

Analysis of civil liability for the abusive practice of child advertising in the ‘Sephora Kids’ phenomenon¹

Análise da responsabilidade civil pela prática abusiva de publicidade infantil no fenômeno ‘Sephora Kids’

Análisis de la responsabilidad civil por la práctica abusiva de publicidad infantil en el fenómeno ‘Sephora Kids’

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Abstract:

A strong trend has been observed in the behavior of children and adolescents, especially females, who visit beauty product stores in search of makeup and skincare items. This phenomenon, known internationally as ‘Sephora Kids,’ was primarily triggered by videos published on the digital platform TikTok by child influencers who showcase their skincare routines and promote products that are unsuitable for children and adolescents and may cause skin damage. In addition to these advertising contents being difficult to identify, they are specifically targeted at audiences up to 12 years old, which, according to the systematic interpretation of Brazilian law, constitutes prohibited child advertising. Therefore, the central issue of this article is: what is the civil liability of advertising companies, the digital platform TikTok, and the child influencers regarding the ‘Sephora Kids’ phenomenon? The research was based on the inductive method, starting from the study of the ‘Sephora Kids’ phenomenon to reach a general conclusion. In the end, it is concluded that all parties involved in the dissemination of this abusive marketing are jointly and objectively liable.

Keywords: ‘sephora kids’; child advertising; child influencers; TikTok; civil liability.

Resumo:

Uma forte tendência tem sido observada no comportamento de crianças e adolescentes, especialmente do gênero feminino, que ingressam em lojas especializadas em produtos de beleza na busca por maquiagens e artigos para cuidados com a pele. Esse fenômeno, que ficou conhecido internacionalmente como ‘Sephora Kids’, teve como principal causa a publicação de vídeos, na plataforma digital Tiktok, por influenciadoras mirins que expõem sua rotina de cuidados com a pele e divulgam produtos skincare, os quais são impróprios para crianças e adolescentes e capazes de gerar danos à pele. Além desses conteúdos publicitários não serem de fácil identificação, estão sendo direcionados especialmente para o público de até 12 anos, o que, pela interpretação sistemática do ordenamento jurídico brasileiro, leva à conclusão de que são proibidos no Brasil por configurarem publicidade infantil. Assim, tem-se como problema central do presente artigo a seguinte questão: como fica a responsabilidade civil das empresas anunciantes, da plataforma digital Tiktok e das influenciadoras mirins pelo fenômeno ‘Sephora Kids’? O método de abordagem indutivo foi a base metodológica da pesquisa, partindo do estudo do fenômeno ‘Sephora Kids’ para se chegar a uma conclusão universal. Ao final, conclui-se pela responsabilização objetiva e solidária entre todos os envolvidos na veiculação da oferta abusiva.

¹ Texto traduzido por Inteligência Artificial.

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Palavras-Chave: 'Sephora Kids'; Publicidade Infantil; Influenciadores mirins; Tiktok; Responsabilidade Civil.

Resumen:

Se ha observado una fuerte tendencia en el comportamiento de niños y adolescentes, especialmente del género femenino, que acuden a tiendas especializadas en productos de belleza en busca de maquillaje y artículos para el cuidado de la piel. Este fenómeno, conocido internacionalmente como 'Sephora Kids', tuvo como principal causa la publicación de videos en la plataforma digital TikTok por parte de influencers infantiles que muestran su rutina de cuidado de la piel y promocionan productos de skincare que son inapropiados para menores y pueden causar daños dermatológicos. Además de que estos contenidos publicitarios no son fácilmente identificables, están siendo dirigidos especialmente a un público de hasta 12 años, lo que, según la interpretación sistemática del ordenamiento jurídico brasileño, lleva a la conclusión de que están prohibidos en Brasil por constituir publicidad infantil. Así, el problema central del presente artículo es el siguiente: ¿cómo se configura la responsabilidad civil de las empresas anunciantes, de la plataforma digital TikTok y de las influencers infantiles en relación con el fenómeno 'Sephora Kids'? La investigación se basó en el método de abordaje inductivo, partiendo del estudio del fenómeno 'Sephora Kids' para llegar a una conclusión general. Al final, se concluye por la responsabilidad objetiva y solidaria de todos los involucrados en la difusión de la oferta abusiva.

Palabras clave: 'sephora kids'; publicidad infantil; influencers infantiles; TikTok; responsabilidad civil.

1 Introduction

The digital world has transformed the way people relate, interact, work, and entertain themselves, and it has also significantly impacted childhood. New generations are already born immersed in technology, using mobile devices, social media, and photo and video sharing platforms daily, often several times a day.

In this scenario, there is a growing presence of companies that, aware of the significant participation of children and adolescents on digital platforms, target their advertising directly to this audience. These companies exploit the hypervulnerability of minors to boost their profits and sales. And precisely because digital platforms are low-regulation environments, they become fertile ground for abusive and unethical practices, especially when they involve children.

Within this context, one phenomenon has gained international attention: the case known as "Sephora Kids." It is characterized by the massive presence of children and preteens in beauty product stores, such as the French company Sephora and the American Ulta Beauty, in search of skincare products. This trend was mainly driven by videos posted on the digital platform TikTok, in which child influencers showcase their skincare routines and promote products that are inappropriate and potentially harmful for children and adolescents, such as retinol masks and adult-targeted makeup.

This premature exposure to aesthetic standards and consumption of unsuitable products raises concerns that go far beyond dermatological issues, reaching topics such as early adultification, reinforcement of gender stereotypes, and psychosocial impacts on children and adolescents.

Furthermore, it must be noted that advertising content created by child influencers is often not easily identifiable as advertising, even for adults. The problem is aggravated by the fact that such content is specifically aimed at children under the age of 12, whose discernment is still under development. For this reason, addressing this issue becomes not only relevant but urgent.

Considering that cosmetic companies, the TikTok platform, and the child influencers themselves all benefit financially from this practice, the central question this article seeks to address is: What is the civil liability of advertising companies, the TikTok platform, and the child influencers in the 'Sephora Kids' phenomenon, and for the damages caused to children and adolescents through the practice of child-targeted advertising?

Thus, this research aims to examine the “Sephora Kids” phenomenon and its potential consequences for children and adolescents; to analyze the current Brazilian regulatory framework on child advertising; and finally, to verify whether - and to what extent - civil liability can be attributed to advertisers, the TikTok platform, and the child influencers involved in this abusive practice.

To achieve these objectives, the study applies an inductive approach, beginning with an analysis of the “Sephora Kids” phenomenon and working toward a broader legal conclusion. The interpretation will be systematic, seeking to analyze and interpret civil liability for child-targeted advertising within the scope of current Brazilian legislation (Civil Code, Consumer Protection Code, and CONANDA Resolutions). The nature of this research is theoretical, and its purpose is exploratory. Finally, the bibliographic and documentary technique will be employed, based on the study of legal doctrine, legislation, and jurisprudence.

2 The Presence of Child-Targeted Advertising in the 'Sephora Kids' Phenomenon

With the advancement of technology and the emergence of media and social networks, the internet has become a constant presence in people's routines, changing how they relate

and interact. Today, we live in a society of exposure, where, as Bauman has observed, an updated version of Descartes' cogito would be: "I am seen (observed, noticed, recorded), therefore I am" (Bauman, 2014, p. 88).

People increasingly use the virtual environment to share experiences and information, exposing their thoughts, preferences, habits, and attitudes. Decades before the rise of the commercial internet, Guy Debord already pointed to the human need for overexposure and self-affirmation - phenomena now evident in the age of social media - in his seminal 1960s work that coined the term "the society of the spectacle" (Debord, 1997, p. 81).

This social transformation driven by technological growth has profoundly impacted marketing and advertising². It has become imperative for companies to advertise digitally to differentiate their brands and boost sales. Through cyberspace, it is now possible to disseminate ads at low cost and reach millions of consumers worldwide, simultaneously (Pasqualotto; Brito, 2020, p. 43).

Moreover, companies now have access to information made publicly available by internet users, enabling them to identify consumer habits, preferences, conversations, and needs. With this network of data, advertising can be targeted with precision, increasing the power of influence and persuasion in product marketing (Pasqualotto; Brito, 2020, p. 50).

Within this context emerged the figure of digital influencers. Through online platforms, they naturally share their (alleged) habits and lifestyles and create content on diverse topics like fashion, travel, humor, finance, and technology. In doing so, they interact with their audiences and gain trust, becoming digital authorities in specific subjects (Gasparoto; Freitas; Efig, 2019, p. 75).

Recognizing the visibility and credibility influencers achieve among their followers, companies began investing in these public figures, through monetary compensation or by supplying products, to amplify their advertising and sales.

Children have not been excluded from this consumer society described by Bauman or the flood of advertising that turns people into commodities (Bauman, 2008, p. 20). On the contrary, the digital environment facilitates the covert targeting of children and adolescents by advertisers, who see them both as potential consumers and as vehicles to boost sales. Consequently, companies began encouraging the use of child influencers after realizing that

² Already in a thesis published in 1997, just a few years after the Brazilian Consumer Protection Code (Law No. 8.078/90) came into effect, Pasqualotto (1997, p. 27) described advertising in the following way: "For a long time now, advertising has ceased to be a dilettante exercise in creativity by talented copywriters and art directors. Pursuing its inherent practical purposes, advertising has become part of a complex set of integrated planning activities. Collectively, these activities are known as marketing."

advertising aimed at children is significantly more effective when promoted by peers, triggering emotional and unconscious responses in audiences who lack full discernment to identify commercial content (Efing; Moreira, 2021, p. 14).

In this context, the digital platform TikTok has proven to be a powerful marketing tool aimed at children and adolescents. It primarily promotes short, spontaneous, and creative videos with high potential to capture young people's attention. Additionally, TikTok's algorithm identifies users' preferences and interests using their data, enabling content targeting based on individual viewer profiles (Rodríguez, 2024, p. 48).

According to a 2022 study by TIC Kids Online Brasil, TikTok was the most used platform among children and teenagers aged 9 to 17 (G1, 2022). In 2023, 63% of internet users in this age group already had TikTok accounts (Cetic.br, 2023). Moreover, research from 2024 shows that 69% of brands using digital influencers to promote their products did so through TikTok, now the most popular and influential digital marketing network (Influencer Marketinghub, 2024).

Aware of this trend, many beauty brands have embraced it by employing child digital influencers, who hold closer and more credible ties with their audiences, as a communication strategy to naturally and subtly reach and persuade more consumers.

In 2018, over 80% of cosmetic companies launched initiatives involving influencers (Lazo; Velasco, 2021, p. 215). According to a 2020 study, for every €1 invested in influencer marketing, the cosmetics industry generated an average return of €5.20, with top-performing companies earning up to €20 per €1 invested (Lazo; Velasco, 2021, p. 5).

Among these brands, Sephora stood out by using this marketing tool to offer free products to well-known digital influencers, encouraging them to share their experiences with beauty products through reviews and tutorials on TikTok. This strategy broadened its reach and strengthened its position (Guerrero, 2021, p. 13).

Besides increasing product visibility, this approach helped Sephora build a strong beauty community and gain the trust of its users (Rodríguez, 2024, p. 19), including children and adolescents.

It was in this setting that the phenomenon known as "Sephora Kids" emerged, in which mostly girls under 12 began regularly visiting major cosmetic stores like Sephora and Ulta Beauty in search of skincare products.

Most of the products purchased by this young audience, however, are anti-aging items containing ingredients such as retinol, exfoliating acids, expensive humectants, dyes, and serums - clearly unsuitable for children and adolescents (Taylor, 2024).

This phenomenon gained widespread attention, becoming the subject of national and international media coverage. Its origin is closely linked to the popularity of TikTok videos where child influencers aged 9 to 14 showcase their skincare routines, makeup tutorials, and promote moisturizing products and anti-aging masks. Due to these marketing campaigns on social media, mainly targeting children aged 10 to 12, there was a significant sales increase for numerous cosmetic companies. Notably, the California-based company e.l.f. saw its stock surge by 203%, according to MarketWatch (Taylor, 2024).

Although this phenomenon began in the United States, a growing presence of child consumers has also been observed in Sephora stores in Brazil (Rupp, 2024). According to Nexo research, many Brazilian mothers report concern and difficulty in dissuading their preteen daughters from using skincare products, noting an almost obsessive focus on beauty among young girls (Rupp, 2024).

The major concern around this trend lies in the multiple harms caused by premature exposure to the aesthetics industry, which can lead to early adultification, reinforcement of gender stereotypes, and socially constructed expectations misaligned with childhood and adolescence. This undermines self-esteem development in individuals undergoing critical stages of biological and psychosocial growth.

At this point, it is important to highlight Piaget's (1986) theory of cognitive development, which outlines four distinct stages: the sensorimotor stage (birth to age 2), characterized by basic motor skill development and object interaction; the preoperational stage (ages 2–7), marked by language acquisition and symbolic thinking; the concrete operational stage (ages 7–11), when children begin logical thinking about concrete objects and events; and finally, the formal operational stage (age 11 to adulthood), in which abstract and hypothetical reasoning emerges.

According to Piaget, children under 11 do not possess full abstraction or critical judgment skills, making them particularly vulnerable to media and advertising persuasion - as seen in the phenomenon analyzed in this paper.

Similarly, Erikson (1902, p. 92) emphasized that during childhood, especially in early years, identity and self-esteem are formed through social and cultural stimuli from the surrounding environment. As the author notes, "In a culture once pervaded with the value of

the self-made man, a special danger ensues from the idea of a synthetic personality: as if you are what you can appear to be, or as if you are what you can buy.” These values are also conveyed to children and adolescents through digital advertising, impacting identity and self-esteem development during a critical growth phase.

Beyond emotional harm, children's and adolescents' bodies absorb skincare substances more intensively, which can lead to various skin issues such as surface layer exfoliation, lesions, allergies, irritation, and even accelerated acne development (Rupp, 2024).

The risks associated with the “Sephora Kids” phenomenon are therefore evident, and the necessary criteria for characterizing child-targeted advertising are met, in accordance with the "Advertising Guide for Digital Influencers"³ published by the Brazilian National Council for Advertising Self-Regulation (CONAR) in 2021.

According to the Children’s Advertising Review Unit (CARU) - a U.S. self-regulatory agency for child advertising - both direct hiring and the provision of products by advertisers constitute commercial intent (Dias, 2022, p. 370). Similarly, French Law N°. 2023-451 of June 10, 2023, which regulates digital influence, states in Articles 1 and 6⁴ that anyone who monetizes their reputation to promote goods or services through electronic means engages in a commercial influence activity, and is jointly liable with the supplier under the law.

³ According to the Guide, three cumulative elements are required to characterize Influencer Advertising: i) The promotion of a product, service, cause, or other related sign; ii) Compensation or a commercial relationship, even if non-monetary, with the Advertiser and/or Agency; and iii) Interference by the Advertiser and/or Agency over the message content (editorial control over the Influencer’s post). Furthermore, according to the Guide, in the so-called unboxing practice, which occurs through the receipt of freebies, gifts, and/or other types of benefits - even if perceived by the influencer as free and the content is not influenced by the advertiser - there must be an explicit mention of the company due to the principle of advertising transparency, as well as disclosure of the relationship between the brand and the influencer (CONAR, 2021).

⁴ Article 1: Natural or legal persons who, for valuable consideration, use their reputation with their audience to communicate to the public, by electronic means, content aimed at directly or indirectly promoting goods, services, or any other cause, are engaged in the activity of commercial influence by electronic means. In the original: *Article 1: Les personnes physiques ou morales qui, à titre onéreux, mobilisent leur notoriété auprès de leur audience pour communiquer au public, par voie électronique, des contenus visant à faire la promotion, directement ou indirectement, de biens, de services ou d'une cause quelconque exercent l'activité d'influence commerciale par voie électronique.*

Article 6: The persons referred to in Article 1 of this Law whose activity is limited to the commercialization of products and who do not handle the delivery of these products, which is carried out by the supplier, are automatically liable to the buyer under the terms of Article 15 of Law No. 2004-575 of June 21, 2004, on trust in the digital economy. These persons must provide the buyer with the information set forth in Article L.221-5 of the Consumer Code, as well as the identity of the supplier, and must ensure the availability of the products and their legality, particularly the fact that they are not counterfeit products. In the original: *Article 6: Les personnes mentionnées à l'article 1er de la présente loi dont l'activité est limitée à la seule commercialisation de produits et qui ne prennent pas en charge la livraison de ces produits, celle-ci étant réalisée par le fournisseur, sont responsables de plein droit à l'égard de l'acheteur, au sens de l'article 15 de la loi n° 2004-575 du 21 juin 2004 pour la confiance dans l'économie numérique. Ces personnes communiquent à l'acheteur les informations prévues à l'article L. 221-5 du code de la consommation ainsi que l'identité du fournisseur et s'assurent de la disponibilité des produits et de leur licéité, notamment du fait qu'il ne s'agit pas de produits contrefaisants.*

Having identified the key characteristics of the “Sephora Kids” phenomenon, we now turn to an analysis of existing laws and regulations within the Brazilian legal framework regarding child advertising, in order to determine whether this marketing trend in the cosmetics industry constitutes an abusive practice.

3 The Prohibition of Child-Targeted Advertising in Brazilian Law

When it comes to advertising directed at children, extra care must be taken⁵. This is because children and adolescents, being in a stage of psychological and emotional development, tend to believe in everything they are told and shown, even when it would be obviously unrealistic to someone with full discernment.

In addition, children and adolescents readily absorb the values conveyed through advertising targeted at them, which may promote excessive consumerism, physical or sexual stereotypes, and influence their worldview, body image, and self-esteem, all of which are still developing (Office de la Protection du Consommateur, 2012, p. 8).

A study on children's understanding of advertising revealed that children aged three to seven have limited ability to recognize the persuasive intent of ads, believing them to be true, fun, and interesting. Between the ages of seven and eleven, children may begin to recognize commercial intent with parental guidance, but they do not yet apply cognitive defenses. Only around age twelve do they begin to understand that ads are designed to influence behavior (John, 1999, p. 204).

As Rosa, Paulo, and Burille (2023, p. 11) point out, "Youth is the most sensitive phase for the maturation of the individual as a human being - that is, of the person as the adult they will become. It is the phase during which values, culture, respect for rights and freedoms, and recognition of a social role are formed".

Due to this age-related hypervulnerability⁶, various laws and regulations have been directed toward the protection of child and adolescent consumers, so that the inherent naivety of this particular stage of life is not exploited in bad faith by suppliers through the targeting of abusive advertising.

⁵ On the topic of advertising aimed at children, Brazilian legal scholarship has been studying it for some time, with particular emphasis on the work of Pasqualotto and Alvarez (2014).

⁶ Children are classified as hypervulnerable consumers under Brazilian law, requiring greater protection due to the inherent vulnerability of their condition as persons in development, given their psychological and intellectual characteristics. In this context, they have a less critical sense than adults, which makes it easier for advertisers to induce the child audience to consume their products (Efing, 2011, p. 272).

In Brazil, advertising is regulated by multiple laws, such as Law N°. 10.826/2003, which prohibits firearm advertising; Law N°. 9.294/96, which imposes restrictions on tobacco⁷, alcohol, medicine, therapy, and pesticide ads; and Law N°. 11.265/2006, which regulates the marketing of food for infants and young children, among others (Gasparatto; Freitas; Efig, 2019, p. 68).

However, the main legal framework for consumer protection is the Brazilian Consumer Protection Code (Law N°. 8.078/1990), which establishes principles that must be followed in advertising and marketing practices, including: the principle of binding effect (Arts. 30 and 35), the principle of identification (Art. 36), and the principle of truthfulness and non-abusiveness (Art. 37).

The principle of binding effect is found in Article 30, which states that "any sufficiently precise information or advertising disseminated through any form or medium concerning products or services offered or presented binds the supplier who disseminates it and integrates the contract that may be entered into." Therefore, any advertising claim made by a supplier becomes binding, and noncompliance may result in legal consequences⁸ (Gasparatto; Freitas; Efig, 2019, p. 69).

The principle of identification is defined in Article 36, which requires that "advertising must be presented in such a way that the consumer can easily and immediately recognize it as such." This prohibits implicit advertising, content that creates confusion about whether it is commercial or informative in nature (Gasparatto; Freitas; Efig, 2019, p. 69).

The principle of truthfulness and non-abusiveness is found in Article 37, which prohibits misleading or abusive advertising. Misleading advertising is defined as any information that is wholly or partially false or likely to mislead the consumer about the product or service (Art. 37, §1). Abusive advertising is that which is discriminatory, incites violence, exploits fear or superstition, takes advantage of children's lack of judgment and experience, disrespects environmental values, or induces consumers to behave in a way that is harmful or dangerous to their health or safety (Art. 37, §2). Notably, to establish abuse, the

⁷ On April 29, 2025, the digital platforms YouTube, Instagram, TikTok, Enjoei, and Mercado Livre were notified by the National Consumer Secretariat (Senacon) to remove, within 48 hours, content promoting or selling electronic cigarettes and other tobacco-derived products. They were also urged to strengthen control mechanisms to prevent new postings. On Instagram alone, 1,637 advertisements were identified (88.5% of the total identified). The accounts of irregular sellers and influencers together have nearly 1.5 million followers, who are reached by these advertisements (Ministry of Justice and Public Security, 2025).

⁸ Article 35, Consumer Defense Code (CDC). If the supplier of products or services refuses to fulfill the offer, presentation, or advertising, the consumer may, alternatively and at their sole discretion: I - demand the forced fulfillment of the obligation, under the terms of the offer, presentation, or advertising; II - accept another product or service of equivalent value; III - rescind the contract, with the right to the refund of any amount previously paid, monetarily updated, and to compensation for losses and damages.

mere possibility of harm is sufficient; actual harm need not occur (Efing; Marques, 2017, p. 80).

Furthermore, Articles 6 (III), 31, and 46 of the Code⁹ require that the offer and presentation of products and services be clear and accurate, ensuring that consumers receive correct information about characteristics, quantity, composition, price, guarantees, expiration dates, origin, and any potential risks to health or safety. In line with the principle of objective good faith, the duty of transparency and information applies not only during the contract's execution but also in the pre-contractual and post-contractual phases (Efing; Marques, 2017, p. 79).

The right to consumer information should therefore be regarded as a human right and a fundamental right under Brazilian law, especially in the digital age, where the absence of commercial intent disclosure may constitute one of the most damaging forms of informational harm - even when content may seem neutral or merely entertaining (Barbosa, 2019, p. 5).

In addition to the general legal provisions regarding advertising, specific regulations also protect the rights of children and adolescents.

First and foremost, Article 227¹⁰ of the Brazilian Federal Constitution guarantees absolute priority to children and adolescents, ensuring the primacy of their fundamental rights. The Constitution also embraces the Doctrine of Integral Protection¹¹, which guides not only national laws but also international conventions, such as the United Nations Convention on the Rights of the Child (1989), ratified by Brazil through Decree N°. 99.710/1990.

Special mention must be made of the Child and Adolescent Statute (Law N°. 8.069/1990), which defines a child as anyone under twelve years old and an adolescent as

⁹ Article 6, III – the right to adequate and clear information about the different products and services, with correct specification of quantity, characteristics, composition, quality, applicable taxes, and price, as well as information about any risks they may pose; Article 31. The offer and presentation of products or services must ensure correct, clear, precise, and prominent information in Portuguese regarding their characteristics, qualities, quantity, composition, price, warranty, expiration dates, and origin, among other data, as well as any risks they may pose to the health and safety of consumers. Article 46. Contracts that govern consumer relations shall not bind consumers if they are not given the opportunity to become aware of their content in advance, or if the contractual instruments are written in a way that makes it difficult to understand their meaning and scope.

¹⁰ Article 227, Federal Constitution. It is the duty of the family, society, and the State to ensure children, adolescents, and young people, with absolute priority, the right to life, health, food, education, leisure, professional training, culture, dignity, respect, freedom, and family and community living, as well as to protect them from all forms of negligence, discrimination, exploitation, violence, cruelty, and oppression.

¹¹ Due to their vulnerability and fragility, individuals under the age of 18 are entitled to special treatment, precisely because they are in a particular stage of development (Dias, 2020, p. 70). According to Lôbo, the principle of comprehensive protection is not merely an ethical recommendation, but rather a binding guideline in the relationships of children and adolescents with their parents, relatives, society, and the State (Lôbo, 2019, p. 45).

someone aged twelve to eighteen¹². Articles 71, 75, and 76 of the Statute guarantee children and adolescents full access to age-appropriate information, culture, and entertainment content, and recognize their developing capacities. These articles also establish content classification rules for radio and television programs.

Also relevant is the European Council Directive on the Pursuit of Television Broadcasting Activities (89/552/EEC), which, in Article 16, explicitly prohibits television advertising from causing moral or physical harm to minors or directly encouraging them to buy products or persuade others to do so by exploiting their inexperience or credulity.

In Brazil, the Brazilian Code of Advertising Self-Regulation by CONAR (National Council for Advertising Self-Regulation) addresses child-targeted advertising in Section 11. It prohibits various practices, including direct persuasive appeals to children, associating children with inappropriate situations, or suggesting that using a product implies superiority - or that not using it implies inferiority.

In 2013, CONAR issued additional guidelines condemning covert advertising or merchandising¹³ aimed at children. It ruled that advertising of products and services intended exclusively for children and adolescents must be limited to commercial breaks.

Likewise, Resolution N°. 163/2014 of the National Council for the Rights of Children and Adolescents (CONANDA) addresses the abusiveness of advertising and marketing communications targeting minors under 18. It provides a broad definition of "marketing communication," including internet ads and product placement.

The resolution deems it abusive to target children using any of the following features (among others): (I) childlike language, special effects, and excessive colors; (II) soundtracks of children's songs or sung by children's voices; (III) child representations; (IV) celebrities with child appeal; (V) child characters or hosts; (VI) cartoons or animations; (VII) dolls or similar figures; (VIII) promotions with prizes or collectible gifts appealing to children; and (IX) competitions or games with child appeal.

One must also mention Article 5 of Brazil's Legal Framework for Early Childhood, which designates protection against all forms of violence and consumerist pressure as a priority in public policies for young children. It further encourages measures to prevent premature exposure to marketing communications.

¹² Article 2, Child and Adolescent Statute (ECA). For the purposes of this Law, a child is considered to be a person up to twelve years of age, and an adolescent is one between twelve and eighteen years of age.

¹³ Advertising technique aimed at preventing the consumer from immediately identifying the product or service being promoted, in violation of the principle of identification established in Article 36 of the Consumer Defense Code (Efig; Bergstein; Gibran, 2012, p. 96).

Therefore, although there is no single statute that explicitly bans child-targeted advertising, a systematic analysis of the Brazilian legal system—particularly Article 227 of the Constitution, Article 5 of the Early Childhood Framework, Articles 37(§2) and 39(IV) of the Consumer Protection Code, and CONANDA Resolution No. 163/2014 - supports the conclusion that such advertising is abusive and, thus, illegal when directed at children under twelve (Rugolo; Aguiar, 2022, p. 13).

In the "Sephora Kids" phenomenon, where cosmetic companies use child influencers to promote products inappropriate for minors and fail to disclose the commercial nature of the content, exploiting the audience's hypervulnerability to boost sales, it becomes evident that this constitutes illegal advertising. Such practices must be subject to regulatory standards and potential civil liability for the advertisers involved.

4 Civil Liability of Advertising Cosmetic Companies and the Digital Platform TikTok in the 'Sephora Kids' Phenomenon

Once the abusive and illegal nature of covert advertising targeting children in the 'Sephora Kids' phenomenon is established, particularly considering the informational harm resulting from noncompliance with Article 36 of the Consumer Defense Code (CDC)¹⁴, an analysis of the civil liability of those who directly or indirectly benefit from this practice follows.

First, it is important to note that Article 3 of the CDC provides a broad definition of a “supplier,” encompassing “any individual or legal entity, public or private, national or foreign, as well as unincorporated entities, that engage in the production, assembly, creation, construction, transformation, importation, exportation, distribution, or commercialization of products or the provision of services.” Consumers, in turn, include all people exposed to consumption practices (Articles 2, 17, and 29). The CDC also establishes joint and strict liability for all suppliers (Article 7), who are therefore accountable for any informational harm¹⁵ caused to consumers.

¹⁴ Article 36. Advertising must be presented in such a way that the consumer can easily and immediately identify it as such.

¹⁵ On this topic, we have previously stated: “Informational harm arises from the absence of information, whether because: i) it is unknown to the supplier (in cases where unpredictability is a characteristic of the product or service); ii) it is deliberately withheld by the supplier (in cases where the consumer's attention is entirely diverted to the advertising content through the use of various marketing techniques); iii) it is deliberately distorted by the supplier (in cases where confusion is created between reality and fantasy, especially taking advantage of the vulnerability of certain groups of people).” (Barbosa, 2019, p. 6).

As a strategy, many suppliers offer free products to child influencers already known on social media so that they can promote these items through videos posted on digital platforms such as TikTok to their child and adolescent audiences. Because these influencers are also minors and enjoy a trust-based relationship with their followers, they wield significant power to influence and persuade their audience - a fact well-known and deliberately exploited by advertisers, which becomes decisive in shaping consumer purchasing decisions.

By profiling data collected from children and adolescents on their own social media accounts - often without parental consent and without enforcing age restrictions¹⁶ - the platform customizes and delivers videos aligned with users' interests and preferences, thereby enabling advertisers to directly reach their target consumers.

On this vicious cycle and digital platform business model, Kaufman (2022, p. 158) explains:

Their business models are based on the ability to identify patterns, preferences, and user habits from data and offer insights for decision-making (relying on artificial intelligence algorithms, particularly machine learning and deep learning models). This logic underpins platforms and tech applications, social media, e-commerce, and search engines like Google, whose designs are conceived to increase user retention, generate engagement, and, consequently, produce more data.

In fact, researchers have pointed out that by allowing users to receive personalized content without actively searching for it, TikTok becomes addictive, especially for younger audiences (Wang & Guo, 2023, p. 3). Although the minimum age to access the app is 13, TikTok's weaknesses in age verification procedures significantly increase the risk of data being used to facilitate and encourage sales to underage users (Silva & Santana, 2024, p. 87).

According to a report prepared between 2020 and 2021 by The European Consumer Organization (2021, p. 5), TikTok's main audience consists of children (including those under 13) and teenagers. The same report notes that the company has been the subject of several investigations for alleged violations of privacy and data protection regulations, as well as for failing to protect children from disguised advertising and potentially harmful content.

¹⁶ On this subject, the insights of Isabella Henriques, Marina Meira, and Pedro Hartung (2024, p. 254) are particularly noteworthy: "Even digital platforms acknowledge that their predatory business model, based on the monetization of personal data and targeted advertising, should not involve children: as a general rule, their terms of use establish a minimum age of 13 for accessing the service. This requirement, however, does not prevent major players in the Internet ecosystem from exploiting children's hypervulnerability. In practice, it does not stop children from being active users of social networks, apps, and other digital platforms, nor does it stop the digital advertising industry from increasingly investing in child-targeted advertising. In other words, even if not publicly acknowledged by many tech companies, the use of platforms by children and adolescents under the age of 13, and the consequent use of their data for commercial exploitation and advertising, is a well-known and thoroughly documented reality."

It is evident, therefore, that targeting children and adolescents with advertising constitutes an extremely profitable business for both advertisers and major technology companies, who exploit the hypervulnerability of child audiences for profit.

In the 'Sephora Kids' phenomenon, while TikTok profits from the sale of user data and advertising space, cosmetic companies, leveraging insights into consumer behavior and purchasing patterns, are able to strategically position their products, boosting both sales and profits.

There is no doubt that both TikTok and the cosmetic companies qualify as “suppliers” under Article 3 of the CDC and are therefore civilly liable for any harm caused, without excluding potential administrative or criminal responsibility.

Moreover, the responsibility of these companies to ensure the rights of children, including in the digital environment, stems from the broader legal framework, particularly Articles 5, XXXII¹⁷ and 227¹⁸ of the Federal Constitution; the Child and Adolescent Statute (ECA); the Consumer Defense Code; the Convention on the Rights of the Child (ratified by Brazil and incorporated through Decree N°. 99.710/1990); the Civil Rights Framework for the Internet (Marco Civil da Internet); and the General Data Protection Law (LGPD), which in Article 14 states that the processing of personal data of children and adolescents must serve their best interests (Henriques, 2023, p. 343).

In the same vein, General Comment N°. 25¹⁹, published in March 2021 by the UN Committee on the Rights of the Child, recommends that States Parties legally prohibit profiling or targeted advertising directed at children of any age for commercial purposes based on a digital record of their actual or inferred characteristics, including group or collective data, targeted advertising by association, or affinity profiling.

¹⁷ Article 5, XXXII – The State shall promote, in accordance with the law, consumer protection.

¹⁸ Article 227 of the Federal Constitution establishes the duty of companies, as well as families, society, and the State, to ensure, as a first priority, the fundamental rights of children. It states: Article 227. It is the duty of the family, society, and the State to ensure children, adolescents, and young people, with absolute priority, the right to life, health, food, education, leisure, professional training, culture, dignity, respect, freedom, and family and community living, as well as to protect them from all forms of negligence, discrimination, exploitation, violence, cruelty, and oppression.

¹⁹ General Comment No. 25 is an important document aimed at safeguarding the rights of children and adolescents in the digital environment, detailing how the 1989 Convention also applies to the digital world (United Nations, 2021).

Additionally, the Digital Services Act²⁰ - resulting from a political agreement between the European Parliament and Council and applicable across the European Union since February 2024 - establishes in Article 28 that online platform providers must not display advertising based on profiling using the personal data of the service recipient if they have reasonably certain knowledge that the recipient is a minor.

In this context, a landmark case in Brazil is worth noting (São Paulo State Court of Justice - TJSP, Appeal No. 1054077-72.2019.8.26.0002, Rapporteur: Judge Renato Genzani Filho, decided on 12/14/2020), involving the participation of child influencers. Following a complaint filed by Instituto Alana in 2017 through its "Child and Consumption" program, the Public Prosecutor's Office of São Paulo filed a public civil action against Mattel do Brasil, alleging that the company had engaged in a commercial partnership with a popular child YouTuber, just 11 years old, to promote its Monster High toy line. The advertising was targeted at children and failed to disclose its commercial nature.

The campaign, titled "*YouTuber School Monster High*", was a promotion aimed at children and widely disseminated through videos produced by the child influencer on her YouTube channel. Participants - mostly girls between 4 and 16 years old - were required to complete various challenges via video. Each week, a winner received a Monster High doll licensed by Mattel and a pair of tickets to an event held at the company's headquarters with the presence of the influencer (Criança e Consumo, 2017).

After a favorable first-instance ruling, the São Paulo Court of Justice upheld the decision in December 2020, ordering the company to refrain from engaging in indirect advertising practices aimed at children and adolescents and to pay R\$ 200,000 in collective moral damages.

Therefore, in cases involving commercial exploitation and the targeting of behavioral or segmented advertising toward children - as seen in the 'Sephora Kids' phenomenon - both advertisers and large technology companies can and should be held jointly and strictly liable for the abusive practice. Not only do they benefit from the illegal conduct, but they also contribute to it directly (by action) or at the very least fail to prevent it (by omission).

²⁰ Article 28 - Online protection of minors: 1. Providers of online platforms accessible to minors shall put in place appropriate and proportionate measures to ensure a high level of privacy, safety, and security of minors, on their service; 2. Providers of online platform shall not present advertisements on their interface based on profiling as defined in Article 4, point (4), of Regulation (EU) 2016/679 using personal data of the recipient of the service when they are aware with reasonable certainty that the recipient of the service is a minor; 3. Compliance with the obligations set out in this Article shall not oblige providers of online platforms to process additional personal data in order to assess whether the recipient of the service is a minor; 4. The Commission, after consulting the Board, may issue guidelines to assist providers of online platforms in the application of paragraph 1.

5 Liability of Child Influencers in the ‘Sephora Kids’ Phenomenon

Having recognized the liability of the advertising companies and the digital platform, attention now turns to the responsibility of child influencers, which deserves greater scrutiny since vulnerability - a foundational element of consumer law - is present both in the person who acquires the product or is exposed to the advertising message and in the one who disseminates it, playing a fundamental role in convincing and facilitating the sale (Rugolo; Aguiar, 2022, p. 11).

As rightly pointed out by the Alana Institute (Rugolo; Aguiar, 2022), child and adolescent influencers are also people in development and, as such, vulnerable. For this reason, the work they perform on social media would constitute a new form of artistic child labor and would therefore require judicial authorization to be exercised, as provided in Article 149, II, of the Child and Adolescent Statute (ECA). However, the digital environment remains a low-regulation space, susceptible to the exploitation of child and adolescent audiences.

In this regard, the case of Lol Surprise dolls (Criança e Consumo, 2019) is noteworthy. These products began to be marketed in Brazil in mid-2017 by Candide Indústria e Comércio Ltda., which used social media and YouTube channels focusing on children as the main commercial advertising strategy through child influencers.

On March 15, 2019, *Criança e Consumo*, a program of the Alana Institute, filed a complaint with the Public Prosecutor’s Office of Espírito Santo State (MP-ES), alleging that the company’s advertising strategies - using child and teen influencers to promote its products via the unboxing technique²¹ - constituted covert advertising, violating the principle of full protection and the presumed hypervulnerability of children.

In February 2022, the State Public Prosecutor’s Office and Candide entered into a Conduct Adjustment Term (TAC), whereby the company committed to readjust its advertising strategies, under penalty of a daily fine of R\$ 5,000.00 for noncompliance.

²¹ This is a marketing technique applied by digital influencers, in which the opening of the packaging of a new product is filmed, showing in detail its items and features. As Monteiro (2020, p. 5) points out, this practice further promotes ambiguity in the content, making it difficult to identify the advertising nature. Because of this, CONAR (2021), through its "Guide," understood that in this practice—even in cases where one of the requirements for the configuration of advertising, namely editorial control over the post, is absent—there must be an explicit mention of the relationship that gave rise to the reference.

Among the clauses established by the TAC (Espírito Santo, 2022), the following stand out: i) refrain from hiring child digital influencers, directly or indirectly, for advertising purposes, except with specific judicial authorization for their participation in such advertising work; ii) refrain from promoting covert advertising on its communication channels; iii) refrain from reposting or referencing, on its official social media accounts, content produced by digital influencers about its products.

On the other hand, the consumer relationship between the influencer and their audience is undeniable when the influencer receives benefits in exchange for promoting products or services on their social media. Such benefits can take various forms: i) financial payments made by the platforms themselves; ii) payments made by companies for advertising or sponsorship in direct partnership with the influencers; iii) barter agreements; or iv) receiving products or experiences (Rugolo; Aguiar, 2022, p. 7).

This is because the influencer holds significant persuasive power over their followers, assuming a role of guarantor regarding the products they promote (Gasparatto, Freitas, Efig, 2019, p. 79). Thus, they are considered equivalent suppliers, who, according to Cláudia Marques, Antônio Benjamin, and Leonardo Bessa (2007, p. 83), are “a third party in the consumer relationship, an intermediary or helper in the main consumer relationship, but who acts before a consumer or group of consumers as if they were a supplier.”

Indeed, in 2019, the Public Prosecutor's Office of São Paulo considered advertising carried out by child influencers on channels aimed at children abusive, requesting that Google remove more than 102 videos from seven child YouTubers (Public Prosecutor's Office of São Paulo, 2019).

It is therefore evident that all the provisions of the Consumer Defense Code, including joint and strict liability, apply to influencers who “i) are part of the consumption chain, ii) receive economic advantage, and iii) have a direct relationship with their followers” (Gasparotto; Freitas; Efig, 2019, p. 84).

However, when the person causing harm to others is a minor, as in the 'Sephora Kids' phenomenon, civil liability is attributed to the parents, according to Articles 928²² and 932,

²² Article 928. A legally incapable person is liable for the damages they cause if the persons responsible for them are not obligated to do so or do not have sufficient means. Sole paragraph. The compensation provided for in this article, which must be equitable, shall not take place if it deprives the incapable person or those dependent on them of what is necessary.

I²³, of the Civil Code. This liability, pursuant to Article 933²⁴ of the Civil Code, is strict (independent of fault) and does not permit recourse rights²⁵. Thus, to establish parental civil liability, it suffices that the child acts negligently, causing damage, and that a causal nexus between the conduct and the damage is demonstrated.

Therefore, given the civil incapacity of child influencers to perform legal acts (Article 3 of the 2002 Civil Code), their legal guardians are responsible for the harmful acts toward the consuming public, without excluding the possibility of recourse action against the actual perpetrators of the damage, namely the advertising companies and the digital platform (Pasqualotto; Brito, 2020, p. 60).

6 Final considerations

This study aimed to analyze the ‘Sephora Kids’ phenomenon, especially from the perspective of the civil liability of the cosmetic companies as advertisers, the TikTok platform, and the child influencers for the informational harm caused to children and adolescents. Initially, the occurrence of covert advertising directed at the child and adolescent audience was identified, a practice that constitutes a violation of the rules governing the protection of children and adolescents against market exploitation.

Secondly, it was observed that although there is no explicit law prohibiting child advertising in Brazil, an analysis of the Brazilian legal framework allows the conclusion that this practice is abusive and illegal.

Subsequently, it was verified that both the cosmetic companies and the TikTok platform directly benefit from targeting advertisements to minors, which is why they are considered suppliers and are civilly liable for the damages caused. It was also found that child influencers - even though they are vulnerable people due to their young age - assume a position of guarantors before their audience. Thus, when causing harm to other equally vulnerable people, they are civilly liable through their legal representatives for such violations.

Finally, it can be concluded that child advertising promoted in the digital world through child influencers - such as in the ‘Sephora Kids’ phenomenon - represents a significant risk to

²³ Article 932. The following are also liable for civil damages: I – the parents, for their minor children who are under their authority and in their company;

²⁴ Article 933. The persons referred to in items I to V of the preceding article, even if they are not at fault, shall be liable for the acts committed by the third parties mentioned therein.

²⁵ Article 934. Whoever compensates for damage caused by another may recover what they have paid from the person who caused the damage, except if the person who caused the damage is their descendant or is absolutely or relatively incapable.

society and, especially, to the healthy development of children and adolescents. This is because, in addition to exploiting the influencers themselves through unregulated child labor, it inserts children - hypervulnerable beings - into a market context incompatible with childhood.

For this reason, it becomes urgent and necessary to regulate digital platforms, from their design to their usage, to ensure the protection of children and adolescents, as well as to prohibit the targeting of advertising to child audiences in the digital environment. It is also essential to raise awareness among parents and society about the dangers arising from the use of new technologies by children and adolescents, especially when such use occurs without the proper control and guidance of legal guardians.

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