



3Rs of Sustainable Activism on Social Media: Relatability, Reliability and Redress

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Abstract

The achievement of sustainability goals will take a joint effort and content creators could be one of the actors helping with reaching it. Reliable but relatable communication on sustainable lifestyles on social media could reach many consumers and contribute to changing their behaviour patterns. However, the content creators' activities need to fit within certain parameters for the benefits to outweigh the costs. This article identifies three important parameters that regulation should safeguard: Relatability, reliability, and redress. A key reason why content creators have managed to establish themselves as influencers is that they are relatable. But content creators may not be able to ensure what they tell their followers is reliable. That in turn raises the question of who should be responsible for providing redress in cases of misstatements. Following the critical analysis of the European legal framework, this article considers the need for further adaptations to the current rules or even the adoption of new rules more strictly regulating sustainable activism on social media.

Keywords Content creators · Sustainable activism · Social media · Transparency · Accountability · Influencing

Regulating Sustainable Activism on Social Media

Over the past decade, children across the world have started dreaming of a career as an influencer or as a content creator (Taylor, 2019). These two terms do not, however, describe different career pathways; rather, the choice which of these terms to use stems from the intention to emphasize respectively either mass market or creative elements of the activities involved in the same profession (Bishop, 2021). The popularity of this new profession reflects the increasing importance of social media and the role that content creators can play in influencing behaviours (Trivedi & Sama, 2020). Such influence has also attracted the attention of policymakers keen to promote socially desirable goals such as sustainable consumption. The term “sustainable consumption” is used as a convenient shorthand for

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a variety of strategies aimed at reducing, changing, or improving consumption to alleviate the environmental crisis (Mont et al., 2022). Scientifically, the correctness of this term may be questioned due to any, even reduced or changed, consumption further exploiting finite Earth resources and thus continuing to contribute to unsustainability (Brown, 2015). However, the term itself embodies an important objective for policymakers, which content creators are seen as contributing to. In 2022, e.g., the Intergovernmental Panel on Climate Change (IPCC) referring to content creators as “social influencers” noted that “social influencers and thought leaders can increase the adoption of low-carbon technologies, behaviours, and lifestyles” (Shukla & Skea, 2022).

The significance of this issue is clear. Concerns about climate change have been pre-occupying scientists, environmental activists, and politicians for decades. The continued decline of our natural environment and its resources has encouraged an application of the sustainability lens to any process, transaction, or activity. Consumer law has also started trying to reconcile the concepts of safe consumption and of consumer rights with the need to promote sustainability (Hernandez et al., 2020; Mak & Terryn, 2020; Terryn, 2019; Terryn & Van Gool, 2021). The focus of new initiatives is on both mitigating the harmful impacts of consumption and influencing consumer behaviour patterns to minimize consumption. With the European Green Deal (European Commission 2019) recently leading to the adoption of several legal acts and legislative proposals, soon national legislators, consumer and market authorities, and market players will be looking to adopt the most effective measures to help with reaching the intended objectives. It is therefore timely to assess whether harnessing some of the social capital of social media (Helberger et al., 2018) should be one of those measures. Simultaneously, it is important to consider whether — and, if so, how — the claims made by content creators should be regulated. To what extent is the current legal European consumer protection framework applicable to sustainable activism practices on social media?

This paper accordingly offers an in-depth analysis of the role that social media content creators could play by promoting sustainable consumption and of the suitability of the current European consumer legal frameworks that seek to regulate such activities. It identifies three key concepts that are crucial to thinking about these issues: Relatability, reliability, and redress. A key reason why content creators have managed to establish themselves as ‘influencers’ is that they are *relatable*. But content creators may not be able to ensure what they tell their followers is *reliable*. That in turn raises the question of who should be responsible for providing *redress* in cases of misstatements.

It first sets the scene by discussing the role of online content creators in promoting sustainable consumption on social media. Drawing on several empirical studies, it suggests that content creators could be invaluable in helping to shift consumer behaviour patterns. However, it also highlights the risks to sustainable activism — defined here as an activity aimed to promote responsible citizenship and encourage individuals to recognize the impact of their activities on society (Fisk, 1973; Micheletti & Stolle, 2012; Spaargaren & Oosterveer, 2010; Willis & Schor, 2012) — on social media. It asks whether de-influencing practices, focused on responsible citizenship, can possibly remain relatable if they are at least partially motivated by content creators’ commercial interests. It further examines whether communications about the sustainable aspects of products or services can be reliable, given the lack of transparency of global supply chains combined with an imbalance of power between content creators and the parties whose interests they represent. This is particularly important where there is a link between sustainable activism and commercial interests, since content creators may then find themselves subject to legal obligations under EU consumer law, including claims for redress for having caused consumer harm.

The next part then addresses the suitability of the European consumer law framework to confront these risks. Both current and newly proposed European legal measures show policymakers' efforts to update and enhance the framework of legal protection to changing market and societal needs. However, the paper exposes three main uncertainties related to the regulation of sustainability activities of content creators on social media in the EU. First, it discusses the scope of these measures, considering the difficulties with determining the commercial character of the content creators' activity. Second, it illuminates the murky legal consequences of the power imbalance and the lack of transparency between content creators and other members of global supply chains. Third, it addresses the lack of transparency in the communication between content creators and consumers, which could lead to misleading commercial practices.

This paper starts from an assumption that through their extensive networks, content creators could play a significant role in promoting sustainable consumption. As content creators can share sustainability messages in a relatable way, they could model behaviours and banish myths on a wide scale (Townsend, 2022). However, imposing a further regulatory framework on content creators' activities, especially around assuring the reliability of communication and accountability for consumer harm, could inhibit their influence. This raises questions as to the efficacy and desirability of such a move (van Reijmersdal et al., 2016). Simultaneously, it is precisely the same, extensive scope of the content creators' influence on their followers that leads to fears of misuse and calls for further regulation. Following the critical analysis of the European legal framework, the concluding part considers the need for further adaptations to the current rules or even the adoption of new rules more strictly regulating sustainable activism on social media.

Content Creators through the Sustainability Lens

Influencing Factors

Content creators, also commonly called social, online or digital influencers, are not a homogenous group. Many never reach the celebrity status or monetization levels for which they were aiming (Goanta & Bertaglia, 2023). A legal definition could focus on criteria that are quantitative (audience or revenue size, number of content views) or qualitative (type of provided service, revenue source, type of medium used, editorial control), or any combination of these (Michaelsen et al., 2022). The definition recommended by experts in the field to the European Parliament focused on qualitative factors: "a content creator with a commercial intent, who builds trust and authenticity-based relationships with their audience (mainly on social media platforms) and engages online with commercial actors through different business models for monetisation purposes" (Michaelsen et al., 2022, p. 25). This definition still leaves some ambiguity, but could be more difficult to circumvent than a purely quantitative one. Content creators could, e.g., hide content views or spread followers' numbers across various platforms to disguise audience size. Interestingly, in the first legal act devoted to regulating influencer marketing in Europe (Loi visant à encadrer l'influence commerciale et à lutter contre les dérives des influenceurs sur les réseaux sociaux, (Loi, 2023), France adopted the following definition of content creators/influencers: "Les personnes physiques ou morales qui, à titre onéreux, mobilisent leur notoriété auprès de leur audience pour communiquer au public, par voie électronique, des contenus visant à

faire la promotion, directement ou indirectement, de biens, de services ou d'une cause quelconque exercent l'activité d'influence commerciale par voie électronique." French law emphasizes the content creators' reliance on their "reputation" ("notoriété") for commercial purposes, which is likely to stem from their trust and authenticity-based relationships.

This element of trust and authenticity-based relationships between content creators and followers is also key to the influence of content creators, as consumers are more likely to follow recommendations of content creators whom they trust (Čop et al. 2024; Hsu et al., 2013; Pop et al., 2022; Serman & Sims, 2020). Other factors that may enhance the content creators' influence, according to one recent study, include attitude, perceived usefulness, prior experience, subjective norms, and social attractiveness (Serman & Sims, 2020). This empirical study showed that if consumers approached the content creator's communication with an open mind and a positive attitude, they were more likely to be receptive to it (Lim et al., 2017). A positive attitude was more likely to be present if followers perceived content creators' recommendations as useful, i.e., when the advertising content was informative and relatable. Therefore, perceived usefulness enhances attitude and the likelihood of consumers following the content creator's recommendations (Lou & Yuan, 2019). Additionally, the content creator's familiarity and prior experience with a particular type of a product or service they are recommending was found to raise their followers' confidence in it having been properly tested. However, followers are often appropriately wary of the actual expertise of content creators with a product or a service they are promoting (Lou & Yuan, 2019). The fit of a recommended product with the given content creator's image is therefore an important influencing factor (Janssen et al. 2022). There were also "subjective norms," whereby consumers heeded content creators' recommendations due to their social circles having previously done so. Finally, the study showed the importance of social attractiveness, defined as the "degree to which a person has the ability to influence the state of mind of others and be socially accepted and approved by society" (Serman & Sims, 2020, p. 5). Social attractiveness should not, however, be confused with the content creator's physical attractiveness, as this factor has not yet proven consistently to lead to greater purchasing intention (Lim et al., 2017; Lou & Yuan, 2019).

This study also found that disclosing the sponsored nature of the published content could diminish the recommendation's influence (Serman & Sims, 2020). It is perhaps unsurprising that consumers may have less trust in the reliability of any communication that has been paid for (Evans et al., 2017). However, other studies have shown a *positive* impact of such disclosures, which were seen as reflecting the authenticity of content creators and showcasing their expertise, raising their influence further (Audrezet & Charry, 2019). Some also found that the mitigating effect of a sponsored-ad disclosure on the communication's persuasiveness depended on the platform used — being stronger on social media platforms than on blogs (Hughes et al., 2019) — and could weaken with time (Audrezet & Charry, 2019). This uncertainty about the precise impact of disclosing sponsorship is important to keep in mind when assessing whether the content creators' sustainable claims could remain relatable if they are further regulated.

Overall, the marketing scholarship confirms that content creators may exert significant influence on their followers, and it identifies some factors yielding this effect. The question then arises whether these influencing powers could be used to change behaviours towards more sustainable consumption.

De-Influencing

Promoting products and services is aimed at increasing sales, and, consequently, consumption. Influencer marketing is then, by definition, contrary to the aims of sustainability (García-de-Frutos et al., 2018). However, if we look at anti-consumption dynamics, an argument could be made that even reducing or changing consumption forms and patterns could benefit the sustainable agenda (Schlosberg, 2019). The movement towards voluntary simplicity embraces living in harmony with the environment, seeing value beyond material possessions and could “mitigate the environmental damage caused by production systems” (de Oliveira Campos et al., 2022; Elgin & Mitchell, 1977).

Sustainable activism on social media occurs when content creators advocate the values of voluntary simplicity and anti-consumption, advocating responsible citizenship. It could involve expressing concerns about, e.g., the negative impact that consumerism has on the environment or natural resources, and about exploitative working conditions, especially in the Global South (Portway 2019). Sustainable activists may discourage consumption or encourage responsible consumer decision-making. In either case, they emphasize the need for consumers to ask questions before making purchases. They promote new behavioural patterns to their followers, calling out materialistic behaviours, expressing scepticism about over-hyped products, and educating consumers on financial, social, and environmental responsibility. This may have consumers re-evaluating their need for a particular product or a service, thereby minimizing consumption. The motivation for engaging in sustainable activism varies from pursuing a range of personal, including commercial, to altruistic goals (Kumar and Pandey 2023, p. 4222).

Recently, these practices have gained more traction on social media, leading to a trending new hashtag: De-influencing (Hetler, 2023; Mayer, 2023). The current financial pressures are conducive to content creators indicating overpriced products and savings that consumers could be making by changing their consumption patterns. Much of the activity of de-influencers reflects these concerns, but they also highlight sustainability issues — e.g., the amount of waste that consumerism generates. This shift in content creation may follow from social responsibility becoming a part of the content creators’ industry ethics (Čop et al., 2024), albeit ethical guidelines for influencer marketing, and even more specifically for green content creators, require both a further definition and global implementation (Borchers & Enke, 2022; Wellman et al., 2020). Examples of de-influencers include Lauren Singer, a blogger advocating a zero-waste lifestyle on a bluntly entitled blog “*Trash is for Tossers*” (<https://www.tift-admin.com/>), famous for fitting four years of her trash into a mason jar, and Kathryn Kellogg, whose popular Instagram account is straightforwardly called “*Going Zero Waste*” (Kellogg, 2023). Social media activists continue with the lifestyle experiments, which started in 2000s on blogs and TV as an attempt to declutter and minimize (Zavestovski & DeLaure, 2022).

At first sight, de-influencers seem to discourage consumers from purchasing certain products, thus embodying anti-consumption principles by countering the widespread push towards more consumption in which content creators often participate. However, a closer look shows that most of them promote consuming *differently*, rather than consuming less. For example, Lauren Singer turned her blog on zero-waste living into a shopping platform for package-free products. Content creators promoting sustainable lifestyles should thus be seen as mostly representing green consumption rather than anti-consumption trends (Armstrong et al., 2022, p. 48). Accordingly, de-influencing has also been called “influencing by another name” or “a difference of opinion on what the

best products are” (Karimi, 2023). Consequently, some environmental educators question whether de-influencing can address more systemic issues of sustainable consumption. If de-influencers just provide “better” product recommendations, this is unlikely to prompt re-thinking of the whole consumption behaviour (Mayer, 2023).

De-influencers may use in their activities insights from behavioural economics to nudge consumers (Alemanno & Sibony, 2015) to socially desirable outcomes, such as consuming less or differently. Through their content they may also try to counter nudges of brands encouraging over-consumption or unsustainable consumption (Baldwin, 2014). The extent to which the use of nudging or counter-nudging would be effective depends on many factors and should be carefully considered by policymakers when regulating their activity.

Moreover, with de-influencers not limiting themselves to negative reviews of unsustainable products or services, but rather choosing to add recommendations for more sustainable alternatives, they may be engaging in commercial practices. That is not to imply that de-influencers could not be motivated by altruism or that they need to completely divorce themselves from commercial interests to give effect to responsible citizenship. In cases when they act with a commercial intent, as with corporate social responsibility (CSR) strategies, an argument could be made that it is possible to reconcile the simultaneous pursuit of sustainable and economic goals (Brest, 2016). However, one key difference is that companies engaging in CSR report on their activities and any trade-offs made, as well as being held accountable for this. Whether further information obligations and accountability should be imposed on content creators engaging in sustainable activism when one of their motivations is a commercial intent will be addressed in the next part.

Imperfect Sustainability

Content creators promoting sustainable products and services openly admit that they may not always succeed in achieving sustainability (Wallis, 2022). Their concerns about their communication’s reliability often stem from the lack of transparency in the supply chain and from the power imbalance between various actors therein. Moreover, they recognize various moral dilemmas they face in content creation, when they are expected to represent conflicting interests of brands, followers, and society (Čop et al., 2024). This may lead content creators to have to compromise on either their commitment to the brands, authenticity to the followers, or societal responsibility (Čop et al., 2024). Consequently, they call themselves advocates for imperfect sustainability (or imperfect sustainability advocates) and emphasize the value of starting “somewhere.”

The first concern refers to the challenge of assuring transparency in modern, complex, global supply chains (Abdulla 2023; Egels-Zandén & Hansson, 2016; Kolben, 2019). It results from, among others, the outsourcing of labour-intensive production, increased trade liberalization, and technological progress. From the sustainable activists’ perspective, the lack of transparency could obscure the product’s provenance and composition. This could lead to greenwashing if such a product is marketed as a sustainable option without due justification (de Jong et al., 2020; Jacobs & Finney, 2019; Peattie & Crane, 2005, pp. 361–362). Moreover, while consumers might wish to boycott products involving the use of forced or unfair labour conditions (Kolben, 2019), the complexity of global supply chains is an obstacle to assuring the observance of good working conditions among various suppliers spread out across the world (Abma, 2016). Consequently, content creators engaging in sustainable activism may not be able to guarantee to their followers that following their advice will allow a full expression of responsible citizenship.

The second concern relates to the business model underpinning the relationship between a brand and a content creator (Goanta and Wildhaber 2020, pp. 210–231). Content creators' freedom to choose the content they post varies significantly, along with the opportunities they have for product testing. The social media platforms they use may further limit content creators' choices, due to the limits of their capabilities and the rules they impose (Michaelsen et al., 2022, pp. 35–36). There is also an inherent power imbalance in the relationship, especially if content creators are not part of the media or advertising agencies. While a content creator's influence is often a valuable marketing commodity for brands, the possibility to represent branded content determines the livelihood of freelance content creators. Unless employed by agencies, content creators have no one to represent their collective interests or to provide codes of conduct, information about legal obligations, etc. (Goanta and Wildhaber 2020, pp. 210–231; Michaelsen et al., 2022, p. 34). As such, content creators cannot always question and verify the product information provided to them in marketing materials.

Content creators may then inadvertently misinform their followers simply because they do not have access to the relevant information. However, unreliable content may also reflect a lack of due care. For example, when fast-fashion giant Shein invited a group of content creators to visit their warehouses in China to attest to good working conditions, content creators reported on their channels what they saw on the day (Gerstein, 2023). This apparent confirmation of Shein having good CSR led to a huge backlash on social media (Hardy, 2023) from followers already aware of damning reports on Shein's labour practices (Vara, 2022). At best, the audience perceived these content creators as oblivious to the truth and as negligently spreading misinformation. At worst, they were labelled as sell-outs.

The current label of "imperfect sustainability advocate" may indeed reflect the reality of many environmental claims not being properly verified. It provides a warning to followers that a given content creator may not always provide them with reliable information. Such a disclaimer could, however, diminish the persuasive effects of sustainable activism on social media. A further issue is whether it could release content creators from accountability for misleading their followers about the sustainable providence and impact of the product they recommend. The next part accordingly analyses current European consumer law measures and new proposals that intend to improve communication on environmental claims.

Imperfect Legal Frameworks

The rise of influencer marketing has brought new challenges among others to consumer law (Goanta and Ranchordás 2020). There is increased awareness of content creators' influence on consumer decision-making and increased concerns about their lack of adherence to consumer disclosure and transparency rules. European policymakers have therefore explicitly considered how content creators fit within the existing European consumer protection framework.

In December 2021, the European Commission included a paragraph on influencer marketing in its new guidance on the interpretation of the provisions of the Unfair Commercial Practices Directive 2005 (UCPD) (European Commission, 2021). While the guidance is not binding, it is an important reference point. The Commission supported its interpretative criteria by referencing existing Court of Justice of the European Union's (CJEU) case law, as well as addressed practical issues in consumer protection application that national

judicial and administrative cases exposed (Kaprou, 2023; Narciso, 2022). Regarding influencer marketing, paragraph 2.2 clarifies that content creators can qualify as traders, provided they engage in influencer marketing “on a frequent basis, regardless of the size of their audience.” One weakness of this guideline is the lack of specificity of the frequency with which content creators must conduct commercial activities to be classified as traders. Confusingly, paragraph 4.2.6 of the guidance also indicates that content creators have “a greater than average reach in a relevant platform,” meaning that while the audience’s size is irrelevant for determining the commercial character of their activity, it could matter for classifying persons engaging on online social media as content creators to begin with. The difference in the assessment criteria may contribute to legal uncertainty, especially with the guidance not accounting for content creators’ activity on different platforms. However, even if content creators do not qualify as traders, they could still be seen as acting “on behalf of” traders whose products they promote, pursuant to paragraph 2.2 of the guidance. This limits the risk of content creators claiming that the UCPD does not apply to them. Paragraph 4.2.6 of the guidance also specifies that the form of payment that content creators receive or whether their relationship with a trader is contractual are irrelevant to the UCPD’s application. This flexibility is necessary to encompass varied types of business models used by content creators which need has previously been recognized in national practice, e.g., in Germany (Bundesgerichtshof (BGH) 2021). Interestingly, a recent law change in Germany, introducing a new §5a (4) of the German Unfair Competition Act (*Gesetz gegen den unlauteren Wettbewerb* 2004), created a rebuttable presumption that communication in favour of a third party results from a payment or a similar remuneration, leading to the recognition of the communication’s commercial character (Sørensen et al., 2023, p. 29). The next section considers further the suitability of these requirements and whether placing obligations stemming from EU or national consumer law on content creators could impact their communication’s reliability.

When the UCPD applies to content creators, they have an obligation not to mislead consumers whether by action or omission (Articles 6 and 7). This would include failing to provide consumers with clear information on the sponsored nature of shared content. The European Commission indicated that such disclosures’ transparency depends on the channel used, the disclosure’s placement, timing, duration, language, and context, the target audience, and other aspects. It is clear, however, that the obligation to disclose the paid nature of a given communication will not be met just by adding a hashtag at the end of a lengthy text, by hiding it behind a hyperlink, or by simply tagging a trader who provided this payment (similarly, BGH 2021). The first type of disclosure could easily be overlooked by inattentive consumers, the second requires consumers to make an active search for the essential information, and the third does not clarify the relationship between a trader and a content creator. Further, Point 11 of Annex I UCPD obliges content creators to disclose that traders have paid them for promoting their products or services in editorial content. It could be argued that a content creator’s communication amounts to editorial content, as both the CJEU and the European Commission see the need to interpret this provision broadly (European Commission 2021, para. 4.2.6; Luzak & Goanta, 2022); Peek & Cloppenburg 2021). Additionally, by not disclosing their commercial activity, content creators could risk infringing Point 22 of Annex I UCPD, which prohibits traders from presenting themselves as consumers. Whether these obligations suffice to ensure consumers receive reliable information will be further discussed in the section “Information Reliability and Transparency”.

Content creators could be held responsible for breaching UCPD provisions either solely or jointly with the brand whom they were representing (European Commission 2021, para.

4.2.6). While the exact attribution of liability would depend on the context, e.g., the nature of the relationship between content creators and traders, the parties' adherence to any disclosure duties, on whether content creators acted within their assigned authority, and the extent of the control content creators had in preparing their communication, consumers may benefit from such shared liability. Ensuring that content creators are accountable for their communications seems necessary to incentivize their adherence to the UCPD's rules, as well as providing consumers with an easier redress option. However, the guidance rightly notes that the prevention of unfair commercial practices could also fall under the due diligence obligations of both brands and online platforms, the latter facilitating the content creators' communication. Pursuant to Article 5 UCPD, traders must act with professional diligence, which may require them to monitor the activities of hired or commissioned content creators. The issues with sharing accountability will be further discussed in the section "Redress and Accountability Concerns".

Relatability vs Commercial Character of Sustainable Activism

Content creators engaging in sustainable activism on social media may act for altruistic purposes but they may also monetize their passion for sustainable lifestyles, similarly to other areas of influencer marketing (Goanta & Wildhaber, 2019). Sustainable activists on social media not only indicate the negative environmental impact of certain products or brands, discouraging followers from purchasing them, but also recommend other, more sustainable consumption options instead. This creates an avenue for commercially minded content creators to engage with sustainable brands, gaining remuneration through endorsements, affiliate marketing, or barter directly from such brands. For example, among many Instagram posts by Kathryn Kellogg (@going.zero.waste) on recycling and re-using consumer products are a "paid partnership" post for a smart waste appliance (Kellogg, 2023b) and a post tagged #<brand name>Partner for a sustainable sneakers brand (Kellogg 2023a). Marissa Burch (@worthnotwaste) uses TikTok to inform her followers about "sustainable swaps." One of her posts promotes using a specific brand of baking soda, listed as a "paid partnership" (Burch 2023). While she encourages followers to replace various household cleaning products with one baking soda, thus reducing waste, she receives remuneration for this communication.

When brands pay content creators, regardless of remuneration type, the European Commission guidance (2021) suggests the UCPD's applicability. The current pre-condition is the "frequent" occurrence of content creators' commercial activities. The CJEU also established this requirement in the *Kamenova* (2018) case, *in casu* for differentiating online traders from consumer-sellers. Specifically, the CJEU referred to "a regular, frequent and/or simultaneous activity in comparison with her usual commercial or business activity" to recognize an online trader, but it also listed other factors requiring consideration, thereby limiting who would qualify as an "online trader." The problem is that the frequency requirement is ill-suited to apply to content creators' activities. It does not account for content creators spreading their activity between various social media channels. For example, Marissa Burch only has one post on TikTok in nine months of 2023 labelled as a paid partnership (Burch 2023). Assessed on its own, this post would likely not be perceived as a frequent occurrence of the content creator engaging in commercial practices. However, she also has an Instagram account and a blog, where she posts monetized content more regularly (Burch n.d.). National enforcement authorities could, of course, assess the commercial activity's frequency across various social media channels, which in this case could lead

to the determination that she has also posted on TikTok in her capacity as a trader. Such an evaluation would require a thorough sweep of various social media, making it a resource-intensive endeavour. Moreover, considering the need for the authenticity of content that creators post online, to build their influence, there will inevitably be many instances of communication that do not involve monetizing content. This could then skew the assessment of how frequently they engage in commercial practices. The frequency requirement also overlooks the fact that even one commercial post could cause consumer harm.

Since the source and type of remuneration are irrelevant pursuant to *Peek & Cloppenburg* (2021), content creators engaging in sustainable activism would still be identified as traders even if their business model relied on remuneration from sources other than brands. However, a grey zone emerges when content on sustainable lifestyles is not instantaneously monetized, but rather is part of a long-term business plan. Many sustainable activists eventually create their own sustainable products or sell self-authored books on sustainable lifestyles, e.g., on websites such as The Zero Waste Collective (<https://www.thezero-wastecollective.com/>) or Trash is for Tossers (<https://trashisfortossers.com/mission/>). Therefore, even if they have not partnered with sustainable brands when promoting sustainable lifestyles, they may have been building a platform to use for commercial gains in the future. For example, Lauren Singer started writing a personal blog in 2014 about her journey to achieve a zero-waste lifestyle. In 2017 she created an online platform, Package Free (<https://packagefreeshop.com/>), facilitating commerce in more sustainable versions of daily products, i.e., using minimal packaging, reducing single-use plastic. Such content creators' activities building towards opening a new business or launching their own product would not be covered by the UCPD (pursuant to Article 2(d)) if the posted content was not monetized at the time and a direct link to the sale of a product could not be established. Unless only a short time has elapsed between content creators building their audience and starting to recommend their own products, it would be difficult to prove such a link.

Similarly, when content creators are building their audience and have just set up their social media channel, they may promote certain products and brands without receiving remuneration for such recommendations. At times, the brand may not even be aware of such recommendations having been made, which would also make it difficult to prove that content creators acted on behalf of a trader. The lack of remuneration would keep content creators outside of the scope of the UCPD, unless content creation was recognized as a professional or economic activity, regardless of the scope and nature of its monetization (Michaelsen et al., 2022, p. 23). Here the determinant factor to bring content creators within the UCPD could be the overall commercial intent rather than a specific commercial gain related to the given communication (Michaelsen et al., 2022, p. 25). The importance of such a determination also follows from a brand being unlikely to bear responsibility for content creators' activities, if these were not commissioned and perhaps occurred even without the brand's awareness. Content creators engaging in sustainable activism for altruistic purposes could rebut the presumption that their content creation is linked to a commercial intent. This would follow the above-mentioned German law example (Sørensen et al., 2023, p. 29).

It would be preferable to remove the suggested requirement of "frequent" posting of monetized content for content creators to qualify as traders engaging in commercial practices. This would follow the above-mentioned French law example. Further, online content creation should count as a professional activity, regardless of obtained commercial gain. Instead, the commercial intent driving the communication should be the determinant factor and a rebuttable presumption could be adopted of a causal link between content creation promoting a third party and commercial intent. Registration of such a professional activity

in the Member States would be required. Without such changes, content creators engaging in sustainable activism as part of a long-term business model are likely to remain free of obligations imposed by the current European consumer protection.

Some commentators take the view that further regulation is inappropriate. The risk is that it could stifle some of the very characteristics of content creation on social media that lend it its relatable and persuasive character (Samples, 2019). It is, however, difficult to justify not regulating communications on social media when other forms of media communication are regulated. Moreover, the fact that in most cases disclosures about the commercial character of posted content are not intrusive shows that compliance with legal obligations by content creators, while a hurdle to jump over, need not be disruptive. As has been mentioned, empirical research is inconclusive on the impact of such disclosures on the effectiveness of content creators' communications (Michaelsen, 2024). Whether further regulation could allow for maintaining the relatable and persuasive character of sustainable claims on social media depends also on the applicable transparency standard, which will be further considered in the section on information reliability.

Redress and Accountability Concerns

The relationship between content creators and brands may take different forms (Campbell & Farrell, 2020; Goanta and Wildhaber 2020, pp. 210–231). Content creators may enter into long-term contracts with brands, becoming their ambassadors, or short-term contracts to represent a specific campaign or product. Influencer and/or advertising agencies may serve as intermediaries, with different levels of engagement, from a matchmaking service to dictating at least some of the terms and conditions of contractual performance. Brands and content creators do not even need to formalize their relationship in a written contract, but rather could informally determine it by exchanging messages. The latter occurs especially when brands send content creators their products, bartering for subsequent recommendations of these products.

Regardless of the nature of the relationship, brands will usually have access to more resources and be in a stronger transactional position than content creators. This suggests that there are limits to content creators' ability to ask brands to verify product characteristics and provide disclosures before they recommend such products to their followers. Moreover, due to the complexities of modern supply chains, the content creators' insight into labour and production practices of a particular brand may easily be obscured, even if they attempt to investigate them (Kampourakis, 2021; White, 2015). While the recently established website, Influencer Legal Hub (https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/influencer-legal-hub_en), recommends that content creators check EU product safety notifications listing unsafe products, such due diligence would not significantly limit their reputational risk of becoming involved in greenwashing (Yeoh, 2017, p. 82). The question then arises whether it makes sense to place a due diligence obligation on content creators who are commercialising their passion for sustainability by holding them accountable for spreading misinformation to consumers, as traders under the UCPD, when a sustainable product they are promoting does not deliver on its environmental promises.

Thus far, policymakers and courts have recognized the parent company's accountability for the environmentally detrimental actions of their subsidiaries in the supply chain (e.g., *Four Nigerian Farmers and Milieudefensie v Shell* (2021)). Analogously, we could expect a brand to take responsibility for the content creators' actions if the latter misinformed their

audiences about the sustainable characteristics of the brand's product. This would follow from the tort of negligence for breaching a duty of care that companies owe for harmful consequences of actions by their subsidiaries, employees, agents or other contractors, depending on the specific nature of their relationship with a given content creator (Goanta and Wildhaber 2020, pp. 210–231) and on the presence and nature of harm. Analogically, if content creators act on behalf of traders, they could expect not to be held liable provided they disclosed this fact and acted within their authority. However, the scope of the traders' duty of care, as well as the consequences for its breach, may vary among the Member States, as this area of law has not been harmonized. Moreover, as mentioned, sometimes brands will have no awareness or control of the content creators' activity, which should limit their responsibility. Consequently, there is legal uncertainty as to the accountability of brands, which may justify policymakers trying to protect consumers by also assigning liability to other actors.

Imposing a duty of care on content creators to monitor the veracity of brands' sustainable claims would place a heavy burden on one of the weakest parties in the chain, which treating them as traders under the UCPD may amount to. Even establishing joint liability in such circumstances, while desirable from the perspective of consumer protection, would likely further distort the transactional balance. Provided that content creators simply reiterate sustainable claims issued to them by the brands, and that they did not have reasonable cause to doubt the veracity of such claims, we could argue for holding the brands responsible for any misinformation. This would differ, ultimately, if content creators had more creative control over the communication with their audience and drafted their own sustainable claims. This approach would align with the concept of relational justice, as elaborated on by Dagan and Dorfman (2016), which accounts for economic disparities between parties in the global supply chain when "fixing just terms of interactions." It also gives effect to the power-responsibility equilibrium theory proposed in sociology and social psychology studies by Emerson (1962). Following this theory, the most powerful actors in a chain will have the greatest responsibility (Lwin et al., 2007). Consequently, instead of expanding duties of care towards consumers among other market players, such as content creators, any due diligence obligations placed on content creators whom brands provide with sustainable content to promote should be limited in scope. Instead of placing on content creators a duty to investigate the providence and veracity of sustainable claims, whether by law or contractually, we could better expect them to rely on reasonable reassurances from the brand on this issue. Regarding the latter, the content creators' expertise in a subject-matter may expose them to more liability, as they could be more easily deemed to have uncovered the unreliable character of sustainability claims (Kertz & Ohanian, 1990, pp. 623–626).

A limited positive duty on content creators to verify a brand's information could be justified on the basis that content creators are more likely to have a relational relationship with consumers, in contrast to the transactional relationship between traders and consumers (Siciliani et al., 2019, pp. 184–187). After all, content creators' whole commercial activity relies on building a long-term relationship based on trust. Such trust could lead to consumers relying on content creators to provide them with all the necessary and truthful information, rather than verifying the claims themselves. However, we could expect consumers, as responsible citizens, to also critically evaluate any sustainable claims that have been made (Ingenbleek et al., 2015), with content creators often encouraging such questioning.

Practically speaking, when content creators qualify as traders pursuant to the UCPD, consumers could raise a claim for misleading them by action or omission. National consumer and market authorities, competitors, and online platforms could also raise claims of misleading practices. The risk of being accused of unfair commercial practices by these

stakeholders, which could lead to fines and reputational damage, may help to limit their occurrence on the market. Therefore, the option to hold content creators responsible alongside brands is beneficial for consumers, giving them more opportunities to claim compensation for their damage. What the consumer protection framework currently lacks is the assurance that content creators could then have a right of redress against brands, which right could better give effect to the power-responsibility equilibrium theory. Conversely, it is highly likely that brands as stronger transactional partners, dictating contractual terms, would contractually exclude any redress rights.

Additionally, we could consider the accountability of an advertising or influencer agency for making misleading sustainable claims. If a content creator simply shared content that had been provided to them by an agency, it is the agency that could be held liable instead of a brand. Due to their professional character and access to more resources than content creators, there are more justifications for holding them liable for relying on an inadequate substantiation of sustainable claims by brands. For example, in the United States the Federal Trade Commission in the case of *American Home Products Corporation* (1981) decided that the advertising agency could not rely on scientific documents presented by the brand to justify the claim that was made in advertising, as the study was defective on its face. Overall, there should be a direct correlation between the level of the involvement in the content creation, the level of expertise, and the scope of the duty of care, whether of content creators or of agencies (Kertz & Ohanian, 1990, p. 629).

The liability of social media channels should also be considered. Recent European legislation, such as the Digital Services Act 2022 (DSA), imposed enhanced responsibilities on online platforms. Without online platforms, content creators would not be able to build their audiences and monetize their activities. Further, the role of online platforms goes beyond that of a mere intermediary between content creators and their followers. Platforms create new opportunities for content monetization, e.g., through ad revenue, subscription, or tokenization. Their interfaces are also crucial to facilitate compliance with content creators' legal obligations (Goanta & Bertaglia, 2020). Currently, online platforms have two main obligations regarding sustainable activism occurring on their channels. First, they need to facilitate the transparent disclosure of paid partnerships or of the sponsoring of content, where brands have paid content creators for the dissemination of sustainable claims (Recital 68 and Article 26 DSA). This has required online platforms to design specific interface tools both requesting and facilitating such disclosures (Instagram, 2020). Second, social media channels are also responsible for content moderation to the extent determined by the DSA. At the very least, they must act upon a notice of harmful content, pursuant to Article 16 DSA, which could require them to investigate a post reported as misleading on sustainability claims. Bigger online platforms must more actively engage in content moderation and report their actions publicly, pursuant to Articles 39 and 42 DSA.

Overall, however, the accountability of online platforms for misleading sustainable content reaching consumers is limited. They are not obliged to check all content as to its veracity and accuracy prior to it being posted, pursuant to Article 8 DSA. Any such far-reaching surveillance and moderation obligation would effectively militate against the continuation of the current business model of social media channels and was previously argued against in the scholarship (Buiten et al., 2020). Moreover, placing further surveillance obligations on online platforms would provide them with even more governance powers. Scholars have already emphasized the risks relating to the occurring paradigm shift of the privatization of online governance and the obscurity surrounding the legitimacy and impact of online platforms' moderation activities (de Gregorio, 2018; Goanta & Spanakis, 2020). Therefore, it seems undesirable to perceive online platforms as a parent company for online

advertising and monetization practices, which could bring with it an umbrella duty of care for all actors engaging in such practices on these platforms. However, due to their strong transactional position, we could expect them to introduce more robust codes of conduct and more efficient, transparent reporting mechanisms, discouraging greenwashing online (Buiten et al., 2020; Helberger et al., 2018).

One of the significant gaps in the European consumer protection framework is the lack of consideration given to the variety of actors involved in modern marketing and trade, and the dynamics of their relationships. If European policymakers address accountability questions at all, it is done on a piecemeal basis, tackling the responsibilities of one actor at a time. Hence, consumers and their representatives require a knowledge not only of the UCPD to assess the liability of content creators, advertising or influencer agencies, or brands, but also of the DSA to hold the platforms accountable, and of any relevant national contractual or tortious liability regimes. Moreover, as indicated in this section, these rules currently account for neither the weaker transactional position of content creators nor the stronger one of online platforms.

This section has emphasized the legal uncertainty stemming from the lack of harmonization of the tort of negligence across the EU, leading to the varied accountability of brands for misleading sustainability claims shared online by content creators, with whom brands work. As brands' umbrella responsibility for misleading content shared about their products could be mitigated by their transactional power, any other actor held responsible, such as a content creator, should have a right of redress against them. The scope of a positive duty of care imposed on content creators should be correlated with the scope and freedom of their involvement in content creation. The introduction of such a duty could be justified by the relational relationship between content creators and their followers.

Information Reliability and Transparency

The preceding part mentioned the difficulties content creators may have in ensuring their sustainable communication is not misleading. In previous years, the focus of policy and academic debates on the reliability of the content creators' communication mainly lay on ensuring the greater transparency of disclosures as to paid partnerships or sponsored content. This led to requirements as to the visibility, proper placement, and timing of such disclosures (European Commission 2021, para 4.2.6; Luzak & Goanta, 2022). French legislators in Loi no 2023–451 also adopted additional rules on transparency for content creators, such as requesting disclosures when posted images were retouched, image filters were applied, or images were generated by AI. However, even the most transparent disclosures do not necessarily provide for an effective consumer protection framework. Scholars have shown that consumers have a vested interest in not reading all disclosures provided to them (Ben-Shahar & Schneider, 2014) and in any case are simply not capable of processing them (Lee & Lee, 2004). Keeping this in mind, a content creator's disclosure of being an imperfect sustainability activist may also either not reach consumers or not make them fully aware of the entailed risks.

The imperfection of information obligations and of the principle of transparency suggests that policymakers should strengthen other measures already discussed, such as duties of care. However, as the sustainable claims' reliability could drive both responsible citizenship behaviours and fair competition in the internal market, it has been a focal point of European policymakers' efforts to prevent greenwashing. Such efforts resulted in 2023 in a proposal for a new Green Claims Directive, which aims to provide consumers with

“reliable, comparable and verifiable information to enable them to make more sustainable decisions and to reduce the risk of ‘green washing’.” This proposal intends to increase the transparency of environmental disclosures and, ultimately, also consumers’ trust in environmental claims. Environmental claims are defined broadly as any message or representation “in the context of a commercial communication, and which states or implies that a product, product category, brand or trader has a positive or zero impact on the environment or is less damaging to the environment than other products, product categories, brands or traders, or has improved its impact over time,” pursuant to Article 1 of the recently adopted Green Transition Directive. The wording “in the context of a commercial communication” seems to imply that even an indirect link to commercial practices would be sufficient, which could easily bring content creators within the scope of these new rules.

The Green Transition Directive amends UCPD, explicitly prohibiting traders from misleading consumers about the durability or repairability of products, or about their environmental or social impact. These characteristics form part of the material product information, the disclosure of which is required under Article 7 UCPD. As sustainable activists often mention these characteristics, any content creators who qualify as traders will need to ensure that they, or the traders providing them with promotional materials, can indeed justify such claims. As set out in previous parts, content creators should, however, be able to rely on the justifications provided by the brands that they work with. If claims relate to the product’s future environmental performance, e.g., that it reduces energy consumption by a certain factor, such claims will need to be supported by specific evidence, pursuant to Articles 3 and 4 Green Transition Directive. As the Green Transition Directive amends UCPD, the expectation is that the obligations it introduces will apply to content creators, as well, when they qualify as traders or act on behalf of traders pursuant to UCPD. This will oblige such content creators to avoid the following blacklisted practices, among others: Making generic environmental claims without relevant justification; making environmental claims about the entire product, when only an element of it supports them; or presenting requirements that are legally mandated for a given product category as if they were a distinctive feature of the promoted product.

While such information obligations will improve the reliability of sustainable claims, the biggest improvement in assuring transparency stems from the newly formulated and awaiting legislative approval Article 5(6)(g) Green Claims Directive imposing a requirement of providing consumers with a summary assessment of the environmental claim. Instead of having to rely on technical documents supporting a sustainable claim, consumers should receive a clear and understandable summary of its main elements. Such a summary should be perceived as material product information so that any failure to mention it by content creators who qualify as traders could amount to a misleading omission under Article 7 UCPD. The question then arises as to whether content creators could simply provide a link to the summary provided by traders in their communication or whether they need to replicate it. This is a point that needs to be considered for inclusion in the accompanying guidance when the EU policymakers adopt the Green Claims Directive. Additionally, microenterprises have been released from this duty (Article 5(7) Green Claims Directive) to minimize their compliance costs. As sustainable products may often be introduced into the market by microenterprises, as defined by Recommendation 2003, this choice to prioritize business needs may still leave an important gap in the consumer protection framework. Instead of excluding microenterprises from the scope of this obligation, the Member States could offer them additional support, as has been previously suggested in the scholarship (de Franceschi, 2023, pp. 46–47).

Importantly, to boost transparency, content creators should not only improve their product knowledge, but also know the scope of the mandated EU consumer law disclosures. To facilitate this, the European Commission, in collaboration with legal experts from Utrecht University and University of Leeds, created the above-mentioned Influencer Legal Hub in October 2023. Its textual and audiovisual resources aim to enhance compliance with EU consumer law by raising knowledge and awareness of legal obligations among content creators. Further, content creators should follow the guidance on increasing transparency of their communication provided by the European Commission (European Commission 2021), national advertising or other enforcement agencies (SRC 2019; UOKiK 2022), or even academic literature (Luzak et al., 2023). The relevant literature on the subject highlights the importance of proper placement, timing, and format of consumer disclosure to make disclosures more effective.

It is possible that increasing the reliability of sustainable claims will diminish their relatability. The more obligations with which content creators must comply, the less freedom they have in communicating in their own style with their followers. Aside from the possible distrust of any communication that has been paid for (Evans et al., 2017), followers may also perceive communications crafted so as to comply with legal obligations as inauthentic by a given content creator. Authenticity and trust are some of the key elements required for persuasiveness (Serman & Sims, 2020). To ensure the effectiveness of sustainable activism on social media, policymakers should try to limit the number of information obligations required of content creators. This would also respond to the calls for minimizing mandated disclosures due to consumers' information overload (Lee & Lee, 2004; Luzak et al., 2023). It is also important to improve consumer awareness of information rights, which could help with maintaining positive consumer attitudes during the shift in communication by the content creators followed (Serman & Sims, 2020).

3Rs of Sustainable Activism on Social Media

The achievement of sustainability goals will take a global, joint effort and content creators could be one of the actors helping with reaching it. Reliable but relatable communication on sustainable lifestyles on social media could reach many consumers and contribute to changing their behaviour patterns. However, as with any measure, the content creators' activities need to fit within certain parameters for the benefits to outweigh the costs. This article has identified three important parameters that regulation should safeguard: Relatability, reliability, and redress.

As outlined above, for the information to remain relatable, policymakers should allow content creators to maintain their freedom of speech and to conduct their businesses. The first step towards this is to clarify content creators' legal status as professionals. Policymakers should improve the "trader" qualification in the UCPD by ignoring the suggested by the Commission requirement for a "frequent" commercial activity from content creators. Next, they should allow registering content creation as a professional activity when content creators are motivated by a commercial intent, which should be presumed if their communication promotes products of third parties. Not only would this provide more legal certainty but it would also facilitate the provision of additional training on their legal rights and obligations, and the creation of codes of conduct.

While substantive rights and obligations often precede and outnumber procedural ones, it is crucial to develop clearer accountability lines for misleading sustainable claims. The

paper has set out the argument for limiting content creators' duties of care and ensuring that such duties correspond to their expertise, their independence from a trader, and their level of involvement in content creation. The umbrella duty of care imposed on traders should be accompanied by rights of redress for content creators, if they are required to compensate consumer harm caused by information that they are merely conveying rather than creating. Simultaneously, as online platforms play a significant role in governing the environment facilitating sustainable activism on social media, we should expect them to facilitate compliance with legal and regulatory requirements, social norms, and standards.

Finally, taking steps to ensure greater transparency in the global supply chain and requiring more evidence for sustainable claims should help with the communication's reliability. Despite limitations of even transparent disclosures in reaching consumers, it remains important to require the reliability of sustainable claims made on social media. Only reliable sustainable claims could boost the reasonable decision-making of responsible consumer-citizens and ensure fair competition. The forthcoming adoption of the Green Claims Directive, which will necessitate more evidence-based sustainable claims and provide more guidance on transparent disclosures thereof to consumers, is a highly awaited measure. However, policymakers should not forget the role that content creators, and other parties working with producers and traders of sustainable goods, have to play in communicating information about such products to consumers.

This article identified various gaps in the currently binding and forthcoming EU consumer protection measures in addressing the commercial practices of content creators promoting sustainable products and services. Whether further regulatory action should occur depends on, among others, the harm that both content creators and consumers may experience without such measures, the costs of introducing more obligations on this issue, the ecological footprint of increased influencer marketing weighed against the benefits of sustainable activism on social media in changing behaviour patterns. While empirical research is needed to quantify these elements, this article argues for policymakers giving more attention to the role that content creators can play in promoting sustainable lifestyles.

Declarations

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