CoCoT conversations

Trust in advertising and the digital society

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Trust in advertising and the digital society

Three observations

1. The need for trust in the internal market was a reason for fully harmonising advertising law in the EU
2. But EU law also expects consumers to distrust advertising
3. Which is becoming problematic in the age of digital advertising.
EU advertising law in a nutshell

- Full harmonisation
- Many open norms, including prohibitions of misleading and aggressive practices
Observation 1
The need for trust in the internal market was a reason for fully harmonising advertising law in the EU
Consumer confidence as reason for EU regulation of advertising

Two internal market reasons for full harmonisation:
1. No barriers for traders
2. Consumer confidence in cross-border shopping -
   (i) certain of rights
   (ii) sufficiently high level of protection
Observation 2
..but EU law also expects consumers to distrust advertising
But: consumer is also expected to distrust advertising!

- Average consumer, reasonably informed, observant and circumspect (CJEU Gut Springenheide)
- Take advertising with a pinch of salt
- Guard themselves against influencing techniques
- Protection mostly against misleading information
Observation 3
..which is becoming problematic in the age of
digital advertising
Problematic in relation to digital influencing techniques

- Increasingly personalised persuasion attempts, data-driven
- Manipulative choice architectures: dark patterns
- Increasingly difficult to identify advertising
- Studies: lack of understanding
Problematic in relation to digital influencing techniques

• Expectation that consumers guard themselves: difficult to maintain
• Risk of distrust and advertising and regulation
• Raises Q: need for regulatory update to safeguard/bring back trust?