

# Working Papers Series

## #2

*Influencers in business-to-  
business marketing*

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## 1. Introduction

In 2016, Systems Applications and Products (SAP), a company that provides business solutions for small, big and international enterprises, decided to attract public attention to its annual technology conference called Sapphire, by inviting 11 influencers. Among them were business consultants, academics and authors, who conducted interviews throughout the event which were recorded and livestreamed through their own Facebook pages. With the help of the influencer community, Sapphire managed to reach over 80.000 online viewers, on top of the regular 20.000 attendees, which exceeded expectations.<sup>1</sup>

This is an illustration of business-to-business (B2B) or industrial influencer marketing. As such, influencer marketing is defined by the Association of National Advertisers (ANA) as the leveraging of individuals who have influence over potential buyers and engage in marketing activities to drive a brand message to a larger market.<sup>2</sup> The core idea of influencer marketing is that it is not the brand that directly promotes itself to potential customers, but rather an intermediary, namely a trusted individual, who spreads their positive experience with the brand within their own communities. In essence, this marketing strategy is based on word-of-mouth (WOM) advertising.<sup>3</sup> In contemporary influencer marketing, influencers operate digitally and spread their influence through social media networks, which is often referred to as electronic word-of-mouth advertising (eWOM).<sup>4</sup>

<sup>1</sup> Social Business Engine, Youtube channel (Youtube, 2016)

<[https://www.youtube.com/watch?v=qh8mwSdA5BU&feature=emb\\_title](https://www.youtube.com/watch?v=qh8mwSdA5BU&feature=emb_title)> accessed 4 November 2019.

<sup>2</sup> American Marketing Association, 'Definitions of Marketing' (AMA, 2017) < <https://www.ama.org/the-definition-of-marketing-what-is-marketing/>> accessed on 3 January 2019.

<sup>3</sup> Thorsten Henning-Thurau, 'The Impact of New Media on Customer Relationships' (2010) 13 *Journal of Service Research* 311; Yung-Ming Li, 'Identifying influential reviewers for word-of-mouth marketing' (2010) 9 *Electronic Commerce Research and Applications* 294; Christine Kiss, 'Identification of influencers – Measuring influence in customer networks' (2008) 46 *Decision Support Systems* 233; Angele Dobeles, 'Controlled infection! Spreading the brand message through viral marketing' (2005) 48 *Business Horizons* 143; Walter Carl, 'The role of disclosure in organized word-of-mouth marketing programs' (2008) 14 *Journal of Marketing Communications* 225; Arch Woodside and Wayne Delozier, 'Effects of Word of Mouth Advertising on Consumer Risk Taking' (1976) 5 *Journal of Advertising* 12; Roger Mason, 'Word of mouth as a promotional tool for turbulent markets' (2008) 14 *Journal of Marketing Communications* 207; Ed Keller and Brad Fray, 'Word-of-mouth advocacy: a new key to advertising effectiveness' 52 *Journal of Advertising Research* 459; Ed Keller and Brad Fray, 'The Role of Advertising in Word to Mouth' (2009) 49 *Journal of Advertising Research* 154.

<sup>4</sup> Christopher Vollmer and Geoffrey Precourt, *Always on: Advertising, marketing and media in an era of consumer control* (1st edn, McGraw Hill Professional, 2008); Thomas Gruen, 'eWOM: The impact of customer-to-customer online know-how exchange on customer value and loyalty.' (2006) 4 *Journal of Business research* 449; Soyeon Kim, 'The influence of eWOM communications: an application of online social network framework' (2018) 80 *Computers in Human Behaviour* 243; Tai-Yee Wu, 'Predicting the effects of eWOM and online brand messaging: Source trust, bandwagon effect and innovation adoption factors' (2017) 2 *Telematics and Informatics* 470; Thomas Reimer, 'Not just for the recommender: How eWOM incentives influence the recommendation audience' (2018) 86 *Journal of Business Research* 11; Kineta Hung, 'The influence of eWOM on virtual consumer communities: Social capital, consumer learning and behavioral outcomes.' (2007) 4 *Journal*

The use of social media influencers for marketing is rapidly gaining importance. In a report published by Influencer Marketing Hub, it was estimated that this industry had grown from 1,7 billion US dollars in 2016 to 6.5 billion US dollars in 2019.<sup>5</sup> It is estimated that about 50% of all businesses who target consumers (B2C) use influencer marketing.<sup>6</sup> Moreover, also businesses who advertise products and services purchased to other businesses (B2B), are increasingly using social media influencers as part of their marketing strategy.<sup>7</sup> It is estimated that about 15% of all B2B companies already use influencers, and this number is increasing.<sup>8</sup>

Despite the increasing use of influencers in B2B commerce, the current academic literature mainly centers around B2C influencers. Even though B2B influencers make online content that is spread through their own websites or social media just like B2C influencers, influencers in B2B commerce are quite different from their B2C counterparts; they are established professionals, often with years of practical experience in their field and close ties to their audience. Because of this, they can exert a significant influence in their communities. In order to ensure their position, the B2B influencer needs to be perceived as an objective expert. Therefore, B2B influencers give a different shape to the business models that their B2C counterparts use. They engage in a wider variety of activities and do not only focus on advertising but also on independent commercial activities such as advising companies. Regarding these features and activities, B2B influencers sometimes even come closer to professional journalists than to B2C influencers.

At the same time, the need for research on this topic is becoming more urgent, as many players in the B2B field are unaware of their legal obligations.<sup>9</sup> With the growing use of B2B influencers, new questions on this topic need to be explored. Who qualifies as a B2B influencer?

of advertising research 485; Yu-Hui Fang, 'Beyond the credibility of electronic word of mouth: Exploring eWOM adoption on social networking sites from affective and curiosity perspectives.' (2014) 3 *International Journal of Electronic Commerce* 67.

<sup>5</sup> Influencer Marketing Hub, 'Influencer Marketing Benchmark Report: 2019' (Influencer Marketing Hub, 2019) < <https://influencermarketinghub.com/influencer-marketing-2019-benchmark-report/>> accessed on 10 November 2019. See also Richard Hanna, 'We're all connected: the power of the social media ecosystem' (2011) 54 *Business Horizons* 265.

<sup>6</sup> Mark Schaefer and Evy Wilkins, 'The Rise of Influencer Marketing in B2B Technology' (*Traackr*, 2017) < <https://www.traackr.com/resources/influencer-marketing-b2b-technology>> accessed 10 January 2020. Note that this is study conducted by a marketing agency, this number is not yet confirmed by academic research.

<sup>7</sup> Omar Itani, 'Social media use in B2b sales and its impact on competitive intelligence collection and adaptive selling: Examining the role of learning orientation as an enabler' (2017) 66 *Industrial Marketing Management* 64. See also Nina Michaelidou, 'Usage, barriers and measurement of social media marketing: An exploratory investigation of small and medium B2B brands' (2011) 40 *Industrial Marketing Management* 1153.

<sup>8</sup> Fn. 7.

<sup>9</sup> For example, The Drum estimated that only 8% of B2B Marketers are aware of and understand the FTC guidelines. See Laurie Fullerton, 'Are B2B marketers in compliance with FTC native advertising guidelines?' (The Drum, 2016) < <https://www.thedrum.com/news/2016/05/09/are-b2b-marketers-compliance-ftc-native-advertising-guidelines>> accessed 10 January 2020.

What do they do exactly? How do we recognize them? What are their legal rights and obligations?

These aspects feed into a broader research question this paper aims to analyze: what is the legal framework applicable to B2B influencers from the perspective of disclosure of material interests or advertising, and is this regime fit for its purpose? This paper aims to bring a contribution to the current research gap in two ways: first, by providing a general framework on B2B influencers as a distinctive group, and second, by looking into their legal obligations with a particular emphasis on the disclosure of advertising. This paper is structured as follows. The first part aims to provide a general framework on B2B influencers. Hence, Chapter 2.1 first offers an overview of the literature on B2B marketing using social media and Web 2.0, and then explores the differences between B2B and B2C marketing. Thereafter, it gives an outline of the different actors involved in Chapter 2.2 and their business interests in Chapter 2.3. Chapter 2.4 explains the basic business models and interests in B2B marketing through the monetization of online content. The second part of this paper, starting from Chapter 3, looks into the legal questions regarding disclosure in particular, which find themselves at the heart of B2B marketing. First it discusses the solutions that regulators have been considering for the consumer counterpart of this marketing technique in Chapter 3.1. Thereafter, it examines the role of media law in Chapter 3.2 as well as how native advertising issues in journalism have been tackled so far, in Chapter 3.3. Finally, Chapter 4 takes a normative outlook at how the B2B industry ought to be regulated and addresses a few recommendations to balance the interests of the stakeholders in this business ecosystem.

## **2. What is B2B influencer marketing?**

### **2.1. Literature review**

The current literature on the use of social media and online interactive (Web 2.0) tools in B2B commerce is lagging behind the large amount of research that is done on B2C social media marketing. This can be explained by the fact that social media is still not used as prominently in B2B as it is in B2C.<sup>10</sup> Estimations are that only 30% of B2B companies use social media as

<sup>10</sup> Hanna Keinänen, 'Antecedents of social media B2B use in industrial marketing context: customers view' (2015) 30 *Journal of Business & Industrial Marketing* 711; Nina Michaelidou, 'Usage, barriers and measurement of social media marketing: An exploratory investigation of small and medium B2B brands' (2011) 40 *Industrial Marketing Management* 1153.

a marketing tool.<sup>11</sup> There is some academic literature that focuses on explaining why this number is relatively low, which is elaborated on below.

One of the reasons social media marketing is believed to be less popular in B2B is because of the different target group: individual consumers are easier to reach via social media than a group of professionals who make purchase decisions for their enterprises.<sup>12</sup> B2B enterprises can perceive social media use as irrelevant for their businesses, do not expect a sufficient return on investment (ROI) or do not know how to measure the benefits.<sup>13</sup> Other research has pointed out that some B2B companies do not trust their employees monitoring social media platforms or do not have the expertise in their company to set up campaigns.<sup>14</sup> The possibility of losing confidential information to competitors and uncontrolled online discussions is also a common concern.<sup>15</sup>

Yet, some researchers have pointed out the opportunities for social media marketing in B2B. Web 2.0 tools and especially social media is a cheap and adequate means to keep customers up to date on new products or services, novelties about the firm or upcoming events (one-way-communication).<sup>16</sup> Maintaining these communications with existing customers, providing sales support and follow-up are seen as essential goals in the use of digital marketing channels.<sup>17</sup> An important feature of social media is that it can be used as a tool to build relationships with a variety of other stakeholders.<sup>18</sup> By sharing content and responses to that content, business relationships are established and strengthened, following the principle of reciprocity (two-way-communication).<sup>19</sup> Quinton points out in a 2016 study showing that, network formation creates other opportunities as well: social media presence can be used to the

<sup>11</sup> Jari Jussila, 'Social media utilization in business-to-business relationships of technology industry firms' (2014) 30 *Computers in Human Behavior* 606.

<sup>12</sup> Nikolettta-Theofania Siamagka, 'Determinants of social media adoption by B2B organizations' (2015) 51 *IMM* 89.

<sup>13</sup> Bruce Weinberg and Ekin Pehlivan, 'Social spending: Managing the social media mix' (2011) 54 *Business Horizons* 275; Nina Michaelidou, 'Usage, barriers and measurement of social media marketing: An exploratory investigation of small and medium B2B brands' (2011) 40 *Industrial Marketing Management* 1153.

<sup>14</sup> Mike Bernard, 'The impact of social media on the B2B CMO' (2016) 31 *Journal of Business & Industrial Marketing* 955.

<sup>15</sup> Tuula Lehtimäki and Jari Salo, 'Harnessing web 2.0 for business to business marketing – Literature review and an empirical perspective from Finland' Working paper (University of Oulu, 2009).

<sup>16</sup> Jari Salo, 'Social media research in the industrial marketing field: Review of literature and future research directions' (2017) 66 *Industrial Marketing Management* 115.

<sup>17</sup> Heikki Karjaluoto and Nora Mustonen, 'The role of digital challenges in industrial marketing communications' (2015) 30 *Journal of Business & Industrial Marketing* 703.

<sup>18</sup> Ross Brennan and Robin Croft, 'The use of social media in B2B marketing and branding: an exploratory study' (2012) 11 *JCB* 101.

<sup>19</sup> Sarah Quinton, 'Tensions and ties in social media networks: Towards a model of understanding business relationship development and business performance enhancement through the use of LinkedIn' (2016) 54 *Industrial Marketing Management* 15; Jens Eklinder-Frick, 'Bridging and bonding forms of social capital in a regional strategic network' (2011) 40 *Industrial Marketing Management* 994.

advantage of users by gaining both the trust of the community and insights on the actions of competitors.<sup>20</sup> Another opportunity in the use of social media is brand building. This is a strategy that is commonly used in B2C as well, as it creates more awareness of the brand by the public and enhances the image of the brand.<sup>21</sup> Both effects can ultimately lead to the attraction of new customers.<sup>22</sup> Ultimately, the use Web 2.0 tools is likely to have a positive impact on sales, as it can be used in different stages of the sales process, such as identification of customers and their needs, presentation of the brand and products, closing the sale and providing support.<sup>23</sup> Yet, Jussila found in a 2014 study that there is still a huge gap between the opportunities that social media use has to offer B2B organizations, and the perceived challenges.<sup>24</sup> The willingness to invest in social media is amongst other things dependent on the image and innovativeness of the firm and their perceived ease of use of the tool.<sup>25</sup>

Besides a general assumption, very little empirical evidence exists of the differences between B2B and B2C in the way social media is used.<sup>26</sup> For B2B organizations, the main objective is often not promptly reach as many people as possible, but to build strategic relationships.<sup>27</sup> This explains why B2B organizations tend to focus more on professional networking sites, such as LinkedIn, than on social networking sites such as Facebook.<sup>28</sup> Moore found that the purposes of B2B online marketing are mostly focused on prospecting, handling objectives and after-sales follow-up, while B2C marketers put more focus on connecting with individual users.<sup>29</sup> Next to the objectives and the choice of the platform, there are also

<sup>20</sup> Manjit Yadav and Paul Pavlou, 'Marketing in Computer-Mediated Environments: Research Synthesis and New Directions' (2014) 78 J. Mark. 20; Sarah Quinton, 'Tensions and ties in social media networks: Towards a model of understanding business relationship development and business performance enhancement through the use of LinkedIn' (2016) 54 Industrial Marketing Management 15;

<sup>21</sup> Fn. 15.

<sup>22</sup> Joel Järvinen, 'Digital and social media marketing usage in B2B industrial section' (2012) 22 The Marketing Management Journal 102; Jodie Ferguson and Mayo Mohan 'Use of celebrity and non-celebrity persons in B2B advertisements: effects on attention, recall and hedonic and utilitarian attitudes' (2019) article in press, IMM. A good example of how influencers can contribute to brand building is a 2012 Volvo Trucks commercial on Youtube, featuring French actor Jean Claude van Damme. Even though the commercial was not aimed at consumers, the video made a big contribution to brand awareness as it was watched over 95 million times on Youtube. See Trucks, Youtube Channel (Youtube 2013)

< <https://www.youtube.com/watch?v=M7FIVfx5J10&t=1s>> accessed 12 January 2020.

<sup>23</sup> Roberta Schultz, 'An exploratory study of social media in business-to-business selling: salesperson characteristics, activities and performance' (2012) 22 The Marketing Management Journal 76; James Andzulis 'A review of Social Media and Implications for the Sales Process' (2012) 32 Journal of Personal Selling & Sales Management 305.

<sup>24</sup> Fn. 11.

<sup>25</sup> Ibid.

<sup>26</sup> Severina Iankova 'A comparison of social media marketing between B2B, B2C and mixed business models' (2019) 81 Industrial Marketing Management 169.

<sup>27</sup> Fn. 3.

<sup>28</sup> Jesse Moore, 'Utilization of Relationship-Oriented Social Media in the Selling Process: A Comparison of Consumer (B2C) and Industrial (B2B) Salespeople' (2013) 12 Journal of Internet Commerce 48.

<sup>29</sup> Fn. 28.

differences in the content produced. In B2B advertising, the content is often more pragmatic and rational, whereas in B2C the message is often more emotional and personal.<sup>30</sup> This relates to the nature of communication in industrial business partners: communication is more direct and professional.<sup>31</sup>

Generally speaking, influencer marketing can be considered as a species of the genus online marketing. Influencers are social media users who become third party endorsers by expressing opinions on products, giving tips and advice or posting pictures, videos or blogs about products or services and are capable of influencing the opinions of others.<sup>32</sup> While the academic literature is slowly starting to address influencers in the B2C field, influencers in B2B have received barely any scholarly attention.<sup>33</sup> There are, however, significant differences between them. In B2B, the targeted audience is often way more specific, which reflects the fact that sales in the B2B field are often a time-consuming and complex process. In order to reach this audience, influencers in B2B are not just peers but rather professionals. As opposed to B2C, in B2B it is not the number of followers, clicks or viewers of the influencer that count, but the individuals that are reached. Another remarkable difference between B2B and B2C influencers is their position in the labor market. Especially with (non-celebrity) B2C macro-influencers, being an influencer is often their sole profession. Once they have built a certain trust with a big

<sup>30</sup> Kunal Swani, 'The untapped potential of B2B advertising: A literature review and future agenda' (2019) article in press, *Industrial Marketing Management*.

<sup>31</sup> Fn. 11.

<sup>32</sup> Karen Freberg, 'Who are the social media influencers? A study of public perceptions of personality' (2011) 37 *Public Relations Review* 90; Stefan Bernritter, 'Why Non-profits Are Easier to Endorse on Social Media: The Roles of Warmth and Brand Symbolism' (2016) 33 *Journal of Interactive Marketing* 27.

<sup>33</sup> Norman Booth, 'Mapping and leveraging influencers in social media to shape corporate brand perceptions.' (2011) 3 *Corporate Communications: An International Journal* 184; Brian Smith, 'Rise of the brand ambassador: Social stake, corporate social responsibility and influence among social media influencers.' (2018) 1 *Communication Management Review* 6; Jan-Frederik Grave, 'Exploring the Perception of Influencers vs. Traditional Celebrities: Are Social Media Stars a New Type of Endorser?' (*Proceedings of the 8th International Conference on Social Media & Society*, 2017); Marijke de Veirman, 'Marketing through Instagram influencers: the impact of numbers of followers and product divergence on brand attitude.' (2017) 5 *International Journal of Advertising* 798; Chung-Wha Ki, 'Influencer marketing: Social media influencers as human brands attaching to followers and yielding positive marketing results by fulfilling needs.' (2020) 55 *Journal of Retailing and Consumer Services* (forthcoming); Jason Weismueller, 'Influencer endorsements: How advertising disclosure and source credibility affect consumer purchase intention on social media.' (2020) *Australasian Marketing Journal* (forthcoming); Danny Brown, *Influence marketing: How to create, manage and measure brand influencers in social media marketing* (Qur Publishing, 2013); Do Yuon Kim, 'Influencer advertising on social media: The multiple interference model on influencer-product congruence and sponsorship disclosure' (2020) *Journal of Business Research* (forthcoming); Carolina Stubb, 'This is not sponsored content – the effects of impartiality disclosure and e-commerce landing pages on consumer responses to social media influencer posts' (2019) 98 *Computers in Human Behaviour* 210; Castulus Kolo, 'Social media celebrities as influencers in brand communication: An empirical study on influencer content, its advertising relevance and audience expectations.' (2018) 3 *Journal of Digital & Social Media Marketing* 273; Avery Holton, 'Recasting social media users as brand ambassadors: Opening the door to the first "Social Suite"' (2012) 1 *Case Studies in Strategic Communication* 3; Jung Eun Lee, "YouTube vloggers' influence on consumer luxury brand perceptions and intentions" (2016) *Journal of Business Research* 5753.

audience and business partners, the business models described in the next section can provide sufficient income to live from.<sup>34</sup> Becoming an influencer is more and more perceived as a career in itself.<sup>35</sup> The opposite is the case with B2B influencers. Being an influencer is not their profession: they are influencers *because* of their profession. Maintaining a fulltime job next to their role as influencer enlarges their expertise and thus credibility and status as influencer. Influential discussions are often also not as public and accessible on the internet, but rather take place in closed groups, forums or professional networking websites.<sup>36</sup> Another significant difference, as will be further discussed under Chapter 2.3, is that relationships with influencers in B2B are often long-term collaborations.<sup>37</sup> Instead of merely promoting a product or service, the focus is more on getting the influencer engaged with the brand.<sup>38</sup>

It has become clear that despite the fact B2B influencers are on the rise, the literature focusses on B2C influencers. The remaining part of this chapter will therefore bring a contribution to this literature by looking at some of the differences between B2B influencers and other groups in more detail.

## 2.2. Defining B2B influencers

The literature review showed that B2B marketing is a world of its own, and accordingly, so is the work of B2B influencers. Whereas there is no determined definition of a B2B influencer yet, the starting point is the same as it is with B2C influencers: not a company, but a trusted individual who has the ability to influence their audience.

Absent a definition, this part focuses on creating an overarching view of the categories of influencers active in the B2B playing field. There are multiple ways to categorize influencers. The terms nano-, micro- and macro-influencers are sometimes used as a way to refer to the size

<sup>34</sup> See for instance John Lynch 'A 7-year-old boy is making \$22 million a year on YouTube reviewing toys' (*Business Insider*, 3 December 2018) <<https://www.businessinsider.nl/ryan-toysreview-7-year-old-makes-22-million-per-year-youtube-2018-12/>> accessed 8 December 2019; Chavie Lieber, 'How and why do influencers make so much money? The head of an influencer agency explains' (*Vox*, 28 November 2018) <<https://www.vox.com/the-goods/2018/11/28/18116875/influencer-marketing-social-media-engagement-instagram-youtube>> accessed on 8 December 2019.

<sup>35</sup> Crystal Abidin, 'Please Subscribe! Influencers, Social media, and the Commodification of Everyday Life' (2016).

<sup>36</sup> Fn. 6.

<sup>37</sup> Inna Semenyuk, 'How to Create A Successful B2B Influencer Marketing Strategy in Five Steps' (*Forbes*) <<https://www.forbes.com/sites/forbesagencycouncil/2019/09/03/how-to-create-a-successful-b2b-influencer-marketing-strategy-in-five-steps/#5e1cd94b9236>> accessed on 8 December 2019,

<sup>38</sup> Lee Odden, 'The B2B CMOs Guide to Influencer Marketing' (*TopRank*, 2019) <<https://www.toprankmarketing.com/newsroom/cmo-b2b-influencer-marketing/>> accessed 8 December 2019.

of the audience and the reach of the influencer.<sup>39</sup> Another classification is by the professional field the influencer is active in, such as IT or consultancy. However, when dealing with B2B influencers, it is useful to take a look at their profession, as this feature is crucial for their status as influencers. In order to spread a convincing message, a B2B influencer has to be someone who has a status of expertise in a specific field. Traditionally, B2B companies have often worked, and still work, with journalists, consultants and business analysts to strengthen their commercial message via traditional means such as professional journals. At present, however, they are more and more experimenting with a broader type of B2B influencers on social media. A big range of people qualifies for the task. Common groups include, but are not limited to, *celebrities*, *C-level executives*, *employees*, *customers* and *industry experts*.

Closest to B2C influencer marketing is the practice of working with *celebrities*. Even though this kind of partnership has become known for its success in B2C, B2B companies, too, occasionally engage in it. Examples are NICE - a data security company, that launched a video marketing campaign with chef Gordon Ramsay and comedian Ed Helms – and VOLVO, that featured actor Jean-Claude van Damme in an advertisement for trucks.<sup>40</sup> While these celebrities might not so much be perceived as experts on the topic, this kind of marketing campaign has some benefits, as it might catch the eye of the broader public, especially when such videos go viral. However, celebrity influencers are not as common in B2B as the groups discussed in the remaining part of this chapter.

A first interesting party when it comes to spreading the word on social media are *C-level executives* such as chief executive officers (CEOs) or chief information officers (CIOs). A prime example is Marc Benioff, the CEO of Salesforce, a company specialized in customer relationship management. Benioff is especially active on Twitter.<sup>41</sup> His account has over a million followers and posts multiple tweets daily. He uses the platform not only to retweet messages from the Salesforce business account, but also to spread his ideas about modern business and support of various causes such as sustainability, thereby showing some parts of his management personality. On his Twitter page, numerous references to offline interviews he conducted and articles he wrote can be found, further strengthening his position as an opinion

<sup>39</sup> Amanda Perelli, 'The 7 types of social-media influencers, from nano to macro, explained by a top marketing agency' (Business Insider, 27 January 2020) < <https://www.businessinsider.com/types-of-influencers-on-social-media-micro-macro-nano-classification-2020-1> > accessed 2 February 2020.

<sup>40</sup> Fn. 22; NICE, YouTube Channel (YouTube, 2018) < <https://www.youtube.com/user/NICEsystems1> > accessed 2 February 2020.

<sup>41</sup> Mark Benioff, Twitter Account (Twitter, 2020) < <https://twitter.com/Benioff/status/1189685839707561984> > accessed on 3 February 2020.

leader.<sup>42</sup> Putting an executive at the front of the company's image on social media can create many opportunities in a B2B marketing strategy, as they often already have a significant professional network in their field and can spark the eye of potential customers and, not unimportantly, mainstream media. Significant benefits of having a CEO that is active on social media is that they probably know the company and its views best and do not need to be paid for their online actions.<sup>43</sup> Nonetheless, not every CEO is equally suited for the job. A major complication for companies can emerge when business activities mix with unfavorable personal ones. An example of this is a tweet from Elon Musk, CEO of Tesla, who called a British diver a 'pedo guy' on Twitter in July 2018. The tweet received extensive press coverage and led to a decline in the value of Tesla shares of 3.5% the same day.<sup>44</sup>

Other influencers found close to the business are *employees*. As business insiders, employees are seen more and more as influencers. This concept is sometimes named as employee advocacy. A good example is International Business Machines Corporation (IBM), an IT company that is active in different B2B fields, ranging from software to banking and education. Because it might prove difficult to find one or more influencers that can reach that many communities, IBM chose its own employees as its influencers. Tanmay Bakshi is such an influencer. As IBM's youngest employee, the 14-year old excels at explaining technical topics in an understandable and passionate manner, which he often does in his own YouTube channel.<sup>45</sup> His videos have thousands of views. Although employee advocacy might not be the first thing that comes to mind when thinking of influencers, its use is becoming increasingly popular. Employees are believed to be the most connected to their jobs and are sometimes considered to be even more trustworthy than CE's. Their reach can be surprisingly large as well. A study from Cisco shows that employees' social media posts can generate eight times more engagement than posts from the company behind them.<sup>46</sup>

<sup>42</sup> Benioff for example, writes articles for the New York Times. See Marc Benioff 'We Need a New Capitalism' (*The New York Times*, 14 October 2019) <<https://www.nytimes.com/2019/10/14/opinion/benioff-salesforce-capitalism.html>> accessed 5 February 2020.

<sup>43</sup> Lacey Miller, 'The CEO's Role as Chief Influencer' (*Trendkite*, 5 January 2018) <<https://blog.trendkite.com/trendkite-blog/the-ceo-s-role-as-chief-influencer>> accessed 3 February 2020.

<sup>44</sup> NU.nl 'Waar is Tesla-baas Elon Musk toch mee bezig?' (*NU.nl*, 27 Augustus 2018) <<https://www.nu.nl/weekend/5427407/waar-tesla-baas-elon-musk-toch-mee-bezig-.html>> accessed on 5 February 2020.

<sup>45</sup> Tanmay Bakshi, YouTube Channel, (YouTube, 2017) <[https://www.youtube.com/watch?v=gzOvU\\_DylZg](https://www.youtube.com/watch?v=gzOvU_DylZg)> accessed on 5 February 2020.

<sup>46</sup> Christine Bailey, 'Empliyee Advocacy: Marketing Engine of the Future?' (*Cisco*, 21 September 2015) <<https://blogs.cisco.com/socialmedia/employee-advocacy-marketing-engine-of-the-future>> accessed 4 February 2020.

Another source of influencers closely related to B2B firms is their own *customers*, who are professionals as well and distinguished from consumers.<sup>47</sup> Customers are an appealing party in B2B social media marketing, as they definitely bring a human element to a brand. Okta is an example of a company that deliberately showcases customers experiences on its website and Facebook. The IT-company does so by creating blogs, videos and reviews of their projects.<sup>48</sup> These reports offer not mere reviews, but detailed, technical overviews of the services provided. The B2B customers, being other businesses and peers, can thus be very influential.

The last kind of influencers in B2B are *industry experts* - a diverse group that includes, among others, consultants, industry analysts, journalists, academics and so on. Anyone who has a trusted voice in the industry can add credibility to a brand's message and influence the purchase decision of existing and potential customers in their communities. Although some of these opinion leaders have an extensive followers count, this is not the main parameter for the choice of influencers in B2B. More important are the targeted audience and the credibility that a certain individual has online.<sup>49</sup> As will be further discussed in Chapter 2.4, industry experts are not merely used for PR, as they often have long-term collaborations with brands and can be involved in many different aspects of a company. Nonetheless, PR experts form an interesting subgroup of the industry experts. PR experts can be part of a company or work as freelancers and they usually have extensive networks, both on- and offline. They differ slightly from other industry experts because, even though they can be very influential, their topic of expertise is advertising itself. Therefore, their online content is generally perceived as advertisement rather than business material.

Whether the groups listed above can indeed all be classified as influencers in a narrow sense remains a valid question. One could argue that CEOs and employees cannot be classified as influencers since they have a direct interest in the company and are not a (more or less) objective third party.<sup>50</sup> Placing customer reviews online can also be considered a conventional e-commerce method that, as mentioned before, corresponds with eWOM in general. Especially when compared to celebrity or mega-influencers in B2C, the similarities might be hard to see.

<sup>47</sup> As will be further discussed at the end of this section, it might be debatable whether customers are to be seen as 'real' influencers, as their influence on others might come close to conventional e-WOM advertising. Therefore, it might be helpful to distinguish customers that spontaneously review their experiences online from those who are intentionally taking part in commercial activities.

<sup>48</sup> Okta, 'Meet our thousands of customers' (*Okta*) <<https://www.okta.com/customers/>> accessed 4 February 2020.

<sup>49</sup> Joel Beckaler, *Digital Influence*, (Springer Professional, 2018).

<sup>50</sup> See for instance Noam Gordon, 'Why Employee Advocates Aren't Social Media Influencers' (Talking Influence, 9 January 2020) <<https://talkinginfluence.com/2020/01/09/employee-advocates-influencers/>> accessed 15 January 2020.

Ultimately, where to draw the line is dependent on what definition of influencer is used. In the absence of a clear definition of B2B influencers, and in addition to this categorization, the next sections give an outline of other features that help to identify an influencer as such: their interests and business models.

### 2.3. Interests

The conditions of the collaboration between brand and influencer are usually documented in their contractual relationship. The exact content of such an agreement differs in individual cases, as there are no standard contracts or minimum requirements. A contract normally states the rights and obligations of each party. If a contract is made it entails, at the very least, a description of the advertisement to be produced and the relative remuneration. The level of detail might thought vary, leaving a lot of freedom to the creativity of the influencer (for example, ‘mention the product in at least five blogs’) or giving more exact guidelines (‘say the product has quality X and has caused Y results in Z people’). In B2B influencer marketing, however, contracts are not always made or are atypical. A distinct feature of agreements made by B2B influencers and brands is that the influencer is not always paid for their content.<sup>51</sup> By itself, that is not uncommon. Not every individual who says something positive about a brand or customer experience is paid to do so. Likewise, B2B influencers frequently actively collaborate with brands with the intent to promote their companies, without getting paid. Backaler and many marketing agencies even strongly advise companies against paying B2B influencers, since this impairs their objectivity.<sup>52</sup> However, even when the influencer does not receive a monetary remuneration, this does not implicate that there is no gain for the influencer; they have several other interests as well.

The interests of B2B firms and their associated influencers, can roughly be divided into two categories: short- and long-term interests. Short-term interests are the quick wins. For the firm, this entails a direct increase in interest in the brand, which may translate in more traffic on their website or a viral video or, in the best case, an immediate increase in sales. Short-term interest for the influencer comprises the immediate payment from the brand or the used

<sup>51</sup> Catalina Goanta and Isabelle Wildhaber, ‘Controlling Influencer Content Through Contracts: A Qualitative Empirical Study on the Swiss Influencer Market’ in Catalina Goanta & Sofia Ranchordas, *The Regulation of Social Media Influencers* (Elgar, 2020 forthcoming).

<sup>52</sup> Fn. 49; Kristina Libby, ‘How Much Should You Really Be Spending on Influencer Marketing?’ (Entrepreneur, 19 September 2017) <<https://www.entrepreneur.com/article/299484>> accessed 17 January 2020; Michael Quoc, ‘A Guide to Paying Influencers on Social Media’ (*IamWire*) <<http://www.iamwire.com/2017/12/guide-paying-influencers-social-media/169613>> accessed 17 January 2020.

platform, according to the business models discussed under Chapter 2.4. However, it is mainly the long-term interests that are important for both parties. As discussed in the literature review, B2B transactions are usually a more time-consuming and complex process whereby the ROI is expected to be more prominent when targeting a specific audience for a longer period of times, rather than a big audience for a short period of time. For the firm, long-term partnerships with an influencer contribute to interaction and discussion with their audience, which leads to strategic relationships, opportunities company development, increase in credibility and, ultimately, a broader audience of prospected customers.<sup>53</sup> The most important long-term interest for the B2B influencer is keeping or enlarging their influence, as this will create a bigger audience and more business opportunities for them in the future. In order to do so, a key element is that the influencer retains his or her status as an objective party. A payment might impair the objectiveness of the influencer, leading to the diminishment of trust with their audience.<sup>54</sup> Only when the influencer has a large amount of freedom to create content at their own discretions and work with brands that they believe in and support, this necessary objectivity can remain.

#### 2.4. Business models

Another source of inspiration for understanding how to define B2B influencers is reflected by their business models. Once again, due to scarce existing research, this part will draw from a comparison to B2C influencer business models.<sup>55</sup>

B2C influencers can make money online by using one or more of four business models: *brand-compensated commercial activities*, *bartering*, *independent commercial activities* and *monetisation of online content*.

Within *brand-compensated commercial activities*, brands reach out to specific influencers that are of interest to them to establish some form of collaboration in order to create favorable user-created content.<sup>56</sup> However, the initiative can also come from the side of the influencer or via intermediary marketing agencies.<sup>57</sup> Probably, the most common way to

<sup>53</sup> Caitlin Burgess ‘Sowing the Seeds of Success: 3 Elements of Strong B2B Influencer Relationships’ (*TopRankMarketing*) < <https://www.toprankblog.com/2019/05/b2b-influencer-relationship-characteristics/> > accessed on 17 January 2020.

<sup>54</sup> Fn. 49.

<sup>55</sup> For a more detailed analysis of the business models used by B2C influencers, see Catalina Goanta and Sofia Ranchordas, ‘The Regulation of Social Media Influencers: An Introduction’ in Catalina Goanta & Sofia Ranchordas, *The Regulation of Social Media Influencers* (Elgar, 2020 forthcoming).

<sup>56</sup> Yen-Liang Chen, ‘Predicting the influence of users posted information for eWOM advertising in social networks (2014), article in press, *Electronic Commerce Research and Applications*.

<sup>57</sup> For example, influencers asking for free diners or hotel stays. NOS op 3, Youtube Channel, (YouTube, 2019) < <https://www.youtube.com/watch?v=pKudVtKUzwU&feature=youtu.be> > accessed 10 January 2020.

involve influencers in marketing campaigns is by sponsored content, which entails that a brand pays the influencer to showcase them or their products in the content.<sup>58</sup> For example, the influencer can talk positively about a brand in their videos on YouTube or show it in a picture on Instagram. Another example of brand-compensated commercial activities is the work of a brand ambassador. Even though the creation of sponsored content might also be part of the job description of a brand ambassador, the two activities are not exactly the same. The brand ambassador usually becomes the face of the brand and commits him- or herself for a longer period of time.<sup>59</sup> Ideally, the brand ambassador is not a mere advertiser, but himself passionate about the brand. A third brand-compensated practice that is common in B2C is affiliate marketing.<sup>60</sup> This entails that the influencer earns a commission for every order or every click that is made via him or her.<sup>61</sup> Affiliate marketing can be recognized by the use of specific promotion codes or specially coded hyperlinks that direct a customer to a partner's website. These codes or links are then promoted in the content that the influencer posts online.<sup>62</sup>

The second business model is *bartering* - a system of exchange of goods or services. A bartering technique that is used to get B2C influencers engaged in marketing campaigns, is by sending individual influencers free samples (or products, coupons and so on). Brands hope or expect that the influencer will use their product and then review or discuss it online.<sup>63</sup> This technique is particularly popular in the fashion and cosmetic industry.<sup>64</sup> A variation of this technique is enabling influencers to organize free giveaways or other contests related to a product. Another way of bartering is collaborating with other influencers, by participating in their content, which helps the involved influencers to increase their audience, which in turn can lead to more brand-compensated opportunities in the long run.

<sup>58</sup> Jan-Frederik Gräve, 'Exploring the Perception of Influencers Vs. Traditional Celebrities: Are Social Media Starts a New Type of Endorser?' *Proceedings of the 8th International Conference on Social Media & Society* (2017).

<sup>59</sup> Claudia Fisher-Buttinger and Christine Vallaster, *Marketing metaphors and metamorphosis*, (Palgrave Macmillan, 2008); Brian Smith, 'Rise of the brand ambassador: Social stake, corporate social responsibility and influence among the social media influencers' (2018) 3 *Communication Management Review* 6.

<sup>60</sup> Arunesh Marthur, 'Endorsements on Social Media: An Empirical Study of Affiliate Marketing Disclosures on YouTube and Pinterest' (2018), 2 *Proceedings of the ACM on Human-Computer Interaction*; Sidarth Bhat, 'Impact of Brand Ambassador on consumer shopping behaviour' (2016) 5 *Reflections-Journal of Management*.

<sup>61</sup> Dennis Duffy 'Affiliate marketing and its impact on e-commerce' (2005) 22 *Journal of Consumer Marketing* 161.

<sup>62</sup> Laura Bladow, 'Worth the Click: Why Greater FTC Enforcement Is Needed to Curtail Deceptive Practices in Influencer Marketing' (2018) 59 *William & Mary Law Review* 1123.

<sup>63</sup> Andrea Galeotti and Sanjeev Goyal, 'Influencing the influencers: a theory of strategic diffusion' (2009) 40 *RAND Journal of Economics* 509.

<sup>64</sup> Camilla Cheung, 'How I Scored Tons of Free Stuff By Building a Small Social Media Audience' (*WiseBread*, 22 May 2017) <<https://www.wisebread.com/heres-how-one-social-media-micro-star-gets-lots-of-free-stuff>> accessed 3 February 2020.

However, B2C influencers do not merely depend on brands for their income. Often, they also conduct *independent commercial activities*. Especially mega influencers often sell their own fandom merchandise, such as clothing or cosmetic products.<sup>65</sup> Some platforms, such as YouTube, enable influencers to advertise their merchandise directly under their videos. It is also common to either add links in the description of the content, that direct viewers to a different website where the merchandise is sold or promote the merchandise in the content itself.

B2C influencers can use the fourth business model - *monetization of online content* - to make money online with the monetization means of the platform they work on. Online platforms use advertisements in order for the content to remain free of charge for the users. However, influencers can get a share in this content monetization. The creator of a YouTube video, for example, can choose to show more advertisements during the video. The more views the video has, the more revenue is received.<sup>66</sup> Another example is the use of programs such as Google AdSense, that can place advertisements on influencers' websites or blogs. The options depend on the specific platform and, together with their possibilities and legal implications, go beyond the scope of this paper.<sup>67</sup>

When assessing the marketing activities of influencers in the B2B field, a slightly different picture emerges. In essence, B2B influencers use the same business models as B2C influencers. However, the ways in which B2B influencers give substance to these business models are often different. Nevertheless, there is some overlap with the common strategies in B2C that are mentioned above. In order to assess what activities are popular amongst B2B influencers, a good starting point are the annual LinkedIn Top Voices, which are annual lists of professionals on LinkedIn in different fields of expertise and countries who are able of to start chains of interaction on the platform.<sup>68</sup> Even though an extensive study of the activities of all the influencers in these lists goes beyond the scope of this paper, a few general remarks can be made from observing and analyzing the profiles of the people of typical B2B categories of this lists, such as data science, finance and technology. The remainder of this section will focus on

<sup>65</sup> For a recent example, see Julia Alexander, 'YouTubers are clashing over eye shadow, and millions of dollars are at stake' (*The Verge*, 1 November 2019) < <https://www.theverge.com/2019/11/1/20936459/shane-dawson-jeffree-star-conspiracy-palette-james-charles-morphe-youtube-beauty> > accessed on 25 March 2020.

<sup>66</sup> YouTube Help, 'How to earn money on YouTube'

<<https://support.google.com/youtube/answer/72857?hl=en>> accessed 3 February 2020.

<sup>67</sup> For further reference, see Catalina Goanta and Stephan Mulders, "Move fast and break things': Unfair commercial practices and consent on Social Media' (2019) 8 *Journal of European Consumer and Market Law* 136.

<sup>68</sup> Daniel Roth, 'LinkedIn Top Voices 2019: Here are the people most responsible for driving professional conversation' (*LinkedIn*, 4 December 2019) < <https://www.linkedin.com/pulse/linkedin-top-voices-2019-we-found-people-most-responsible-daniel-roth> > accessed on 26 March 2020.

how B2B influencers give shape to the business models mentioned before and is displayed in table 1.

Just like B2C influencers, B2B influencers engage in *brand-compensated commercial activities*. Likewise, B2B influencers are sometimes paid by brands to create sponsored content in the form of videos, photos or, more often, blogs.<sup>69</sup> The use of brand ambassadors is similarly essential in B2B, because it enables companies to build strategic relationships with the audience of the influencer. The most significant difference between B2C and B2B interactions with brands is that, in B2B, the commercial relationships do not merely evolve around advertising. Influencers who do not have a fulltime job in a business often generate income from work as self-employed consultants or business strategists, conducting consultancy services for multiple businesses.<sup>70</sup> Other influencers – the employee advocates - receive income from their work as employees for a company.

*Bartering* is an important business model for B2B influencers, who barter by creating content in collaboration with companies. The key difference with brand-compensated commercial activities is that in bartering, influencers do not receive a monetary payment, but gain other benefits that are in line with their interests. Creating non-sponsored content in the form of blogs, articles, podcast and even videos, helps them to strengthen connections with the field, keep their knowledge up-to-date and attract more traffic and interaction to their webpages, which, in the long-term can lead to direct monetary remuneration through platform-specific monetization or can attract potential future employment opportunities.<sup>71</sup> A difference with sponsored content where the brand pays the influencer and has a significant decision-making role on the content, is that in unpaid content creation, the influencer usually keeps the editorial freedom over the content.<sup>72</sup> The use of affiliate links, which is popular in B2C, appears to be a

<sup>69</sup> Jessica Toib, 'The Best Native Advertising Examples of 2019' (*Nudge*, 6 January 2020) <<https://giveitanudge.com/best-native-advertising-examples-of-2019/>> accessed on 26 March 2020; Joydeep Bhattacharya, 'Top B2B Influencer Marketing Trends to follow in 2020' (*The Social Media Hat*, 10 March 2020) <<https://www.thesocialmediahat.com/blog/top-b2b-influencer-marketing-trends-to-follow-in-2020/>> accessed on 26 March 2020.

<sup>70</sup> For example, see Nir Eyal, LinkedIn Account (LinkedIn 2020) <<https://www.linkedin.com/in/nireyal/>> accessed on 25 March 2020; Fin Wycherley, LinkedIn Account (LinkedIn 2020) <<https://www.linkedin.com/in/finwycherley/>> accessed on 26 March 2020; Farah Ehsan, LinkedIn Account (LinkedIn 2020) <<https://www.linkedin.com/in/farahehsan/>> accessed on 26 March 2020.

<sup>71</sup> Inna Semenyuk, 'How To Create a Successful B2B Influencer Marketing Strategy in Five Steps' (Forbes, 3 September 2019) <<https://www.forbes.com/sites/forbesagencycouncil/2019/09/03/how-to-create-a-successful-b2b-influencer-marketing-strategy-in-five-steps/#a162f7b92362>> accessed on 26 March 2020; Patrick Dodge, 'How Small Brands Can Get Started With B2B Influencer Marketing' (Creative Side Marketing, 25 August 2018) <<http://www.creativesidemarketing.com/blog/how-small-brands-get-started-b2b-influencer-marketing/>> accessed on 26 March 2020.

<sup>72</sup> Lee Odden, 'B2B Marketers: Is Your Influencer Marketing Mechanical or Meaningful?' (Forbes) <<https://www.toprankblog.com/2018/12/influencer-marketing-mechanical-meaningful/>> accessed on 26 March 2020.

less appealing way to use influencers in B2B, which can relate to the high-value sales in B2B. Furthermore, affiliate links can sometimes be hard to recognize as they are not always disclosed.<sup>73</sup> However, their use is not completely unheard of. An example of a B2B influencer who clearly discloses affiliate links is Pat Flynn. Flynn is a self-proclaimed thought leader in online entrepreneurship, with a YouTube channel that has around 200.000 followers. He established a collaboration with the email marketing company ConvertKit and posted a tutorial video about their service on his channel. In the video subscription section, Flynn posted a link to the ConvertKit website for a free trial period and disclosed to his audience that the link was an affiliate link and he was earning a commission for every click.<sup>74</sup>

Next to working with brands, B2B influencers also rely on *independent commercial activities* as a source of their income. Specifically, they often engage in numerous side jobs and activities, both on- and offline. Companies can hire B2B influencers as public speakers at network events; furthermore, influencers can give on- and offline masterclasses or host or participate in webinars.<sup>75</sup> Some B2B influencers sell merchandise as well. However, this mainly refers to self-authored books.<sup>76</sup> Often these books centre around their topic of expertise and the influencers own experiences. The sales of other consumer goods, such as t-shirts or cosmetics that are popular with B2C influencers, remains unseen in the area of B2B influencers.

To conclude, the position in the labour market of B2B influencers is not that different from B2C influencers. Essentially, they both use the same four business models to generate income. Yet, the specific activities influencers conduct within these models diverges, as B2B influencers engage in a wider variety of marketing activities and often see their income emerging from more than one source. Consequently, they are less dependent on brands as their primary source of income. The emphasis of B2B influencers is more on their independent work, whereas B2C influencers generally focus more on the brand-compensated activities.

<sup>73</sup> Take for instance the actor Liam McNeill, who made a YouTube commercial for VistaPrint, a company that produces business cards. Even though one can never be sure how McNeill's remuneration for the video was agreed upon, the discount code at the end of the video does suggest some form of affiliate marketing. See Liam McNeill, YouTube Channel (Youtube, 2016) <<https://www.youtube.com/watch?v=yL99Phwj2KY>> accessed 3 February 2020.

<sup>74</sup> Patt Flynn, YouTube Channel (YouTube 2019) <<https://www.youtube.com/watch?v=t5e-9N3snN8&t=15s>> accessed 3 February 2020.

<sup>75</sup> For example, see, Josh Steimle, LinkedIn Account (LinkedIn 2020) <<https://www.linkedin.com/in/joshuasteimle/>> accessed on 26 March 2020; Somi Arian, LinkedIn Account (LinkedIn 2020) <<https://www.linkedin.com/in/somiarian/>> accessed on 26 March 2020; Jessica Fearnley, LinkedIn Account (LinkedIn 2020) <<https://www.linkedin.com/in/jessica-fearnley-47173019/>> accessed on 25 March 2020.

<sup>76</sup> For example, see Dambisa Moyo, LinkedIn Account (LinkedIn 2020) <<https://www.linkedin.com/in/dambisamoyo/>> accessed on 26 March 2020; Amy Franko, LinkedIn Account (LinkedIn 2020) <<https://www.linkedin.com/in/amyfranko/>> accessed on 26 March 2020; Lisa Orbe-Austin, LinkedIn Account (LinkedIn 2020) <<https://www.linkedin.com/in/lisaorbeaustin/>> accessed on 26 March 2020.

Nonetheless, these are general estimations of the activities of both groups, and the picture is not black and white: there are B2B influencers who sometimes engage in activities that are usually more frequent in B2C and vice versa.<sup>77</sup> Two additional conclusions can be drawn from this analysis, that will prove essential for the rest of this paper. Firstly, the fact that B2B influencers do not merely engage in advertising and PR, but also provide a lot of output that is completely or predominantly independent, can cause difficulties when assessing the legal rights and obligations of the influencer and the related brand, as will be further examined in Chapter 3. Secondly, when looking at creation of objective content and (co-)authoring books, the immediate proximity of B2B influencers and professional journalist becomes very clear. The importance of this cross-fertilisation with journalists will be further explored under Chapter 3.3.

Table 1: Commercial activities of influencers in B2C and B2B

	<b>B2C Influencers</b>	<b>B2B Influencers</b>
<b>Brand-compensated commercial activities</b>	<ul style="list-style-type: none"> <li>• Advertising by sponsored content</li> <li>• Brand ambassador</li> <li>• Advertising by affiliate links</li> </ul>	<ul style="list-style-type: none"> <li>• Advertising by sponsored content</li> <li>• Brand ambassador</li> <li>• Work as consultant</li> <li>• Work as employee</li> </ul>
<b>Bartering</b>	<ul style="list-style-type: none"> <li>• Unpaid collaborations with other influencers</li> <li>• Receiving free samples</li> </ul>	<ul style="list-style-type: none"> <li>• Unpaid collaborations with companies</li> </ul>
<b>Independent commercial activities</b>	<ul style="list-style-type: none"> <li>• Sale of fandom merchandise</li> </ul>	<ul style="list-style-type: none"> <li>• Sale of self-authored books</li> <li>• Freelance work such as giving workshops, giving guest lectures, conducting webinars, etc.</li> </ul>
<b>Monetisation of online content</b>	<ul style="list-style-type: none"> <li>• Platform-specific monetisation</li> </ul>	<ul style="list-style-type: none"> <li>• Platform-specific monetisation</li> </ul>

### 3. Legal implications regarding disclosure in B2B influencer marketing

With the rise of B2B influencers, new legal issues and questions arise as well. Some of them apply to B2C influencers, too, while others are inherent to the B2B group. In this section, one of the greatest challenges with influencer marketing in B2B, namely the disclosure of commercial activities, will be discussed from a legal point of view.<sup>78</sup>

One of the main reasons for brands to use social media influencers as part of their marketing campaigns is that the brand itself disappears to the background while the influencer promotes the product. As the advertisement blurs in with the editorial content of the influencer, marketing activities can be hard to recognize.<sup>79</sup> While influencer marketing is not prohibited in itself, a lack of disclosure of the commercial nature of the content can be considered misleading. The rationale behind prohibiting of misleading commercial practices is the imbalance between parties: a consumer is less knowledgeable and more vulnerable as opposed to a mighty company and therefore needs additional information before making purchase decisions. The rules regarding disclosure can be found on different levels, such as EU law, national law, local regulatory organs and self-regulation. This section aims examine whether these regulations provide sufficient guidance for B2B influencers and the brands behind them.

Disclosure in B2B influencer marketing has not yet received much attention from scholars or legislators. In the absence of a generally acknowledged framework on when B2B influencers should disclose their connections with a brand, this section will examine regulations on comparable topics with the practices of B2B influencers. This will be done from three different perspectives. First, existing regulations on unfair competition on EU and national level

<sup>78</sup> Carolina Stubb, 'This is not sponsored content – the effects of impartiality disclosure and e-commerce landing pages on consumer responses to social media influencer posts' (2019), 98 *Computers in Human Behaviour* 210. See also Nathaniel Evans, 'Disclosing Instagram Influencer Advertising: The Effects of Disclosure Language on Advertising Recognition, Attitudes and Behavioral Intent' (2017) article in press, *Journal of Interactive Advertising*; Ganga Dhanesh, 'Relationship management through social media influencers: Effects of followers awareness of paid endorsement' 45 *Public Relations Review* 101765; Jan Traskowski, 'Identifying the Commercial Nature of Influencer Marketing on the Internet' (2018) 65 *Scandinavian Studies in Law* 81; Ava Farshidi, 'Evaluating the FTC Endorsement Guidelines through the Career of a Fashion Blogger' (2018) 9 *Journal of Sports and Entertainment Law* 185; Holly Pavlika, 'How Are Real-Life Influencers Reacting To The FTC New Disclosure Guidelines?' (*Forbes*)<

<https://www.forbes.com/sites/forbesagencycouncil/2017/11/14/how-are-real-life-influencers-reacting-to-the-ftcs-new-disclosure-guidelines/>> accessed 7 February 2020; Loes Janssen and Marieke Fransen, 'Written Honesty is the Best Policy: Effects of Disclosure Explicitness and Disclosure Modality on Brand Responses via Critical Attitudes' (2019) *EAA* 113; Sophie Boerman, *Advertising in new formats and media: current research and implications for marketers*, (Emerald Group Publishing, 2016)

<sup>79</sup> Bartosz Wojdowski, 'The Deceptiveness of Sponsored News Articles: How Readers Recognize and Perceive Native Advertising', (2016) 60 *American Behavioural Scientist* 1475; David Hyman, 'Going Native: can consumers recognize native advertising: does it matter' (2017) 19 *Yale Journal of Law and Technology* 77. See also Malin Gregersen, 'To disguise or disclose? The effects of sponsorship disclosure on the recognition and evaluation of sponsored content on Instagram'(2018) *Handelshoyskolen*.

will be discussed. As will become clear in the next paragraph, these regulations mainly centre around fair and transparent behavior towards consumers and, as far as influencer marketing is concerned, B2C influencers. However, this section will demonstrate that there are many links and overlaps with their B2B counterpart, both in theory and in practice. Second, we will look at B2B influencers from the point of view of media law. Because the EU legislation on this topic is currently being reformed, we will see that national and international media codes still play an important role in this matter. Third, a comparison will be made between B2B influencers and another group, namely journalists, because journalists and B2B influencers share multiple common characteristics. The practice of native advertisement - which is regulated in journalism – in particular, comes close to the work of B2B influencers.

### 3.1. Disclosure in the context of unfair competition

Not disclosing advertising can mislead audiences about the nature of the commercial message, which in turn, could lead to unfair advantages for certain market actors. In EU law, misleading advertising finds itself at the heart of two essential instruments that aim to harmonize differences between Member States in this respect: the Unfair Commercial Practices Directive (UCPD) and the Misleading and Comparative Advertising Directive (MCAD).<sup>80</sup> First, the objective of the UCPD, which came into force on 11 June 2005, is consumer protection. In principle, the UDPC was drafted with a clear focus on B2C transactions. As is stated in the preamble, the Directive is confined to protecting consumer economic interests and therefore does not apply to B2B marketing practices.<sup>81</sup> However, four EU Member States - Germany, Austria, France and Sweden - currently apply the UCPD to B2B trade relations as well.<sup>82</sup> Other countries, such as Italy and Belgium have gone beyond minimum standards and apply at least part of the UCPD to B2B commercial dealings.<sup>83</sup> Therefore, the next section will take a closer look on how the UCPD works and what its effects are.

The second instrument is the MCAD. The aim of this directive is mainly to protect business against the unfair marketing activities of other businesses. It is based on an earlier

<sup>80</sup> Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market ('Unfair Commercial Practices Directive') OJ L 149/22; Directive 2006/114/EC concerning misleading and comparative advertising ('Misleading and Comparative Advertising Directive') OF L 376/21

<sup>81</sup> preamble (8) UCPD.

<sup>82</sup> EC Commission, First Report on the application of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market, document 52013DC0139 (2013) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52013DC0139>> accessed 6 February 2020.

<sup>83</sup> Fn. 82.

instrument that already came into force in 1984 and was revised multiple times.<sup>84</sup> It used to be applicable to both B2C and B2B commerce. However, since the UCPD replaced the first type of scope, the MCAD has been limited to B2B relations and is therefore still a relevant document for those member states that do not apply the UCPD to B2B relations.

### 3.1.1. *Unfair Commercial Practices Directive (UCPD)*

The UCPD establishes the standards according to which certain business practices may be deemed as unfair. In order to identify whether a commercial practice can be classified as unfair, one has to follow the particular structure of the UCPD. In the following order, that structure consists of the *Annex I* (the blacklist), *misleading actions and omissions* (article 6 and 7), and the *general test* (article 5).

*Annex I* of the UCPD, also called the blacklist, is a list of commercial practices which are in all circumstances considered unfair, because they are either misleading or aggressive. Most of the practices listed are related to the sale of goods contracts.<sup>85</sup> For B2C influencers, especially point 22 of Annex 1 is important: advertisement practices without proper disclosure can be regarded as ‘disguised trading’. Furthermore, point 11 of Annex 1 constitutes a prohibition on native advertising without disclosure. However, it was not clear when exactly and till what extend the influencer had to disclose. In 2018, however, the European Commission addressed these problems in their ‘Behavioral Study on Advertising and Marketing Practices in Online Social Media’.<sup>86</sup> This research paved the way for the New Deal for Consumers, an initiative aiming to amend existing consumer protection legislation so as to increase transparency.<sup>87</sup> This initiative led to the amendment of point 11 of Annex 1, which clarified that the prohibition on native advertising without disclosure also applies when a trader provides information to a consumer in response to the consumer’s online search query.

<sup>84</sup> Directive 84/450/EEC related to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising OF L 250/17.

<sup>85</sup> Catalina Goanta and Stephan Mulders, ‘Move Fast and Break Things: Unfair Commercial Practices and Consent on Social Media’ (2019) 8 *Journal of European Consumer and Market Law* 136.

<sup>86</sup> European Commission, ‘Behavioural Study on Advertising and Marketing Practices in Online Social Media’ (June 2018) Final Report <[https://ec.europa.eu/info/files/advertising-and-marketing-practices-online-social-media-final-report-2018\\_en](https://ec.europa.eu/info/files/advertising-and-marketing-practices-online-social-media-final-report-2018_en)> accessed 18 April 2020, 34.

<sup>87</sup> European Commission, ‘Proposal for a Directive of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules’ (Proposal) COM(2018) 185 final (11 April 2018) and ‘Proposal for a Directive on representative actions for the protection of the collective interests of consumers’ (Proposal) COM(2018) 184 final (11 April 2018)

In spite of the nature of blacklisted practices, national judges still have to test whether a certain practice is can be subsumed to those covered by the blacklist. When they find that it is not considered unfair in the meaning of the practices outlined in the Annex, they can proceed to interpret whether a practice is unfair based on the *misleading actions and misleading omissions* tests of article 6 and 7 UDPC. These tests have a broader formulation than the practices on the blacklist. According to the text of article 6, an action is misleading if it contains false information and is therefore untruthful (1) or deceives or is likely to deceive the average consumer, even if the information is factually correct (2).<sup>88</sup> Article 7 on misleading omissions states that a commercial practice is misleading if it omits material information that the average customer needs. In order to examine whether there is a breach of article 6 or 7, national judges test if the average consumer would have made the same purchase decision based on the truthful or complete information that the third party possesses.<sup>89</sup>

In the case where a judge cannot demonstrate a breach of either Annex I or articles 6 and 7, the last legal basis for the testing of an unfair commercial practice is the *general test* of article 5 of the UCPD. According to article 5, unfair commercial practices are prohibited. These are practices that are contrary to the requirements of professional diligence (1) and are likely to materially distort the economic behaviour of the average consumer (2).<sup>90</sup> However, even though the provisions in article 5 allow for more judicial discretion than Annex 1 or article 6 and 7, there are several limitations to the application of all three tests on the work of influencers in both B2C and B2B.

The first limitation when applying the UCPD to the practices of influencers in B2B is its scope. The UCPD deals only with B2C transactions.<sup>91</sup> Under point 6 in the preamble, it is made clear that the EU leaves relationships between traders (B2B) to the national laws of the Member States.<sup>92</sup> The UCPD itself thus provides no legal basis for unfair commercial practices in B2B situations. However, even for the four countries that do apply the UCPD to B2B relations, the wording of the UCPD can complicate its application, because it requires the involvement of a trader. In article 2(b) UCPD a trader is defined as any natural or legal person who, in commercial practices covered by this Directive, is acting for purposes relating to his trade, business, craft or profession and anyone acting in the name of or on behalf of a trader.

<sup>88</sup> Saulius Katuoka, 'Misleading actions vs. misleading omissions under Unfair Commercial Practices Directive. National approach in context' (2016) 2 International Comparative Jurisprudence 18.

<sup>89</sup> Fn. 85.

<sup>90</sup> Article 5 UCPD.

<sup>91</sup> Article 2(a) UCPD defines consumers as 'any natural person who, in commercial practices covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession'

<sup>92</sup> Preamble (6) UCPD.

The Court of Justice of the European Union (CJEU) gave a more detailed explanation of the term in the case *Kamenova*.<sup>93</sup> In the examination, the court has to take several features into account including the manner of organization of the sale, the intention to generate profit, the amount of expertise of the seller, the legal status of the seller, the extent the sale was connected to the seller's commercial or professional activity, and whether the seller received remuneration or an incentive.<sup>94</sup> It might prove difficult to consider influencers as traders, especially when being an influencer is not their primary occupation or source of income.<sup>95</sup> Moreover, the extent to which B2B influencers meet these criteria will depend on the business model used. A case in which the influencer engages in the creation of sponsored content will fit the requirements of the definition more easily than in the case of bartering. Perhaps, the presence of an incentive for the influencer can be demonstrated when there is an underlying contract between the brand and the influencer. However, things get more complicated when there is not such a contract and the influencer is merely giving a requested professional opinion that has the consequence of promoting supplies or goods. Furthermore, asymmetry in information between trader and audience can be harder to prove when there are experts on both sides of the sale and trust between parties plays a significant role in B2B transactions.<sup>96</sup>

As soon as the court establishes that an influencer can be qualified as a trader, it has to determine whether this trader engages in a commercial practice. The CJEU has defined a commercial practice in the *CHS Tour Services* case as 'any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader directly connected with the promotion, sale or supply of a product to consumers.'<sup>97</sup> This definition might capture some of the work that influencers in B2B do, such as selling their own merchandise (e.g. books), but there are limitations to the application of the unfair practices tests to the activities of B2B influencers, as they are rarely involved in the sale itself.

<sup>93</sup> Case C-105/2017 *Komisia za zashtita na potrebitelite v. Evelina Kamenova* [2018] ECLI:EU:C:2018:808.

<sup>94</sup> *Ibid.*, paragraph 38.

<sup>95</sup> See also Rossana Ducato, 'One Hashtag to Rule Them All?' in Catalina Goanta & Sofia Ranchordas, *The Regulation of Social Media Influencers* (Elgar, 2020 forthcoming)

<sup>96</sup> This becomes especially relevant when applying the general test to a B2B commercial practice. Paul Pavlou, 'Institution-based trust in interorganizational exchange relationships: the role of online B2B marketplaces on trust formation.' (2002) 11 *The Journal of Strategic Information Systems* 215; Ranjan Banerjee, 'Applications of agency theory in B2B marketing: review and future directions' in Gary Lilien, *Handbook on Business to Business Marketing* (Edward Elgar Publishing Limited, 2012); Raluca Bunduchi, 'Trust, power and transaction costs in B2B exchanges – a socio-economic approach.' (2008) 5 *Industrial Marketing Management* 610; Raluca Bunduchi, 'Business relationships in internet-based electronic markets: the role of goodwill trust and transaction costs.' (2005) 4 *Information Systems Journal* 321.

<sup>97</sup> Case C-435/11 *CHS Tour Services* [2013] ECLI:2013:574, paragraph 27.

### 3.1.2. *Misleading and Comparative Advertising Directive (MCAD)*

EU regulation on B2B advertising is left to the MCAD. The MCAD provides a minimum legal standard for the protection of misleading marketing by competitors and full harmonisation on comparative advertising. Concerning B2B influencers, the most important rules are found in articles 2 and 3. Article 2 sets the standard for when advertising is misleading, namely when it deceives or is likely to deceive the persons to whom it is addressed or whom it reaches (1a) and is likely to affect economic behaviour (1b) or which injures or is likely to injure competitors (2). In addition to these rules, article 3 provides some factors that have to be taken into account when determining whether advertisement is misleading, such as the nature of the advertising. With these rules, the MCAD grants Member States the potential to restrain the advertising activities of B2B firms and influencers but leaves it to the member states to take concrete measures.

Because of the minimum harmonisation character of the MCAD on misleading advertising, both academic research and EU case law with regards to the MCAD focus mainly on comparative advertising instead of misleading advertising.<sup>98</sup> Member States, after various consultations, were and still are reluctant to agree on further harmonisation or extension of the scope of MCAD.<sup>99</sup> Therefore, there are significant differences in the regimes that countries apply to B2B advertising. However, even in Member States where businesses are not granted as much protection as consumers, MCAD rules need to be considered in the light of the UCPD because, when conducting an unfair commercial practice against consumers, businesses may also violate the interests of competitors.<sup>100</sup>

### 3.1.3. *The implementation of EU legislation at national level*

As this paper is not comparative, the goal of this exploration is not to provide the reader with an in-depth analysis of one given jurisdiction, but to rather exemplify the implementation of

<sup>98</sup> See for instance, Michael Barone, 'Enhancing the detection of misleading comparative advertising,' (1999) 5 *Journal of Advertising Research* 43; Paul Spink, 'Comparative Advertising in the European Union,' (1998) 47 *International & Comparative Law Quarterly* 855.

<sup>99</sup> Monika Namysłowska, 'Member State Interests and the EU Law on Unfair B2C and B2B Practices' *In Between Compliance and Particularism* (Springer, 2019); Jules Struyck, 'Do We Need "Consumer Protection" for Small Businesses at the EU Level? Varieties of European Economic Law and Regulation.' (2014) 3 *Studies in European Economic Law and Regulations* 359.

<sup>100</sup> European Commission, 'Study for the Fitness Check of EU consumer and marketing law' (May 2017) final report, < <http://centaur.reading.ac.uk/75391/1/Fitnesschecklot1studymainreport-1.pdf>> accessed on 21 April 2020, 19.

the EU rules in national law. In a 2017 ‘Study for the Fitness Check of EU consumer and marketing law’, the European Commission examined the implementation of the UCPD and MCAD in the Member States. Generally, there are three different approaches: some Member States apply all or a part the rules the UCPD to B2B relations; others keep the UCPD and MCAD separate but extended the scope of the MCAD to cover more B2B practices. France and Italy apply to UCPD only partially to B2B relations. In France, for example, article 6 of the UCPD was implemented in article L. 121-1 of the *Code de la consommation*. Denmark and Finland are examples of countries that do not apply the UCPD to B2B relations but did instead extend the scope of the MCAD. The Danish legislator has a general framework of provisions on misleading marketing practices that are not only in place to protect consumers, but also businesses.<sup>101</sup> Finland has not incorporated the protection for consumers and businesses in a single act but has broadened the scope of the MCAD from ‘misleading advertising’ to ‘actions of good commercial practice’ making it applicable in a wider set of circumstances.

So how do these European regulations impact the rules on disclosure of the activities of B2B influencers on a national level? To illustrate a possible answer to this question, in what follows, this section elaborates on German law. Germany is one of the countries that apply most of the rules of the UCPD to B2B relationships. Published in 2004, the German Unfair Competition Act (*Gesetz Gegen den Unlauteren Wettbewerb*, UWG) was drafted in anticipation of the new UCPD and underwent only minor changes after the Directive came into force.<sup>102</sup> Article §3 UWG roughly follows the wording of the UCPD. With §3a UWG, the German legislator determined that the prohibition of unfair commercial practices applies regardless of whether it is harmful to consumers, competitors or other market participants.<sup>103</sup> The 1901 version of the UWG already had a general provision covering unfair commercial practices in B2B, which indicates that the current §3 and 3a aim to protect businesses as well as consumers. As the UCPD, the UWG also contains a blacklist which, however, only applies to B2C dealings.<sup>104</sup> Furthermore, the protection of the UWG is not unlimited: the conduct has to have noticeable (*Spürbar*) effect, meaning that a breach of §3 has to be some sort of significance. Thus, even though German legislation remarkably extends the MCAD scope, not every unfair

<sup>101</sup> European Commission, ‘Study for the Fitness Check of EU consumer and marketing law’ (May 2017) final report, < <http://centaur.reading.ac.uk/75391/1/Fitnesschecklot1studymainreport-1.pdf>> accessed on 21 April 2020, 364.

<sup>102</sup> Ulf Bernitz, ‘Marketing and Advertising Law in a Process of Harmonisation’ (Hart Publishing, 2017) 140.

<sup>103</sup> § 3a UWG: Rechtsbruch. ‘Unlauter handelt, wer einer gesetzlichen Vorschrift zuwiderhandelt, die auch dazu bestimmt ist, im Interesse der Marktteilnehmer das Marktverhalten zu regeln, und der Verstoß geeignet ist, die Interessen von Verbrauchern, sonstigen Marktteilnehmern oder Mitbewerbern spürbar zu beeinträchtigen’

<sup>104</sup> § 3(3) UWG. See also Geraint Howells, ‘The European unfair commercial practices directive: Impact, enforcement strategies and national legal systems’ (Ashgate Publishing, 2014) 73.

conduct is prohibited by the UWG.<sup>105</sup> In §5a(6) of the UWG, it is stated that an illegal act of unfairness occurs when the commercial intent of a commercial practice is not identified, unless it is directly apparent from the context, and when such failure is capable of causing the consumer to make a transactional decision, which he or she would not have taken otherwise. The rules of the UWG are further developed in the German Media Law (*Telemediengesetz*, TMG): under §6(1), the TMG states that ‘commercial communications must be clearly identifiable as such.’ For B2B influencers, this means that at least sponsored content has to be disclosed unless users can see at first glance that something is an advertisement. The latter might be the case when content is displayed on the website or the social media channel of the brand. In that case, online visitors can expect that the content is an advertisement, and it does therefore not have to be disclosed. The main obstacle, however, is again the practice of bartering. Because unpaid collaborations are in between independent editorial content and advertisement, there is no general rule, and judges have to examine each case individually to determine whether the scale tips in favour of one or the other. The criterium here is whether there is commercial communication or not. Commercial communication is defined in section 2(5) of the TMG, as every form of communication which serves the direct or indirect promotion of the sale of goods, services or the image of a company, another organisation or a natural person who works in trade, commerce, crafts or a professional service; the transmission of details referring to goods and services or the image of a company, an organisation or a person which are made independently and in particular with no financial return, does not per se represent a form of commercial communication. Considering that indirect promotion can be commercial communication as well, this definition does not exclude bartering practices of B2B influencers from being considered as commercial communication. However, the emphasis on the fact that the absence of financial return points towards non-commercial communication makes it less likely that bartering will be considered as such. To conclude, the German legislator implemented the UCPD into a clear set of rules that are applicable to both B2C and B2B influencers. The use of general terms and broader definitions for terms as commercial communications make the rules broadly applicable. Yet, the definition of commercial communications provides German judges with judicial discretion which allows them to evaluate practices in a grey area, such as bartering, on a case to case basis.

The use of the MCAD as a basis for regulation of B2B advertising, does not imply that a Member State has a less comprehensive relation on the topic as opposed to Member States that

<sup>105</sup> Jules Struyck, ‘Do We Need ‘‘Consumer Protection’’ for Small Businesses at the EU Level? Varieties of European Economic Law and Regulation’ (2014) 3 *Studies in European Economic Law and Regulations* 359.

use the UCPD. As mentioned before, the MCAD leaves room for any type of further restrictions similar to the German laws. Ultimately, it is up to the Member State whether it considers it necessary to grant the B2B sector the same protection as B2C or not.

### 3.2. Disclosure in the context of media law

As we have already seen in the previous example of Germany, disclosure is not only dealt with in regulations regarding unfair competition but also in media law. The EU has an instrument dealing with this topic, namely the Audiovisual Media Services Directive (AVMSD).<sup>106</sup> This directive aims to protect commercial interests on a public level rather than only for consumers. The current version of the AVMSD dates from 2010 and does not deal with social media or video-sharing platforms - a problem that the 2018 revision of the directive tried to overcome. Member States were given 21 months to transpose the new directive into their national legislations, setting the deadline for September 2020. Until the transposition of the AVMSD into the national legislation is in place, influencers will be subjected to the self-regulation of the audio-visual media sector.<sup>107</sup>

Most countries have a central authority governing advertising behavior, such as the *Reclame Code Commissie* (RCC) in the Netherlands or the *Jury voor Ethische Praktijken inzake reclame* (JEP) in Belgium. These independent, self-regulating organizations develop additional codes and guidelines for advertisers that are in line with EU and national legislation. Depending on what is governed in the national media law, these codes can be more extensive, as in the Netherlands, or less extensive, as in Germany. Generally speaking, most regulatory media codes consist of both a general part, dealing with all communication in the media, as well as specific parts, providing additional guidance for certain sectors in the advertising industry. Examples here are codes for advertising for alcohol, foodstuffs or children's products. Most

<sup>106</sup> Directive (EU) 2018/1808 of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities [2018] OJ L 303/69.

<sup>107</sup> Susanne Fengler, 'How effective is media self-regulation? Results from a comparative survey of European journalists.' (2015) 30 *European journal of communication* 249; Carmen Palzer, 'European provisions for the establishment of co-regulation frameworks.' (2003) 13 *Media Law & Policy* 7; Lucille Ponte, 'Mad men posing as ordinary consumers: the essential role of self-regulation and industry ethics on decreasing deceptive online consumer ratings and reviews.' (2012) 12 *The John Marshall Review of Intellectual Property Law* 2; Madeleine de Cock Buning, 'Life after the European Audiovisual Media Service Directive: Influencers on Social Media through the Looking-Glass' in Catalina Goanta & Sofia Ranchordas, *The Regulation of Social Media Influencers* (Elgar, 2020 forthcoming); Abdul Barkatullah, 'Does self-regulation provide legal protection and security to e-commerce consumers?' (2018) 30 *Electronic Commerce Research and Applications* 94.

countries also have a specific code dealing with social media or influencer marketing. Examples are the media codes of the RCC and the JEP. Both the RCC and JEP have published guidelines on influencer marketing in addition to their general codes.<sup>108</sup>

In 2018, the Belgian JEP published a report on recommendations regarding influencer marketing. JEP made no distinction between B2C and B2C influencers in this report.<sup>109</sup> Among the recommendations are tips on how and when to disclose the commercial nature of an online message. The recommendations are applicable under two conditions. The influencer receives a remuneration in money or in kind (1), and the advertiser has significant control over the message (2). JEB mentioned explicitly in the recommendations that when these criteria are not met, there is no situation of influencers marketing, merely a personal opinion. Looking back at the business models, it is clear that B2B influencers do not always meet these criteria and are therefore not considered to be influencers at all. The first criterium is especially odd, as for the audience, it makes no difference whether the influencer is paid. What matters is whether the content is deceiving or not. Furthermore, as discussed earlier, bartering is a significant component in B2B influencer marketing. Payment can be in kind, but when there is only an exchange of services, the work is excluded from the definition of influencer marketing. Furthermore, an employee or CEO influencer will probably not meet the first criterium because they are not *especially* paid for their online activities. The second criterium also poses some obstacles when it comes to B2B influencers, as it is common for B2B relations to give the influencer much editorial freedom. In addition, the recommendations provide insufficient information on where to draw the line. JEP uses the same criteria in their code on native advertising.<sup>110</sup> Again, even when a brand delivers all the necessary information and product samples to an influencer, when there is no clear instruction about the desired content, this is not considered a commercial message. To conclude, as the JEP recommendations might provide some clarity on disclosure for B2C influencers but not for their B2B counterpart. With the combinations of the two criteria for the applicability of the regulations, the majority of B2B influencer practices will fall outside of its scope.

<sup>108</sup> Jury voor Ethische Praktijken inzake reclame, ‘Aanbevelingen van de Raad van Reclame inzake influencers’ (JEB, Oktober 2018)

<[https://www.jep.be/sites/default/files/rule\\_recommendation/aanbevelingen\\_van\\_de\\_raad\\_voor\\_de\\_reclame\\_online\\_influencers\\_nl.pdf](https://www.jep.be/sites/default/files/rule_recommendation/aanbevelingen_van_de_raad_voor_de_reclame_online_influencers_nl.pdf)> accessed on 2 February 2020; Reclamecode Social Media & Influencer Marketing (RSM) (Stichting Reclame Code, 2019) <<https://www.reclamecode.nl/nrc/reclamecode-social-media-rsm/>> accessed on 6 February 2020.

<sup>109</sup> Fn.108.

<sup>110</sup> Jury voor Ethische Praktijken inzake reclame, ‘Code over herkenbaarheid van native advertising en aanverwante commerciële communicatie’ (JEP, 4 February 2019), <[https://www.jep.be/sites/default/files/rule\\_recommendation/code\\_over\\_herkenbaarheid\\_van\\_native\\_advertising\\_en\\_aanverwante\\_commerciële\\_communicatie.pdf](https://www.jep.be/sites/default/files/rule_recommendation/code_over_herkenbaarheid_van_native_advertising_en_aanverwante_commerciële_communicatie.pdf)> accessed on 6 February 2019.

The Dutch RCC also has one general code with advertising rules - the *Nederlandse Reclame Code* (NRC) - and different specific codes, including a code on social media and influencer marketing. Unlike the Belgian code on influencer marketing, the NRC applies to all advertising messages regardless of whether they are paid for or not. Advertisement is considered misleading when the advertiser omits necessary information that might influence the purchase behavior of the average consumer.<sup>111</sup> This is a broad definition that would cover most B2B influencer work, but the choice of the words ‘average consumer’ is unfortunate, making it unclear whether or not the rule applies to B2B relationships. The same term also appears in the specific code on social media and influencer marketing.<sup>112</sup> Enquiry with the RCC, however, has revealed that both the general and the specific codes apply to all advertising claims, B2B and B2C alike. Hence, according to the NRC, most B2B influencers would be obligated to disclose their collaborations with brands. Nevertheless, the wording of the codes is likely to cause confusion amongst actual users.

### 3.3. Disclosure and native advertisement in journalism

Besides the mandatory and self-regulatory framework of media law, legal and ethical standards in journalism is another aspect of media law relevant to the examination of disclosure of B2B influencers. Journalism is mostly governed by soft law, such as ethical codes and codes of conduct. As mentioned before, B2B influencers share some common characteristics with professional journalists. Both groups are perceived as objective experts in the field. On the one hand, journalists at present are creating more online influence within their own communities. A 2019 report from PRWeek and Cision highlights that 27% of the respondents named a mainstream journalist as the most significant social media influencer.<sup>113</sup> Especially in the B2B field, journalists often have secondary jobs as well. A good example is technology journalist Adrian Bridgwater, who has over 15.000 followers on Twitter.<sup>114</sup> Besides his work for the business magazine *Forbes*, he also works as an analyst and consultant. He is related to different tech companies and is often seen as a speaker at tech-related events. On the other hand, B2B

<sup>111</sup> Article 1 Nederlandse Reclame Code (*Stichting Reclame Code*)

<[https://www.reclamecode.nl/nrc\\_taxonomy/algemeen/](https://www.reclamecode.nl/nrc_taxonomy/algemeen/)> accessed on 6 February 2020.

<sup>112</sup> See for instance article 4(a) Reclamecode Social Media & Influencer Marketing (RSM) (*Stichting Reclame Code, 2019*) <<https://www.reclamecode.nl/nrc/reclamecode-social-media-rsm/>> accessed on 6 February 2020.

<sup>113</sup> Cision, ‘2019 Global Comms Report’ (*Cisco, 2019*) <<https://www.cision.com/us/resources/white-papers/2019-global-comms-report/>> accessed 6 February 2020.

<sup>114</sup> Adrian Bridgwater, Twitter Account (*Twitter, 2020*) <<https://twitter.com/ABridgwater>> accessed on 6 February 2020.

influencers often ‘act’ like journalists, producing a lot of editorial content and giving their professional views - often on their own social media platforms, but sometimes in newspapers or magazines as well.<sup>115</sup> The common denominator is that both B2B influencers and journalists are considered objective, professional writers and that both are capable of influencing their on- and offline audience.

A specific aspect of journalism that comes remarkably close to the commercial activities of B2B influencers is native advertising. The term native advertising refers to a type of online advertisement which takes the shape of the rest of the editorial content.<sup>116</sup> Native advertisements often appear on journalistic platforms such as online newspapers. It is a strategy in which the advertising blends in with the rest of the content, thereby following the form and function of the user experience of the website. These types of ads are also called advertorials. The Interactive Advertising Bureau (IAB) names three core types of native ads.<sup>117</sup> The first type is ‘in-feed/in-content ads’. In-feed ads are advertisements that are displayed in content feeds, and mimic the design of the platform, whereas in-content ads are advertisements that appear within the paragraphs of an article. The second type are the ‘content recommendation’ ads. With this type, the advertisement is displayed as a recommendation together with the editorial contents. This is often to be found below the editorial content. The third type is probably the hardest to recognize and is called ‘branded content’ or ‘sponsored content’. The ad is published in the exact same form as the normal content, generally an article, which can be published in collaboration with a brand or on behalf of a brand.

Especially in professional journalism, native advertising creates a certain tension. Traditionally, most news platforms, have always called for the so-called ‘separation between church and state’, sometimes referred to as ‘the Chinese Wall’, which implies that there is some kind of separation between the commercial and the editorial departments of the medium.<sup>118</sup> This separation is implemented to guarantee the autonomy and independence of the journalists and the paper and secure the trust of the readers - a core value in journalism. However, with the increasing demand for native advertising, newspapers and magazines often find themselves balancing this separation with the need to keep the relationship with the advertiser. Especially

<sup>115</sup> Fn. 42.

<sup>116</sup> CAP News, ‘Putting the ad in native advertising’ (ASA, 4 February 2016)

<<https://www.asa.org.uk/news/putting-the-ad-in-native-advertising.html>> accessed 6 February 2020.

<sup>117</sup> IAB, ‘Native Advertising Playbook 2.0’ (IAB, May 2019) < [https://www.iab.com/wp-content/uploads/2019/05/IAB-Native-Advertising-Playbook-2\\_0\\_Final.pdf](https://www.iab.com/wp-content/uploads/2019/05/IAB-Native-Advertising-Playbook-2_0_Final.pdf)> accessed 6 February 2019.

<sup>118</sup> For example, see, The New York Times, ‘Ethical Journalism’ (The New York Times) <<https://www.nytimes.com/editorial-standards/ethical-journalism.html#advertisersMarketingPromotion>> accessed on 6 February 2020.

with many newspaper and magazines in financial hardship, the balance is shifting towards the commercial side. Consequently, the lines between advertisement and editorial content are more and more blurred.

As with advertising, journalism is a highly self-regulating sector, that refers to general professional codes, ethical standards and, sometimes, platform-specific standards. Native advertisement has been regulated relatively early and extensively, because it is hard to recognize and even when recognized, often readers still believe that an advertorial contains more objective information than regular ads. An example of how harmful the lack of proper disclosure can be is the story of Ruja Ignatova and her company OneCoin.<sup>119</sup> OneCoin was a company that claimed to have invented a new kind of cryptocurrency, but eventually turned out to be a Ponzi scheme. Multiple investors afterwards declared that one of the reasons they invested money in the company was the appearance of Ignatova on the cover of *Forbes* magazine. What they had not seen was that it was not a cover at all, but a paid advertorial in the magazine itself.

In 2015, with the rise of the use of advertorials, the Federal Trade Commission (FTC) issued a specific document regarding disclosure in native advertising, which contains rules on when and how and when an advertisement should be disclosed.<sup>120</sup> For example, the commercial nature of an ‘in-feed’ ad should be clear in the feed itself, and should reveal its commercial nature before the reader opens the content. Furthermore, the disclosure has to be clear – namely written in an unambiguous language and in a font and color that are easy to read and positioned close to the ad itself. In addition to the FTC guidelines, local regulatory organs or even media platforms themselves often have their own guidelines or codes for journalistic standards.<sup>121</sup> Common requirements are for example the obligation to keep a certain distance towards the topic, non-acceptance of gifts of remunerations from third parties, the prohibition to have a financial interest in the subject or the restriction on having secondary jobs. The Dutch Code for Journalism has a clause stating that journalists should reveal all their connections to the topic,

<sup>119</sup> BBC, ‘Cryptoqueen: how this woman scammed the world, then vanished’ (*BBC*, 24 November 2019) <<https://www.bbc.com/news/stories-50435014>> accessed on 3 May 2020.

<sup>120</sup> FTC, ‘Native Advertising: A Guide for Businesses’ (*FTC*, 2015) <<https://www.ftc.gov/tips-advice/business-center/guidance/native-advertising-guide-businesses>> accessed 6 February 2020.

<sup>121</sup> For example, the Dutch television news show ‘Nieuwsuur’ has its own code for ethical journalism, see <<https://nos.nl/nieuwsuur/over/journalistieke-code/>> accessed 6 February 2020.

even private ones.<sup>122</sup> The Belgian Code for Journalism requires complete transparency with regards to external financing or support to journalists.<sup>123</sup>

Generally speaking, it is fair to say that disclosure standards for journalists are more far-reaching than the ones for influencers. Regardless of their payment, commercial intent or audience, journalists must disclose any ties with the parties they write about. With regards to B2B influencers, disclosure standards are more complex, as they differ according to which role they take on. If the work of a B2B influencer can be classified as journalism, obviously the stricter standards of journalism apply. Identifying a specific practice as journalism, however, is not always easy, as it depends on how content is interpreted. What standards apply to a specific piece of content depends thus on this interpretation. This double standard raises a lot of questions, such as when exactly a B2B influencer can be considered taking on a role as a professional journalist or who should determine this.

#### **4. Reflection and suggestions for improvement**

The previous chapters of this paper focused on two major aspects of B2B influencers. The first part gave an outline of the characteristics of this group, who they are and how they work. The second part laid out the legal frameworks in which B2B influencers currently operate. The present section will assess these findings from the perspective of the audience and critically evaluate the results hitherto discussed and attempt to formulate suggestions for improvement. Specifically, it will examine the effect of these developments by investigating whether they cause any harm and if they need to change.

In the first part, it became clear that B2B influencers and their engagement in marketing activities are a relatively new phenomenon. Specifically, they are a very diverse group of people that engages in a variety of business models. B2B influencers can take on many different roles, behaving sometimes more like B2C influencers, sometimes more like journalists. As a consequence, the audience of B2B influencers may have trouble with recognizing them. At present, no studies are available on whether that is the case with specific business audiences. However, several studies have been conducted on the ability of consumers to recognize influencers and related sponsored content.

<sup>122</sup> Toelichting X 'Bindingen' NVJ, 'Code voor de journalistiek door het Nederlands Genootschap van Hoofdredacteuren' (NVJ, 2008) <<https://www.nvj.nl/ethiek/ethiek/code-journalistiek-nederlands-genootschap-hoofdredacteuren-2008>> accessed 6 February 2020.

<sup>123</sup> Article 12 Raad voor de Journalistiek, 'Code van de Raad voor de Journalistiek' (2010) <<https://www.rvdj.be/sites/default/files/pdf/code-rvdj.pdf>> accessed 6 February 2020.

According to a study of the European Commission on consumers showed consumers have trouble recognizing sponsored content.<sup>124</sup> Part of this is to be attributed to a lack of awareness of the existence of influencers and the nature of their work and second, a failure to recognize a particular influencer as such. Participants did significantly better when they were informed beforehand on the possibility of seeing sponsored content. Similarly, Dhanesh found in a 2019 study that awareness of paid endorsements relates to the recognition of actual ads, which in turn correlates with purchase intention.<sup>125</sup> Hence, in order to recognize sponsored content, the identification of a possible influencer is an essential first step.

A conclusive study on whether businesses are better than consumers in recognizing influencers is not available; however, there are good reasons to assume they are not. As discussed in the literature review, trust plays a crucial role in B2B dealings, which is enhanced by interacting with an established B2B influencer. This is due to their expertise and (assumed) objectivity - two of the main features of B2B influencers as discussed earlier. Combined with the newness of B2B influencers. Therefore, one might suspect that businesses are even less likely to recognize B2B influencers. On first sight, that might not immediately seem like a problem. However, the consequence is that lack of recognition and awareness of B2B influencers also leads to lack of recognition of their business models, thus making it harder to differentiate between brand-compensated, collaborative or independent content.

The second part of this paper delved into the regulations on advertisements disclosure, which proved to be fragmented and complex. Furthermore, they either do not reflect B2B influencers; prospect or do not apply to them at all, even though non-disclosure may lead to harm in this context as well (e.g. unfair competitive advantages). When a brand chooses not to disclose the underlying relationship with an influencer, they gain an advantage as opposed to their competitors who do offer full transparency. The same applies to competition between influencers; content that is clearly marked as advertisement appears to be less attractive for readers than content that is not, which can lead to unfair competition amongst influencers with regards to the monetization of online content business model.<sup>126</sup>

<sup>124</sup> European Commission, 'Behavioural Study on Advertising and Marketing Practices in Online Social Media' (June 2018) Final Report <[https://ec.europa.eu/info/files/advertising-and-marketing-practices-online-social-media-final-report-2018\\_en](https://ec.europa.eu/info/files/advertising-and-marketing-practices-online-social-media-final-report-2018_en)> accessed 18 April 2020, 40.

<sup>125</sup> Ganga Dhanesh, 'Relationship management through social media influences: effects of followers' awareness of paid endorsement.' (2019) 45 Public Relations Review 101765.

<sup>126</sup> Louise Kelly, 'Avoidance of Advertising in Social Networking Sites' (2013) 10 Journal of Interactive Advertising 16; Sophie Boerman, 'Development of the Persuasion Knowledge Scales of Sponsored Content (PKS-SC)' (2018) International Journal of Advertising; Carlos Ferreira, 'Social media advertising: factors influencing consumer ad avoidance.' (2017) 16 Journal of Consumer Behaviour 183.

Another problem with lack of disclosure is that it prevents the receiving party from making an independent and informed purchase decision.<sup>127</sup> In fact, this was one of the most important reasons behind implementing stricter regulations of disclosure in consumer protection legislation.<sup>128</sup> How does that translate to the B2B field? There are good reasons to argue that the B2B audience is not at all that different from B2C, as several companies have consumer and business branches and sometimes these are mixed.<sup>129</sup> An example is provided by airlines' advertisements for business class flights. Those advertisements are generally aimed at businesses but equally reach consumers. It is hard, if not impossible, to aim advertisements at businesses only. However, even for companies that are not mixed and sell products that are evidently meant for businesses, the B2B audience is not necessarily different from the B2C one; after all, it is still a natural person who receives the advertisement and not the business as a whole, especially since the increase of freelancers in the labor market. Subsequently, some scholars argue for an extension of consumer protection laws for small businesses to restore the imbalance between weaker and stronger business parties.<sup>130</sup> This brings us to discuss whether the ability to recognize disguised advertising is a skill that can be expected from players in the B2B field: is having the difficulties with recognizing advertisements unnecessarily harmful or is it part of a normal entrepreneurial risk? I would argue that even though we should expect diligence more from a business purchaser than a consumer, there is enough reason to further extend the duty to disclose for B2B influencers. Transparency regarding any material or immaterial connection to a brand and the nature of that connection can be beneficial to all stakeholders. For the influencers themselves, this transparency would both improve legal certainty and enhance their credibility. For customers, a full disclosure would contribute to better-informed purchase decision-making. For brands, it would lead to an enhancement of both legal certainty and credibility, and, if complete disclosure of any material connection became mandatory, it would resolve any competitive disadvantages. To conclude, full disclosure could create a more equal playing field for all actors involved.

<sup>127</sup> FTC, 'How to Make Effective Disclosures in Digital Advertising' (FTC, 2013) <<https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>> accessed on 10 May 2020.

<sup>128</sup> European Commission, 'Behavioural Study on Advertising and Marketing Practices in Online Social Media' (June 2018) Final Report <[https://ec.europa.eu/info/files/advertising-and-marketing-practices-online-social-media-final-report-2018\\_en](https://ec.europa.eu/info/files/advertising-and-marketing-practices-online-social-media-final-report-2018_en)> accessed 18 April 2020, 40.

<sup>129</sup> Severina Ivanova, 'A comparison of social media marketing between B2B, B2C and mixed business models' (2019) 81 *Industrial Marketing Management* 169.

<sup>130</sup> Jules Stuyck, 'Do We Need Consumer Protection for Small Businesses at the EU Level?' (2014) *Varieties of European Economic Law and Regulation* 359; Monika Namysłowska, 'Member State Interests and the EU Law on Unfair B2C and B2B Practices' *In Between Compliance and Particularism* (Springer, 2019).

The question remains of how both the visibility of B2B influencers and the disclosure of material connections can be enhanced. Developing a clear definition of who B2B influencers are may seem like a logical first step. However, the wide range of influencers and their activities makes it difficult to define the group as a whole. In order to solve this problem, it would be useful to make their social media accounts distinguishable from non-professional accounts. Some platforms already use this technique for business pages: the layout and functions of the page make it clear to the audience that the account is used for business purposes instead of personal ones.<sup>131</sup> One possibility is to apply this idea of a specific layout to social media pages of B2B influencers. Platforms can take account of that, for example, by letting B2B influencers register themselves. Platforms may also proactively review channels of influencers or provide a questionnaire to the audience to assess profiles. In order to establish such a system, the platform would need a consistent set of criteria. The business models and features illustrated in Chapter 2 are a suggested starting point. When a user qualifies as an influencer, this should be made clearly visible to the audience. Implementing visibility may take different shapes: a pop-up, a specification in the biography of the user or a specific page lay-out. Another possible suggestion is to place a badge or symbol behind the username of the influencer - a technique that YouTube currently uses to verify channel eligibility.<sup>132</sup>

Furthermore, adjust regulations on disclosure may be adjusted so as to better fit the commercial activities of B2B influencers. As discussed in the section on national applications, some countries already do so by applying parts of the UCPD to the B2B sector by extending the scope of the MCAD. However, various initiatives to further harmonize the rules on unfair B2B practices have not been received with great enthusiasm by the EU Member States yet.<sup>133</sup> Most Member States tend to hold on to their traditional wide discretion concerning the regulation of B2B practices, which leads to a minimum harmonization approach or no harmonization at all.<sup>134</sup> As a result of this, national approaches differ tremendously from each other. Traditionally, the B2B field has thrived on fair dealings and freedom of contract.<sup>135</sup> The extension of the legal coverage mostly depends on how much freedom the Member States

<sup>131</sup> See for instance, Instagram, 'About Professional Accounts' < <https://help.instagram.com/138925576505882>> accessed on 12 May 2020; LinkedIn Premium, 'Discover How Premium Can Help You' < <https://premium.linkedin.com/>> accessed on 12 May 2020.

<sup>132</sup> YouTube Help, 'Verification Badges on Channels' < <https://support.google.com/youtube/answer/3046484?hl=en>> accessed on 12 May 2020.

<sup>133</sup> Monika Namysłowska, 'Member State Interests and the EU Law on Unfair B2C and B2B Practices' *In Between Compliance and Particularism* (Springer, 2019).

<sup>134</sup> Fn. 133.

<sup>135</sup> EuroCommerce for retail & wholesale, 'B2B trading practices' (*Issue Brief, September 2017*) < [https://www.eurocommerce.eu/media/151228/Issue%20Brief\\_B2B%20trading%20practices.pdf](https://www.eurocommerce.eu/media/151228/Issue%20Brief_B2B%20trading%20practices.pdf)> accessed on 16 May 2020.

believe the industrial field should be granted. Even though further harmonization of rules would probably be the most effective way of regulating disclosure behavior, agreement on such a level is not to be expected any time soon. Self-regulation tools thus seem to be more adequate for clarifying rules on disclosure. Updates on existing soft law instruments can be done on a national level or by the online platforms. The advantage of updating or clarifying guidelines on a platform-level over a national level is that it would harmonize the behavior of users from different countries. Another benefit is that sanctions (such as removal from the platform) for users that are non-compliant would be easier to enforce when incorporating rules in the user-terms, whereas enforcement of broader, national codes in its current form, has proven to be less effective.<sup>136</sup> In addition to regulations on platforms and professional codes, there are numerous possibilities to strengthen the effectiveness and level of harmonization of these instruments that can be further explored. It goes beyond the scope of this paper to analyze all possibilities but determining the most effective strategy for self- or co-regulation on the topic of disclosure would definitely provide an opportunity for further research.<sup>137</sup>

## **5. Conclusion**

Influencer marketing might have had a relatively slow start in the B2B field compared to the B2C, but the B2B market segment is catching up rapidly. Together with the rise of B2B influencers, new questions regarding the status and legal obligations of this group have emerged. However, as illustrated in Chapter 2.1, the existing literature has just started to address social media use in B2B and, as opposed to B2C, there is little academic attention to influencers yet. Therefore, this paper aimed to contribute to the literature in two ways; first, by attempting to unravel the nature of B2B influencers by analyzing their interests, business models and characteristics; secondly, by analyzing the legal framework regarding disclosure in which B2B influencers currently operate. Suggestions for improvement were then offered.

From Chapter 2, it became clear that B2B influencers are a very diverse group. Ranging from CEOs to industry analysts and from consultants to academics, B2B influencers can arise

<sup>136</sup> Susanne Fengler, 'How effective is media self-regulation? Results from a comparative survey of European journalists' (2015) 30 *European Journal of Communication* 249; Tony Prosser, 'Self-regulation, co-regulation and the audio-visual media services directive.' 31 *Journal of Consumer Policy* 99; Jean Boddewyn, 'Advertising Self-Regulation: True Purpose and Limits.' 18 *Journal of Advertising* 19.

<sup>137</sup> Caroline Fisher, 'The disclosure dilemma: Returning to journalism after political media advising' (2015) 1 *Communication Research and Practice* 58; Caroline Fisher, 'The disclosure disconnect: ideals of transparency and editorial reality' 38 *Australian Journalism* 129; Michelle Amazeen, 'The effects of disclosure format on native advertising recognition and audience perceptions of legacy and online news publishers' (2018) Sage Pub 1.

from almost every aspect of the B2B sector. Yet, B2B influencers in common more than only a relation to the B2B field and a large social media audience; they share the interest to maintain or increase their status as an objective opinion leader in their field and thereby exercise influence over their audience. This objective reflects in the business models that B2B influencers use, and whose essence is the same as in B2C. Both groups make money by working with brands, barter agreements, independent commercial activities and monetization of online content. However, while B2C influencers mainly focus on brand-compensated activities such as advertising, the core of B2B influencers' work are unpaid collaborations with companies and independent commercial activities. B2B influencers thus sometimes behave more like journalist rather than B2C influencers and find themselves on a sliding scale between these groups. Whether the scale tips to one way or the other depends on the specific circumstances of the case. Nonetheless, this analysis has given way to identifying some qualities that are specific for B2B influencers as a group. B2B influencers are professionals with strong ties to the community in their field of expertise; furthermore, they form long-term relationships with brands and ultimately aim to establish themselves as online opinion leaders in order to attract future business opportunities.

With these characteristics in mind, Chapter 3 looked at what disclosure duties might apply to B2B influencers. The current legal framework does not provide an unambiguous answer to that question. The analysis of EU unfair competition law, media (soft) law on advertising and media (soft) law on journalism has demonstrated multiple difficulties. The variety and fragmentation of these instruments contribute to a complex whole of standards. Whether a particular rule or standard applies depends on the country, the platform, the business model used and other circumstances of the case. Generally, the effects of these instruments are limited by their scope when being applied to B2B influencers - either explicitly by stating that the regulation does not apply to B2B relations or implicitly, by using specific terms or criteria. In particular bartering, is often not or not clearly addressed in these regulations, leaving B2B influencers, companies and marketeers in a grey area of legal uncertainty.

In Chapter 4, this paper took a normative viewpoint to identify what bottlenecks concern B2B influencers and disclosure. Two crucial difficulties came forth: a lack of recognition of B2B influencers and their work and, correspondently, a failure to identify the level of objectivity of online content. The problem with recognizing B2B influencers is rooted in the diversity of their group and the alleged objectivity of their output. Together with the important role of trust in B2B transactions, the lack of awareness and recognition of influencers further leads to a lack of recognition of collaborated content if not disclosed. Especially when engaging

in mixed business activities, it becomes particularly hard for the audience to detect the level of objectivity of the content in question. With regards to the fact that the audience of B2B influencers is not notably different from B2C influencers, non-disclosure of collaborated content is likely to influence the purchase decision of the audience in an unfair way. The most proportionate solution that might help solve these issues is enlarging the visibility of B2B influencers' on social media by means, for example, of a special page lay-out, thereby making the audience more aware that the content might not be completely independent. In addition to that, extending user terms on social media platforms to mandatory disclosure of the nature of any form of collaboration for B2B influencers is suggested. Ultimately, this would benefit all stakeholders involved in terms of objectivity for the audience, legal certainty for businesses and marketers using influencers, and enhanced credibility and trust for the B2B influencer in question.

To conclude, increased awareness and transparency of the activities of B2B influencers would be an excellent first step to safeguard a level playing field across the B2B field and business-to-business influencer marketing.

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