

MARKETING AND SELLING DIRECT TO CONSUMERS

Legal considerations when moving from B2B to B2C

13 May 2021

Introduction to the team



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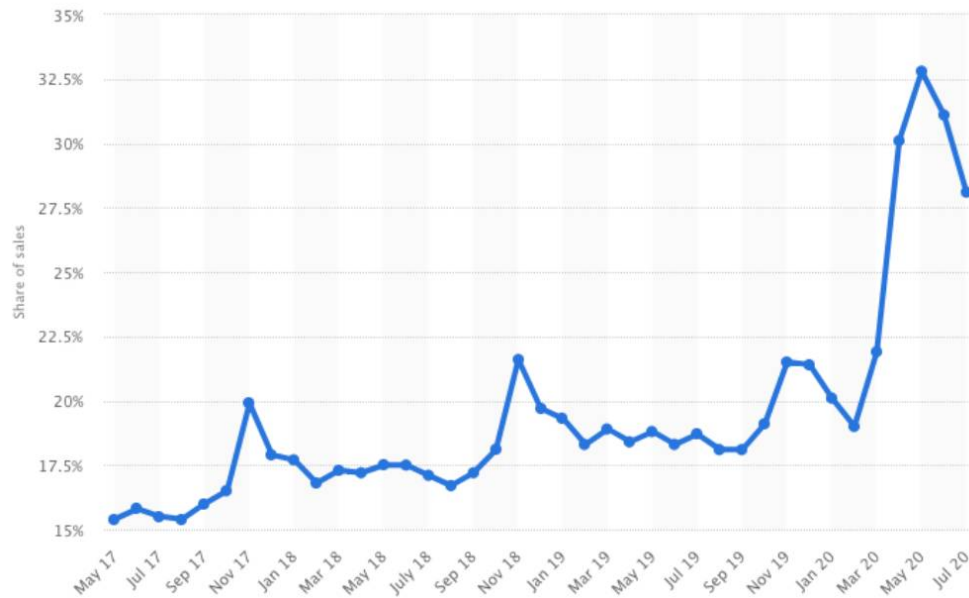
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The why

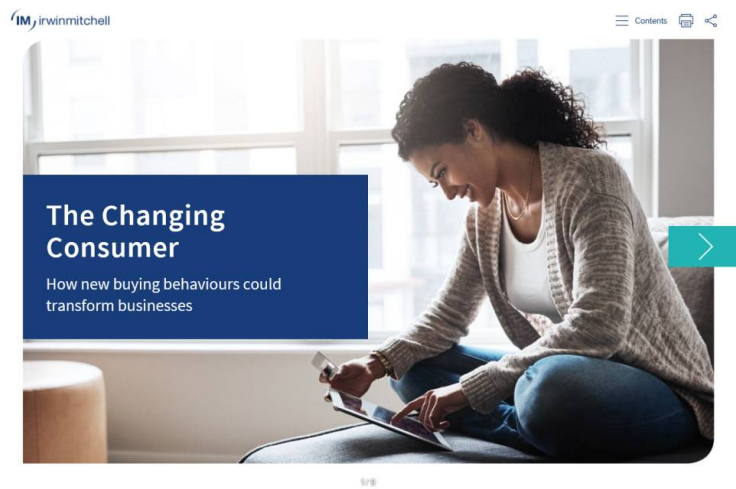


According to Statista, the overall percentage of e-commerce retail sales in the UK rose to nearly a third of all retail in May 2020.

At the same time, 2020 saw Direct-to-Consumer sales increase by roughly 25%.

At the end of 2020, the worldwide value of e-commerce was \$4.2 trillion, estimated to increase to \$5.4 trillion in 2022.

The Changing Consumer report



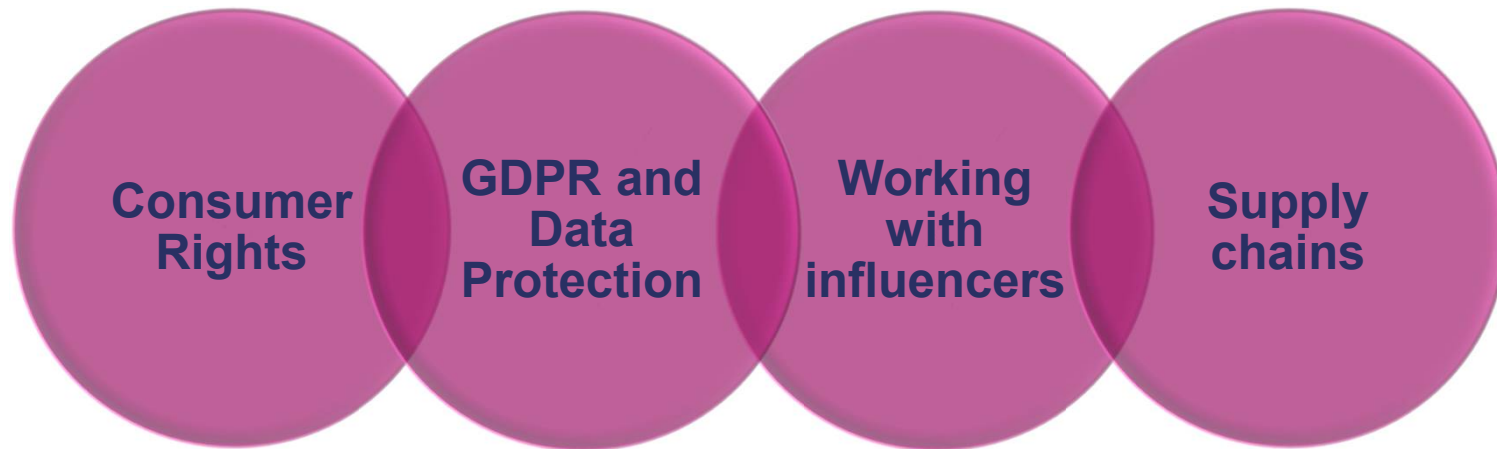
Irwin Mitchell has published a report that looks at the developing trends currently affecting the consumer sector.

The Changing Consumer report looks at the key changes that have occurred in the sector, including the overwhelming move towards e-commerce, and how these have been accelerated by the Covid-19 pandemic. The report also examines a number of key legal considerations for consumer businesses.

A link to the report is below.

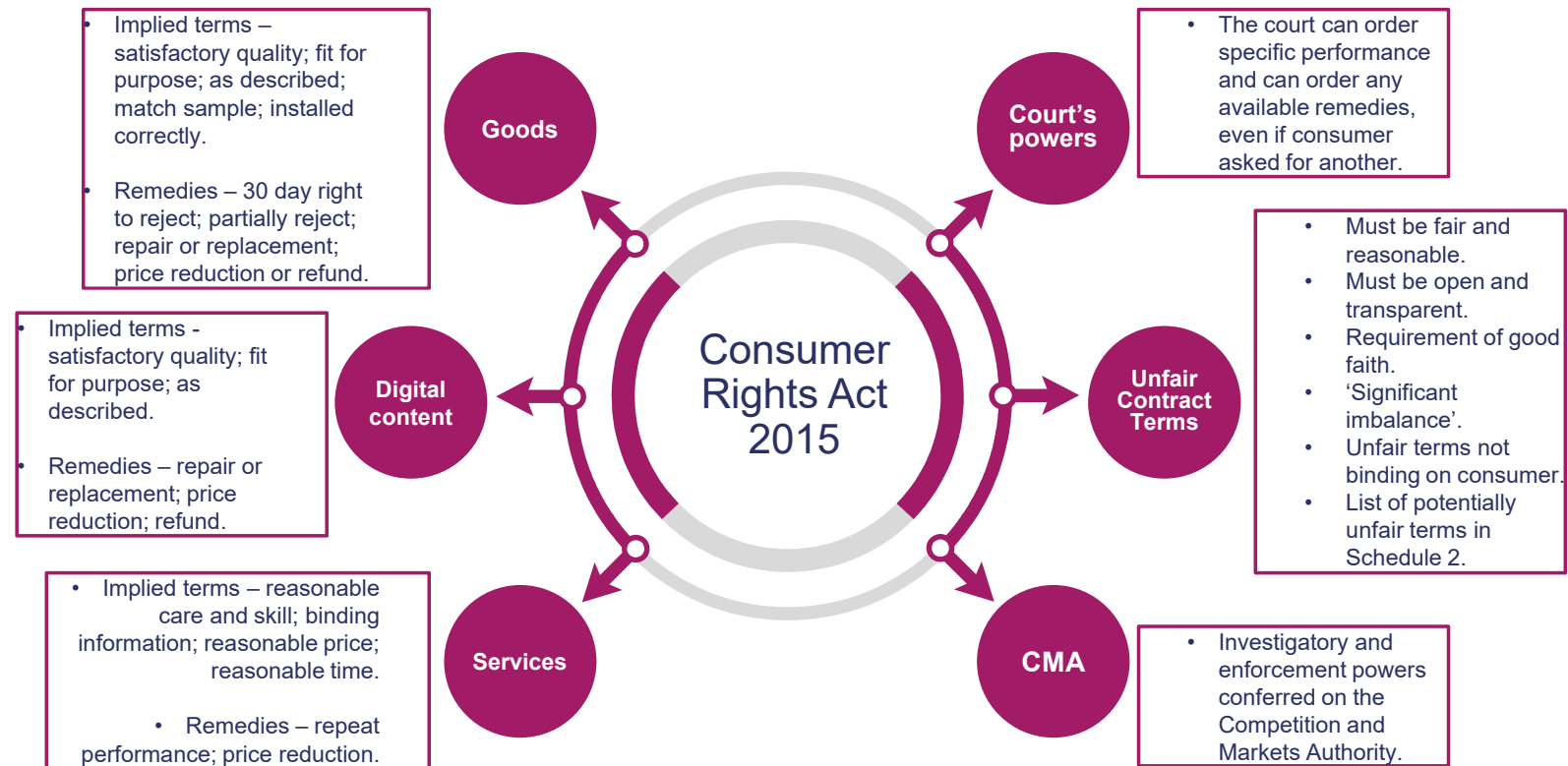
https://irwinmitchell.turtl.co/story/the-changing-consumer/?utm_source=Irwin%20Mitchell%20LLP&utm_medium=email&utm_campaign=12182853_BLS-Campaign-Consumer_Report-240221&utm_content>Show&dm_i=10X2,794CL,LGJI28,TEIPU,1

Today's topics – 4 areas to consider when moving from B2B to B2C



Consumer Rights

Consumer Rights



Consumer Rights and Brexit



- Largely unchanged.
- Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 remain in force.
- Jurisdiction for disputes will continue to be that of the consumer.

Key changes post-Brexit

- Access to the EU ADR platform has been removed for UK residents and businesses.
- Potential for additional custom duties, VAT and handling fees now (Royal Mail may seek to collect from customer prior to delivery, on behalf of HMRC).
- Increases to UK credit and debit card charges when making purchases from EU-based merchants.
- Additional custom declaration forms and packaging requirements.
- Application of CJEU decisions.



Brexit – the future

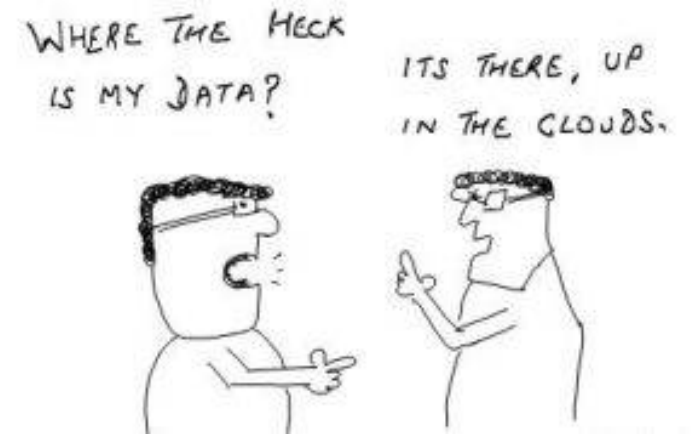
Potential for further divergence in future.



UK GDPR and Data Protection

UK GDPR and Data Protection

- How may consumer personal data be collected?
 - Online stores
 - Ordering goods and/ or services
 - Creating an online account
 - Customer service live chat
 - Newsletters and other direct marketing
 - Website cookies



Data protection rights of consumers

- Right to request **access** to any personal data held about them.
- Right to have inaccurate personal data held about them **corrected**.
- Right to have their personal data **erased** in certain circumstances.
- Right to have the **use of their personal data restricted**, including preventing the use of their personal data for direct marketing purposes.
- Right to **withdraw consent** to use their personal data.
- Right to **object to processing**, including objecting to direct marketing or querying whether the business has a legitimate interest.
- Right to have their **personal data provided to them**, in certain circumstances, in an electronic format.
- Rights in relation to **profiling and automated decision making**.



Direct marketing and consent

Data Protection Act 2018 & Privacy and Electronic Communications Regulations 2003 (PECR)

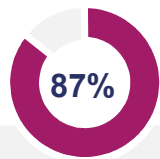
- **Opt-in:** Obtaining consent for marketing
 - Use of opt-in boxes
 - Specifying the methods of communication (e.g. email, text, post)
 - Consent to pass details to third parties for marketing and naming those parties
 - Records of consent
- **Opt-out:** “Unsubscribe” link in each email or another means to opt-out



Working with Influencers

Working with influencers

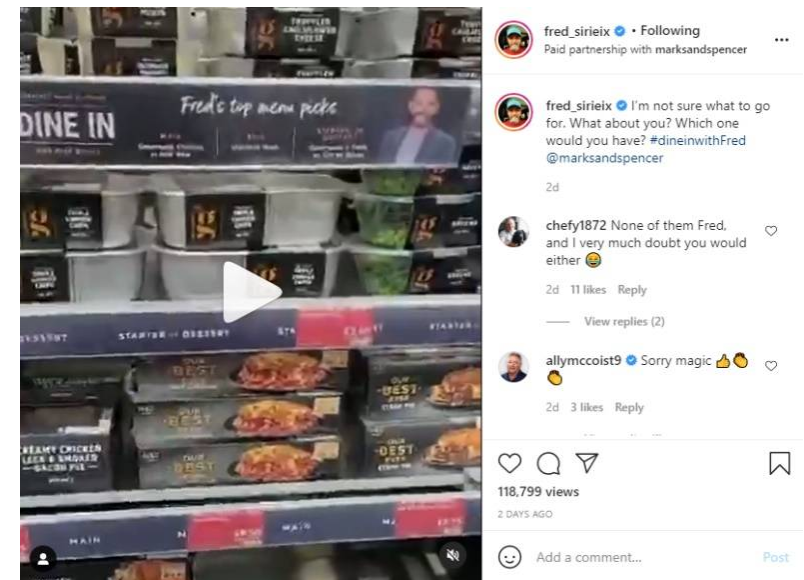
- Why influencer marketing works?
 - Relatively new, evolving route to market
 - Covid-19 and increased use of social media
 - Changing buying behaviours
 - Access to certain demographics
 - Ability to tap into established, loyal followings



of shoppers are inspired by an influencer to make a purchase

Working with influencers

- The right influencer for the job
 - Chefs, food critics, restaurateurs
 - Celebrities and TV personalities
 - Fred Sirieix x Marks and Spencer
 - 'Niche' digital-first influencers
 - Gluten free/ dairy free
 - Veggie/ vegan
 - Health and wellbeing
 - Recipe developers
 - Foodies
 - Lifestyle
- Other digital-first influencers



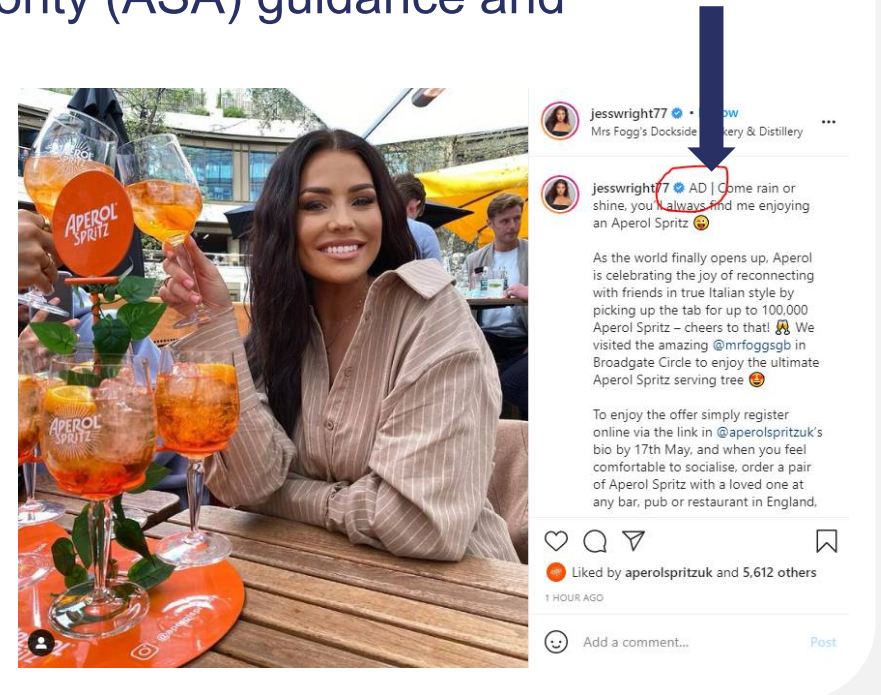
Contracting with influencers

- Engaging influencers
 - Influencer contracts
 - Exclusivity
 - Fee and/ or commission
 - Type of content and media
 - Intellectual property rights
 - Usage period
 - Paid media spend
 - Termination rights
- Via talent management agencies



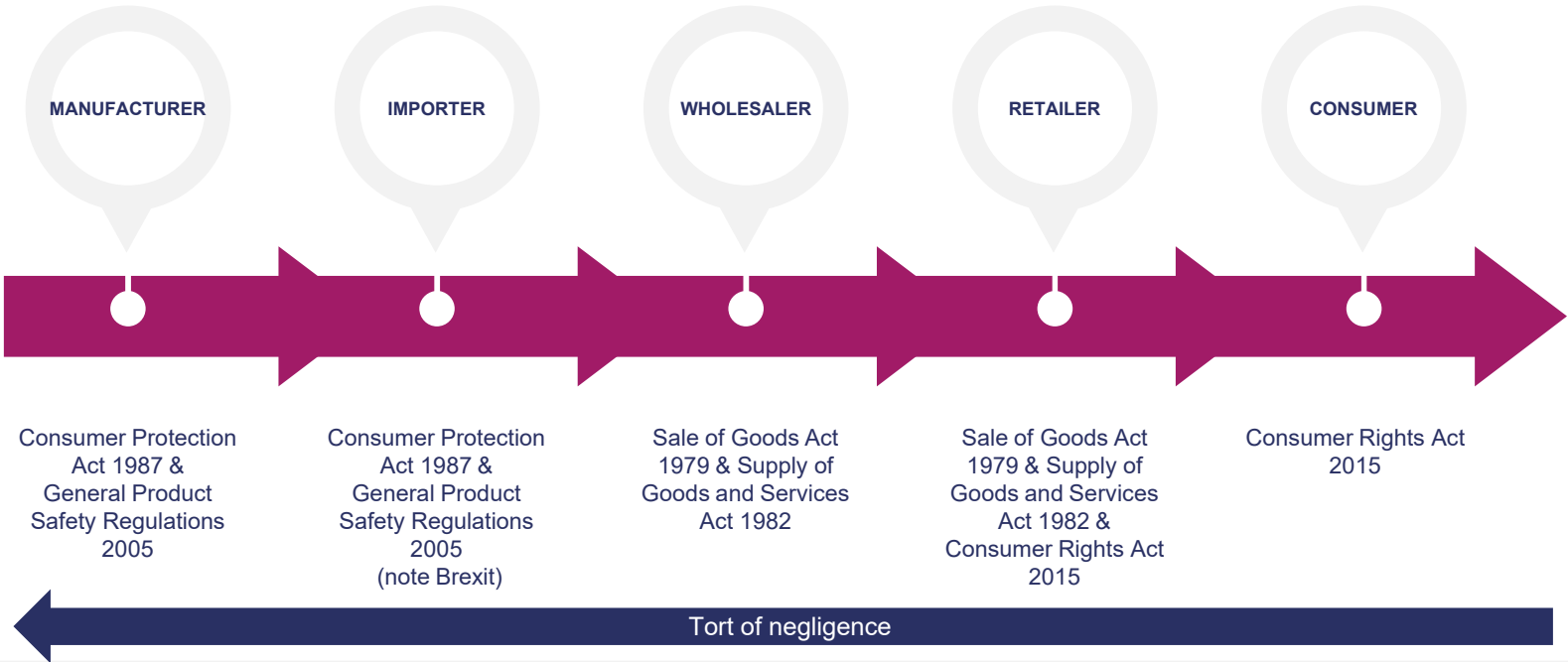
Key considerations for a successful influencer campaign

- Compliance with the Advertising Standards Authority (ASA) guidance and advertising regulations
 - Disclosing paid-for content - #AD vs. #spon
 - Consumer trust
 - ASA and CMA enforcement
- Original content
- Sharing metrics
- Mitigating risk
 - Content approval process
 - Take down rights



Supply Chains

Product liability and supply chains



Logistics

- Packaging
- CE/UKCA markings (1 January 2022)
- Employees
- Supply agreements
- Delivery companies
- Returns procedures



- Strategy
- Internal buy-in
- Sole or dual approach
- Branding
- POS
- Reputation management

Birmingham City Council v Tesco Stores Ltd - 19 April 2021

Tesco argued (amongst other things) that, whilst the food may have been past its use by date, it was not likely to cause significant harm to consumers and, in most cases, was still safe to eat.

DJ Qureshi rejected Tesco's argument, calling it "an affront to common sense" and, in doing so, provided the following warning to other companies who attempt to circumvent the law this way:

"This needs to be said to Tesco and others in case people want to find ways to avoid complying with the food safety laws. If the Tesco defence was a valid one, no one would ever plead guilty to selling an item after the use by date and they would shop around to find a scientist to say it is still safe to eat. If Tesco had succeeded with this implausible defence about unsafe foods, then the game of Russian Roulette can be described as a safe one!"



Any questions?

Please do get in touch



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