



Universiteit Utrecht

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

- Harmonised EU law: the Unfair Commercial Practices Directive (2005/29)
- 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



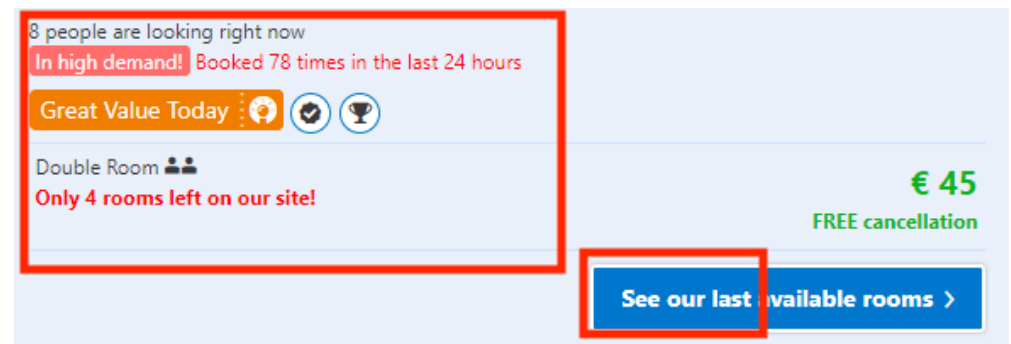
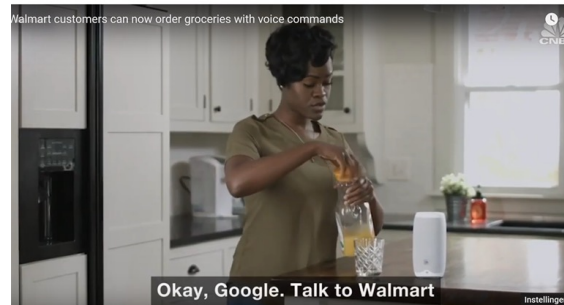


Observation 3

..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?

