the EU’s Directive 2005/29/EC on Unfair Commercial Practices.

- **Deceptive Digital Practices**

Deceptive digital practices involve online actions that mislead or manipulate consumers, including false advertising, undisclosed sponsorships, or misleading product claims. Such practices are actionable under statutes like the U.S. Federal Trade Commission Act (15 U.S.C. § 45) and the EU Unfair Commercial Practices Directive.

- **Digital Consumer**

A digital consumer is an individual who purchases, subscribes to, or interacts with products and services offered via digital platforms. Legally, digital consumers are protected under consumer protection statutes that extend traditional rights to online transactions, including disclosure, fair treatment, and remedies for deception (OECD, 2022).

- **Digital Influencers**

Digital influencers are individuals who have established credibility on online platforms and shape consumer behavior through endorsements, recommendations, or sponsored content. Legally, they are increasingly subject to mandatory disclosure requirements to prevent misleading advertising (ASA, 2021).

- **Digital Marketplace**

A digital marketplace is an online platform that connects buyers and sellers, facilitating transactions of goods, services, or digital content. Platforms can be liable under strict liability frameworks or consumer protection law if they facilitate the distribution of deceptive or harmful content (European Union, 2022).

- **Mandatory Disclosure Rules for Influencers**

These rules require influencers to clearly communicate commercial relationships, sponsorships, or endorsements when promoting products or services online. Such rules aim to prevent deceptive advertising and are enforced by regulatory bodies like the FTC and ASA (FTC, 2016; ASA, 2021).

- **Principle of Consumer Sovereignty**

The principle of consumer sovereignty emphasizes that consumers should be free to make informed choices, with their preferences guiding production and resource allocation in the market (Von Mises, 1949; Samuelson & Nordhaus, 2010). However, in the context of digital marketing, this principle is often undermined by practices such as clickbait, fabricated endorsements, algorithmic dark patterns, and undisclosed influencer promotions, which manipulate consumer behavior instead of empowering informed decision-making (Helberger, 2016; Susser, Roessler & Nissenbaum, 2019).

Such practices distort consumer autonomy by creating artificial urgency, exaggerating product benefits, or concealing material information, thereby weakening the very foundation of sovereignty. In Rwanda, similar challenges appear in the form of counterfeit products, false advertising, and misleading promotional schemes, particularly in sectors such as fashion, electronics, and pharmaceuticals, where consumer risks extend to both financial and health harms (MINICOM, 2023). These distortions highlight that consumer sovereignty cannot function effectively without transparent information, fair competition, and regulatory safeguards. Thus, ensuring sovereignty in Rwanda's digital economy requires robust enforcement of consumer protection laws, stricter oversight of digital advertising, and alignment with international best practices such as the EU Digital Services Act and India's Consumer Protection Act (UNCTAD, 2021; European Commission, 2022).

- **Sensationalised Content**

Sensationalised content refers to digital material deliberately designed to provoke strong emotional reactions, attract clicks, or exaggerate facts. Legally, it can constitute misrepresentation or deceptive practice if it materially misleads consumers, as considered under the EU's Unfair Commercial Practices Directive or U.S. FTC guidelines.

- **Strict Liability**

Strict liability is a legal doctrine imposing responsibility for harm regardless of intent or negligence. In the digital consumer context, it can be applied to creators, influencers, and platforms that publish or

amplify deceptive content, shifting the burden from proving intent to demonstrating objective misrepresentation and consumer harm (Howells & Weatherill, 2017). Under this approach, the focus shifts from proving the intent to deceive to demonstrating that the content objectively misrepresented information or caused actual harm to consumers. This makes enforcement more effective in fast-moving online environments where deception can spread rapidly, and intent is often difficult to establish. Strict liability also encourages proactive compliance: platforms and content creators must verify claims, provide accurate disclosures, and implement mechanisms to prevent consumer harm (European Commission, 2022; FTC, 2016). By prioritizing accountability and transparency, strict liability strengthens consumer trust and reduces the risk of financial, health, or privacy damages caused by misleading digital content.

▪ **Safe-harbor Protection**

Safe-harbor protections refer to legal provisions that shield online intermediaries such as internet service providers, social media platforms, and e-commerce sites from liability for unlawful or misleading content posted by users, provided the platforms meet certain conditions. These conditions usually include acting as a neutral intermediary, having no active role in creating or promoting the content, and taking prompt action to remove or disable access to illegal or harmful material once notified.

In the digital consumer protection context, safe-harbor rules aim to balance innovation and accountability. They encourage the growth of digital platforms by limiting their liability for user-generated content, while also requiring them to adopt mechanisms (such as notice-and-takedown systems, transparency reporting, or compliance officers) to protect consumers from harm. For instance, the U.S. Communications Decency Act Section 230 and the EU's E-Commerce Directive (2000/31/EC) provide safe-harbor protections, though the scope and enforcement mechanisms differ. Critics argue that overly broad protections may allow platforms to avoid responsibility for hosting deceptive or harmful content, while reforms such as the EU's Digital Services Act (2022) impose stricter obligations to ensure consumer safety online.

COMPARATIVE ASPECT OF EUROPEAN UNION'S DIGITAL SERVICES ACT AND THE U.S. FEDERAL TRADE COMMISSION ENFORCEMENT PRACTICES, UK, INDIA AND SOUTH AFRICA

The regulatory approaches to digital platforms adopted by the European Union, the United States, the United Kingdom, and India reveal both convergences and divergences in balancing accountability, innovation, and the protection of fundamental rights. The European Union's Digital Services Act (DSA) establishes a comprehensive framework that imposes layered obligations on digital intermediaries, with special duties for Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSEs).¹ Its primary objectives are to address illegal content, mitigate systemic risks such as disinformation, and protect fundamental rights online, while also fostering innovation within the single

¹ Very Large Online Platforms (VLOPs) like Facebook and TikTok, and Very Large Online Search Engines (VLOSEs) like Google and Bing, are the biggest online services with massive influence on society. Because of their size, the EU's Digital Services Act gives them stricter rules, requiring them to limit harmful content, be transparent about algorithms and ads, protect user rights, and share data with researchers. Their importance lies in ensuring a safer, fairer, and more accountable digital space. They must identify and reduce risks such as disinformation and harmful content, provide transparency about how their algorithms and advertisements work, give users stronger rights to appeal when content is removed, and share data with independent researchers to better understand their societal impact. Their importance lies in the fact that, by holding these powerful platforms accountable, the DSA seeks to make the digital space safer, fairer, and more respectful of democratic values and user rights.

market (European Union, 2022). The DSA mandates risk assessments, algorithmic transparency, notice-and-action mechanisms, user redress systems, and independent audits, thereby embedding accountability within ex ante regulatory obligations. Its enforcement architecture relies on national Digital Services Coordinators, while granting the European Commission direct supervisory authority over VLOPs, with sanctions reaching up to six percent of global annual turnover (European Commission, 2023).

In contrast, the United States does not have a comprehensive digital services law, relying instead on the Federal Trade Commission (FTC) to enforce consumer protection and competition standards under the FTC Act. The FTC's approach is reactive and case-driven, focusing on unfair or deceptive acts or practices, data security failures, and misleading claims, including recent actions against deceptive uses of artificial intelligence (Federal Trade Commission, 2024). Remedies are often developed through litigation or negotiated consent decrees, providing flexibility but less predictability compared to the EU's rules-based regime. The UK's Online Safety Act of 2023 similarly emphasizes accountability, particularly with respect to child safety and illegal content, to issue codes of practice and impose substantial fines. However, it has sparked debate over potential threats to free expression, especially concerning proposals for monitoring encrypted communications (UK Government, 2023).

India's regulatory model combines the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules of 2021 with the Digital Personal Data Protection Act of 2023. This framework imposes significant operational obligations on intermediaries, such as traceability of messages, rapid takedown procedures, and mandatory appointment of compliance officers (Ministry of Electronics & Information Technology, 2021). The DPDP Act adds privacy protections by regulating personal data processing, yet both regimes have raised concerns regarding state overreach and chilling effects on free expression (Ministry of Electronics & Information Technology, 2023). Comparative analysis suggests that while the DSA provides strong procedural safeguards such as redress mechanisms and transparent reporting, the U.S. approach benefits from adaptability in addressing novel harms, though it lacks consistency. The UK and Indian systems demonstrate the effectiveness of strong regulatory mandates but also highlight the risks of excessive governmental control and potential infringement on human rights. Taken together, these frameworks illustrate the global challenge of designing digital governance regimes that enhance accountability while safeguarding freedom of expression and encouraging innovation.

South Africa does not yet have a single comprehensive statute comparable to the European Union's Digital Services Act. Instead, regulation of digital platforms follows a sectoral approach. The Protection of Personal Information Act (POPIA) establishes privacy and data-protection rules enforced by the Information Regulator (Republic of South Africa, 2013). The Electronic Communications and Transactions Act (ECTA) provides the legal framework for electronic commerce and intermediary liability, while the Films and Publications Amendment Act expands the mandate of the Film and Publications Board to regulate online distribution and harmful content (Republic of South Africa, 2002; Republic of South Africa, 2019). In addition, the Independent Communications Authority of South Africa (ICASA) oversees broadcasting and telecommunications, and the Competition Commission has conducted market inquiries into online intermediation platforms to address dominance and fairness in digital markets (Competition Commission South Africa, 2022).

This fragmented framework strengthens oversight in areas of privacy, consumer protection, and harmful content regulation, yet it lacks the centralized ex ante obligations and algorithmic risk assessments that

define the EU's DSA (European Commission, 2023). Enforcement in South Africa is primarily ex post and distributed across multiple regulators, leading to challenges of coordination and consistency (Mawdsley, 2021). Nonetheless, South Africa's Constitution provides strong guarantees of freedom of expression, privacy, and access to information, which ensure that regulatory measures must remain proportionate and rights-respecting (Constitution of the Republic of South Africa, 1996). South Africa's model is pluralistic and evolving robust in privacy and harmful content oversight, cautious on systemic platform accountability, and shaped by constitutional values that demand a balance between accountability, innovation, and fundamental rights.

GLOBAL CASE STUDIES ON MISLEADING ADVERTISING AND DIGITAL PLATFORM ACCOUNTABILITY

EUROPEAN UNION

▪ European Commission v. X (formerly Twitter) 2024

In July 2024, the European Commission notified X (formerly Twitter) that it may be in breach of the Digital Services Act (DSA) (Regulation (EU) 2022/2065) for its alleged failure to adequately address the dissemination of illegal content and disinformation on its platform. This case represents the first major enforcement action under the DSA, a landmark piece of EU legislation designed to regulate large online platforms by imposing stringent obligations concerning content moderation, algorithmic transparency, advertising, and systemic risk management.

The Commission's preliminary findings suggested that X had not established sufficient mechanisms to remove illegal content swiftly, nor had it provided adequate transparency regarding its algorithms and advertising practices as required under Articles 14–17 of the DSA. This raised concerns that the platform's practices could endanger public safety, democratic processes, and consumer rights within the EU digital market. The action also illustrates the shift in regulatory philosophy from voluntary codes of conduct toward binding, enforceable obligations on "Very Large Online Platforms" (VLOPs), of which X is one. Enforcement under the DSA can result in significant penalties, including fines of up to 6% of the company's global annual turnover, demonstrating the EU's resolve to hold powerful tech companies accountable.

Comparatively, this case echoes earlier U.S. enforcement efforts by the Federal Trade Commission (FTC) against platforms for deceptive practices, but it goes further by embedding accountability for systemic risks within statutory obligations. The outcome of this case is likely to set a precedent for how the DSA will be applied to other global platforms such as Meta, TikTok, and Google. Ultimately, European Commission v. X underscores a broader international trend toward enhanced platform responsibility, balancing the right to free expression with the imperative of safeguarding users against harmful and illegal digital content.

▪ Zalando v. European Commission, 2025

In September 2025, Europe's General Court made an important decision in the case of Zalando v. European Commission. Zalando, the biggest online fashion store in Europe, had challenged the European Commission's decision to label it as a Very Large Online Platform (VLOP) under the Digital Services Act (DSA). Zalando argued that it was mainly an online shop and not a digital platform like Facebook or

YouTube, so the extra responsibilities under the DSA should not apply to it. The company claimed that most of its business was about selling clothes directly to customers, not about running a platform where harmful or misleading content spreads.

The Court, however, disagreed. It found that Zalando had over 83 million active users each month, which is far above the DSA's threshold of 45 million. The judges also noted that Zalando allows activities such as customer reviews, third-party seller listings, and targeted advertising, all of which carry risks for consumers and can spread harmful or misleading information. Because of this, the Court confirmed that Zalando must be treated as a VLOP. This ruling is important because it shows that the DSA is not only for social media companies; it also applies to very large online shops and marketplaces. Zalando will now have to meet strict rules, such as checking and reporting the risks linked to its services, improving transparency about how its algorithms work, and cooperating with researchers and regulators.

The decision also sends a clear message to other large online retailers; that they are big enough to influence millions of consumers, they will be held accountable for safety and fairness in the digital marketplace. This makes the EU's approach one of the strongest in the world, and similar ideas are starting to appear in other countries like the U.S. and South Africa.

▪ **European Commission v. Facebook, 2025**

In 2024, the European Commission took legal action against Facebook because the company was not following the rules of the Digital Services Act (DSA). The problem was about political advertising. The DSA requires big platforms like Facebook to be open and honest about who is paying for political ads, how they are shown to users, and why certain people see them.

The Commission said Facebook failed to give enough transparency, meaning users could not clearly know who was behind the ads or how they were being targeted. This was seen as a serious issue because hidden or misleading political ads can affect democracy and voter trust.

By starting this case, the European Commission showed that it is serious about making sure big tech companies respect digital safety laws. The case also sets an example for other platforms, warning them that failing to follow the DSA will lead to strong enforcement

▪ **European Commission v. Google, 2025**

In early 2025, the European Commission started looking into whether Google was following the rules of the Digital Services Act (DSA). The investigation focused on two main issues: how Google deals with illegal content (such as harmful or banned material online) and whether it is being open and transparent about how its services work, especially in areas like advertising and search rankings.

The case is important because Google is one of the biggest tech companies in the world, and millions of people in Europe depend on its services every day. If Google fails to follow the DSA rules, it means harmful content could spread more easily, and users may not understand how decisions about what they see online are being made. This investigation shows the EU's strong commitment to keeping digital platforms safe and transparent, while also reminding tech giants that they cannot ignore European laws.

- **European Commission v. Amazon, 2024**

In late 2024, the European Commission warned Amazon that it might not be following the DSA rules, especially when it comes to the sale of fake or counterfeit goods on its platform. Counterfeit goods are fake products that pretend to be real like fake branded shoes, electronics, or medicines that can trick buyers and sometimes even cause harm.

The Commission argued that Amazon must do more to stop sellers from offering such products, because allowing counterfeit goods online puts consumers at risk and hurts honest businesses. This case shows that the EU is serious about protecting consumers from scams and unsafe products and making sure that online marketplaces take responsibility for what is sold on their platforms.

In summary; the author argues that the above mentioned cases under the EU's Digital Services Act show how Europe is cracking down on big tech companies to protect consumers and make online platforms more responsible. The Commission has targeted issues like the sale of fake goods, the spread of harmful or illegal content, lack of transparency in political advertising, and attempts by large companies to avoid stricter oversight. Courts have backed the EU's approach by confirming that very large platforms must follow tougher rules, while regulators are holding companies accountable for both the products they sell and the content they allow to spread. Taken together, these cases highlight a clear message that should be understood by every concerned platform that; online platforms cannot ignore consumer safety, transparency, and accountability, no matter how powerful they are.

UNITED STATES

- **Federal Trade Commission v. Lord & Taylor (2016)**

The Federal Trade Commission (FTC) took action against the fashion retailer Lord & Taylor after discovering that the company secretly paid dozens of social media influencers to post pictures of themselves wearing one of its dresses on Instagram. The problem was that these influencers did not tell their followers that they had been paid or given free products to make these posts. As a result, consumers thought the endorsements were genuine personal opinions rather than advertisements. The FTC said this was misleading and unfair because people have the right to know when they are being advertised to. This case shows why transparency in influencer marketing is so important; it helps consumers make informed choices and prevents companies from tricking people into buying products based on hidden sponsorships. It also sent a warning to other businesses and influencers that failing to clearly disclose paid promotions can lead to legal consequences.

- **Federal Trade Commission v. Volkswagen Group of America (2016)**

In 2016, the Federal Trade Commission (FTC) took action against Volkswagen after it was discovered that the company had lied to customers about how clean its diesel cars were. Volkswagen had advertised these cars as being environmentally friendly and meeting U.S. emissions standards, but in reality, the cars were equipped with special software that cheated the tests. This meant that while the cars appeared to pass emissions inspections, they were actually releasing far more pollution than allowed when driven in normal conditions. Millions of people bought the cars thinking they were making a greener choice, but they had been misled. The case became one of the biggest corporate scandals in the car industry, forcing Volkswagen to pay billions in settlements and repair costs. The FTC stressed that this deception was not

only harmful to consumers' trust but also damaging to the environment. The case serves as a reminder that companies must be honest in their advertising and that regulators will hold them accountable when they mislead the public.

- **Federal Trade Commission v. Herbalife (2016)**

In this case, the Federal Trade Commission (FTC) took action against Herbalife because the company was misleading people about how much money they could make by joining its business program. Herbalife operates as a multi-level marketing (MLM) company, where participants earn money not only by selling products but also by recruiting others to join the program. The FTC found that Herbalife made exaggerated claims about potential earnings, suggesting that most participants could make a substantial income when, in reality, only a small number of people actually did. Many consumers were persuaded to spend money on starter kits, training, or products based on these misleading promises.

As a result, Herbalife had to settle with the FTC and make major changes to how it runs its business. This included providing truthful information about earnings, ensuring that income claims are realistic, and restructuring certain aspects of its multi-level marketing program to prevent further deception. The case highlights the importance of honesty in marketing and protecting consumers from false promises that can lead to financial loss, especially in business opportunities that rely heavily on recruitment and personal investment. It also sends a clear warning to other companies that deceptive advertising and misleading income claims are not acceptable and will be closely monitored by regulators.

- **Federal Trade Commission v. DeVry University (2016)**

The Federal Trade Commission (FTC) took action against DeVry University because the school had been making misleading claims in its advertisements. DeVry told potential students that its graduates had high chances of getting good jobs and earning strong salaries after completing their programs. However, the FTC found that these claims were not true for many students, meaning people were being misled into spending money on education under false promises.

As a result of the case, DeVry had to settle with the FTC. The settlement required the university to stop using false or exaggerated claims in its advertising, provide accurate information about graduate employment and earnings, and give compensation to students who were affected by the misleading ads.

This case shows how important it is for educational institutions to be honest with students about outcomes like job prospects and salaries. Misleading advertising can lead students to make decisions that cost them time, money, and opportunities, and regulators like the FTC are willing to step in to protect consumers and hold companies accountable.

- **Federal Trade Commission v. Amazon (2021)**

In 2021, the Federal Trade Commission (FTC) investigated Amazon over concerns that the company was misleading customers about its subscription services, such as Amazon Prime. The main problem was that many consumers found it difficult to cancel their subscriptions, even though the company's advertising made it seem simple and straightforward. People ended up being charged for services they no longer wanted or thought they could easily stop.

The FTC took action to ensure that Amazon provides clear and honest information about how subscriptions work, including the steps needed to cancel them. The case highlights how important it is for online businesses to be transparent and fair with their customers. It also shows that companies cannot rely on confusing processes or hidden steps to keep customers paying.

Ultimately, the case serves as a reminder that consumers have the right to understand what they are signing up for and to cancel services without unnecessary obstacles. Regulators like the FTC play a key role in protecting people from deceptive business practices, ensuring that companies are accountable for how they advertise and manage their online services.

UNITED KINGDOM

▪ Advertising Standards Authority v. Indigo Sun (2025)

In 2025, the United Kingdom's Advertising Standards Authority (ASA) took action against a company called Indigo Sun after it ran an advertisement claiming that using its sunbeds could reduce deaths from cancer. The ASA investigated the ad and found that there was no scientific evidence to support this claim, meaning the advertisement was misleading and could give people false hope or unsafe expectations about the benefits of sunbed use.

As a result, the ASA ordered Indigo Sun to remove the ad. This case highlights the importance of honesty and accuracy in advertising, especially when it comes to health-related claims. Misleading advertisements can put consumers at risk by encouraging them to take actions that may be ineffective or even harmful.

The Indigo Sun case serves as a reminder to all businesses that any claims made in advertisements, particularly those related to health and safety, must be backed by solid evidence. It also shows that regulatory bodies like the ASA are vigilant in protecting consumers from misleading or unproven marketing, ensuring that companies cannot take advantage of people with false promises.

▪ Advertising Standards Authority v. Virgin Atlantic (2024)

In 2024, the UK's Advertising Standards Authority (ASA) banned an advertisement by Virgin Atlantic because it made false claims about the environmental impact of its sustainable aviation fuels. The ad suggested that these fuels produced no carbon emissions, giving the impression that flying with Virgin Atlantic was completely carbon-free and environmentally harmless. However, the ASA found that this claim was misleading because, in reality, the fuels still produce some emissions and cannot completely eliminate the environmental impact of air travel.

The ASA ordered Virgin Atlantic to remove the advertisement and ensure that any future marketing accurately reflected the true environmental effects of its fuels. This case shows how important it is for companies to be honest and clear in their advertising, especially on topics like climate change and sustainability, where consumers are trying to make informed choices.

It also highlights the role of regulatory bodies like the ASA in protecting consumers from being misled. Businesses cannot make exaggerated or false claims about their products, particularly when it comes to environmental benefits, because this can create misconceptions and influence consumer decisions unfairly. The case serves as a warning that transparency and evidence-based advertising are essential in building trust with customers and maintaining credibility in the market.

▪ **Advertising Standards Authority v. Scottish Power (2025)**

The Advertising Standards Authority (ASA) banned an advertisement by Scottish Power because it was misleading. The ad featured architect George Clarke and was made to look like part of a popular TV show. Many viewers thought the ad was actually a segment of the program, rather than a paid advertisement. The ASA found that the ad was not “obviously distinguishable” from the TV show, which is a requirement under UK advertising rules. This means viewers should be able to clearly tell when they are watching an advertisement versus regular TV content. Because the ad blurred that line, it was considered misleading, and the ASA ordered it to be removed.

This case highlights the importance of making sure ads are clearly identified as marketing content. When advertisements are disguised as regular TV shows, they can trick viewers into thinking they are watching neutral content, which can unfairly influence opinions or choices. Regulatory bodies like the ASA ensure that advertisers follow rules that protect consumers from being misled, maintaining honesty and transparency in media and marketing.

▪ **Advertising Standards Authority v. William Hill Casino (2010)**

The Advertising Standards Authority (ASA) banned an email campaign by William Hill Casino because it was misleading. The emails promised recipients a “£66 free bonus” without requiring any deposit. However, the terms and conditions of the offer were not clearly explained, meaning consumers could easily be misled about how to actually claim the bonus.

The ASA found that this lack of clarity violated advertising rules, as people were given a false impression of what they were entitled to. As a result, the campaign was prohibited. This case shows the importance of transparency in marketing, especially when promoting offers that involve money or financial incentives. Advertisers must clearly explain all conditions so consumers can make informed decisions, and regulatory authorities like the ASA step in to protect consumers from misleading promotions.

▪ **Advertising Standards Authority v. TALA (2024)**

The Advertising Standards Authority (ASA) banned six social media posts by influencer Grace Beverly that promoted her brand, TALA, because she did not make it clear that the posts were paid advertisements. Followers who saw the posts were not informed that they were sponsored content, which could have misled them into thinking the recommendations were personal opinions rather than commercial promotions.

The ASA ruled that this lack of disclosure violated advertising rules, emphasizing that influencers must clearly label sponsored content so consumers know when they are being marketed to. This case highlights how important transparency is in influencer marketing, as followers often trust the opinions of influencers and can be easily influenced by posts that appear genuine but are actually paid promotions. By enforcing clear disclosure, regulatory bodies like the ASA help protect consumers from being misled, ensuring that marketing online is honest and that people can make informed decisions when considering products or services promoted by influencers.

INDIA**▪ Consumer Protection Act v. My G Future (2025)**

The Ernakulam District Consumer Disputes Redressal Court in Kochi, India, handled a case where a trader misled customers by advertising a 64% discount on a product. When investigated, it was discovered that the trader had falsely inflated the original price of the item to make the discount appear larger than it actually was. In simple terms, the so-called “big discount” was not genuine it was a trick to attract buyers. The court found this practice to be deceptive and unfair to consumers, as it violated their right to honest and transparent information under the Consumer Protection Act, 2019. As a result, the trader was ordered to compensate the affected consumer. This decision serves as a warning to businesses that misleading advertisements will not be tolerated and that consumer rights must be respected, especially when it comes to truthful pricing and promotions. It also reassures the public that the law protects them from dishonest marketing tactics.

▪ Consumer Protection Act v. Patanjali (2024)

The Supreme Court’s action in the Patanjali case was an important moment in the fight against false advertising in India. The company had made big claims in its ads that were not true, especially about health products. The Court made it clear that while businesses are free to advertise, this freedom has limits especially when ads can harm people’s health or safety. The judges stressed that advertisements must be honest and backed by facts. This ruling sent a strong message that misleading ads, particularly in sensitive areas like health, will not be allowed and that protecting the public comes first.

▪ Consumer Protection Act v. Amazon India (2023)

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▪ Consumer Protection Act v. Flipkart (2022)

In 2022, the National Consumer Disputes Redressal Commission (NCDRC) ruled against Flipkart for publishing a misleading advertisement about the warranty of an electronic product sold on its platform. A consumer had purchased the product believing it came with a specific warranty as advertised, but later discovered that the warranty terms were either inaccurate or not honored. This left the buyer feeling deceived and without the protection they were promised.

The NCDRC held that Flipkart, as a major e-commerce platform, had a responsibility to ensure that information shared with customers was accurate and not misleading. Since the platform failed to do so, it was ordered to compensate the consumer. The decision sent a strong message that online retailers and marketplaces cannot simply shift responsibility onto third-party sellers they must verify the claims made in advertisements to protect consumer trust.

This case is significant because it shows that consumer protection laws apply equally in the digital marketplace as they do in traditional markets. It highlights the growing need for online platforms to practice transparency, provide clear warranty details, and avoid exaggerating benefits in their advertisements. For consumers, the ruling reaffirmed their right to truthful information and fair treatment, while for e-commerce companies, it underscored the legal risks of deceptive advertising practices.

▪ **Consumer Protection Act v. Snapdeal (2021)**

In 2021, the National Consumer Disputes Redressal Commission (NCDRC) ordered Snapdeal, a major Indian e-commerce platform, to pay compensation to a customer who was misled by a false advertisement. The consumer had purchased a product based on the claims made in Snapdeal's promotional materials, but when the item was delivered, it turned out that the quality did not match what had been promised. This left the buyer dissatisfied and cheated, leading to a formal complaint under the Consumer Protection Act, 2019.

The NCDRC found that Snapdeal's advertisement was misleading because it exaggerated or misrepresented the product's features. Since online platforms play a direct role in shaping consumer expectations, the court ruled that they cannot escape responsibility when false claims are made. Snapdeal was therefore directed to not only compensate the consumer but also ensure greater accuracy in its future advertising practices.

This case highlights the principle that advertising must always be truthful and transparent, whether in physical stores or online marketplaces. It also shows how the Consumer Protection Act, 2019 protects ordinary people from unfair trade practices in the fast-growing digital economy. By holding Snapdeal accountable, the ruling reinforced consumer trust and sent a clear warning to other e-commerce platforms that misleading customers has legal consequences.

SOUTH AFRICA

In South Africa, several notable cases illustrate how misleading advertising and digital platform accountability are addressed through regulatory oversight. The Advertising Regulatory Board (ARB) ruled against Ted Baker after it advertised "70% off all sale items," when some products were discounted less, finding the advert misleading and unfair to consumers (News24, 2023). Similarly, online retailer Takealot faced complaints where a newsletter promoted a product at R4,199, only for the price to change when accessed, and another instance where product descriptions were inaccurate; the ARB confirmed these constituted false advertising, underscoring the accountability of digital platforms (Business Tech Africa, 2022).

In another case, telecommunications giant MTN was sanctioned for advertising "unlimited calls and SMS," while in practice applying hidden limitations through an acceptable usage policy demonstrating how ambiguous terms like "unlimited" can mislead consumers (News24, 2024). Environmental accountability was also tested when TotalEnergies was found guilty of greenwashing for promoting its partnership with SANParks as evidence of a "commitment to sustainable development," despite continuing fossil fuel operations; the ARB ruled the claim misleading, marking a landmark decision in environmental advertising (Fossil Free SA, 2023). Collectively, these cases highlight how South Africa's advertising regulatory framework holds both private corporations and state entities accountable for

misleading or exaggerated claims in digital and traditional platforms, thereby reinforcing consumer protection and transparency.

RWANDAN CONTEXT

Unlike the European Union, the United Kingdom, the United States, India, and South Africa, Rwanda has yet to establish a dedicated regulatory authority to oversee digital advertising or address misleading content on online platforms, despite clear political will. Existing frameworks under the Rwanda Inspectorate, Competition and Consumer Protection Authority (RICA), and the Rwanda Utilities Regulatory Authority (RURA) provide some consumer safeguards, but they remain focused on traditional trade practices and lack specialized mechanisms to monitor, evaluate, or sanction deceptive practices in the digital environment. This creates a regulatory gap that leaves consumers vulnerable to online misinformation, fraudulent promotions, and digital exploitation without a centralized body to ensure accountability.

One promising approach to bridging this gap is the adoption of strict liability, which holds individuals, businesses, and platforms legally responsible for harm caused by their claims, irrespective of intent. This principle is especially pertinent in Rwanda, where misleading promotions are prevalent in areas such as traditional medicines, fraudulent investment schemes, and unverified digital services advertised on social media. Strict liability shifts the focus from intent to impact, preventing promoters from escaping accountability by claiming ignorance or good faith. Its adoption would require content creators, influencers, and hosting platforms to exercise greater diligence substantiating health or financial claims with credible evidence, disclosing risks transparently, and actively monitoring and removing harmful content. Such a framework would enhance consumer safety, financial security, and public trust, while raising accountability standards in Rwanda's digital marketplace.

At the same time, digital trade has become a necessity rather than a choice. As emphasized by Rwanda's Minister of Trade, Hon. Prudence Sebahizi, in his Opening Remarks at the Inaugural AfCFTA Digital Trade Forum in Lusaka (May 2025), Rwanda has consistently invested in digital infrastructure, e-commerce, and fintech solutions to position local enterprises competitively on regional and global markets. Yet, national initiatives alone cannot unlock the full potential of digital trade. The African Continental Free Trade Area (AfCFTA) offers a unique opportunity to harmonize regulations, align strategies, and create an enabling environment that empowers entrepreneurs while fostering inclusive growth across the continent.

In this context, Rwanda can strengthen its digital advertising and trade frameworks by drawing on international experience. Lessons from the EU's Digital Services Act, the U.S. Federal Trade Commission, the UK's Advertising Standards Authority, and India's Consumer Protection Act demonstrate the importance of holding platforms, brands, and influencers accountable for deceptive practices. By adapting these models, Rwanda could clarify responsibilities in the digital economy, close existing regulatory gaps, and establish stronger protections for consumers in an increasingly interconnected marketplace.

HOW DOES SENSATIONALISED CONTENT UNDERMINE CONSUMER PROTECTION IN RWANDA'S DIGITAL MARKETPLACE?

Sensationalised content characterized by exaggerated headlines, misleading visuals, or emotionally charged narratives, manipulates consumer emotions to drive engagement, often at the expense of accuracy.

Like anywhere in the world, this phenomenon is particularly prevalent in Rwanda's growing digital marketplace, where rapid internet penetration and widespread social media use have created fertile ground for such practices. The Rwanda Inspectorate, Competition and Consumer Protection Authority (RICA) has identified deceptive advertising and unfair business practices as significant challenges in the digital economy (Ministry of Trade and Industry, The Competition and Consumer Protection Policy 2023).

Internationally, jurisdictions like the United States have witnessed the detrimental effects of sensationalised content. The Federal Trade Commission (FTC) has taken action against companies for failing to disclose material connections between brands and influencers, leading to consumer deception (EPAR Technical Report, 2016). Similarly, the European Union's Digital Services Act (DSA) aims to mitigate such harms by imposing transparency obligations on online platforms (UNCTAD, 2021).

▪ **Domestic Framework: Rwanda**

In Rwanda, Law relating to Competition and Consumer Protection, of 2012 prohibits false advertising, unfair trade practices, and misleading commercial claims. This provides a statutory framework to curb deceptive commercial conduct. However, the law does not expressly define or address "commercial sensationalism" as a distinct category. While outright false claims are covered, the statute is less clear about exaggerated, emotionally manipulative, or clickbait tactics that may not rise to the level of falsity but still distort consumer choice.

For example, digital marketing campaigns that use artificial scarcity messages for instance while advertising traditional medicine "we cure illness that cannot be cured", exaggerated health or cosmetic claims, or influencer endorsements lacking disclosure may escape liability under the current framework. The cross-border nature of digital advertising also complicates enforcement, as many influencers and marketers operate from outside Rwanda's jurisdiction. This creates a regulatory discrepancy; although the law formally prohibits deception, it does not fully capture the understated forms of manipulation characteristic of online sensationalism.

▪ **Comparative Developments and Reform Needs**

Comparative experiences highlight the importance of stronger enforcement and clearer evidentiary standards in tackling digital sensationalism. The UK's Advertising Standards Authority has sanctioned influencers for nondisclosure of paid sponsorships, while the U.S. Federal Trade Commission's Lord & Taylor case (2016) confirmed that undisclosed promotions amount to deceptive marketing. These examples show how regulators are adapting to new forms of manipulation in the digital space. For Rwanda, this underscores the need to update consumer protection law to explicitly prohibit commercial sensationalism beyond outright falsity, require disclosure from influencers and platforms, establish liability for amplifying misleading content, and strengthen cross-border cooperation through the East African Community (EAC) and global networks such as ICPEN.

At present, Rwanda's legal framework prohibits misleading advertising but does not adequately address the manipulative techniques common in online marketplaces. The revised Competition and Consumer Protection Policy (2023) acknowledges these challenges, but still has no binding force; further reform is necessary to close regulatory gaps and prevent consumers from being exposed to marketing practices that exploit psychological biases and undermine trust in digital commerce.

▪ **Understanding the Purpose of Rwanda Consumer Protection Policy in the Digital Marketplace**

The Competition and Consumer Protection Policy (CCP) 2023 modernizes Rwanda's framework for consumer rights and competition regulation to address challenges of the digital economy. Unlike the 2010 policy, the revised CCP aligns with Vision 2050, NST1, the EAC Vision 2050, COMESA rules, AU Agenda 2063, and the SDGs. The policy acknowledges that digital markets create new consumer risks, particularly in areas such as e-commerce, online marketing, and unsafe digital products and services (MINICOM, 2023).

The policy pursues two main objectives. First, it seeks to guarantee fairness and safety for online consumers who are increasingly exposed to misinformation, defective products, and exploitative practices. Second, it introduces accountability measures to ensure compliance by digital enterprises and platforms, while harmonizing Rwanda's law with regional and international standards.

The CCP also emphasizes stronger enforcement and institutional collaboration. This includes empowering regulators, improving inter-agency coordination, and creating specialized dispute resolution mechanisms for online consumer conflicts. The approach reflects a rights-based vision of the digital economy, in which consumer protection is proactive as well as reactive, deterring harmful conduct before it spreads.

Rwanda's Consumer Protection Policy for the digital marketplace seeks to balance innovation with consumer welfare. By linking consumer rights to a strict liability framework for digital actors, Rwanda strengthens trust in online commerce and enhances its capacity to address the risks of the digital economy while supporting sustainable growth.

The author contends that effective consumer protection requires both proactive and reactive enforcement mechanisms, with the dual aim of preventing harmful conduct before it proliferates and addressing violations once they occur. A significant innovation anticipated under the CCP is the adoption of a strict liability regime in the regulation of digital commerce. This model assigns direct responsibility to content creators, influencers, and digital platforms for the materials they generate or disseminate. Importantly, it alleviates the evidentiary burden on consumers, who frequently lack the means to establish intent or negligence in cases of digital deception. By imposing strict liability, the policy reinforces fundamental consumer rights specifically the rights to truthful information, safe consumption, and effective remedies while ensuring that deceptive or harmful commercial practices cannot evade legal accountability.

WHAT ARE THE LIMITATIONS OF RWANDA'S CURRENT LEGAL FRAMEWORK IN ADDRESSING DECEPTIVE PRACTICES BY CREATORS, INFLUENCERS, AND PLATFORMS?

Rwanda's legal framework, primarily embodied in the Competition and Consumer Protection Law (Law No. 36/2012), lays a foundation for consumer protection but has several limitations hindering its effectiveness regarding deceptive digital practices. The law applies to any economic activity carried out or having effect within Rwanda and empowers the Rwanda Inspectorate, Competition and Consumer Protection Authority (RICA) to oversee compliance with quality standards, promote fair competition, and safeguard consumer rights in traditional market.

Nonetheless, the framework lacks provisions that specifically address the unique challenges posed by digital platforms such as algorithmic manipulation, sensationalised content, and influencer marketing which are increasingly relevant in the modern economy. Enforcement also faces obstacles; despite RICA's mandate to impose administrative penalties and its institutional autonomy, its regulatory capacity particularly in the digital arena has been constrained. Furthermore, deceptive practices often originate from foreign entities, raising cross-border jurisdiction issues that complicate enforcement and redress for Rwandan consumers.

Comparatively, jurisdictions like the United States have implemented more robust frameworks. The FTC Act prohibits unfair or deceptive acts or practices in commerce, providing a clear legal basis for action against misleading digital content. Similarly, the European Union's DSA introduces comprehensive regulations to address the responsibilities of digital platforms in curbing deceptive practices (UNCTAD, 2021).

HOW CAN A STRICT LIABILITY REGIME, INFORMED BY COMPARATIVE INTERNATIONAL EXPERIENCES, ENHANCE ACCOUNTABILITY WITHOUT HAMPERING FREEDOM OF EXPRESSION AND INNOVATION?

A strict liability regime, informed by comparative international experiences, can serve as a valuable mechanism for enhancing accountability in the digital marketplace without undermining freedom of expression or innovation. Under a strict liability framework, creators, influencers, and digital platforms would bear responsibility for deceptive practices regardless of intent. This approach shifts the burden of proof away from consumers, who often face challenges in demonstrating intent behind manipulative or misleading conduct, thereby simplifying avenues for redress (Howells, 2018). Moreover, it creates strong incentives for proactive compliance, as digital actors are encouraged to adopt transparent and ethical practices to mitigate the risk of liability (Helberger, 2016). By aligning with international norms, such as the European Union's Digital Services Act (DSA), which places obligations on online platforms to prevent and address illegal or harmful content, strict liability reinforces accountability and builds trust in the digital ecosystem (European Union, 2022).

Nevertheless, introducing strict liability must be carefully calibrated to avoid unintended consequences for freedom of expression and innovation. Comparative evidence demonstrates that clear regulatory guidelines are essential for ensuring that entities understand the scope of prohibited practices and can operate within predictable parameters (Frosio, 2021). Additionally, proportional penalties tailored to the severity of infractions can discourage harmful conduct without imposing undue burdens on smaller actors or suffocation creativity. Safeguards for legitimate expression, such as exemptions for good-faith user-generated content, are equally critical in maintaining a healthy digital discourse (Suzor, 2019).

In Rwandan context, adopting a strict liability regime could complement ongoing reforms in consumer protection law. The revised Competition and Consumer Protection Policy of 2023 provides a policy foundation that can integrate such reforms, thereby harmonizing Rwanda's framework with global best practices while fostering a transparent and accountable digital marketplace (MINICOM, 2023). By balancing accountability with appropriate protections for expression and innovation, Rwanda can strengthen its regulatory system in ways that promote both consumer welfare and digital growth.

BORROWING BEST PRACTICES

▪ **Commercial Sensationalism in Digital Market**

Commercial sensationalism in the context of digital marketing refers to the use of exaggerated, misleading, or emotionally manipulative claims to capture consumer attention and stimulate sales. Unlike ordinary “puffery”² which the law often tolerates as obvious exaggeration commercial sensationalism typically involves distortion of facts, overstatement of benefits, or the creation of artificial urgency. Examples include so-called “miracle” health remedies, deceptive “limited-time” offers, fake scarcity tactics, or manipulated testimonials. These practices go beyond persuasion into deception, exploiting consumer psychology and impairing their ability to make rational and informed choices.

▪ **International Framework**

At the international level, the UN Guidelines for Consumer Protection (2015) call on states to protect consumers against misleading or deceptive marketing practices (Guideline 5 and 11). Similarly, under Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR), restrictions on commercial expression are permitted when necessary to protect public health, morals, or the rights of others, thereby legitimising state regulation of sensationalised advertising.

▪ **Regional Perspectives**

In the European Union, the Unfair Commercial Practices Directive establishes that commercial practices are unfair if they materially distort or are likely to distort the economic behavior of the average consumer (Unfair Commercial Practices Directive, (2005/29/EC). The Court of Justice of the European Union (CJEU) has reinforced this principle. For instance, in Case C-210/96, Gut Springenheide GmbH v. Oberkreisdirektor des Kreises Steinfurt (1998), the Court held that advertising must be assessed from the perspective of the “average consumer,” who is reasonably well-informed and observant, to determine whether it is misleading. Similarly, in Case C-281/12, Trento Sviluppo and Centrale Adriatica v. Autorità Garante della Concorrenza e del Mercato (2013), the CJEU confirmed that misleading claims about the characteristics of goods or services constitute an unfair commercial practice under the Directive.

In the United States, the Federal Trade Commission (FTC) enforces Section 5 of the FTC Act, which prohibits unfair or deceptive acts or practices. In *FTC v. Direct Marketing Concepts, Inc.* (2009), the U.S. District Court found that exaggerated health claims for dietary supplements were materially misleading and violated consumer protection laws. Likewise, in *FTC v. QT, Inc.* (2003), the company’s claims that its “Q-Ray Ionized Bracelet” could relieve pain were ruled deceptive, leading to a multimillion-dollar judgment. These cases illustrate how U.S. law distinguishes between permissible puffery and unlawful sensationalism that deceives consumers.

▪ **Mandatory Disclosure Rules for Influencers**

² According to Howells and Weatherill (2017) and Spence (2020), puffery is a recognized legal and advertising concept that refers to exaggerated, subjective, or promotional claims which no reasonable consumer would interpret as factual. Typical examples include statements such as “*the best coffee in the world*” or “*unbeatable quality*,” which are understood as opinions rather than verifiable facts. Because of this, puffery is generally not actionable under consumer protection or advertising law. It is distinguished from false or misleading advertising, which involves factual assertions that can be objectively disproven. Unlike such deceptive claims, puffery is permissible as it is understood to be non-literal and a common feature of marketing practice

Mandatory disclosure rules require content creators and influencers to make clear, prominent, and timely statements of any material commercial relationship such as payments, gifts, affiliate commissions, discount or other incentives when promoting products or services online. The doctrinal basis for these rules is consumer protection; disclosures reduce information asymmetries between advertisers and audiences, enable informed choice, and prevent misleading impressions that a recommendation is independent when it is commercially motivated (FTC, 2016; CMA, 2019). Regulatory bodies now interpret long-standing principles of unfair and deceptive trade practices to the social-media context and require disclosures that are unambiguous and conspicuous in the modality in which the consumer encounters the content (ASA, 2021; FTC, n.d.).

The author argues that under a strict liability regime for commercial sensationalism, the legal assessment would focus on the objective presence of misleading or omitted material facts rather than on the promoter's subjective intent. In this framework, the failure to disclose a material connection that a reasonable consumer would consider relevant could constitute a per se actionable misrepresentation or an actionable omission. Thus, mandatory disclosure rules operate as an objective standard that maps naturally onto strict liability; if an influencer does not disclose a material connection and consumer harm or deception ensues, liability would attach irrespective of whether the influencer intended to mislead. This reduces evidentiary burdens for enforcement agencies removing the often intractable requirement of proving intent and strengthens deterrence by establishing predictable, enforceable rules of conduct.

▪ Illustrative Case Laws and Regulatory Enforcement

Practical application of mandatory disclosure rules can be seen in multiple jurisdictions. In the Matter of Lord & Taylor (2016), the Federal Trade Commission charged Lord & Taylor for paying 50 social-media influencers to post images of themselves wearing the same dress without adequately disclosing the payment or gift, finding that such undisclosed paid endorsements deceived consumers (FTC, 2016). The matter resulted in a consent order that emphasized the need for clear disclosure of material connections and required corrective compliance measures (Federal Trade Commission, 2016).

In United Kingdom, the Advertising Standards Authority (ASA) and the UK Competition and Markets Authority (CMA) have taken enforcement and supervisory action emphasizing that endorsements must be identifiable as ads, and brands are held responsible where influencers fail to disclose (ASA, 2021; GOV.UK/CMA, 2019). ASA monitoring reports found widespread non-compliance and have urged brands and influencers to adopt clear labelling such as "Ad" or platform-provided "Paid partnership" tags (Advertising Standards Authority. (2021).

The Federal Trade Commission outreach has continued to enforce disclosure expectations in health and wellness influencer posts by issuing warning letters to influencers and trade associations where disclosures were inadequate, demonstrating ongoing regulatory attention (FTC, 2023). These authorities illustrate that mandatory disclosure is not merely aspirational guidance but a functioning element of modern enforcement regimes; when a material connection is not disclosed, agencies secure corrective orders, fines, or warnings and require compliance programs.³

³ This means that rules about disclosure are not just suggestions they are real laws that are actively enforced. If an influencer or company does not openly say that they were paid or sponsored to promote something, regulators can step in. They may order the influencer or company to fix the mistake, pay fines, or follow strict rules in the future to make sure it doesn't happen again.

▪ **Rwanda: How Mandatory Disclosure Can Bridge the Gaps**

Rwanda's existing Competition and Consumer Protection Law No. 36/2012 provides a legal foundation but lack explicit, operational rules for influencer disclosures. Translating mandatory disclosures into Rwandan competition and consumer protection legal system could proceed through the following calibrated measures:

a. Regulatory Rule-Making: Amendments for instance of competition and consumer protection regulations should define “material connection,” prescribe disclosure modalities (text, hashtag, platform tool), and set sector-sensitive standards as stronger disclosure for health and financial services. This creates a clear objective standard compatible with strict liability doctrines; non-disclosure of a material connection would itself be actionable regardless of intent.

b. Presumptive Strict Liability for High-Risk Sectors: For areas that most directly threaten public safety and economic welfare such as medical products and investment schemes; Rwanda could adopt a presumption of strict liability for undisclosed promotional activity. Under this approach, this would mean that failure to disclose material connections in promotion of medicines or investment opportunities creates a presumption of unlawful conduct unless the influencer or sponsor proves compliance with mandated disclosure procedures or available due-diligence defenses.

In health scheme; suppose a social media influencer in Kigali promotes a “miracle herbal cure” for diabetes without disclosing that the product manufacturer paid for the endorsement. If consumers purchase the product and suffer health consequences, the law would treat the non-disclosure as presumptively unlawful. The influencer would only escape liability by showing proof of compliance for instance, that the promotional post contained the mandated disclosure such as #Advert or Sponsored by...”), or that they had exercised due diligence, through verification of the product's regulatory approval status with Rwanda Food and Drugs Authority.

This model aligns with global standards. In *FTC v. Direct Marketing Concepts, Inc.* (2009), exaggerated health claims for supplements were ruled deceptive; and in the EU, *Case C-421/12, Commission v. Belgium* confirmed that consumer protection rules require full transparency in health-related promotions.

In investment schemes; consider a case where an online influencer promotes a cryptocurrency investment scheme, claiming it guarantees “50% monthly returns,” without disclosing their financial ties to the platform. If investors lose money, the non-disclosure would automatically create a presumption of unlawful conduct under strict liability rules. The influencer or sponsor could only rebut this presumption by proving compliance with disclosure requirements, such as providing investors with transparent disclaimers, or by showing evidence of due diligence in verifying the legitimacy of the scheme.

Similar approaches have been applied internationally. In the U.S. Securities and Exchange Commission (SEC) fined celebrities, such as Floyd Mayweather Jr. and DJ Khaled, for failing to disclose payments received to promote cryptocurrency offerings (*SEC v. Mayweather & Khaled*, 2018). These cases underscore the risks of non-disclosure in financial promotions.

The author argues that the primary advantage of adopting a presumptive strict liability regime lies in its ability to significantly strengthen consumer protection. By treating non-disclosure, itself as evidence of misconduct, the model relieves consumers from the difficult task of proving intent, knowledge, or

negligence in digital deception cases. This enhances the protection of fundamental consumer rights, particularly in high-risk sectors such as health and financial services. Moreover, presumptive strict liability improves regulatory efficiency, since regulators can intervene based solely on the fact of non-disclosure without engaging in lengthy and resource-intensive inquiries into the state of mind of influencers or sponsors. In addition, the approach has a preventive effect, as it creates strong incentives for digital actors including influencers, advertisers, and platforms to adopt robust compliance mechanisms such as automated disclosure tools and contractual requirements that ensure transparency in promotional activity.

Comparative experience demonstrates the relevance of this approach. In the European Union, the Unfair Commercial Practices Directive (2005/29/EC) prohibits hidden advertising, especially in sensitive domains such as healthcare and financial services, where non-disclosure of sponsorship creates serious risks. Similarly, in the United States, the Federal Trade Commission's Endorsement Guides (2020 update) require influencers to disclose material connections, with enforcement actions taken against violators, as illustrated in *re Lord & Taylor* (FTC, 2016). Likewise, in South Africa, the Consumer Protection Act 2008 prohibits false, misleading, or deceptive commercial practices, thereby extending protection to consumers in areas including investment schemes and medical promotions.

Applied to the Rwandan context, a presumptive strict liability framework would generate three major benefits. First, it would close existing enforcement gaps under Law No. 31/2012 on Consumer Protection and Competition, which does not explicitly regulate undisclosed or sensationalised digital promotions. Second, it would enhance protection for vulnerable consumers who are disproportionately exposed to misinformation and fraud in the fast-growing digital economy, particularly in relation to health products and investment opportunities circulated on social media. Finally, it would align Rwanda with international best practices, harmonising domestic law with regional and global consumer protection frameworks and thereby boosting confidence in the integrity of Rwanda's digital marketplace.

c. Safe-Harbours and Due Diligence Defense

An important complement to a presumptive strict liability regime is the recognition of safe-harbors and due diligence defenses, designed to prevent the system from unduly penalising small creators or discouraging legitimate online expression. While strict liability enhances accountability, its rigid application may generate unintended consequences, such as deterring participation in digital markets or disproportionately burdening minor actors with limited resources. To mitigate these risks, the framework should provide narrowly tailored defenses that balance consumer protection with fairness.

For instance, influencers could be exempt from liability where they can demonstrate that they appropriately used platform disclosure tools such as tagging posts as “sponsored” or “advertisement” in line with existing technical and regulatory requirements. Similarly, liability could be limited where creators acted in reasonable reliance on representations made by sponsors, for example when a brand provides formal assurances that disclosure obligations have been met. Another safeguard would allow influencers to avoid sanctions if they promptly corrected inadvertent omissions upon being notified, thereby distinguishing between deliberate concealment and good-faith mistakes.

Such defenses would not weaken consumer protection but would instead align Rwanda's framework with comparative international practice. In the United States, for example, the FTC Endorsement Guides encourage corrective disclosure where initial compliance was imperfect, especially for small-scale

creators. The European Union's Unfair Commercial Practices Directive (2005/29/EC) similarly focuses on preventing misleading omissions while recognising that proportionality is essential in enforcement. By adopting safe-harbours within a presumptive strict liability system, Rwanda could preserve strong consumer safeguards while avoiding regulatory overreach that might suffocate innovation or creative participation in the digital economy.

Ultimately, embedding due diligence and safe-harbor provisions ensures that liability is reserved for genuine misconduct rather than inadvertent or technical lapses. This not only strengthens the legitimacy of enforcement but also incentivises platforms and sponsors to implement systemic compliance mechanisms, while reassuring smaller content creators that they can participate in Rwanda's digital economy without disproportionate legal risks.

d. Platform Obligations and Co-regulation

A central element of strengthening consumer protection in Rwanda's digital economy is the introduction of platform obligations combined with co-regulatory mechanisms. The rationale is that influencers and advertisers alone cannot bear the full burden of compliance, particularly in a transnational online environment where content is amplified and monetized primarily through digital platforms. By imposing duties on platforms to facilitate transparency, Rwanda would align with global trends that recognize platforms as gatekeepers of digital commerce.

In practice, this would mean that platforms operating in Rwanda are required to provide simple and prominent disclosure mechanisms such as "paid partnership" or "sponsored" labels, metadata tags indicating commercial content, and notice-and-takedown procedures for posts that fail to comply with disclosure obligations. These mechanisms reduce information asymmetry by enabling consumers to easily distinguish between neutral content and paid promotion. Furthermore, they streamline enforcement, as regulators and consumers alike can more readily identify undisclosed advertising.

Comparative experiences underscore the effectiveness of shared responsibility models. In the United Kingdom, the Advertising Standards Authority (ASA) has actively monitored influencer advertising since 2021, publishing regular reports and sanctioning non-compliant influencers. A notable example involved ASA's ruling against several Instagram influencers who failed to properly tag paid endorsements, even when platform tools were available. This monitoring program demonstrates that placing obligations on both advertisers and platforms ensures greater compliance and consistency.

In the European Union, the Digital Services Act (DSA, 2022) further advances this principle by imposing transparency and accountability obligations on platforms, requiring them to establish systems for identifying commercial content and ensuring compliance with consumer law. The DSA illustrates how platform co-regulation can strengthen enforcement without chilling freedom of expression.

Similarly, in the United States, the Federal Trade Commission (FTC) has held platforms indirectly accountable in cases such as *In re Machinima, Inc.* (FTC, 2015), where YouTube influencers failed to disclose sponsorship from Microsoft and the platform was implicated for inadequate oversight of paid promotions. This precedent highlights the importance of obligating platforms to facilitate disclosures and ensure advertisers comply with existing rules.

In South Africa, the Consumer Protection Act (2008) complements enforcement by requiring that marketing communications, including digital promotions, must not mislead consumers, and enforcement agencies have increasingly targeted online platforms as intermediaries responsible for hosting deceptive content.

A key step in strengthening consumer protection in Rwanda's digital economy is the introduction of platform obligations alongside co-regulatory mechanisms. This approach is grounded in the recognition that influencers and advertisers cannot bear the full burden of compliance, particularly in a transnational online environment where digital platforms amplify and monetize content. By imposing duties on platforms to facilitate transparency, Rwanda would align with international trends that increasingly view platforms as gatekeepers of digital commerce. In practice, this would require platforms operating in Rwanda to provide clear and accessible disclosure mechanisms such as "paid partnership" or "sponsored" labels, metadata tags identifying commercial content, and notice-and-takedown processes for non-compliant posts. These tools not only reduce information asymmetry by helping consumers distinguish between neutral content and paid promotion but also enhance enforcement efficiency, allowing regulators to act swiftly against undisclosed advertising.

Comparative practice demonstrates the effectiveness of shared responsibility models. In the United Kingdom, the Advertising Standards Authority (ASA) has actively monitored influencer marketing since 2021, publishing reports and sanctioning influencers who failed to tag paid endorsements despite the availability of platform tools. In the European Union, the Digital Services Act (DSA, 2022) advances this principle by imposing transparency and accountability obligations on platforms, requiring systems to identify commercial content and ensure compliance with consumer law. The United States has similarly held platforms indirectly accountable, as seen in *In re Machinima, Inc.* (FTC, 2015), where YouTube influencers failed to disclose Microsoft sponsorships and the platform was criticized for inadequate oversight. In South Africa, the Consumer Protection Act (2008) prohibits misleading marketing communications and has increasingly been applied against online platforms hosting deceptive content.

For Rwanda, adopting such obligations would close gaps in the Consumer Protection and Competition, which focuses primarily on advertisers without imposing clear duties on hosting platforms. It would also protect vulnerable consumers by ensuring that sponsored content on platforms like Instagram, TikTok, and YouTube is clearly identified, thereby reducing risks from misleading health claims or fraudulent investment schemes. Moreover, shared responsibility would enhance regulatory efficiency, with platforms acting as partners in enforcement through embedded disclosure tools and cooperation with oversight bodies. For example, if a Rwandan influencer promoted a "miracle herbal cure" for diabetes without disclosing sponsorship, both the influencer and the platform could be held liable: the influencer under strict liability for omission, and the platform for failing to provide disclosure mechanisms or for ignoring takedown requests once notified.

By embedding platform obligations within a co-regulatory model, Rwanda would harmonize its consumer protection framework with international best practice while future-proofing its legal system against emerging risks in digital markets. This approach balances accountability, innovation, and consumer rights, embedding a culture of compliance across all levels of the digital advertising ecosystem.

e. Enforcement Architecture

For Rwanda to effectively safeguard consumers in the digital marketplace, it is necessary to establish a robust enforcement architecture that empowers the consumer protection authority or another designated regulatory body with clear rule-making and investigatory powers on administrative damage. The regulatory body should be vested with authority to issue binding regulations, conduct expedited investigations into digital content, and impose administrative sanctions where violations occur. Such sanctions could include monetary fines, corrective advertising orders, temporary or permanent account suspensions, and a system of graduated penalties to ensure proportionality. Granting these powers would not only deter misconduct but also address the speed and scale at which deceptive digital content spreads.

Comparative experience demonstrates that strong institutional authority is central to digital consumer protection. In the European Union, national regulators enforce the Unfair Commercial Practices Directive (2005/29/EC) with powers to order corrective advertising and impose penalties. The recent Digital Services Act (2022) further empowers regulators to require platforms to remove unlawful content and cooperate in investigations. Similarly, in the United States, the Federal Trade Commission (FTC) has long exercised broad enforcement powers under Section 5 of the FTC Act. In *FTC v. Direct Marketing Concepts, Inc.* (2009), the Commission secured injunctive relief and monetary penalties against companies making deceptive health claims, illustrating how administrative sanctions and corrective orders can address consumer harm in high-risk sectors.

The importance of investigatory authority is also seen in South Africa's Consumer Protection Act (2008), which empowers the National Consumer Commission (NCC) to summon witnesses, demand information, and order compliance in cases of misleading digital advertising. For instance, the NCC has intervened in cases involving false investment schemes advertised through digital platforms, using its statutory powers to protect vulnerable consumers.

In the Rwandan context, such enforcement powers must also be coordinated with the Rwanda Investigation Bureau (RIB), given the cross-border nature of much digital misconduct. Fraudulent investment schemes, undisclosed influencer marketing, and health misinformation often originate outside national jurisdiction, requiring international evidence gathering and cooperation with foreign regulators. Coordination with platforms is equally vital; regulators must be able to compel notice-and-takedown procedures for non-compliant content and ensure systematic cooperation from intermediaries. Comparative precedent, such as the *Google Spain v. AEPD* (C-131/12, ECJ, 2014) "Right to be Forgotten" case, demonstrates that courts and regulators can compel large platforms to remove unlawful or harmful digital content across jurisdictions, highlighting the effectiveness of strong regulatory mandates.

By strengthening Rwanda's enforcement architecture in this manner, the country would close significant gaps in the Consumer Protection and Competition law, which currently lacks detailed provisions on digital enforcement. A modernized authority, armed with clear statutory powers and supported by inter-agency collaboration with RIB, would be well-positioned to address deceptive digital marketing, influencer misconduct, and fraudulent schemes. Such a system would align Rwanda with global best practices while ensuring that consumer protection remains proactive, efficient, and responsive to the challenges of digital markets.

g. Public Education

An essential pillar of an effective consumer protection regime in the digital marketplace is public education, which serves both a preventive and corrective function. Raising awareness among consumers, influencers, and marketing agencies helps to foster a culture of transparency and compliance that reduces reliance on reactive enforcement measures. Public education initiatives can include large-scale consumer awareness campaigns, targeted training programs for influencers and advertisers, and the integration of consumer rights education into digital literacy curricula.

For consumers, education campaigns can emphasize the importance of recognizing sponsored content, sensationalised claims, and potential fraud, particularly in high-risk areas such as health products, financial investments, and digital services. Such campaigns could leverage traditional media, social platforms, and community-based networks to maximize outreach. For influencers and marketing agencies, specialized training programs can ensure that they understand their legal obligations, such as disclosure requirements, liability risks, and ethical standards in digital advertising. Over time, these efforts contribute to the development of social norms of compliance, where transparency in digital commerce is seen not merely as a regulatory burden but as a professional and ethical standard.

Comparative experiences show that public education is a critical complement to legal enforcement. In the United Kingdom, the Advertising Standards Authority (ASA) has conducted recurring campaigns under its “Influencer Marketing” project since 2019, including publishing guidelines and influencer handbooks that explain when and how advertising disclosures must be made. In the United States, the Federal Trade Commission (FTC) issued the Disclosures 101 for Social Media Influencers (2019) guide, a plain-language manual widely disseminated to influencers, which has become a model for combining legal compliance with accessible public education. The FTC has also engaged in industry-wide workshops, such as the Native Advertising: Blurred Lines conference (2016), to bring together stakeholders and shape collective norms.

In South Africa, the Advertising Regulatory Board (ARB) launched initiatives to educate both consumers and businesses on responsible advertising under the Consumer Protection Act (2008), including guidelines on influencer marketing in health and financial sectors. These campaigns highlight the risks of misleading commercial speech and the duty of advertisers to ensure clarity and fairness. Similarly, the European Commission has supported digital literacy and consumer awareness programs under the Digital Services Act (DSA, 2022) framework, recognizing that consumer empowerment is an indispensable element of digital market regulation.

For Rwanda, integrating public education into the consumer protection framework would serve several functions. First, it would empower consumers to identify deceptive or undisclosed promotions and exercise their right to redress. Second, it would build compliance capacity among local influencers and marketing agencies, many of whom may lack knowledge of international best practices. Third, it would reduce enforcement burdens on regulators by encouraging voluntary compliance and peer accountability in the digital marketplace. For instance, a Rwandan campaign could highlight the risks of purchasing “miracle herbal cures” or investing in “guaranteed return” online schemes, while also training influencers on how to use disclosure tools on Instagram, TikTok, or YouTube.

Public education acts as both a preventive safeguard and a norm-setting mechanism. By launching awareness campaigns and training initiatives, Rwanda would align its consumer protection approach with international best practice while fostering a culture of transparency, trust, and accountability in its rapidly growing digital economy (FTC, 2019; ASA, 2021; OECD, 2022).

ENFORCEMENT CHALLENGES AND BALANCING CONSUMER PROTECTION WITH FREE EXPRESSION

While the adoption of strict liability provides a useful tool for addressing intent in consumer protection enforcement, practical implementation remains complex. Enforcement authorities must still demonstrate that the digital content in question is misleading, deceptive, or harmful. This requires the establishment of clear evidentiary standards, including reliable methodologies for identifying misrepresentations such as false health claims, fraudulent investment promises, or hidden advertising. Strengthening digital forensic capacity is therefore essential, enabling regulators to verify content authenticity, track sponsorship arrangements, and measure actual or potential consumer harm.

A key challenge also arises in the cross-border nature of digital markets. Many influencers promoting products and services to Rwandan consumers are based abroad, beyond the immediate jurisdiction of Rwanda's consumer protection authorities. Effective remedies will thus require international cooperation, both with foreign regulators and with digital platforms that host or amplify the content. Mechanisms such as memoranda of understanding (MoUs) with regulators in other jurisdictions, reliance on mutual legal assistance treaties (MLATs), and the negotiation of jurisdictional clauses in platform agreements could significantly strengthen enforcement. Additionally, platform-based content controls, including automated flagging, notice-and-takedown procedures, and disclosure enforcement tools, provide practical avenues for addressing cross-border non-compliance.

Comparative practice underscores these challenges. In the United States, the Federal Trade Commission (FTC) has repeatedly emphasized the need for evidentiary standards in digital advertising enforcement. In *re POM Wonderful LLC* (FTC, 2013), the company was sanctioned for making unsubstantiated health claims about pomegranate juice's ability to prevent or treat diseases. The case highlighted the importance of substantiation requirements in combating false health claims and the role of expert evidence in determining consumer harm.

Similarly, in the United Kingdom, the Advertising Standards Authority (ASA) has dealt with multiple cases of misleading influencer marketing. For instance, in *ASA v. Protein World* (2015), an advertising campaign suggesting that a weight-loss product could quickly transform users' bodies was found to be misleading and socially irresponsible. The case demonstrated the ASA's reliance on consumer impact evidence and its readiness to restrict content when consumer harm was likely.

In South Africa, the *Herbex (Pty) Ltd v. ASA* (2017) case concerned claims that weight-loss products were effective without sufficient scientific evidence. The court upheld the regulator's corrective measures, reinforcing that advertisers bear the burden of proof when health-related claims are made. This case illustrates how evidentiary standards can empower regulators to prevent misleading promotions that exploit vulnerable consumers.

For Rwanda, these comparative lessons suggest that effective enforcement will require a dual approach such as developing robust digital forensic capacity to assess content accuracy and trace online promotions,

and fostering international cooperation to overcome jurisdictional limitations in the regulation of foreign-based influencers.

Finally, enforcement must carefully balance consumer protection with the right to free expression, as protected under the Constitution of the Republic of Rwanda and international instruments such as Article 19 of the ICCPR. Regulatory measures should therefore be narrowly tailored to cover commercial speech, excluding legitimate political debate, journalistic expression, or artistic content. Proportional defenses such as the safe-harbor protections⁴ for inadvertent non-compliance and appeal mechanisms should be built into Rwanda's framework to safeguard legitimate expression while ensuring accountability for harmful commercial conduct.

Thus, a balanced approach would not only close enforcement gaps under Law No. 31/2021 on Consumer Protection and Competition but also embed Rwanda's enforcement practices within global best standards, ensuring that consumer protection is pursued without unduly restricting freedom of expression (*FTC v. POM Wonderful*, 2013; *ASA v. Protein World*, 2015; *Herbex v. ASA*, 2017).

RESEARCH FINDINGS

The study identifies critical deficiencies in Rwanda's existing legal framework for digital consumer protection, which remains largely focused on traditional marketplaces and inadequately addresses the challenges of the digital economy.

Current legislation does not adequately hold social media influencers, content creators, or online platforms accountable for deceptive digital practices, despite their increasing impact on consumer decision-making. A major limitation is the absence of laws specifically addressing sensationalized or misleading content, manipulative advertising, and false health or investment claims. Enforcement is further hindered by the law's reliance on proving subjective intent, which is particularly challenging in fast-paced digital environments where harmful or misleading content can spread rapidly before regulators are able to respond.

An additional concern relates to tax compliance. Many digital actors operating in Rwanda particularly influencers, content creators, and platforms are not effectively taxed, including obligations such as Value Added Tax (VAT) on digital services or income derived from monetized content. Given that payments for viewership or sponsored content are often made through bank transfers, there is a clear opportunity for the Rwanda Revenue Authority (RRA) to enforce tax collection alongside consumer protection measures.

Comparative analysis demonstrates that other jurisdictions have integrated both strict liability enforcement and tax compliance within digital consumer protection frameworks. In the European Union, the Digital Services Act (2022) imposes transparency and accountability obligations on platforms, while member states ensure VAT collection on digital services, including influencer marketing and online advertising. In the United States, the Federal Trade Commission (FTC) enforces strict liability and disclosure obligations for deceptive advertising, while the Internal Revenue Service (IRS) monitors income reporting for online influencers and content creators. Similarly, in South Africa, the Consumer Protection Act (2008)

⁴ According to Kosseff (2019) and the European Union (2000, 2022), safe-harbor protections shield digital platforms from liability for user-generated content, provided they act neutrally and remove illegal or harmful material when notified. In the context of digital consumer protection, these rules encourage platform innovation while requiring measures to prevent consumer harm, though overly broad protections can limit accountability.

addresses misleading online practices, and the South African Revenue Service (SARS) actively enforces VAT and income taxes on digital businesses and influencers.

Specifically, the research highlights five key findings:

1. Absence of laws specifically addressing sensationalized or misleading content, manipulative advertising, and false health or investment claims.
2. Enforcement and Institutional Gaps: Although Rwanda's laws prohibit deceptive conduct, regulatory action against digital sensationalism is hampered by the reliance on proving intent, making enforcement slow and often ineffective. This challenge is compounded by institutional fragmentation, as multiple authorities including RURA, RICA, FDA, RISA, and the RRA have overlapping mandates, complicating coordination and weakening coherent enforcement, particularly where consumer protection and tax compliance intersect.
3. Comparative Evidence: Experiences from the EU, U.S., and South Africa demonstrate that consumer protection is strengthened when liability frameworks adopt strict liability, impose ex-ante obligations on platforms and advertisers, and integrate compliance with tax regulations.
4. Justification for Strict Liability: Strict liability holds content creators, influencers or platforms responsible for misleading or sensational online content, protecting consumers without needing to prove intent.
5. Balancing Rights: Strict liability can be narrowly confined to commercial communications, with defenses such as substantiation and due diligence to safeguard freedom of expression while maintaining robust consumer protection.

Collectively, these findings underscore the need for legislative reform, institutional strengthening, tax enforcement integration, and the adoption of strict liability principles. Implementing such measures would enable Rwanda to regulate its digital economy effectively, protect consumers, ensure fair taxation of digital actors, and enhance overall market integrity.

CONCLUSION

The legal challenge at the heart of Rwanda's digital economy lies in the gap between traditional consumer protection frameworks and the unique risks posed by online commerce, influencer marketing, and platform-based advertising. Law No. 31/2012 on Consumer Protection and Competition and the Competition and Consumer Protection Policy (2023) provide an important starting point, but they are insufficiently tailored to deal with the realities of algorithmic targeting, manipulative marketing, and commercial sensationalism particularly in sensitive sectors like health and finance. The reliance on intent-based liability makes enforcement difficult, as deceptive practices in digital spaces often thrive without clear evidence of intent. This gap undermines consumer autonomy, erodes trust in markets, and leaves regulators without effective tools to curb abusive practices.

Other jurisdictions have confronted similar challenges and provide valuable lessons. In the United States, the Federal Trade Commission (FTC) developed the authentication doctrine, requiring advertisers to provide adequate evidence for claims before they are made (FTC v. POM Wonderful LLC, 2013). The United Kingdom's Advertising Standards Authority (ASA) has imposed strict disclosure obligations on influencers, as illustrated in ASA v. Protein World (2015), where misleading health-related claims were restricted. Similarly, South African courts in *Herbex v. ASA* (2017) confirmed that the burden of proof in

advertising disputes rests on the advertiser, not the regulator, shifting liability in a way that strengthens consumer protection. These examples demonstrate that strict liability, disclosure rules, and platform co-responsibility are legally viable and practically effective in addressing the risks of digital marketing.

For Rwanda, adopting a similar approach would fill enforcement gaps and align national law with international best practices. A strict liability regime particularly in high-risk sectors like medicinal advertising, financial investment, and health supplements would ensure that influencers, advertisers, and platforms cannot evade accountability through intent-based defenses. Mandatory disclosure rules, coupled with platform obligations to monitor and remove misleading content, would strengthen transparency and trust in the digital marketplace. At the same time, Rwanda can safeguard constitutional guarantees of freedom of expression by limiting regulation to commercial speech and designing proportionate defenses to protect legitimate business activity.

Successful implementation will require precise legal framework to integrate strict liability and disclosure obligations into consumer law. By pursuing these reforms, Rwanda can strengthen consumer protection, enhance accountability, and bolster digital trust. More importantly, it would position itself as a regulatory leader within the East African Community (EAC) and COMESA, shaping digital markets in a way that balances innovation, consumer welfare, and freedom of expression.

RECOMMENDATIONS

In light of these findings, the research proposes several legal and institutional reforms to strengthen consumer protection in Rwanda's digital marketplace. First, Rwanda should adopt a strict liability regime for commercial sensationalism, focusing legal scrutiny on misrepresentation and consumer harm rather than proving intent. To complement this, mandatory disclosure rules should be enforced to require influencers to clearly label paid or sponsored content. Liability should also extend to digital platforms whose algorithms amplify deceptive practices, ensuring that they share responsibility for consumer harm. Additionally, the law should provide consumers with effective remedies, including damages, compensation, and mechanisms for collective redress in cases of widespread harm. At the same time, safe harbour provisions could be introduced for actors who demonstrate due diligence and compliance with disclosure rules, thereby encouraging responsible practices without stifling innovation.

Finally, regulatory agencies such as the Rwanda Utilities Regulatory Authority (RURA), and the Consumer Protection Authority should be strengthened through enhanced capacity-building to effectively monitor, investigate, and sanction deceptive digital practices.

Comparative experiences show that jurisdictions like the U.S. Federal Trade Commission (FTC), the UK Advertising Standards Authority (ASA), and the EU Digital Services Act (2022) have adopted stricter liability regimes, platform obligations, and consumer redress mechanisms to address similar challenges. Drawing from these lessons, Rwanda can tailor reforms that strengthen consumer rights, safeguard trust in digital markets, and ensure regulatory alignment with EAC and COMESA standards. Against this backdrop, viable recommendations emerge:

1. **Legislative Reform:** Rwanda should amend Law No. 31/2012 to explicitly cover digital commercial speech, including content creators, influencer marketing and platform-based promotions. Introducing a strict liability regime in high-risk sectors (e.g., health products and

investment schemes) would shift the evidentiary burden from consumers who often lack resources to advertisers and platforms.

2. **Platform Co-Responsibility:** Digital platforms operating in Rwanda should be required to provide prominent disclosure tools and establish notice-and-takedown mechanisms for deceptive content. Where algorithms amplify harmful practices, platforms should share liability with influencers.
3. **Institutional Strengthening:** The Competition and Consumer Protection Authority, in collaboration with RURA, should be equipped with specialized digital regulatory units and rule-making authority. This would allow regulators to impose proportionate sanctions ranging from corrective advertising and fines to account suspensions.
4. **Consumer Remedies and Safeguards:** To enhance accountability, Rwanda should establish mechanisms for damages, compensation, and collective redress in cases of widespread harm. At the same time, safe-harbour protections should be provided for small or first-time actors who demonstrate good-faith compliance, balancing deterrence with fairness.
5. **Public Education and Compliance Culture:** Sustainable consumer protection also depends on awareness. Rwanda should launch nationwide education campaigns and training programs for influencers, marketing agencies, and consumers, modeled on EU's "Check before you click" initiative. Partnerships with universities, civil society, and regional regulators would reinforce compliance and foster a culture of transparency in digital advertising.
6. **Cross-Border Enforcement and Regional Cooperation:** Rwanda should incorporate clear jurisdictional clauses in consumer protection law to enable enforcement against foreign influencers and advertisers whose content targets Rwandan consumers. This should be complemented by the development of bilateral and regional cooperation frameworks with EAC, COMESA, and AU regulators to facilitate coordinated cross-border investigations, enforcement actions, and information-sharing, drawing on best practices from the EU Consumer Protection Cooperation Network.
7. **Integration of Tax Compliance into Digital Consumer Protection:** Rwanda should require all digital actors including influencers, content creators, and online platforms who generate income from commercial promotions and content viewership targeting Rwandan consumers to register for tax purposes and remit applicable taxes such as Value Added Tax (VAT) and income tax. The Rwanda Revenue Authority (RRA) should collaborate closely with regulatory bodies such as the Consumer Protection Authority (RICA), RURA and BNR, to share information on digital transactions, monitor revenue streams, and ensure compliance. To facilitate enforcement, Rwanda could implement a mandatory reporting mechanism, where platforms must provide transaction data for sponsored content and monetized viewership, similar to EU VAT rules for digital services and the IRS reporting requirements for U.S. influencers. Additionally, graduated sanctions should be imposed on non-compliant actors, ranging from fines and corrective measures to account

restrictions. This approach not only strengthens consumer protection by holding actors accountable for misleading practices but also ensures that Rwanda collects due tax revenues from the growing digital economy, promoting economic fairness and supporting public services.

FINAL OBSERVATIONS

Rwanda's Vision 2050 emphasizes a digitally enabled, knowledge-based economy, but such a transformation cannot succeed without a trustworthy and transparent digital marketplace. A modernized consumer protection regime anchored in strict liability, platform accountability, and proactive enforcement would safeguard consumer rights, reduce risks of fraud, and strengthen Rwanda's reputation as a safe digital hub in Africa. By adopting these reforms, Rwanda will not only protect its citizens from deceptive digital practices but also signal to investors, businesses, and international partners that it is committed to rule-based digital governance in line with Agenda 2063 and the SDGs.

SCOPE FOR FURTHER RESEARCH

While this study provides a foundational framework for applying strict liability and enhancing consumer protection in Rwanda's digital economy, several areas remain underexplored and merit further investigation. Future research could examine practical mechanisms for enforcing consumer protection against foreign influencers and digital platforms targeting Rwandan consumers, including the effectiveness of bilateral and regional cooperation frameworks within the EAC, COMESA, and AU jurisdictions.

Sector-specific studies are also needed to assess the unique risks posed by commercial sensationalism in high-risk industries such as health products, financial services, and online education, and how these practices influence consumer behavior and economic outcomes. Additionally, the development of advanced digital forensic tools and clear evidentiary standards warrants further study to enable regulators to objectively detect misleading claims, quantify harm, and streamline enforcement in algorithmically amplified content. Research could also explore the potential impact of strict liability on innovation and entrepreneurship in Rwanda's digital economy, evaluating whether rigorous regulation might unintentionally constrain legitimate content creation or online business activities.

Finally, empirical studies on consumer awareness, digital literacy, and behavioral responses to disclosure tools would provide critical insights for designing effective education campaigns, compliance strategies, and policy interventions, while comparative legal studies across African jurisdictions could inform the harmonization of regional consumer protection frameworks in the digital marketplace.

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