

## Women's vulnerability in the digital consumer environment



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### ABSTRACT

This article seeks to analyze the behavioral vulnerability of consumers in the face of consumer harassment aimed at the female audience in the digital environment, from an interdisciplinary perspective, delving into the sociological and psychological effects of harassment, showing the technological mechanisms that companies are using to conquer this target audience. It will seek to insert women in the new category of hypervulnerable consumers due to their lower economic empowerment in the market, especially when the phenomenon of sexist price differentiation and abusive advertising is identified, presenting legal alternatives for the adequate correction of the practices of transindividual reach. The research followed the deductive method and was based on national and foreign bibliographic research.

**Keywords:** Women, Vulnerability, Consumption, Digital, Gender Discrimination.

## 1 INTRODUCTION

In contemporary times, there is the growing development of the digital environment, which has caused changes in consumer relations, making them faster and more malleable, however, with these reforms, consumers are increasingly becoming the "weaker" part of the relationship.

In this same scenario, women persist in the struggle for equal rights, where this seems to be far from over. Women have already been able to achieve achievements, such as article 5, I of CF/88, which addresses that men and women should be seen as equal, both in rights and obligations, however, equality has not yet been fully consolidated since there is still a discrepancy in relation to social and labor treatments.

Throughout this work, it will be observed how the consumer, and especially the woman, became the target of advertising companies, in addition to observing the methods they use to conquer their target audience in e-commerce.



Thus, in this article, the central theme is to demonstrate how women are seen in the advertising media using the *e-commerce* media as a focus, and how most of the time, the female sex is objectified in an offensive way in order to instigate the heterosexual male audience to make the purchase of the product.

In addition, the present work, in its third chapter, discusses the increase in consumer vulnerability on digital platforms, demonstrating that with new technologies companies have used their *websites* to be able to store and share the personal data of their users, which has resulted in the sale of this data to private companies and targeted advertising. especially on social networks. He also points out that this medium has generated differences in the prices of men's and women's products, the phenomenon known as *pink tax*.

Finally, in its last chapter, it aims to discuss the protective measures regarding consumer rights in this new panorama, with the State gradually intervening more in consumer relations, with the creation of new legislation aimed at regulating the internet and using the extensive interpretation of the Consumer Code – CDC.

In addition, as women are one of the main victims of these new advances in the technological environment, this article highlighted female empowerment, which is gaining greater visibility lately, as a way to change the conduct of entrepreneurs today.

Therefore, with technological advances and the emergence of mechanisms such as apps, which are capable of boosting the sale of a certain product or service with just "one click", these have caused harm to consumers by carrying out, on virtual platforms, abusive practices, causing psychological problems, such as anxiety, depression, bulimia and others.

It is necessary to emphasize that in this article, the problem of sexism in the face of female vulnerability in the digital consumer environment will be explored, where such an approach tends to depreciate the female image, making them susceptible to various discriminatory practices, in addition to the aesthetic pressure that women have been suffering over the years, where the beautiful and the jovial are related to success.

According to Lakatos and Marconi (2003), the quantitative-qualitative method, the legislative analysis of the Consumer Protection Code, the Federal Constitution, the Civil Rights Framework and the General Law for the Protection of Personal Data are used to carry out this work, in addition to theoretical data to prove the research in question. The quantitative and qualitative method will be used both in the interpretation of the subjective observing female feelings/opinions/perceptions regarding marketing and digital consumption, as well as numbers and statistics to demonstrate the hypervulnerability of the female sex in the culture of consumption. Concomitantly, the work of Professor Dennis Verbicaro in his book *Digital Consumer Law* will be used as bibliographic research, which will serve as a guideline to build the theme explained in this work.



Thus, the following research question remains: How did women become a target for advertising media in the virtual environment, having been characterized as a hypervulnerable part in consumer relations?

The implications of this study will be further amplified in the course of the following chapters.

## 2 CONSUMPTION RELATIONSHIP FROM THE PERSPECTIVE OF THE FEMALE GENDER

With regard to the consumer relationship, it is characterized by the presence of two agents, the consumer and the supplier. The consumer would be either an individual or a legal entity that purchases a product for their own use, not being commercial, while the supplier can be an individual or legal entity that develops or provides an activity for commercialization, as provided for in arts. 2nd and 3rd of the Consumer Protection Code.

However, in the doctrine there is more than one concept to define the consumer, given that in the course of the CDC itself it alternates in the content of some articles. The first is the final recipient, which are consumers, who can be individuals or legal entities, who acquire a good or service exhausting its economic function, causing it to be removed from the consumer market.

The authors of the book "Comments on the Consumer Protection Code", Cláudia Lima Marques and Antônio Herman V. Benjamin, defenders of the finalist theory, define the concept of "final recipient" in article 2 of the CDC as follows:

The final recipient is the final consumer, the one who withdraws the good from the market by acquiring or simply using it (factual final recipient), the one who puts an end to the production chain (economic final recipient) and not the one who uses the good to continue producing, because he is not the final consumer, he is transforming the good, using the good, including the service contracted in yours, to offer it in turn to your client, your consumer, using it in your construction service, in your price calculations, as an input for your production. (MARQUIS; HERMAN., 2006, p. 83-84)

In addition, there is the second that refers to the concept provided for in article 2, sole paragraph and article 81 of the CDC, which addresses collectivized interests, which characterizes the consumer as any person who intervenes in consumer relations, even if they have not performed acts of consumption, but who is exposed to the practices carried out by suppliers in commercial transactions.

The equivalence regulated by the sole paragraph of article 2 aims to protect the entire community of persons subject to practices arising from the consumer relationship. In this way, the Consumer Protection Code was able to enable a network that protects the diffuse and collective interests of the consumer mass, providing the bodies that have legitimacy to act in their defense, with a prevention mechanism to obtain a fair reparation for the eventuality of the existence of damage. (MELO, 2017, p. 359 *apud* SENISE LISBOA, 2001, p. 163)

With regard to article 17 of the CDC, the consumer has been conceptualized by equivalence, which extended the protection granted by law to the final recipient to any subject of law who was



harméd by the abusive conduct practiced by the supplier when placing a defective product or service on the market, these are called *'bystander'*, that is, they are harmed third parties who do not participate directly in the consumer relationship.

Indoctrinating on the subject, Paulo de Tarso Vieira Sanseverino teaches that:

each and every victim of a consumer accident is equivalent to the consumer for the purposes of the protection conferred by the CDC. The so-called *'bystander' are now covered*, which are third parties who, although not directly involved in the consumer relationship, are affected by the appearance of a defect in the product or service. (MELO, 2004, p. 55 apud SANSEVERINO, 2002, p. 208).

Finally, there is article 29 of the CDC referring to the exposed consumer, which addresses the equivalence of a consumer with all persons, whether determinable or not, as long as they are subject to a commercial practice, otherwise, in order for it to be protected by consumer legislation, it must result from a consumer relationship, having at least one of the poles a supplier of services or products and, on the other, a consumer as a target to be reached by the supplier's appeal.

This understanding is affirmed by Anthony Herman V. Benjamin, who states that:

The consumer is, therefore, not only the one who "acquires or uses a product or service" (art. 2), but also the people "exposed to the practices" provided for in the Code (art. 29). That is to say: it can be seen concretely (art. 2), or abstractly (art. 29). In the first case, it is necessary that there be or is to be acquired or used. On the other hand, in the second, what is required is simple exposure to the practice, even if it is not possible to pinpoint, concretely, a consumer who is in the process of purchasing or using the product or service. (BENJAMIN, 2007. p. 18)

Therefore, the consumer can be either the one who performs the acts of consumption – buying a product or acquiring a service – or he can also be the one who did not perform any act, but was harmed by the abusive practice carried out by the supplier, not effectively participating in the consumer relationship.

As far as the supplier is concerned, one of its main characteristics is the habituality of carrying out its activities by constantly placing its products or services in the consumer market, which may have a profit-making purpose or not, as there are philanthropic entities that only raise money to ensure their own livelihood, as provided for in article 3 of the CDC.

"A supplier is one who acts professionally in the market, receiving direct or indirect remuneration for the production, distribution and marketing of goods and services." (BESSA, 2011, p. 1.023).

There are four important classifications in this regard. The first refers to the actual supplier, who effectively participates in the manufacturing or production process of the product, these being the manufacturer, the producer and the builder. The second deals with the presumed supplier, who is the intermediary between the manufacturer and the consumer, not participating directly in the creation process, as provided for in article 13 of the CDC.



In addition, there is the apparent supplier who also does not really participate in the manufacturing process of the merchandise, however, when placing a brand or having a glimpse of its name on the product made available to the consumer, the latter is understood as the real manufacturer.

The liability of the apparent supplier is justified by the fact that, by indicating on the product manufactured by a third party its name, brand or other sign that identifies it, the apparent supplier assumes before the consumer the position of the real manufacturer of the product. This allows for their full accountability in the form of article 12 of the CDC (EFING, 2011, p. 83).

Finally, the equivalent supplier would be:

that third party who in the consumer relationship served as an intermediary or helper for the realization of the main relationship, but who acts vis-à-vis a consumer as if he were the supplier. In other words: he is not the supplier of the main contract, but as an intermediary he is the 'owner' of the related relationship and has a position of power in the relationship with the consumer. (MARQUIS; BENJAMIM, 2007, p.. 83).

As for consumption, it was restricted to the act of buying or using a service or product, according to Heilbrunn (2010, p. 7) the act of consuming is "Consumption [...] it was constituted as a system by which individuals collectively and individually manipulate meaning and values, and mobilize important resources in terms of time, efforts [...]."tag.

However, over the years, especially at the beginning of media advertising, the female sex was attributed to the act of consuming in a stereotyped way, since this role was assigned to women. From this, the stereotype that "shopping is a woman's thing" emerged, causing men to refuse to go to stores.

The advent of this stereotype occurred in the period of the Second World War, which resulted in a decrease in production capacity, as men were forced to go into battle in order to defend their nation. In view of this, women began to take space in factories and means of production, where in this way a historical milestone occurred, the female dusting and the search for women's financial independence.

With female empowerment, a phenomenon of postmodernity, women began to seek financial independence. As a result, brands began to realize the importance of attracting even more attention from the female audience, using marketing strategies to promote small changes so that they are not noticed (RICCO; OLIVEIRA, 2017, p. 111).

Thus, it is observed that this correlation between the female sex and the habit of consuming is based on a sexist perspective rooted in society, which leads to the perpetuation of social conditions of a patriarchal nature that has assumed a determining prism in the mold of the personality of individuals.

Women, in this predatory logic of consumption, are permanently induced to follow strict aesthetic and behavioral standards that are pre-established, and often stereotyped, through direct or subliminal advertising campaigns that are meticulously designed to identify and take advantage of their specific needs (VERBICARO et al., 2020).



Thus, it is observed that the consumption habit and the female sex are linked by a sexist vision, which the media propagates over the years, making use of the vulnerability of women in the consumption environment to impose certain behavioral patterns and consumerist habits.

Thus, when explaining about the consumer relationship, it is impossible not to address the means that is most used to encourage it, which would be advertising advertising, which is carried out with the purpose of disseminating, promoting a service or product through an image or informative message, with the purpose of bringing profits and being exclusively aimed at consumers.

According to economist Philip Kotler, he conceptualizes advertising as "any form, non-personal, of presenting or promoting ideas, goods, or services, paid for by an identified sponsor." (KOTLER, 1998, p. 257)

In addition, there are two types of advertising: commercial and social. However, this article will focus on commercial advertising, which aims to promote products and services for profit, including marketing.

Thus, in Brazil, advertising is envisioned as a means of mass communication, that is, carrying out the same practice of conducts to develop the advertiser to the desired consumption, as alleged by Armando Sant'Anna:

"Advertising serves to carry out the tasks of mass communication with greater economy, speed and volume than those obtained through any other means" (SANT'ANNA et al., 2015, p.75).

However, there was only a great advance after the First World War in the year 1930, when there was the emergence of radio with sung advertisements and soap operas that in scenes advertised the products.

After that, television came in the year 1950 that revolutionized Brazilian advertising, with images being broadcast live, with most of these being made by women, since they were aimed at the female sex, because in this period the purchase of products or services was made, for the most part, by women, since they expected them to only take care of the domestic issue and appearance.

This understanding is established by Lipovetsky in 1989, who states that "Since the 1950s, women have been influenced by the consumer industry to make changes in style and presentation and at the time, women were considered beautiful when they had a defined silhouette" (LIPOVETSKY, 1989, p.75).

Because of this, the "advertising dictatorship" used advertisements, films and photos stigmatizing women as they should dress, act and think, resulting in the naturalization of stereotypes of femininity and fragility.

As a result, because these are almost exclusively for women, the media put women in the main focus of the commercials, cleaning and using their best clothes so that when their family members entered the residence they would find a clean and pleasant environment. When the products were aimed



at the male sex, female sexuality was also used to sell that product, where only social status and the perfect woman would be achieved by consuming that commodity.

In addition, the seductive power of silent film stars marked an entire generation of women, serving as a model for the construction of self-representation in modern society, demonstrating women as seductors to a more general public, selling their image, or linking it to the product to be consumed.

However, it is worth mentioning that, during the 90s, the emergence of the internet occurred, which led to several changes in the daily lives of individuals, even enabling transformations in the form of the consumption relationship between supplier and consumer, demonstrating that buying a product has never become so easy, since the tireless hours of searching for a product in physical places gave way to the act of buying in a few clicks in the comfort of your home.

Another change related to digital consumption was the advent of *digital marketing*, which came fiercely to social platforms to show ads for any type of product. Nowadays, it is clear that anyone is liable to be bombarded with advertisements, which induce the purchase of the products of their choice.

An example of this is the social network *Instagram*, which shows several publications and "*stories*" of beauty bloggers - who often do not have a background in aesthetics or nutrition - showing a "revolutionary" product that will make the person lose 10 kg (ten kilograms) in a week. However, what often happens is that company x paid the blogger to advertise the product on her social media as "beauty tips", since she has a great power of influence, especially for the female gender, on this digital platform.

### 3 THE BEHAVIORAL VULNERABILITY OF THE CONSUMER IN THE FACE OF CONSUMER HARASSMENT AIMED AT THE FEMALE PUBLIC

Currently, society lives in the digital age, which has made the act of buying an easy task, providing the consumer with the possibility of searching, ordering and paying for several products in a matter of minutes and even being able to use it at the same time they paid, such as *e-books*, music, digital platforms and among others. Thus, with technological advances, there have been changes in the consumption relationship, and consumer privacy has been dissipated, since these new technologies, such as *smartphones*, *tablets*, *notebooks* They enter the domestic sphere, easily promoting the user's navigation in virtual communities full of offers and promotions, and also allows information about them to be captured and stored in the virtual environment, making it increasingly easier to manipulate to make purchases.

As a result, it is easy for the supplier to display their products and sell them, since when the consumer accesses any digital platform it is inevitable that it is full of ads that are sometimes aimed at the same, with goods that they may like or that they are used to looking for or buying.



With regard to the main showcases of *online advertising* display in Brazil, the research conducted by *comScore* and released by *eMarketer* in 2013 showed that *Facebook* is leading the research with about 51.934 million ad views, as shown in the image below:

Figure 1 – Table of the main online advertising display windows in Brazil.

Sites	Exibição de anúncios	Visitantes únicos expostos a anúncios
1. Facebook	51.934 milhões	60.9 milhões
2. UOL	11.827 milhões	52 milhões
3. Globo.com	11.611 milhões	43.4 milhões
4. Sites da Microsoft	8.816 milhões	39.6 milhões
5. Telefônica	8.499 milhões	41 milhões
6. Sites do Google	7.319 milhões	60.9 milhões
7. Sites do Yahoo!	3.899 milhões	38.3 milhões
8. Portal R7	2.343 milhões	39.3 milhões
9. iG	1.764 milhões	17.1 milhões
10. Grupo Abril	739 milhões	21.3 milhões

Source: Canaltech (2013, online)

As a result, it can be seen that there is vulnerability of the consumer in the aforementioned relationship, which is configured by the insufficiency of information regarding the product or by the absence of legal knowledge to understand how to avoid the abusive conduct of the supplier, who is seen as superior in the power relationship in the consumer market.

Thus, the "subjective legal situation in which the holder is more susceptible to being injured in his or her extra-patrimonial sphere, imposing the application of legal norms of differentiated protection to satisfy the principle of human dignity" (KONDER, 2015, p.5).

In addition, vulnerability comes from an imminent situation, and not only when the consumer has already been injured, this is stated by Jean-Pascal Chazal (2000, p. 244) clarifies that:

If the consumer is to be protected by the law, it is not because he is systematically injured, but because he is likely to be injured for the simple reason of defending himself badly, of not being well armed to face his partner-adversary, which is the supplier.

It should be noted that the digitalization of consumer relations causes the maximization of the consumer's vulnerability, due to the fact that when proceeding with purchases by virtual means, it triggers several doubts, the main one concerns the scope of buyer protection in case any procedure is wrong, not knowing if he can trust a supplier without identity and who can have his information only by following his movement on the *website*.

One of the main reasons for maximizing this vulnerability would be the geographical distance between the seller and the buyer, with the user having difficulties in viewing the product online, since he is not sure if it will meet his expectations, thus, in the event of a vice or defect in the merchandise,





the consumer may find it difficult to enforce his rights against an unidentifiable seller located at a remote address.

In addition, there is another problem regarding this digital relationship, which would be the consumer's declaration of will, since most of the time this does not correspond to veracity, and defects in consent are envisaged.

Such addictions occur largely in social networks, which establish extensive terms and conditions, and users are required to accept if they want to use the network, however, it is clear that most of these people do not read the terms and do not know what they agree with, and may even consent to this social network being able to view and store all their information, which happens in reality, therefore, when we enter *Facebook* or another social network to various ads aimed at the user itself.

Therefore, it is clear that the consumer is the weaker party in this relationship, given that, as shown, the supplier has control over the information of its users, and can also use social media, such as *Instagram*, *Youtube* and *Facebook* to propagate its products at any time of the day, making such conducts facilitate the sale of its products.

Through this, we observe the behavioral technique promoted by suppliers in modernity to boost the marketing of brands by manipulating the consumer's psychology, transforming the individual into what the system imposes.

"The culture industry dictates the models of behaviors in advance, defines and imposes what the new consumption needs will be, defines standards of beauty, and interconnects consumption with the achievement of personal fulfillment, *personal status*, and even happiness" (VERBICARO et al., 2019, p.83).

Faced with this model propagated by the cultural industry, the female public is a recurring target of advertisements, since the bodies of "ideal women" are used to boost sales of products considered mostly male – such as the advertising of alcoholic beverages – or use the female image to demonstrate the ideal of beauty, as we perceive in the advertisements of the cosmetics industry.

Feminine beauty is directly linked to beauty, delicateness and youthfulness. To achieve fullness and acceptance, a woman must undergo several procedures: waxing, painting her nails and hair, spending on various aesthetic methods that slow down skin aging, such as *botox*. In this situation, we observe that feminine beauty does have an expiration date.

Older women fear young women, young women fear old women, and the myth of beauty mutilates the course of everyone's life. And what is more exciting, our identity must be based on our "beauty", in such a way that we remain vulnerable to external approval, bringing our self-love, that sensitive and vital organ, exposed to everyone. (WOLF, 2018, p. 17).



By observing a drive towards the standardization of beauty and female behavior, it is verified that there are extremely sexist approaches in consumerist relations with the exposure of stereotyped images. A case that reverberated in the media was that of the blogger Boca Rosa, in which the *influencer* raised the flag of healthy eating and stated to her followers that she had lost approximately 12 kg just by using "local food", however, in an interview with journalist Leo Dias' program on the radio, the businesswoman did not know that a live was taking place simultaneously through sharing apps, and during commercial breaks, she admitted to having undergone liposuction (DMTV GOIÂNIA, 2017).

By talking to women, the cultural industry, through the consumerist relationship, carries out an appealing and abusive approach, imposing on women different conditions and prices, solely because of sex, behavioral and beauty standards that are unattainable. This differentiated approach that the cultural industry carries out ends up directly influencing consumerist relations, making the female consumer not only vulnerable because she is, in herself, a consumer, but doubly vulnerable, because she is a woman consumer (VERBICARO et al., 2019, p. 99).

From this, it can be seen that the prism in which women are the constant targets of the cruel *marketing* of youthfulness and beauty – often unattainable – since all this is directly associated with the fact that this consumer will only consolidate herself as an "ideal woman" if she buys products with the purpose of making her young and beautiful.

For Wolf (2018) "Beauty" is neither universal nor immutable, although the Western world pretends that all ideals of female beauty originate from a Platonic Ideal Woman. Women are bombarded with *posts* via sharing apps preaching – and standardizing – beauty, and when they disagree with these aesthetic standards, they are labeled exotic or even charmless.

"Beauty" is just one of the many ways of objectifying women, since the market of perfection standardizes behaviors, clothing, consumption habits, and even aesthetic procedures, like a large production line of goods.

Thus, the consumer itself is already vulnerable, however, the female sex is approached with massive gender discriminatory harassment, since there is pressure to fit into aesthetic standards seen in advertisements and publicity made by artists and models, through this, women compare their "ordinary" bodies with those that have undergone retouching through beautification apps. As a result, women are under psychological pressure to maintain the standard of "beauty" sold by these media, carrying out absurd diets and insane exercises - that is, practically unattainable, making them spend more and more on products to take care of their appearance and be able to match these paradigms.

As mentioned above, with technological advances, suppliers have unraveled several ways of subjecting consumers to consumer practices, making them more susceptible to consumer harassment, however, this practice has become recurrent in the environment and has become a natural practice, consequently acceptable.



Consumer harassment is seen as an aggressive conduct carried out by the supplier, which undermines the arbitrariness of the consumer's decision when choosing the products he wants or needs, pressuring him in order to induce him to give in to market pressures, taking advantage of his insecurities, fears, reliability in relation to third parties and even his age, gender and social status.

This understanding is affirmed in the article *Unraveling the Behavioral Vulnerability of the Consumer: A Legal-Psychological Analysis of Consumer Harassment*, written by Professor Dennis Verbicaro, and master's students Lays Rodrigues and Camille Ataíde (2018, p. 2) which explains:

Consumer harassment is characterized by the practice of aggressive behaviors, which directly affect the consumer's freedom of choice and, in more serious and continuous situations, their own life projects, attacking their psychic sphere, which, in the midst of so many manipulative strategies, is subjugated and led to give in to market pressures. (VERBICARO et al., 2018, p. 2)

One of the most active ways to characterize it as consumer harassment would be advertising activities that are carried out in excess, mainly because of the *internet* that has made it possible to create several ways to carry out advertisements with the following:

There is an infinity of virtual techniques for promoting advertising messages, such as, for example, the *micro-site*, the *banner*, the *pop up*, the *sponsored links*, the *email marketing*, the *adverlog*, the *search engine marketing*, podcasting and *spam*. In short, it is the use of digital technologies as a *marketing* tool involving communication so that, along with new technologies, new risks of harm also arise (BASAN, 2020, p. 30).

As a result, it is clear that such forms of advertising frequently approach several advertisements, forcing the consumer to view them against their will, also such providers do this without the authorization of the users, making the advertisements tiring and exasperating, which can cause anxiety, emotional disturbances and even the exacerbated consumerism of Internet users.

In view of this, it can be seen that this conduct made by the suppliers, due to the large quantity, frequency and the way of approach in which the advertising is carried out, it is clear that there is disloyalty and violation of the principle of objective good faith, which is characterized as an abusive practice, aggravating the vulnerability of the consumer.

As seen in the first chapter, advertising has grown along with technological development, leaving the radio, going to television and now with the evolution of the *internet* it has gained great space on this platform, given that more and more people have been consuming information and products through the digital market. Due to this, the digital *influencer* or, translating to Portuguese, the digital influencer, which can be seen as a form of consumer harassment, has emerged.

The *digital influencer* is seen as a profession that aims to influence people's behavior and opinion using communication channels such as *Youtube*, *Instagram*, *Facebook*, *Twitter* and others. They use these social networks to attract as many followers as possible to increase their power of



influence, some of the most well-known influencers would be Boca Rosa, Camila Coutinho, Manu Gavassi, Whinderson Nunes and Viih tube.

Influencers post photos and videos on their social media profiles, tag companies in the publications and that's it, all it takes is a click or tap on the screen and the consumer is already forwarded directly to the brand's profile or to the organization's virtual store, from then on the customer has access to all the company's products and will be able to make their online purchases in a simple and fast way ( FELIX, 2017, p.18).

In this way, most companies opt for this means of advertising, since we have observed it to be quite effective. This can be confirmed through the survey conducted by Nielsen (2017), a company specializing in consumer behavior, 90% of customers trust the recommendation of others to buy a product, while only 33% say they are influenced by ads.

With this, it is noted that influencers have a great power of influence, as they have the reliability and proximity to their followers who, by listening to them daily through their channel or page, decide to trust them about the products they recommend, unlike ads that can easily be ignored and blocked.

In this sense, currently, making a comparison with the culture and consumption of previous years, the influencer is nothing more than the old store windows, which aims to highlight and exalt the product, presenting it in an appropriate way, in order to sharpen the desire to obtain a certain piece in question, therefore, They are seen as a form of consumer harassment, as they make your audience believe that such merchandise can bring beauty, happiness and pleasure, generating harm to the consumer who trusts most of the time in a lie.

However, for the doctinaire Felix (2017), consumers, especially women, have increasingly sought stereotyped beauty:

The desire to look good physical has been growing for a large part of society today, with technological advances, the popularization of the internet and social networks, the exchange of information about the fashion market has occurred around the world with an increasing speed. (FELIX, 2017, p. 30).

In this way, the concern with appearance in the modern world remains crystal clear, and influencers are of paramount importance in the dictatorship of behavior and aesthetic standards, so when a certain consumer follows these professionals starts to believe in the veracity of the advertisements (or *publiposts*) that he shares.

As for the world of aesthetics and beauty, we observe an approach in which beauty is linked to well-being and happiness.

The culture industry and consumer harassment are more pronounced for women. This harassment manifests itself through the media, through abusive advertising, tarnishing the image of women or, as mentioned, imposing unattainable standards of beauty and behavior. (VERBICARO, 2019, p. 98).



As a result, influencers highlight the "ease" of aesthetic changes, recently when scrolling through the *instagram feed* we observed partnerships with brands in the beauty industry and aesthetic procedure clinics - which inconsequentially sell these procedures as a simple and easy way to beautify without showing any side effects. An example of this is the "wave" of aesthetic procedures and partnerships that several *influencers* close with aesthetic clinics and sell *lipolad* (the new type of liposuction, which would be a procedure in which the person leaves the operating room with buds in the belly).

One case that reverberated in the media was the influencer Virginia Fonseca, who underwent two *lipolad surgeries* in the period of approximately one year. The *influencer* used the procedure to generate content and engagement on her *youtube channel*, not taking into account the repercussion of the naturalization of aesthetic procedures, in addition to not addressing the dangers that the procedure can entail in the patient's body.

Liposuction, or just lipo is an extremely invasive procedure that many people undergo for the elimination of fat, unwanted skin, or even remodeling the shape of the belly built "buds", however, when done inappropriately it can cause the perforation of the patient's organs.

Another event that impacted the Brazilian media was the case of the 26-year-old blogger Liliane Amorim, the young, phenotypically thin chose to "go under the knife" to achieve the long-awaited "flat belly", however, the girl died due to complications in the surgery and her intestine was perforated which led to generalized infection (ESTADO DE MINAS, 2021).

In the book *Digital Consumer Law*, Alexandre Rocha do Carmo and Caio Gabriel Motta alluded that:

Through the media, it always promises women an ideal happiness through the consumption of goods and services propagated in the media (...) there is the imposition of stylish bodies, promoting the constant need for aesthetic treatments and surgeries, as well as the constant need to shop, triggering compulsive consumption. (CARMEL; MOTTA 2019, p. 221)

Women are constantly approached with these ads and *lifestyles* from the *influencer world*, which address realities that not even the professionals themselves experience, causing several disorders for those who actually live in real life, such as bulimia, anorexia, anxiety and depression by comparing it to a *fake lifestyle*, disseminated on social networks.

Through this, it is eye-catching the way in which contemporaneity approaches the female universe, as well as the imposition of female inferiority over the years, which indicates the hypervulnerability of the consumer for only being a woman.

In this way, influencers, by exerting a greater influence in relation to a certain group, precisely because they demonstrate greater safety in the use of the indicated product, can generate psychological



problems by pressuring Internet users to buy, they must as well as their suppliers be civilly liable for damages caused to consumers by illicit advertising or by problems arising from the products.

#### **4 THE HYPERVULNERABILITY OF THE CONSUMER IN THE FACE OF E-COMMERCE – MANIPULATION AND LEAKAGE OF PERSONAL DATA – AND OF THE CONSUMER IN THE FACE OF THE *PINK TAX*.**

In the course of the previous chapters, it was discussed that in today's society there has been the advancement of technological means, one of them being the emergence of the internet and social networks. In view of this, it can be seen that the internet has expanded to the point that practically all relationships have started to be carried out through it, and even the Brazilian legislative system has to cover them.

This statement can be verified through the ICT Household 2019 survey, carried out by the Regional Center for Studies for the Development of the Information Society, which states that Brazil has about 134 million Internet users, representing 74% of the population that accessed the internet at least once in the last three months, with approximately 39% of users buying products and services over the Internet in the twelve months prior to the survey.

It should be noted that with the advancement of this new technology, there have been several transformations, especially in commercial relations, causing impacts on legal businesses that have generated the advent of e-commerce, which has triggered several changes in the consumer market, especially during the pandemic that practically forced suppliers to use the digital medium to be able to sell their services or products.

In view of the above, it is clear that e-commerce is a commercial transaction carried out in a digital environment through electronic means, in which the parties do not have any physical contact, which causes extinction in terms of geographical distance and reduces the costs arising from legal business, given that suppliers do not spend on equipment installations. with establishments, even with employees and among others.

As a result, there have been several changes in consumer relations, which have caused both benefits and harms for the parties. As far as consumers are concerned, they had the privilege of obtaining any purchase with just "one click", having a greater and faster search for prices and quality of goods, being able to reduce travel costs and save time.

As for the suppliers, in addition to reducing costs, they acquired the possibility of carrying out the so-called *marketing* digital, which can be done on any virtual platform, which is aimed at different groups, which leads to consumerism, making people buy something they don't need, increasing the profit of companies.

That said, the development of digital marketing was obtained , which would be:



(...) a segmented marketing, through the appreciation of groups and individual interests, and which uses techniques that help in the discovery of the activities of consumers on the network when they access the sites, shaping the online advertising according to the clicks of the consumer-Internet user (SANTOS, 2009, p.80).

Thus, it is noted that this *marketing* presents several divergences as to what is seen on television, which has certain times to appear and shows the advertising of goods that are not related to the taste of the viewers, which is completely different from the digital that demonstrates products and services in any period, which are directed directly to Internet users.

However, this form of advertising has caused a major problem for Internet users, which would be the need to be cautious about the content they access on the internet, since the development of this has caused the fulfillment of various irregularities and even illicit activities on the part of suppliers.

One of the main irregularities would be the violation of privacy and intimacy, with the manipulation of personal data, which in the virtual sphere has the purpose of generating information, news and advertisements directed to the particularities of Internet users, inducing them to buy products and services they do not need, making the consumer more vulnerable to this consumer society.

This "phenomenon" is due to the data storage technology carried out by companies – such as the example above of *Netflix* – and by data sharing – such as the store in *the Facebook feed* – , common practices of companies, authorized by the user to use their personal data from the moment they click on the button to accept the terms and conditions and use, or the cookie acceptance button. (ROCK; MAZIVEIRO, 2020, p. 21).

Thus, it is observed that users do not have full technical knowledge to be able to understand the seriousness of the situation regarding their consent in the terms and conditions of use provided on digital platforms - such as *Facebook*, *Instagram*, *Google*, *Amazon* and others - since they collect and store data, transmitting it to suppliers, without the consent of Internet users, in order to obtain profits. The biggest example of this was the case of *Facebook*, which sold its users' data to be used for political purposes, which influenced the US presidential election won by Donald Trump.

Individuals voluntarily provide their data, knowingly or unknowingly, through just one *click*, in the search for access to the services offered by applications and digital platforms. All this range of information produces the so-called *Big Data*, which consists of a large amount of collected data that is stored, analyzed, categorized and classified by computers using supposedly neutral algorithms. (BASTOS; MIRANDA, 2020, p.136).

In addition, it is worth noting that when Internet users search online, especially in the *Google.com* for certain services or products, they give rise to the ability to create very personal profiles to meet people's individualized taste, and this is extremely used by supplier companies to direct their advertising with offers and prices specific to that profile, in order to increase the chances of buying from their products. wares.



This practice is called targeted advertising, which consists of cross-referencing information in order to generate very personal profiles of users. This data is increasingly stored and subjected to an organization and filter process, generating a complete profile of the consumer, making it possible to know their preferences and needs instantly. (BARRETO FILHO, 2019, p. 23).

In addition, the practice of this targeted advertising is carried out through *cookies*, by accepting this policy of a particular *website* or social network, users are at the mercy of the providers, since *cookies* are data generated with the purpose of identifying the user and obtaining their browsing habits (*websites* who you visit the most) and consumption, as a result, the browser allows full access to your personal preferences, such as religion, sexual orientation, interests in certain websites and others.

However, by consenting to this marketing technique, the Internet user passes on to the supplier companies certain functions that benefit them by assisting in the sale of their services and products, these functions are:

(...) (i) notify the "vendor" that a particular consumer has returned to the site for a search; (ii) automatically customize the screen with the preferences of that identified consumer or even for their last purchase, (...) if the customer wants to continue the purchase at the point where they left off, they will "remember" what they had in their "cart", making it unnecessary for the consumer to restart the process; (iii) keep the consumer's identification and password when transported to another page; (iv) maintain a list of the pages visited by the consumer on a given day and time (...). (SANTOS, 2009, p.84).

In view of this, it can be seen that the suppliers that use this digital commerce strive to cover up the manipulation and leakage of the personal data of Internet users, to prevent them from understanding the seriousness of this violation of privacy, since the breach of trust with these consumers can lead to great losses, fines and even lawsuits due to the "security breach".

Therefore, it is clear that when the consumer enters into a legal transaction, in person, he has autonomy of will, the advantage of knowing precisely if the product is in perfect condition and is not obliged to agree to a *cookie* policy and terms and conditions of use to make a purchase, that is, his privacy regarding his preferences remains hidden from third parties. It is totally different from those celebrated virtually, which are not negotiated and the consumer is coerced in practice to consent to the terms in order to browse and buy.

In addition, it is clear that this new consumer relationship causes an aggravated vulnerability, and digital consumers can be called hypervulnerable, given that it feeds on the fragilities of individuals, such as the lack of knowledge when faced with these technological innovations, it would also be in order to reinforce that such people need greater protection regarding their right to privacy.

However, many times the user clicks to accept the terms or *cookies* of the electronic addresses without even understanding that he has just granted the company some minimum data that will be continuously used to filter personal preferences and serve for market strategies. It is understood that such "consent" is not as informed and unambiguous as the legislator would like it to be (ROCHA; MAZIVEIRO, 2020, p.7).





Such propaganda feeds on and extracts its good results from ignorance, pain, suffering, low self-esteem, and other similar states of vulnerability to offer products or people that, "coincidentally", appear as a – possible or certain – solution to alleviate such states of vulnerability (BASTOS; MIRANDA, 2020, p. 141).

Finally, the imbalance between the parties in this consumer relationship is evident, due to the fact that the consumer does not have full knowledge about such technologies, and because he is coerced to choose between his privacy and access to these new technologies so as not to be isolated from certain groups and to be able to use the benefits available in this digital environment. However, in doing so, they renounce their intimacy, autonomy and freedom, and may become hostage to these digital platforms and applications.

Over the years, the modification of consumer relations had been observed throughout the chapters, in which, despite the flexibility and facilitation of online means of purchase, the consumer was not exempt from the abusive practices that companies carried out, as Carmo and Motta (2020) argue, the *internet* – which would be an environment in which consumers should have a better range of freedom of choice – ends up reflecting the same abusive practices carried out by the physical sector.

In view of this, the forms of abusive practices have accompanied the modernization of consumer relations, however, the CDC does not protect the consumer in some of them, given that our code was written in the last century, a period before globalization and the facilitation of access to digital media.

Consumer harassment in the digital sphere gave rise to the so-called *Surveillance Capitalism*, a concept named by Professor Shoshana Zuboff that alludes to the idea of companies providing user data to a certain *website* for companies to resize ads for potential consumers, who become hostage to their own research, as explained above.

In her article *Consumer Harassment in the Virtual Environment: Facing the Hypervulnerability of Pregnant Women*, the doctinaire Isabelle de Assunção Rodrigues (2020) states that:

Today, our data is a hugely profitable asset that helps transform some technology companies into some of the most profitable and powerful of any business segment on the planet. And every day, we give them our data more voluntarily in a variety of ways." (RODRIGUES, 2020, p.254)

As mentioned before, women have constantly been harassed with advertisements in their daily lives, from this, with the modernization of consumer relations, we observe the dishonesty of the market growing more and more without the help or state protection for the protection of this consumer.

Carvalho and Leal (2020, p. 159) add that "consumer harassment is an affront to the individual's intimacy, having important consequences for their lives, including the idea they have of themselves, their self-esteem, and the way they are perceived by the community, this is their image."



From this, we can observe the industry dictating behaviors of a society, shaping aesthetic and stereotyped standards, leading women to the boring search for perfection.

Thus, there is a double vulnerability in female consumption, the first as potential consumers of the product – the weakest link in the consumerist relationship – and the second due to the logic of the current market: consumerist abusiveness against women.

When we add *up Surveillance Capitalism* together with the harassment of women, we can see the large companies in the beauty industry enter the female psyche, and from there, create a pattern of consumption.

Phillip Kotler, Hermawan Kartajaya and Iwan Setiawan – well-known authors among *marketers* – argue that women are a highly desired target audience for targeted *marketing actions*, as well as young people and *netizens* – "citizens of the internet". They point out that women are: i) collectors of information, as they make the purchase decision differently from men, in a more analytical way; ii) holistic buyers, as they analyze all aspects inherent to a potential purchase, from emotions to price and characteristic; iii) domestic managers, as there are data that indicate that they are the ones who usually manage domestic purchases of products and services that serve the whole family (VERBICARO et al., 2020, p.252).

Social networks are one of the essential communication vehicles for the dictatorship of beauty, with the targeting of advertising to a particular consumer dictating aesthetic standards, in addition to collecting *through cookies* and providing that consumer's data to interested companies.

In addition, another boring reality faced by women would be the fact that their products have higher prices when compared to products aimed at men.

The *Department of Consumer Affairs* (DCA) of New York City, in 2015, carried out a study proving that women pay more on products similar to men's, from then on the term *pink tax* originated.

Let's look at the price comparisons:

Figure 2 – The differentiation of prices between similar products for both sexes:

**PINK TAX**  
Produtos e serviços femininos custam mais caro

Homens		Mulheres
a partir de R\$180	Corte de cabelo no Jacques Janine da rua Augusta, em São Paulo	R\$220
R\$ 8,55, pacote com 6 unidades da Preserv	Preservativo	R\$ 8,60, pacote com 1 unidade da Della
R\$ 9,99, Gillette Prestobarba3	Lâminas de depilar e barbear	R\$ 11,73, Gillette Prestobarba3
R\$ 99	Camisa social na liquidação da Zara	R\$ 139
R\$ 19,99	Camiseta básica de algodão da Hering	R\$ 26,99
R\$ 219	Calça jeans modelo 501 da Levi's	R\$ 369

Fontes: sites e lojas

Source: Folha de São Paulo (2015, online)



The habit of consuming is directly linked to the woman wrongly. In the past, she was the one who needed to clothe and manage her family, so they use this basic principle of economics to determine prices for the products supplied.

The amount of products offered – your offer – is determined by the sellers. It is influenced by the price of that product in the market, the cost of inputs, and technology, for example. On the other hand, it is the consumer who establishes the demand. The demand for a product depends on factors such as its price, the purchasing power of the population, tastes and fashion, the existence of similar or substitute products in the market, among others. (FINANCIAL JOURNAL, 2021, online).

From this, the sexism of the market in relation to women is crystal clear, placing them in situations of devaluation and in a discriminatory way. Through this, we found that the female sex is a constant target – if not the main one – of moral harassment by large companies, thus, the hypervulnerability of this category in the digital environment is notorious.

Therefore, it is clear that these consumers need to be protected and react to these transformations in the consumer relationship, making use of the Brazilian legislative system, which has been presenting rules to cover these changes – Marco Civil and the General Data Protection Law – and consumer empowerment.

## **5 PROTECTIVE MEASURES THAT ENSURE THE PROTECTION OF CONSUMER RIGHTS – THE CDC, THE CIVIL RIGHTS FRAMEWORK FOR THE INTERNET, THE LGDP AND WOMEN'S EMPOWERMENT**

As previously glimpsed in the course of the chapters, consumer relations have been developed in the digital environment, more and more people prefer to make purchases of goods or services with just "one click" and in a matter of minutes in the comfort of their homes than to go to a commercial establishment.

In this way, gradually the Consumer Protection Code is trying to apply its articles to support the rights of consumers in e-commerce, taking into account that it is in a vulnerable position and with the development of technological means some doctrinaires have come to characterize the consumer as hypervulnerable - aggravation of the vulnerability of the individual consumer - being even more necessary the state intervention to ensure the protection of consumers their basic rights, which is provided for in article 6 of the CDC.

The growth of these technological means brought the *internet*, as mentioned above in previous chapters, which triggered the creation of social networks that envision the maintenance of image, appearance, being used as a mechanism to propagate the advertising of goods or services and induce the consumerism of people who use these platforms, and one of the main means of induction would be digital influencers.



However, as this profession emerged after the creation of the CDC, it has applied its articles in an analogous way in order to entail a civil liability to these professionals, since they have generated emotional problems to their followers by influencing them to make purchases of the products they advertise, thus, some doctrinaires have broadened the understanding of these articles in order to fit them into these new consumer relations.

Thus, this understanding is the same as that of the doctrinaire Priscila Wândega Jezler, who states as follows:

Consumer legislation provides for the solidarity of the supply chain, as provided for in articles 7, sole paragraph, and 25, § 1, of the CDC165; In this way, "everyone who has intervened in the advertising act will be held responsible if there is deception and abusiveness." It was the chosen way for those who participate, directly or indirectly, in the consumer relationship, to be liable for the damages caused to the consumer. (JEZLER, 2017, p.56)

In addition, with the same thought, the doctrinaires Gasparotto, Freitas and Efing, in a scientific article "Civil Liability of Digital Influencers", on p.79 allege that:

When a digital influencer indicates a product or service, their reliability adds persuasive power to consumer behavior, generating security about the quality of that product or service that is being indicated. Influencers therefore assume a position of guarantors in the face of the products and services indicated. If the qualities attributed to the products and services are not consistent with reality, the persuasion factor of the influencers appear in a negative and harmful way to the consumer, thus confronting the principles of good faith and trust. (GASPAROTTO; FREITAS AND EFING, 2019, p. 79)

In view of this, it can be seen that there are several gaps in the Consumer Code (CDC) regarding the punishability of digital influencers, since this Law has not kept up with the growth of the digital market, and the judiciary has to use extensive interpretation to solve concrete cases on this topic.

In view of this, since it is well known, the CDC applies strict liability to the person who caused the damage, as provided for in the theory of risk that is regulated in article 12 of this Code, which provides that suppliers and others are liable regardless of fault for defects or vices of the product or its services.

The doctrinaire Zelmo Denari follows the same thought when he states that

In the context of consumer relations, the guidelines of strict liability were soon accepted and called 'liability for the fact of the product': it was not interesting to investigate the conduct of the supplier of goods or services, but only if there was cause (causal liability) to the product or service, being responsible for its placement on the consumer market. (GRINOVER et al., 2001, p. 159).

However, when dealing with the civil liability of the "*digital influencer*", in the majority understanding of the doctrinaires, they are jointly and severally liable for the reparation of damages due to the abusive dissemination of the product or service offered, as provided for in article 7, sole paragraph and article 25, paragraph 1 of the CDC. This is because the influencer's advertising is one



of the determining factors for their followers to make the purchase, since it conveys a sense of security to the purchaser of the product and the fact that this service generates profits.

The same understanding is mentioned by Gonçalves (2012, p.54), who reports that: "The one who profits from a situation must answer for the risk or disadvantages resulting from it"

However, the Superior Court of Justice (STJ) has a minority understanding, which argues that digital influencers should not be blamed for the advertising service provided, given that there is no consumer relationship with their followers and they do not qualify as a supplier based on articles 3, 36, sole paragraph, and article 38 of Law 8.078/1990. Such an interpretation is envisaged in the following case-law of the above-mentioned Court:

CIVIL AND PROCEDURAL. COLLECTION ACTION, CUMULATED WITH COMPENSATION FOR MORAL DAMAGES. CONTRACTING A LOAN WITH A FINANCIAL INSTITUTION. DEPOSIT OF AMOUNT AS A FIRST INSTALMENT. BORROWED CREDIT NOT GRANTED. ATTRIBUTION OF CIVIL LIABILITY TO THE SERVICE PROVIDER AND TO THE TELEVISION NETWORK THAT, IN ITS PROGRAM, PRESENTED ADVERTISEMENTS FOR THE PRODUCT AND SERVICE. "STAGE ADVERTISING". FEATURES. PURPOSE. ABSENCE OF GUARANTEE, BY THE BROADCASTER, OF THE QUALITY OF THE GOOD OR SERVICE ADVERTISED. MERE ADVERTISING PLACEMENT. EXCLUSION FROM LITIGATION. PROCRASTINATORY FINE IMPOSED BY THE ORDINARY COURT. PURPOSE OF PRE-QUESTIONING. EXCLUSION. PRECEDENT N.98-STJ. CDC, ARTS. 3, 12, 14, 18, 20, 36, SOLE PARAGRAPH, AND 38; CPC, ART. 267, VI. I. The responsibility for the quality of the product or service advertised to the consumer is of the respective supplier, thus conceptualized under the terms of article 3 of Law No. 8,078/1990, and does not extend to the communication company that broadcasts the advertisement through a presenter during a television program, called "stage advertising". II. Thus, it is necessary to exclude from the litigation, due to passive illegitimacy ad causam, the television station, since it cannot be attributed to it co-responsibility for presenting advertising from a financial company, also a defendant in the action, which would have failed to provide the loan to the viewer under the conditions promised in the advertisement. III. "Motions for clarification filed with a notorious purpose of pre-questioning do not have a delaying character" (Precedent No. 98/STJ). IV. Special appeal heard and granted. (STJ - REsp: 1157228 RS 2009/0188460-8, Rapporteur: Justice ALDIR PASSARINHO JUNIOR, Judgment Date: 02/03/2011, T4 - FOURTH PANEL, Publication Date: DJe 04/27/2011). (BRAZIL. Superior Court of Justice (4. Class). REsp: 1157228. CIVIL AND PROCEDURAL. COLLECTION ACTION, CUMULATED WITH COMPENSATION FOR MORAL DAMAGES. CONTRACTING A LOAN WITH A FINANCIAL INSTITUTION. DEPOSIT OF AMOUNT AS A FIRST INSTALMENT. BORROWED CREDIT NOT GRANTED. ATTRIBUTION OF CIVIL LIABILITY TO THE SERVICE PROVIDER AND TO THE TELEVISION NETWORK THAT, IN ITS PROGRAM, PRESENTED ADVERTISEMENTS FOR THE PRODUCT AND SERVICE. "STAGE ADVERTISING". FEATURES. PURPOSE. ABSENCE OF GUARANTEE, BY THE BROADCASTER, OF THE QUALITY OF THE GOOD OR SERVICE ADVERTISED. MERE ADVERTISING PLACEMENT. EXCLUSION FROM LITIGATION. PROCRASTINATORY FINE IMPOSED BY THE ORDINARY COURT. PURPOSE OF PRE-QUESTIONING. EXCLUSION. PRECEDENT N.98-STJ. CDC, ARTS. 3, 12, 14, 18, 20, 36, SOLE PARAGRAPH, AND 38; CPC, ART. 267, VI. I. Appellant: Rádio e Televisão Bandeirantes LTDA. Defendant: Paulo Roberto Merg Jardim. Rapporteur: Minister Aldir Passarinho Junior, February 3, 2011. (BRAZIL, 2011, ONLINE)

Therefore, as previously mentioned, such professionals have great power of persuasion over their followers on social networks, also having their reliability and by exercising their activity they



acquire an economic incentive. Because of this, they must be held objectively liable, by virtue of the principles of good faith and solidarity.

It is necessary to emphasize that the legislator chose to protect the most vulnerable part of the consumer relationship, which is the consumer, since the capitalist system tends to impose its will on them, making consumers subject to contract their services obeying rules already established only by the supplying party, which limit choices and rights because of the standardization of products and services. to the established contractual model, an example of which is adhesion contracts. Because of this, the State has been increasingly intervening in this relationship, with the creation of rules aimed at supporting the consumer in this digital environment.

Thus, it is contemplated that with the advent of the *internet*, the user was exposed to several damages which were difficult to repair in a comprehensive way, with this in 2009 the Civil Rights Framework for the Internet in Brazil emerged, which originated goals for collaboration and participation in debates – both in the physical and virtual environment.

From this milestone, in 2014 the President of the Republic sanctioned Law 12.965/2014, the Law of the Civil Digital Framework, such law addresses in its texts rights and duties for the use of the *internet*, in addition to regulating specific topics such as the protection of records, personal data and private communications, net neutrality, the civil liability of internet connection providers and applications, the keeping of records and their eventual requisition by the authorities.

In view of the above, the Marco Civil was one of the first Brazilian legislations that protected the environment of cyberspace, which led to additional protection for the consumer.

In addition, there was another rule on this subject is the General Personal Data Protection Law – LGPD that came into force in August 2020, which provides for the protection of personal data of individuals or legal entities, in order to regulate the rights of freedom, privacy and development of the personality of the natural person, as set out in art.1 of this legislation.

Such legislation addresses the pillar principles that helped in its creation, which would be the principles of Net Neutrality, Privacy and Data Retention.

As for the principle of Neutrality, it provides that the provision of *internet* made available by companies must treat access equally, without restrictions to the Internet user who wishes to browse, the privacy principle guarantees Internet users the inviolability of their intimacy and personal life to third parties, without their consent and data retention determines that only for one year the storage of data records can occur, under penalty of a court order if the deadline is extended.

Thus, the LGPD seeks to ensure that the personal data that companies have access to is used in good faith, following principles such as purpose, necessity, transparency and security. In this sense, the data must be processed in a legitimate manner and informed in a clear and precise manner to the holder to serve what is strictly necessary for the purposes of the company, and there must be technical and administrative measures for the protection of personal data



from unauthorized access and from accidental or unlawful situations of destruction, loss, alteration, communication or dissemination. (ROCK; MAZIVEIRO, 2020, p. 6).

However, with the development of the digital environment, this legislation finds it difficult to protect the personal data of browsers, considering that they easily agree to transfer their data to websites by just "one click", of their own free will, without reading or informing themselves properly about what they are accepting or the consequences that may be caused by this storage.

"However, it is more than common for the owner to accept *cookies* from electronic addresses without even reading the small letters informing that he is making his data available free of charge" (ROCHA; MAZIVIERO, 2020, p. 6).

The aforementioned rule makes it clear that the user, when consenting to share their data, must be autonomous, informed and aware that they have agreed to transfer them for a specific purpose, based on article 5, XII of the aforementioned Law. Such "consent" is provided by the acceptance of the terms and conditions of use and the acceptance of *cookies* that are made available on all websites.

However, this procedure to view the acceptance of Internet users is similar to the adhesion contract, which is provided for in article 54 of the Consumer Protection Code, which has its contractual clauses established unilaterally by the supplier. In this way, the consumer cannot decide what data they want to provide and must only agree to it if they want to make use of the service or product, so this consent is seen as involuntary.

"False consent, then, causes the consumer's privacy to be violated, since they are unable to modulate or select the data they want to provide to companies, nor decide not to provide any data, as it is an adhesion contract." (ROCK; MAZIVIERO, 2020, p. 6).

It should be noted that the LGPD is silent as to how this term of acceptance and conditions of use and acceptance of *cookies* should be made available to users, in addition, it presents a lack of information when explaining to the consumer what can come from agreeing to this procedure, given that it is clear that there is an imbalance in this relationship, since the supplier carries more information about this situation than the consumer, the latter remains vulnerable to this relationship, and should have greater protection.

Therefore, the aforementioned Law must undergo some changes, such as requiring companies to establish a term in which the user can choose which data they want to share and even if they do not accept this term they can continue browsing the page without any obstacles. In addition, you must clearly demonstrate information about the results that may be generated by sharing your personal data.

In addition, as the right to information is essential in consumer relations, it is necessary to insert a provision in the law that determines that consent must be obtained from the availability to the user of the personal and sensitive data that the company intends to collect, so that he can select which ones he wants to provide – if any. Only in this way, consent will truly be "free, informed and unambiguous", under the terms of article 5, item XII, of the LGPD. (ROCK; MAZIVEIRO, 2020, p. 14).



Throughout this work, the protection of the female sex in the consumer market has become crystal clear. As we have already discussed, advertising companies prioritize knowing their target audience by directing advertisements to them through languages that dialogue directly with the consumer.

However, over the years, the consumer has come to disidentify with the advertisements of female stereotypes – the "beautiful", delicate and jovial – in view of this, the new generation that has become economically active has valued brands that have *Branding* – the company's identity – more consistent with the reality of the standards.

From this milestone, a movement called *femvertising* emerged, which emerged to combat *marketing* and advertising with which women no longer identify. Therefore, prejudices, incoherent perfection and social barriers only tend to repel this audience more and more.

Bayone and Burrowes (2019, p. 25) alluded that:

To this end, one of the currents used is *femvertising*, a term that comes from the combination of the English words *feminism* and *advertising*. The term gained notoriety at the event called *Advertising Week in New York*, when it was discussed by the executive director of the media platform Sheknows, Samantha Skey.

We have observed the intensification of this type of advertising strategy expanding in the media, mainly through sharing applications and social networks, where it has as its main focus the "viralization" causing greater repercussion for the brand. The strategy of bringing the company and the consumer closer together is clear, since it promotes an identification between the products and services provided with its target audience.

"According to a survey conducted by the National Confederation of Shopkeepers and SPC Brasil (CDL, 2016), 64.8% of women admitted that social networks influence their shopping habits." (BAYONE; BURROWES, 2019, p.27). In view of this, it is notorious that the *online* environment is a way to boost brand searches and disseminate products and services that benefit *from femvesting*.

An example that reverberated worldwide was the Savage X Fenty brand, whose *lingerie* brand created by singer Rihanna presented models with different body shapes and colors at one of the biggest annual fashion events – *New York Fashion Week* (ELLE, 2020). This event was a milestone in the fashion industry, as it was out of step with the plastic and objectified hypersexualization of fashion shows in this segment.

The *marketing* strategy was consecrated and soon took on great proportions in sharing apps and social networks, with this, the company was on par with major underwear brands already consolidated for years in the market.





Another example that had national repercussions was Avon's advertisement in 2021, which demonstrated different types of skin using its products, exposing people of different genders and colors, bringing the use of makeup closer not only in a beauty ritual, but in a way of expressing oneself.

Therefore, it is observed that it is essential that the brand not only incorporates in its advertising pieces, but also integrates practices that promote gender equality and female empowerment into the companies' policies.

## 6 CONCLUSION

By way of conclusion, it was observed that with the growth of technological means there was the emergence of the *internet* that triggered several changes in consumer relations, one that occurs through the digital medium, and it is not necessary for the parties to be present in person to agree on an agreement for the purchase of services or products, being able to carry them out in the comfort of their home.

However, even with beneficial changes, this relationship generated more harm for consumers, who came to be considered hypervulnerable, due to the lack of knowledge about the consequences caused by the consent to make their personal data available to companies.

As a result, as mentioned above, the disparity between the consumer and the supplier was clear, since the same, due to the fact that they do not have a full understanding of this new development of "*marketing*", need to be cautious when making purchases or accessing *online* services, since entrepreneurs have used this medium only for their own benefit, which has caused, Most of the time, abusive and unlawful conduct, as these have deprived the consumer of consent autonomously and voluntarily.

In view of this context, there is a need for greater improvement in the supervision and application of laws aimed at consumption in e-commerce, greater disclosure of information regarding the results caused by the exposure of personal data – this is glimpsed in Banco Itaú's advertisement (Privacy – Autograph, 2021) -, making it clear what targeted advertising, *cookies* would be and among others. In addition, provide users with the option to decide what data they want to provide and leave them free to enjoy the service without the need to be required to consent to the sharing of their personal information.

In addition, it is worth noting that such a scenario has led to even more disadvantages for the female sex who over the years has persistently fought to ensure their equal treatment with the male gender, however, there is currently asymmetry in the consumer market regarding the treatment given to women, who are the main targets of advertising and price increases in goods - *pink tax* - which has stimulated emotional and psychological problems, such as overconsumption to achieve a "perfect beauty".



In this way, the culture industry makes female beauty related to the beautiful and youthful, inducing that to achieve such "beauty" it needs to undergo various aesthetic procedures, such as *botox*, lip fillers, hair painting and others. However, as mentioned above, some companies in their advertising media have over time changed this definition of beauty, demonstrating various genders, ethnicities, bodies and different hair, making it clear that beauty can exist in different forms.

Due to this scenario, it was possible to provide greater visibility to female empowerment, so the Government together with the female public should encourage companies to sign the Women's Empowerment Principles, and should make public their commitment to gender equality, since about 79% of women positively associate brands that promote ads that incite gender equality based on the recent survey carried out by *Facebooktag*.

Finally, there is no doubt that even in this new scenario, the consumer, especially women, requires greater legal protection and more intervention by the State in the relationships carried out in the digital sphere, as a result of the hypervulnerability that they find themselves in.



## REFERENCES

ANDRADE, B. Tudo sobre comidinhas da terra. You Tube. 1 dez. 201. Disponível em: <https://www.youtube.com/watch?v=TCYbVmie85U>. Acesso em: 05 abr. 2021.

ARAÚJO, T. B. S. de. A proteção de dados e os direitos do consumidor no Brasil: Perspectivas e Considerações em face da Lei Geral de Proteção de Dados. 2019. (Trabalho de Conclusão de Curso de Bacharel em Direito) - Ministério da Educação Universidade Federal de Pernambuco Centro de Ciências Jurídicas Faculdade de Direito do Recife. Universidade Federal de Pernambuco, Recife, 2019.

AVON POWER STAY. Maquiagem que resiste e #VeioPraFicar. Música: Avon Ta On. You tube. 4 abr. 2021. Son., color. Disponível em: <https://www.youtube.com/watch?v=IdH7p0bv4XE>. Acesso em: 12 maio 2021.

BARRETO FILHO, M. V. R. B. Os Contornos Jurídicos da Lei Geral de Proteção de Dados Frente ao Consumo no Ambiente Virtual. (Trabalho de Conclusão de Curso de Direito). Universidade Federal da Paraíba. Santa Rita, p. 51. 2019.

BASAN, A. P. O Direito de Proteção de Dados Pessoais e a Busca pelo Sossego na Sociedade da Informação: Publicidades Virtuais e o Assédio de Consumo como Dano. 31 de agosto de 2020. (Doutorado em Direito). Universidade do Vale do Rio dos Sinos. Programa de Pós-Graduação em Direito. São Leopoldo, RS, 2020.

BASTOS, E.A. V. B.; MIRANDA, C. P. T. de. Sociedade em Rede, Novas tecnologias, Privacidade, Consumo e Vulnerabilidade: Necessidade de Proteção Eficiente do Consumidor no Ambiente das Novas Tecnologias de Informação e Comunicação. Lumen Juris, Rio de Janeiro, p. 125-154, 2020.

BAYONE, A. M.; BURROWES, P. C. Como ser mulher na publicidade: femvertising e as novas representações do feminino. Consumer Behavior Review, v. 3, n. 1, p.24-37, 2019.

BRASIL. STJ. Ementa REsp nº 1.157.228 - RS (2009/0188460-8). Relator: Aldir Passarinho Junior. Brasília, DF de 2011. Diário Oficial da União. Brasília, 03 fev. 2011. Disponível em: [https://processo.stj.jus.br/processo/revista/documento/mediado/?componente=ATC&sequencial=13729093&num\\_registro=200901884608&data=20110427&tipo=5&formato=PDF](https://processo.stj.jus.br/processo/revista/documento/mediado/?componente=ATC&sequencial=13729093&num_registro=200901884608&data=20110427&tipo=5&formato=PDF). Acesso em: 21 jun. 2021.

CANTO, R. E. A Vulnerabilidade dos Consumidores no Comércio Eletrônico e a Reconstrução da Confiança na Atualização do Código de Defesa do Consumidor. 2014. Dissertação de mestrado (Mestrado em Direito) - Universidade Federal do Rio Grande do Sul Faculdade de Ciências Jurídicas e Sociais Programa de Pós-Graduação em Direito. Porto Alegre, 2014.

CARMO, A. R. DO.; MOTTA, C. G. A vulnerabilidade do Gênero Feminino no Ambiente Virtual: um mal antigo no novo mercado. In: VERBICARO, Dennis; VERBICARO, Loiane Prado; FERREIRA, Janaína. Direito do Consumidor Digital. Rio de Janeiro: Editora Lumen Juris, p. 235, 2020.

CARVALHO, B. B.; LEAL, P. S. T. O Paradoxo entre o Assédio de Consumo e a Intimidade na Sociedade do Espetáculo. In: VERBICARO, Dennis; VERBICARO, Loiane Prado; FERREIRA, Janaína. Direito do Consumidor Digital. Rio de Janeiro: Editora Lumen Juris, p. 159, 2020.

COHET-CORDEY, F. (org.). Vulnerabilité et droit: Le développement de la vulnérabilité et ses enjeux en droit. Grenoble: Presses Universitaires de Grenoble, 244, 2000.



DIÁRIO FINANCEIRO. O que é oferta e demanda? Disponível em: <https://www.dicionariofinanceiro.com/oferta-e-demanda/>. Acesso em: 23 abr. 2021.

DMTV GOIÂNIA. *Blogueira Boca Rosa mente sobre lipo e é criticada na internet*. You Tube. 7 dez. 2017. Disponível em: <https://www.youtube.com/watch?v=-qMggKr1rPQ>. Acesso em: 05 abr. 2021.

ELLE. Rio de Janeiro: Editora Abril, 02 out. 2020. Mensal. Disponível em: <https://elle.com.br/moda/rihanna-faz-tudo-mais-uma-vez-com-desfile-da-savage-x-fenty>. Acesso em: 12 maio 2021.

ESTADO DE MINAS. Influencer morreu após ter intestino perfurado durante lipo, diz laudo. Uai, 2021. Disponível em: <https://www.uai.com.br/app/noticia/e-mais/2021/02/03/noticia-e-mais,267729/influencer-morreu-apos-ter-intestino-perfurado-durante-lipo-diz-laudo.shtml>. Acesso em: 05 abr. 2021.

ESTUDO: consumidores brasileiros e a influência dos anúncios nas redes sociais. 2013. Disponível em: <https://canaltech.com.br/publicidade/Estudo-consumidores-brasileiros-e-a-influencia-dos-anuncios-nas-redes-sociais/>. Acesso em: 12 maio 2021.

FELIX, E. C. O papel das influenciadoras digitais no processo de decisão de compra. 2017. (Trabalho de Conclusão de Curso em Administração). Ciências Administrativas, Universidade Federal do Rio Grande do Norte, Natal, 2017.

FONSECA, V. Fiz uma cirurgia de risco!!!. You Tube. 27 ago. 2020. Disponível em: <https://www.youtube.com/watch?v=bjKq7j1WrQY>. Acesso em: 05 abr. 2021.

GAZUREK, M. Para uma compreensão do ato do consumo\*. Ponto-e-Vírgula: Revista de Ciências Sociais, São Paulo, p. 116, 2012.

GONÇALVES, C. R. Responsabilidade Civil. 14<sup>a</sup> ed. São Paulo: Saraiva, 2012, p. 54.

GRINOVER, A P.; BENJAMIN, A. H. V. DE.; FINK, D. R.; WATANABE, K.; JUNIOR, N. N.; DENARI, Z. Código Brasileiro de Defesa do Consumidor: comentado pelos autores do anteprojeto. 7<sup>a</sup> ed., Rio de Janeiro: Forense Universitária, p. 159, 2001.

KONDER, C. N. Vulnerabilidade patrimonial e vulnerabilidade existencial: por um sistema diferenciador. Revista de Direito do Consumidor, v. 99, p.101-123, 2015.

KOTLER, P. Marketing Management. New Jersey, Prentice-Hall, 1998, p. 587.

MELO, N. D. de. Dano Moral nas Relações de consumo. 2<sup>a</sup> ed. rev. e ampl – São Paulo: Saraiva, 2012 apud Sanseverino, Paulo de Tarso Vieira – Responsabilidade civil no Código do Consumidor..., São Paulo: Ed. Saraiva, 2002

RICCO, A. S.; OLIVEIRA, D. B. A influência do marketing e o comportamento da consumidora no processo de compra de produtos com taxa rosa. Espaço e Tempo Midiáticos: Revista do Grupo de Pesquisa Mídias e Territorialidades Ameaçadas, v. 2, n. 1, p. 111-126, 2017.

ROCHA, L. A. G. S.; MAZIVIERO, L. N. Por um clique: Como a Lei Geral de Proteção de Dados Pessoais possibilita o “Consentimento Involuntário” de Fornecimento de Informações de Particulares à Empresa. Editora: Lumen Juris, Rio de Janeiro, p. 3-24, 2020.



RODRIGUES, I. A. O Assédio de Consumo no Ambiente Virtual Diante da Hipervulnerabilidade da Gestante. In: VERBICARO, Dennis; VERBICARO, Loiane Prado; FERREIRA, Janaína. Direito do Consumidor Digital. Rio de Janeiro: Editora Lumen Juris, 2020. p. 254.

SANT'ANNA, A.; JÚNIOR, I. R.; GARCIA, L. F. D. Propaganda, teoria, técnica e prática. 9º ed. Editora: Cengage Learning, 2015.

SANT'ANNA, A. Propaganda, teoria, técnica e prática. 9ª ed. Editora: Revista, p. 75, 2015.

SANTOS, D. P. P. dos. Vulnerabilidade Existencial na Internet. In: IV Congresso do IBDCivil, 2019. Belo Horizonte. Da dogmática à efetividade do Direito Civil: Anais do Congresso Internacional de Direito Civil Constitucional. Fórum, p. 815, 2019.

SANTOS, F. M. A. O Marketing Digital e a Proteção do Consumidor. Tese (Mestrado em direito) - Pontifícia Universidade Católica de São Paulo - Puc-Sp. São Paulo, p. 183. 2009.

VERBICARO, D. et al. Direito do Consumidor Digital. Rio de Janeiro: Editora Lumen Juris, 2020. p. 222.

VERBICARO, D.; VERBICARO, L. P.; GALEÃO, C. A indústria cultural e o consumo sob a perspectiva da mulher. Revista de Direito do Consumidor, v. 123, n. 28, p. 77-106, 2019.

WOLF, N. O Mito da Beleza. In: WOLF, Naomi. O Mito da Beleza. Rio de Janeiro: Rosa dos Tempos, p. 17, 2018.