DIGITAL CONTENT PRODUCTS: DECEPTIVE MARKETING LANGUAGE, “LEGALESE” AND BRAZILIAN E-COMMERCE REGULATION

PRODUTOS DE CONTEÚDO VIRTUAL: LINGUAGEM COMERCIAL ABUSIVA, JURIDIQÜÉS E A DISCIPLINA JURÍDICA DO COMÉRCIO ELETRÔNICO NO BRASIL

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ABSTRACT: Contemporary e-commerce businesses increasingly involve digital media, which consumers buy online and may store in their personal files. Although such acquisitions operate through a buy now icon, they often entail limitations that most consumers struggle to understand. Hence, despite benefiting consumers in numerous aspects, latest e-commerce developments increase the complexity of online environments and make it harder for average users to understand their rights and obligations. This issue has been dealt with by the OECD latest recommendation on Consumer Protection in E-commerce and is subject to recent internal regulations – and drafted statutes – under Brazilian Law. The first encourages public and private sectors to work together to educate

RESUMO: Produtos de conteúdo virtual, comprados on-line e armazenáveis em arquivos pessoais, cada vez mais se fazem presentes nos ambientes digitais de compras. Conquanto essas aquisições costumam operar mediante o botão “comprar”, elas não raro implicam limitações ao uso, as quais a maior parte dos consumidores falha em compreender. Assim, malgrado o caráter benéfico aos consumidores em diversos aspectos, os mais recentes desenvolvimentos do comércio eletrônico elevam a complexidade do ambiente virtual e dificultam a compreensão, por parte do usuário-médio, de seus direitos e obrigações. Este tema foi objeto de diretiva da OCDE sobre a proteção do consumidor no comércio eletrônico e é regulada no Brasil por leis vigentes e diplomas projetados. A primeira sugere
consumers, government officials and businesses about e-commerce to foster informed decision-making, whereas the latter strongly normalizes the duty to inform. Despite the specific domestic rules concerning e-commerce in Brazil, it is the broader Consumer Code that supplies tools to solve the referred issue. Strictly speaking, when consumers buy digital contents, they do not own it, but have it licensed. They are nonetheless induced to believe that have most rights related to ownership by the deceptive marketing language employed by e-businesses and by legalese in fine print of Terms of Use or License Agreements. While exploring this context, the present survey advocates that immediate remedies against hard-to-grasp information and deceptive language are more effective than medium or long-term policies regarding education for e-commerce. These are, however, paramount to developing a digital market environment that nurtures informed consent and welcomes more balanced and harmonic transactions.

**Keywords:** E-commerce – Digital content products – Informed consent – Brazilian Consumer Law.

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**SUMÁRIO:** Bibliography.

Some of the most pressing issues related to Consumer Law worldwide concern the fast-paced developments in information and communications technology in the last decade. It is so because they lead to a widespread increase in the number of consumers with Internet access and hence with the possibility of engaging in e-commerce, which, according to the recent note of the United Nations Conference on Trade and Development Secretariat: “presents some challenges for consumers that differ from those encountered during off-line commercial transactions. Such challenges have given rise to the need to adapt existing legal and regulatory frameworks to the particular requirements of e-commerce”. This essay aims at scrutinizing current developments on e-com-

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them – under the threat posed by repressive remedies already in force – to disclose usage limitations in the same form of the language here hindered deceptive – the buy or buy now button. In other words: changes indispensable to the establishment of an online environment that really encourages and fosters informed and sustainable decision-making by consumers may begin by an alteration as simple as the substitution of buy or buy now by purchase license or have it licensed, with a simplified disclosure of usage limitations in plain and accessible language along with the offer. Detailed information thereabout, desirably in clear and intelligible wording, could then be unfolded in the Terms of Use or User License Agreements.

These conclusions are supported by reports published by the British Department for Business Innovation & Skills, as well as by behavioral insights on consumer protection: “The information age has made an unprecedented amount of information available to consumers. But the information itself is sometimes presented in a way which makes it difficult to make the right decision. Consumer behaviour is greatly influenced by what their attention is drawn to; for instance people are more likely to notice stimuli that are novel (messages in flashing lights), accessible (items on sale next to checkouts) or simple (a snappy slogan). Simplicity is also important as consumers’ attention is much more likely to be drawn to things that are easily understood”22.

It is hence possible to conclude that promoting an online environment that nurtures education for sustainable consumption and welcomes informed – instead of biased – decision-making, although seemingly a major challenge especially to developing economies, may (begin to) occur through simplistic, yet remarkably powerful measures, such as minor changes in the language employed by business, alongside with remedies long in force. These considerations aim at propelling further debates and developments on the topic, most notably in addressing juxtapositions and approximations between Brazilian e-commerce regulations and the latest OECD directive.

BIBLIOGRAPHY


KANAYAMA, R. Políticas públicas: entre o liberalismo e o paternalismo. RDPE, a. 11, v. 42.


MIK, E. The erosion of autonomy in online consumer transactions. Law, Innovation and Technology, a. 8, v. 1, 2016.


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