



## RESPONSIBILITY OF DIGITAL INFLUENCERS FOR PROMOTING GAMBLING



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### ABSTRACT

This work aims to understand the responsibility of digital influencers for the dissemination of gambling. It is known that the broad debate between legislators, experts in civil law, consumer law and representatives of the gambling industry is necessary in order to ensure that the Law created promotes a fair, safe and transparent environment for all involved, balancing economic interests and protecting the Brazilian consumer. However, digital influencers who promote gambling platforms in exchange for money without any concern for the harmful effects that this practice can generate can and should be held civilly liable. By acting negligently or even maliciously, these agents expose their followers to significant risks, such as accumulation of debts, bankruptcy or even serious health problems, including anxiety and depression. After the research, it was clear that the market for digital influencers grows considerably, attracting more followers and changing the style of many users and these may be practicing an illegal act. It is up to social network users to be aware and report in order to combat these actions that only grow and directly impact the lives of citizens. Regarding the methodology, it is a bibliographic review based on books, articles, specific Brazilian legislation and other materials already published.

**Keywords:** Civil liability. Digital influencer. Gambling.

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## INTRODUCTION

There is a significant evolution of online gambling, with the advent of digital technologies, which have started to offer a variety of entertainment ranging from sports betting to virtual casinos. This game modality is distinguished by its accessibility and convenience, allowing users to participate from anywhere with an internet connection. However, the ease of access brings with it concerns related to addiction and the financial impact on players. The growth of these platforms has been exponential, supported by technological innovation and the expansion of the online consumer market, which raises important questions about regulation and consumer protection.

Online gambling platforms have been exploring social media as a strategic means to expand their reach and engage new users. In this context, digital influencers play a central role in promoting these platforms, using their broad follower base to promote games through sponsored content and persuasive marketing strategies.

However, this practice raises ethical and legal concerns, especially in view of the possibility of exposing minors and vulnerable individuals to gambling-related content. The partnership between platforms and influencers significantly expands the impact of these campaigns, which requires a careful analysis of the limits of the liability of those involved and the need for stricter regulation to mitigate potential social and financial damage.

This article deals with the civil liability of digital influencers in the promotion of online gambling, having gained legal prominence, especially in light of the Consumer Protection Code (CDC). The dissemination of content that induces the consumer to error or exposes him to risks can constitute a violation of rights, subjecting influencers to liability for any damages. In addition, Law No. 12,099/2023, of the State of Maranhão, imposes administrative sanctions on those who disclose games of chance, reinforcing the need for transparency and compliance with current regulations.

The growing popularization of online gambling has raised questions about the responsibility of digital influencers in promoting these activities. The use of social networks as a means of commercial dissemination significantly expands the reach of these practices, making it essential to analyze the related legal impacts. In this context, the problem of this research is to investigate: **to what extent can influencers be held responsible for promoting games of chance, considering the Consumer Protection Code (CDC) and specific legislation that prohibits this practice?**

This phenomenon raises a series of reflections on the social, economic, and ethical impacts associated with the proliferation of online gambling. Among the concerns raised are issues related to gambling addiction, consumer protection, money laundering and

gambling integrity. In addition, the growing influence of digital influencers in the promotion of these games raises debates about the ethical and legal responsibility of these agents in the dissemination of potentially harmful practices.

The present work aims to analyze the configuration of the responsibility of digital influencers in the promotion of gambling, based on the parameters of the CDC and Law No. 12,099/2023, specific to the State of Maranhão. To this end, a specific approach will be made on three main aspects: (a) the application of Law No. 12,099/2023 in the accountability of influencers; (b) the interpretation of the CDC in cases of disclosure of gambling by these public figures; and (c) the sanctions and legal consequences provided for those who disrespect the rules in force.

In addition to the literature review, a documentary analysis of the legislation applicable to the case was carried out, including rules of the Consumer Protection Code, Civil Code and specific laws that regulate games of chance such as Law No. 12,099/2023, which prohibits the practice of disclosure and delimits sanctions, if there is non-compliance with the established requirements. The qualitative methodology, through literature review and documentary analysis, will enable the construction of a comprehensive view of the research problem, thus substantiating the conclusions.

This article is structured in three chapters. It begins with this introduction. The first chapter presents the concept of civil liability and its foundations, as well as the impact of digital influence on consumer decision. The second chapter focuses on the diffusion of bookmakers and their impacts on society. The third chapter highlights the regulation of the disclosure of games of chance, more specifically the creation of Law No. 12,099/2023. Finally, the final considerations.

## **CIVIL LIABILITY**

Civil liability is an obligation that incumbent on a person to have to repair the damage caused to another (indemnify), or even the obligation that can be incumbent on a person to repair the damage caused to another, by his own fact, or by the fact of people or things that depend on him (Guerra; Benacchio, 2015). In general, civil liability is objective, dispensing with the demonstration of intent or fault, and, consequently, generates the obligation to indemnify the damage.

The civil liability of digital influencers in the promotion of gambling in the virtual environment corresponds to a topic of social relevance, being very present today, especially considering the growing use of the internet and the impacts caused on users,

whether by hate speech, prejudiced acts, slander, defamation and even exposure of intimate videos.

## GROUPS OF CIVIL LIABILITY

Initially, it must be understood that civil liability is a fundamental principle of private law, which aims to repair damage caused to a person. In consumer law, civil liability is objective, that is, it does not depend on the fault of the supplier.

The civil liability adopted by the Consumer Protection Code (1990) is objective. It provides that the supplier who causes damage must respond without taking into account whether or not there was his fault – it is enough for there to be an act, damage, and bond between both (Paulo Neto, 2018).

In its articles 12, 13, 14, 18, 19 and 20, the CDC clearly exposes this strict liability, including joint and several liability, between product suppliers and service providers. The only exception in the codification is that related to liberal professionals who provide services, since they only respond upon proof of guilt (subjective liability).

In the Brazilian context, although the Federal Constitution provides for the strict liability of the State (art. 37, § 6), the subsidiary application of the Civil Code — especially with regard to the general elements of civil liability, such as causal link, damage and, in certain cases, fault — has been fundamental for the improvement of doctrine and jurisprudence. This demonstrates that the Civil Code is not removed from this discussion, being frequently invoked to fill gaps, delimit concepts and guide the establishment of criteria for repairing damages.

In fact, Brazil has one of the most protective systems for those affected by state actions or omissions, providing broad access to compensation for property and moral damages. This posture can be interpreted, by some, as an advance of the national legal system in relation to other countries.

There is no doubt that the discussion is broad among legislators, experts in civil law and consumer law, as well as representatives of the gambling industry and even digital influencers in order to ensure a safe and transparent environment for all involved, balancing economic interests with the full protection of the rights of Brazilian consumers.

In this same vein, the Consumer Protection Code stands out, whose normative structure aims to balance consumer relations through the principle of consumer vulnerability. This principle recognizes the consumer as the weaker party in the contractual relationship, requiring measures that ensure contractual balance without violating the principle of isonomy (Gama, 2014).

The problem occurs when there is a conflict of rules and principles, which can be of hierarchical origin, specificity of the matter and temporality or chronological. In the same hierarchy, specificity prevails, not temporality; different hierarchy, the superior one prevails. Thus, when a certain system of rules is adopted, the guiding principles must be of the same codification or law that is being applied, or hierarchically superior; the other systems are used to fill the gap or better clarify the rules (Sanseverino, 2017).

The word activity in article 3 of the Consumer Protection Code refers to the meaning that every product or service provided must be carried out in a traditional way, that is, in a professional or commercial way.

Article 3 Supplier is any individual or legal entity, public or private, national or foreign, as well as depersonalized entities, which carry out the activity of production, assembly, creation, construction, transformation, import, export, distribution or commercialization of products or provision of services.

Article 3, § 1 § 2 of the CDC conceptualizes what the product and service are, establishing:

Article 3, § 1 - Product is any movable property. Material or immaterial  
Paragraph 2 - Service is any activity provided in the consumer market, for remuneration, including those of a banking, financial, credit and insurance nature, except those arising from labor relations.

To be considered a supplier, it is necessary that the individual or legal entity carries out one of the activities mentioned below, which excludes from the configuration of supplier by the CDC, for example, the sporadic sale that can occur between two individuals, such as the sale of someone's cell phone to their neighbor. There is also a distinction in the concept of supplier, thus having product suppliers and service providers, but to better understand both it is necessary to understand what differentiates them, that is, the object of the consumer relationship (Gama, 2014).

Thus, it is necessary to define that a supplier is any natural or legal person that, on a regular basis, offers products or services for remuneration, noting that it is not necessary for the supplier to be a legal entity (company, industry, etc.), article 3 of the Consumer Protection Code recognizes as suppliers, including depersonalized entities. Therefore, the supplier is any person to whom, in the consumer relationship, the activity of supplying the market is dedicated, being responsible for supplying the product or providing the service to the consumer (final recipient).

## THE IMPACT OF DIGITAL INFLUENCE ON CONSUMER DECISIONS

It is notorious that the digital influence on consumer behavior is an increasingly relevant and present issue in the daily lives of Brazilians, especially in the face of the rise of social networks, digital marketing, and artificial intelligence. In this scenario, the consumer's purchase decision is increasingly shaped by digital factors, often unconscious or indirect.

First, the expression digital influencer (in English; *digital influencer*) became known in Brazil in 2015. It refers to people who are able to stand out on networks and mobilize a large number of users and followers, through the creation of content, showing their lifestyle, sharing opinions, tastes and experiences (Silva; Tessarolo, 2016).

The digital influencer is a term that best identifies those people who are part of a group that has a volume of connections higher than the average of people inserted in that social network (Messa, 2016). For Ferreira (2018), digital influencers act as social filters, organizing and directing users' interests about certain products, services, or experiences. As a rule, users tend to follow profiles with which they identify, whether through aesthetics, language, values, or shared content, which enhances the power of persuasion of these agents in mediating consumption and forming opinion.

With the consolidation of the internet as the main means of communication and information, digital influence has come to play a central role in consumer decisions. Marketing strategies have been profoundly transformed by the presence of digital influencers, online *reviews*, personalized algorithms, and advertising campaigns on social networks (Gonçalves, 2021).

Digital influencers, for example, act as highly effective opinion leaders, as they establish a relationship of proximity and credibility with their audience. A digital figure's recommendation of a product can have more impact than traditional advertising, especially among young, connected audiences. In addition, the use of algorithms by digital platforms — such as product recommendation engines or personalized ads — allows marketing to be precisely targeted, creating personalized and sometimes persuasive consumer experiences (Messa, 2016).

Another relevant aspect is the power of reviews and comments from other consumers, which work as a kind of digital social proof. Platforms such as Amazon, Reclame Aqui, TripAdvisor and social networks in general have become an integral part of the decision process, influencing not only whether *to* buy, but *what*, *how* and *where* to buy (Limeira, 2018).

Despite the advantages brought by digital influence — such as expanding access to information and personalizing offers — challenges also arise. Among them, content manipulation, disguised advertising, abusive use of personal data, and consumer difficulty in distinguishing opinionated content from sponsored advertising stand out (Gonçalves, 2021).

It is impossible to deny the growth and influences of social networks in the lives of users, as they are part of the great global mass, accumulating about 5 billion users. In this scenario, Brazil stands out as the third largest consumer of internet purchases, with about 90 million active consumers (Nielsen, 2019).

Faced with this cyber reality, digital influencers, formerly called bloggers, emerge, who start to produce daily content for these platforms in order to connect and engage their followers and attract new ones (Karhawi, 2017).

Therefore, the impact of digital influence on consumer decisions is a phenomenon that requires attention not only from companies and consumers, but also from legislators and consumer protection agencies. Building an ethical, transparent, and regulated digital environment is essential to balance innovation and consumer protection in digital times.

## **DIFFUSION OF BOOKMAKERS AND THEIR IMPACTS ON SOCIETY**

Historically, Brazil has a restricted legislation with regard to games of chance, supported by article 50 of Decree-Law No. 3,688/41, which deals with criminal misdemeanors related to this type of gambling. However, there is a strong tendency to make the rules more flexible, aiming not only at tax collection, but also at the regulation and protection of consumers who participate in these activities (Silva, 2020). There is no denying the diffusion of virtual bookmakers and, consequently, their impacts on the country's economy and on the daily lives of Brazilians addicted to online betting

According to the professor of the Department of Sociology and Methodology and Social Sciences of the Fluminense Federal University (UFF) in Rio de Janeiro, Marcelo Pereira de Mello, the impacts are more felt in the lower social classes:

The type of game known as bet, accessible by cell phones, has its niche of exploitation among the poorest, due to the ease of access and the absence of legal and bureaucratic control obstacles. This persistent bettor, usually from the most disadvantaged classes, tends to see betting as an investment and believes that 'investing' little money can multiply it. When this perspective ('investment') is associated with compulsive behavior, it becomes the perfect formula for addiction and the impairment of family income (MELLO *apud* SILVA, 2020, p.11).



In view of the above quote, it is clear that this is a problem of great complexity, whose resolution is not feasible in the short term. It is essential that consumers adopt a vigilant posture in the face of promises of quick riches, in order to avoid being a victim of financial fraud. In addition, it is possible to seek protection from the Judiciary, by denouncing abusive practices, as well as adopting preventive measures, such as unfollowing digital influencers who, by prioritizing their own interests, promote illicit and socially harmful conduct.

## IMPACTS OF BETTING ON USERS' LIVES

It is notorious that betting is risky, mainly for reasons that involve both the financial and the emotional, legal and social aspects. In Brazil, not all forms of betting are legalized. In the case of games of chance (in which the result depends exclusively on luck, such as slot machines and roulette) they are, as a rule, prohibited by the Criminal Misdemeanor Law (art. 50).

In recent years, what has been worrying the authorities and generating enormous losses to Brazilian families are the bets that take place in the virtual and digital environment. CNN Brasil journalist Leonardo Ribbeiro (2024) researched the topic and found that Bolsa Família beneficiaries transferred more than BRL 3 billion to betting companies, known as "bets1", through pix, in August 2024 alone, a record that directly impacts the financial lives of families. This information is contained in a report by the Central Bank.

According to the Central Bank document exposed in the report, the average spent by the beneficiaries of the social program on bets in the period was R\$ 100 (one hundred reais). Of the bettors, 4 million (70%) are heads of household and sent BRL 2 billion (67%) by PIX to bets. It is estimated that 24 million individuals participated in gambling and betting in Brazil, making at least one transfer via PIX to these companies during the period analyzed. Regarding the profile of bettors, most are between 20 and 30 years old, although bets are made by individuals of different age groups (Ribbeiro, 2024).

When the bet is made responsibly, with low amounts, such as occasional entertainment, it is seen as normal. On legal and regulated platforms, with transparency, with clear limits on time and money. Avoiding the illusion that betting is a way to make a living. However, the problem is to keep playing and increasing the amount of bets to the point of losing everything.

Online sports betting has been regulated recently, with companies obtaining licenses to operate legally. However, participating in illegal betting can lead to fines and



light criminal sanctions, as well as security risks. Although many bettors don't know it, betting has a mathematical edge to the house. In the long run, the one who profits is the operator of the game. Advertisements stimulate customers, who through the image of stars and celebrities mask the system that transforms passion into harm (Guimarães, 2024).

In recent years, there has been a real explosion in the presence of bookmakers — especially digital ones — in the daily life of Brazilian society. Driven by the popularization of the internet, legislative flexibility, and the growing influence of digital personalities, these platforms have come to occupy spaces previously restricted to traditional advertising, such as soccer stadiums, club shirts, television commercials, and, more recently, influencers' profiles on social networks (Nielsen, 2019).

This phenomenon has economic, technological, and cultural roots. From an economic point of view, bookmakers move billions of reais, generating employment, income and tax collection, but at the same time, the promise of easy enrichment generates family debt, health problems such as depression and even cases of suicide due to the fact that the person cannot get out of this situation.

The growth of online bookmakers in Brazil directly impacts the consumption and income of Brazilian families. The ease of access and the promise of quick wins attracts a growing number of Brazilians, who, according to a survey by Itaú, have already spent around 70 billion on virtual games. In the same survey, it is estimated that 0.25% of the Gross Domestic Product (GDP) was allocated to online betting in the last year (SILVA, 2020, p.13).

In addition, the impact that the betting culture has on the young audience is observed. The practice has been constantly romanticized, being associated with an image of immediate financial success and a lifestyle based on consumption and ostentation. This representation, widely disseminated on social networks, tends to stimulate impulsive behaviors and can compromise the emotional balance of young people, causing, in certain cases, conditions of dependence and psychological damage resulting from the frustration generated by unrealistic expectations.

Therefore, although the diffusion of bookmakers represents a consolidated phenomenon, its rapid expansion imposes on society — especially legislators, educators, and health professionals — the challenge of reflecting on its effects and establishing mechanisms for regulation, inspection, and social awareness, balancing economic freedom with the protection of fundamental rights.

## REGULATION OF THE DISCLOSURE OF GAMES OF CHANCE: LAW NO. 12,099/2023

First, it can be stated that the legislation on gambling in Brazil has historically been quite restrictive, demonstrating a conservative stance towards the morality and risks of these games. Everything began to change with the Criminal Misdemeanor Law, more specifically Decree-Law No. 3,688 of October 3, 1941, whose rule in the Brazilian legal system refers to criminal offenses of lesser offensive potential, known as misdemeanors — different from crimes, which are more serious offenses provided for in the Penal Code (Nucci, 2016).

The purpose of the law is to punish conduct that, although illicit, does not constitute crimes. The penalty for misdemeanors is usually more lenient, such as: Simple imprisonment (and not imprisonment or detention as in crimes), Fine. As in other laws, it is divided into parts: General Part (articles 1 to 12) – deals with common rules, such as attempt, concurrence of persons, recidivism, penalties, etc. Special Part (articles 13 to 70) – lists the conducts considered criminal misdemeanors.

Some misdemeanors are still widely applied, such as disturbing the peace and gambling (Nucci, 2016).

Sports betting was regulated in the country by the Pelé Law (Law No. 9,615/1998), which deals with sports. Law No. 13,756/2018 represented a relevant change by legalizing sports betting, establishing a legal basis for its regulation. However, the effectiveness of this law has been hampered by gaps and ambiguities in the regulations. The lack of detailed regulations on essential aspects, such as licensing, taxation, and control mechanisms, generates an unstable legal environment (Pereira, 2022).

On the other hand, State Law No. 12,099, sanctioned on October 17, 2023 by the Governor of the State of Maranhão, establishes the prohibition of the dissemination of games of chance made available by foreign platforms by individuals and legal entities, including digital influencers, on the internet and in other means of advertising, such as billboards, television commercials, advertising on collective buses, pamphlets, radio and booklets, throughout the territory of Maranhão.

To ensure the effectiveness of this legislation, Decree No. 38,717, of November 22, 2023, regulated the law, assigning to the Institute for the Promotion and Defense of Citizens and Consumers of the State of Maranhão (PROCON/MA) the responsibility for the inspection and application of the relevant administrative sanctions. PROCON/MA is also in charge of promoting reporting channels, developing preventive measures, and guiding consumers about the risks associated with these foreign platforms.

It is a law with only five articles, however, it is expected that its impacts will be positive, as can be seen below:

Art. 1 The dissemination of games of chance, made available by Foreign Platforms, by individuals and legal entities, on the world wide web, as well as by other means of advertising such as billboards, television commercials, *busdoor*, pamphlets, radio and booklets, in the State of Maranhão is prohibited.

Article 2 - Failure to comply will result in an administrative sanction with the application of a fine ranging from R\$ 10,000.00 (ten thousand reais) to R\$ 1,000,000.00 (one million reais) to be applied according to the content disclosed on the profile or page.

Art. 3 - The prohibition must be inserted in the campaigns to publicize the State's actions.

Art. 4 - The Executive Branch shall regulate this Law, to ensure its application and supervision.

Art. 5 This Law enters into force on the date of its publication (MARANHÃO, 2023).

Therefore, the most worrying aspect lies in the way these platforms are promoted. Targeted advertising, often disguised as a personal opinion in videos and posts by digital influencers, escapes conventional regulation and hinders critical public perception. It is in this context that laws such as Law No. 12,099/2023, of the state of Maranhão, gain prominence, by prohibiting the dissemination of gambling by foreign platforms in the state territory, especially through public figures or influencers.

This legislative initiative reflects a growing concern about digital influence in the promotion of gambling, seeking to protect consumers in Maranhão from the potential harm associated with these practices. It can be said that this is a recent legislation that still deserves greater theoretical foundation and little by little more people are getting to know, respect and even denounce those who do not comply with the respective standard.

## FINAL CONSIDERATIONS

Technology and the internet have caused profound transformations in the behavior of Brazilian consumers. Currently, access to a wide variety of information about products, prices, and competitors allows consumers to make decisions more consciously and strategically. In addition, the elimination of geographical barriers has significantly expanded the possibilities of purchase, making the market more accessible and competitive.

In the current scenario, it is common for consumers to carry out several surveys before making a purchase. The opinion of other users — who have already purchased and used a certain product or service — began to exert great influence, generating greater security and confidence at the time of decision. Recommendations and evaluations have thus become essential elements in the contemporary consumption process.

Knowing that Brazilians, users of the social network, trust the speech and opinion of certain digital influencers, it is also common to be attracted to some unreliable advertisements, such as gambling. Although the Federal Government has already created specific legislation (Law No. 14,790/2023) to regulate the commercial exploitation of betting, it is up to the user to always be aware and not fall into scams or even get carried away by the thrill of winning a small amount and then running the risk of losing all their savings.

It is recalled that the State of Maranhão also created a specific law to try to organize these online betting platforms, that is, Law No. 12,099/2023, sanctioned by the state government in order to establish the prohibition of the dissemination of games of chance made available by foreign platforms by individuals and legal entities, including digital influencers, on the internet and in other means of advertising, such as billboards, television commercials, busdoor, pamphlets, radio and booklets, throughout the territory of Maranhão.

It is worth mentioning that information, guarantee and transparency in the consumer relationship are just some of the rights that are widely distributed in the Consumer Protection Code. Such rights ensure, for example, the immediate return of money or reimbursement for the purchase of defective products or the exchange for others of the same specifications, as well as compensation for any material and even moral damages.

The rights that are already affirmed in the Civil Code and in the CDC, that is, rights addressed to us Brazilians, potential consumers, possessors by force of law, of the facilitation of our defense and quick access to justice. Therefore, it is vital to study and know the relevance of understanding the Consumer Protection Code and using it as a shield against the abuses to which consumers are subjected on a daily basis, whether in the real or virtual world.

In the course of the work, it was found that the market for digital influencers has been growing considerably, attracting more followers and changing the style of many users who let themselves be carried away by passion or simply by admiring a certain *influencer*. Although many of them originated in the fashion and beauty segment, nowadays, they address various topics, such as finance, entrepreneurship and gambling, often known as Bets.

It is precisely in the practice of betting on games of chance that many users lose control of their private finances in the dreamy quest to earn extra money and end up losing everything in a short time. This problem present in several countries, especially here in

Brazil, can lead to the bankruptcy of the company, family indebtedness and even suicide practices.

In view of the reported facts, it is believed that the problem was answered and the general objective achieved, as it was possible to understand the responsibility of digital influencers for the dissemination of games of chance. Thus, it is not intended to exhaust the topic, but to make it more discussed in the academic sphere, among professors, law students and Brazilian society in general, which is the most harmed by this practice of gambling that only enriches the owners of these betting platforms and their *digital influencer partners*.



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