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Digital Advertising: Self-regulation of Advertising by Digital Influencers in Brazil

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Brazil's Consumer Defense Code requires that all forms of advertising be easily identifiable by consumers, and prohibits misleading or abusive advertising. One of the most effective mechanisms for monitoring compliance with these principles has been through self-regulation by industry entities such as CONAR in the advertising industry, and ANBIMA in the financial and capital markets.

These two organizations have been attentive to the challenges posed by the digital environment, and particularly new forms of advertising, where the work of digital influencers stands out. Both CONAR and ANBIMA have recently published best practice manuals containing guidelines for digital influencers.

CONAR's "Guide to Advertising by Digital Influencers" (*Guia de Publicidade por Influenciadores Digitais*) clarifies basic concepts, such as the definition of advertising itself, and provides guidance to content creators and marketing agencies on the application of the rules under the Brazilian Advertising Self-Regulation Code (*"CBAP" – Código Brasileiro de Autorregulamentação Publicitária*), also published by CONAR.

The CBAP's main objective is to establish ethical standards for advertising and marketing within general principles such as respect, truthfulness and protection of privacy. The Code also set out specific rules for certain categories of advertisements, such as alcoholic beverages and, more recently, gaming and betting.

According to the guide for digital influencers, transparency regarding the relationship behind the influencer's content is essential. All promotional content must be explicitly labeled as advertising, using terms such as *Publicidade*, *Publi*, and *Publipost*. Even where the content is non-commercial, the origin of products received by the influencer must be disclosed to prevent misleading messaging.

The guide shows special concern over advertising content targeted at children and adolescents, and emphasizes that such content must be readily identifiable as advertising by the target audience.

In the financial and capital markets, ANBIMA has taken the lead with the publication, in November 2023, of the manual "Rules and Procedures for Hiring Digital Influencers" (*Regras e Procedimentos para Contratação de Influenciadores Digitais*), with guidelines that companies should follow when hiring "finfluencers" (investment-focused digital influencers) for commercial purposes. The manual underlines companies' responsibility for ensuring that the influencers they hire comply with the requirements.

In April 2024, ANBIMA published “It’s Online: The ANBIMA Manual of Best Practices for Finfluencers” (*Tá na Rede: Manual ANBIMA de Melhores Práticas para Finfluencers*), which emphasizes the importance of influencers’ commitment to transparency and truthfulness. For example, the manual states that technical information on a product must be produced exclusively by the finfluencer’s client, and recommends the inclusion of links to more specialized material.

The manual also reminds influencers that they must not promise profit or guarantee future results, compare investment products that are different in nature, or publish investment simulations without clearly stating that they are hypothetical and that actual results may be different.

ANBIMA’s manual also warns that influencers’ reach can affect asset pricing, with the potential for investigation by Brazil’s securities and exchange commission, the CVM, and the Public Prosecutor’s Office for capital markets violations. To address this risk, ANBIMA and the CVM have agreed to work together to monitor the activity of investment influencers on social media. ANBIMA will also promote courses and certifications to enable influencers to continue to develop their expertise and obtain accreditations that attest to their training and reliability.

These initiatives by CONAR and ANBIMA demonstrate how self-regulatory bodies can play a critical role in preventing violations of the law and mitigating the risks of non-compliant advertising.

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