Influencer as individual and trader: exploring the boundaries of discrimination in influencer marketing from a multidisciplinary perspective

Taylor Annabell, Thijs Kelder, Jacob van de Kerkhof, Haoyang Gui & Catalina Goanta

View supplementary material ⬈

Published online: 13 Jun 2025.

Submit your article to this journal ⬈

Article views: 1247

View related articles ⬈

View Crossmark data ⬈

Citing articles: 4 View citing articles ⬈

Influencer as individual and trader: exploring the boundaries of discrimination in influencer marketing from a multidisciplinary perspective

Taylor Annabell, Thijs Kelder, Jacob van de Kerkhof, Haoyang Gui and Catalina Goanta

Molengraaff Institute for Private Law, Utrecht University, Utrecht, Netherlands

ABSTRACT

This article grapples with the tension between understanding influencers as individuals with lived experiences and as economic actors who behave like traders. Adopting a multidisciplinary perspective, it explores the boundaries of discrimination faced by influencers in their treatment by brands. It combines a feminist, intersectional approach with legal insights to examine the case study of a Black influencer who publicly withdrew from a brand trip due to unequal treatment and the ensuing drama on TikTok. Analysing a dataset of 137 TikTok videos, the study demonstrates how narratives of unfairness, racial discrimination, and responsibility are reconfigured by the legal status of influencers as independent contractors, reflecting on the limits of legal protections available to them.

Introduction

Influencers cultivate parasocial relationships with their audiences by sharing relatable, authentic content. This often draws on their experiences and personal identities, which feed into understanding the influencer as an individual. However, as influencers engage in monetization practices like influencer marketing, they often act as de jure economic agents in a professional commercial capacity. This impacts their legal status, complicating the conceptualization of the influencer as a person with lived experiences who shares content on social media platforms. We argue that the influencer's legal classification as a trader produces novel tensions regarding the rights and protections afforded to influencers, which have implications for how we understand the fair, equitable treatment of influencers when it comes to visibility and remuneration.

This article examines how classifying influencers from a legal perspective reconfigures cultural understandings. Drawing on a multidisciplinary approach, we explore the boundaries of what constitutes discrimination through our case study, teasing out the tensions between the rights that influencers hold as individuals and those they hold when acting

as companies or freelancers, which shape the intersection between unequal brand treatment and discrimination.

The case study that animates this article is the 'Tarte F1 Drama'. In May 2023, Black fashion and beauty influencer Bria Jones publicly withdrew from a brand trip with the makeup company Tarte Cosmetics to the F1 Miami Grand Prix after discovering discrepancies in her itinerary compared to what was promised and what other (white) influencers received. As she explained in a TikTok video, 'I will be damned as a Black creator if I accept anything other than equal treatment on these trips'. By adopting a feminist, intersectional lens within a media studies framework, we analyse narratives of unfairness and discrimination that emerged as other influencers and TikTok users linked Bria's experience to the structural inequalities present in the industry. We intertwine this analysis with legal insights into the status of influencers as independent contractors when dealing with discriminatory practices and discuss some examples of relevant legal regimes.

The multidisciplinary perspective we employ allows us to bring qualitative research on the unequal distribution of visibility and remuneration in the creator economy (Bishop 2021; Christin and Lu 2023; Duffy and Meisner 2023; Glatt 2022, 2023) into dialogue with the legal status of influencers. We consider European consumer protection as a benchmark, where influencers may be viewed as traders-professional parties responsible for ensuring their followers receive a high level of legal protection, although they might have fewer protections themselves (Goanta and Ranchordás 2020). We offer empirical insights about perceptions and experiences of power imbalance in the creator economy, the racialization of 'calling out' inequalities, and tensions in conceptualizing influencers as commercial actors that leverage their personal identities. We argue that the qualification of influencers as traders creates legal uncertainty over whether the framework of discrimination applies, raising critical questions about legal protections afforded to them as 'traders' and whether we need to consider additional rights for influencers that go beyond what the law provides.

To develop this argument, we first introduce scholarly approaches to understanding inequalities within the growing influencer industry. Next, we utilize legal literature to establish the legal status of influencers before discussing the case study. Our analysis includes a qualitative content analysis of a dataset comprising 137 TikTok videos from 'Tarte F1 Drama,' focusing on articulations and interpretations of unequal treatment and assessments of responsibility and influencer worth, alongside a legal analysis of the rights of influencers as businesses. Finally, we critically reflect on our findings and the role of TikTok in the conclusion.

Inequalities in the creator economy

As part of new modes of cultural production, distribution and monetization enabled by 'platformization' (Nieborg and Poell 2018), influencers generate (or aspire to earn) revenue through their social media presence (Duffy 2017). By influencers, we mean creators who produce original content across platforms and monetize their self-brands and parasocial relationships, drawing on the seminal work by Abidin (2016), which extends earlier scholarship on microcelebrities (Marwick 2013; Senft 2008). Due to low barriers to entry, the creator economy is marked by democratic narratives of openness and opportunities

for influencers to engage in monetization. As this section will illustrate, scholars have troubled this myth through empirical research showing how structural conditions and hierarchies of visibility unevenly distribute monetization potential among certain identities and types of content.

The creator economy operates on a logic of visibility (Duffy and Hund 2019; Glatt 2023). The allocation of visibility by platforms influences the algorithmic distribution of content to audiences and the calculation of engagement metrics, which shape different types of monetization. For example, sharing content in exchange for payment from third parties or brands, known as influencer marketing, often relies on industry templates based on engagement metrics and follower counts. Likewise, revenue generated from platforms through creator funds and ad-sharing is determined by calculations established by the platform, which draw on metrics. Other revenue gained through the direct sale of products or services to consumers, as well as donations or subscriptions, also depends on influencers being connected to their followers, which is facilitated by platform recommendation systems. As such, for influencers 'to be visible . . . is to be rendered valuable' (Duffy and Hund 2019, 4996) and monetizable, which brings with it what Duffy et al. (2021) describe as 'nested precarities of visibilities'. This captures the volatile nature of visibility due to changing audience preferences, advertiser demands, platform algorithms and the overall platform ecosystem.

The 'nested precarities of visibilities' unequally affect influencers in the creator economy. Influencers from historically marginalized groups or those producing non-normative expressions experience and view mechanisms of platform invisibility (punishment) and visibility (reward) as unevenly distributed and inconsistently enacted by platforms (Christin and Lu 2023; Duffy and Meisner 2023; Glatt 2022, 2023). Identities, expressions and types of content that do not fit narrow criteria (white, male, middle class, heteronormative, brand-friendly) face increasing obstacles, reinforcing and solidifying existing hierarchies. For example, through her ethnographic work, Glatt (2023) demonstrates how the toll of managing audience relationships is higher for marginalized creators because of the 'intimacy triple bind'. She connects (1) structural exclusions to visibility and income-generating opportunities, (2) reliance on alternative revenue streams like crowdsourcing, which (3) requires the performance of relational labor, intensifying risks of harassment and hate. Here, the intersectional identity of the influencer as an individual nuances their access to visibility and remuneration, which we argue must also be reconciled with their legal classification.

Bishop's (2021) work on influencer management tools provides another entry point for understanding how inequalities are baked into the creator economy. By situating visibility and pay inequality affecting Black influencers in longer patterns of advertisers' racist perception of risk and safety, she proposes that the calculation of 'brand safety', rendered objective through algorithmic systems in tools like Peg, maps onto hierarchies of desirability and employability that predate the creator economy.

This critique of intermediaries in the influencer marketing industry is reinforced by Christin and Lu's (2023) study on discriminatory compensation dynamics. Drawing on a non-representative sample of voluntarily disclosed payment rates for sponsored content, they reveal the racialized pay gap as a result of discrimination. They illustrate how metrics are used to justify paying influencers of colour less than their white counterparts. Influencers of colour faced abuse and harassment online when speaking out about failed

negotiations or not receiving payment. This aligns with earlier work on the racial distribution in the labor of 'calling out' racism online (Nakamura 2015), particularly concerning the beauty influencer industry (Lawson 2020). It demonstrates how the uneven allocation of opportunities across racial groups by brands intersects with unequal responsibility for addressing racial inequalities and issues embedded in algorithmic systems.

Across this body of literature, race, along with class, sexuality, ability, and gender, are identified as intersecting categories that influencers embody. Coined by Crenshaw (1989), the analytical concept of intersectionality recognizes that 'social categories mutually constitute each other' (Phoenix 2006, 22) and are 'inextricably linked' (Christensen and Qvotrup Jensen 2012, 120), as individuals are simultaneously positioned within these intersecting categories. Consistent with this framework, we approach discrimination as unequal treatment based on belonging to groups that are attributed 'negative meanings . . . by broader society or the dominant culture' (Williams 1998, 15–16).

We propose that discrimination can be traced by examining how patterns of inequality seep into calculations of worth and allocations of visibility across various forms of monetization in the creator economy. This is partly inspired by Fiers' (2023) scoping review of discrimination in online paid labor, which identifies 'leakages' in the pipeline as barriers to participation. Influencers, however, are positioned as outside the scope of review because of the prevalence of 'aspirational' unpaid labor (Duffy 2017). Although this is characteristic of the creator economy, it overlooks the monetization practices of influencers, thereby disconnecting this group from issues of inequalities in access, participation and labor outcomes in online labor. In our case study, we focus on understanding how discrimination is part of influencer marketing and, more specifically, the itinerary of a brand trip as a representation of the contractual terms between a brand and influencer, which leads us to the issue of their legal status.

The legal status of influencers

Given the consumer-facing nature of the creator economy, we approach influencers' legal status through consumer protection legislation. Although our case study reflects a US influencer, we focus on European insights because, unlike the US, the EU has a rich history of mandatory consumer protection legislation spanning the last 50 years, along with extensive fundamental rights for individuals. These insights highlight the growing significance of legal qualifications that can clarify not only the rights but also the obligations of influencers. Accordingly, we use consumer protection to signify the commercial, rather than the personal, nature of the influencer persona under the law. Particularly through the lens of consumer protection, we can shed light on the impact of influencers' economic activities. Regardless of their business models and level of professionalization, an influencer's audience is a group of consumers. Consumer protection aims to reduce the power imbalance between economic actors and individuals by placing obligations on the former to protect the rights of the latter.

To identify which economic actors this applies to in European consumer law, a harmonized definition of 'trader' exists in the consumer *acquis*, an umbrella term for a range of consumer instruments, most of which apply to the creator economy (for example, the Unfair Commercial Practices Directive (UCPD), Digital Content Directive and Unfair Contract Terms Directive). The Court of Justice of the European Union (CJEU)

elaborated upon the constitutive elements of the 'trader' definition in the *Kamenova* case. Ms Kamenova, a seller on a peer-to-peer platform with eight ads for products on the Bulgarian marketplace olx.bg, was not considered sufficient by the Court to be qualified as a trader. Despite the legal classification must be assessed on a 'case-by-case approach' (para. 37), objective criteria can be used to make this determination. Such criteria include whether commercial activities are conducted in an organized manner; the activity is intended to generate profit; the party engaging in commercial activities possesses expertise that consumers do not have or the party is VAT-paying (para. 38). This does not preclude influencers based on their number of followers since they may regularly engage in monetization and develop professional expertise in the field. However, there is uncertainty regarding where to draw the line.

We argue that consumer protection can serve as a tool for the qualification of influencers as traders. As a result, we note that as long as influencers consistently undertake content monetization activities that bring them revenue, they may be deemed traders – and thus professional economic actors. This qualification likely applies to most influencers, irrespective of whether they consider themselves a business and their selfrepresentation as individuals through self-branding practices based on relatability, authenticity, and personal identity (Abidin 2016; Duffy 2017). The focus on the relationship between influencers and consumers also reorients the discussion of power imbalances in the creator economy, as discussed in the previous section, between influencers and brands, platforms and intermediaries. Although this body of research recognizes influencers' dependencies on other economic actors, from a legal perspective, the issue of protection when qualified as a trader applies to consumers and holds influencers to a high standard.

Case study: TikTok F1 Tarte drama

To explore how the conceptualizations of influencers as individuals with lived experiences and economic actors who function as traders impact their engagement with brands, we adopt a case study approach. Since 2015, American makeup company Tarte has organized over 20 brand trips, including one for the F1 Miami Grand Prix in May 2023. Brand trips are a form of influencer marketing in which the promotion of a third party is integrated into the content shared by influencers on the trip. Informed by Edwards (2022) work on influencer retreats and Bainotti's (2023) work on the logic of conspicuousness, we conceptualize brand trips as sites that make visible the logics and subjectivities of the influencer industry. Participation in brand trips enables influencers to showcase their social status within the creator economy, produce content that aligns with both the sponsoring brand and their personal brand, and may signify an ongoing paid partnership.

Tarte invited a range of influencers with diverse audience sizes[1] to the Miami Grand Prix. Bria had 453k TikTok followers at the time and, earlier in 2023, had participated in brand trips with Nair for Coachella, Tarte for the Taylor Swift Eras Tour, and Netflix for a film premiere. She had also produced commercial content for Bobbi Brown, Covergirl, Citizens Bank, and Le Mond Gourmand. On 3 May 2023, Bria shared a TikTok video that she later deleted that day, explaining her withdrawal from the trip. She recounted receiving a different itinerary than what she had initially been promised, along with other friends, which no longer included tickets for the Sunday race (the culmination of

the F1 weekend compared to practice on Friday and qualifying on Saturday). Although she would have 'love[d] to go on a Tarte trip' and felt 'grateful,' she explained that she had 'more integrity than to get all the way to Miami and realise that I'm being treated like a second-tier person or like I'm being ranked. ' Other influencers and TikTok users shared videos in response to Bria's deleted post, as well as the actions of Maureen Kelly, the CEO of Tarte, who shared and then deleted response videos. Tarte invited two Black influencers, Niké Ojekunle and Fannita Leggett, and Bria shared another video that reframed her experience as 'miscommunication' (see Figure 1 for a timeline).

We constructed a dataset to examine how Bria's experience was narrated and acted as a catalyst for discussion and drama (see Table S1 for an overview). Using the browser-based scraping tool Zeeschuimer (Peeters 2024), we collected videos based on search terms (Tarte F1 Drama, Tarte F1 Bria, Tarte Cosmetics Bria drama, Tarte F1 Bria video, Bria
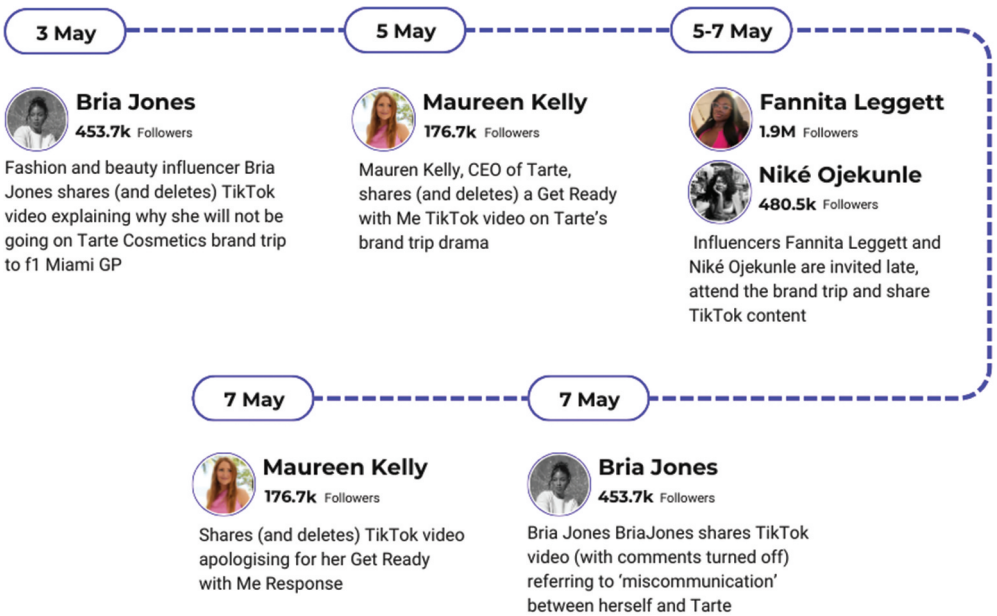

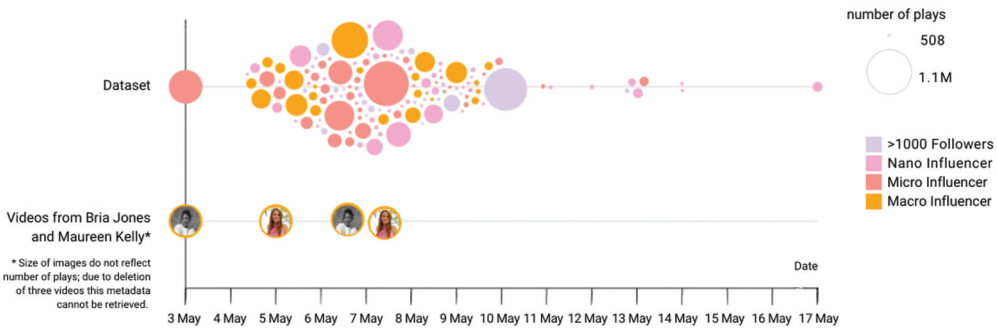**Figure 1.** Timeline of key events in F1 Tarte drama.

Figure 2. Visualisation of videos in the F1 Tarte drama TikTok dataset.

Jones Tarte drama) in November 2023. We cleaned the dataset by removing duplicates and reviewing videos, resulting in 137 videos, which are visualized in Figure 2. These videos, varying in reach and engagement, were shared by TikTok users with differing follower sizes, demonstrating how Bria's situation elicited reactions, commentaries, and discussions from various actors in the influencer industry, collectively contributing to the overall visibility of the drama.

The data are analysed qualitatively. Each video was examined to identify themes, focusing on how meaning was attributed to Bria's experience, Tarte Cosmetics, and Maureen, Black influencers who attended, along with the influencer industry. Coding was conducted inductively through an iterative process to capture patterns across the videos with a focus on narrative. This also involved examining intertextual traces facilitated by platform features such as the use of stitch ($n = 37$), comment reply ($n = 15$), or the inclusion of screenshots and screen recordings. We selected examples from our analysis to illustrate how narratives were constructed in the multimodality of audiovisual content and platform affordances. Additionally, we extracted the hashtags from the captions and grouped those that referred to specific individuals involved in drama. Using the visualization tool RankFlow (Rieder 2016), we demonstrate the changes in the quantity of hashtags related to individuals over time, indicating developments in whom creators choose to direct attention towards.

Following this qualitative analysis, we adopt a legal perspective to examine what constitutes discrimination within influencer labor, particularly regarding how the qualification of such labor affects the creator's legal status (e.g. employee, independent contractor, or business). We explore the increasing scrutiny of freedom of contract in these relationships, drawing on the JK v TP SA (2023) case, which examined discrimination in an independent contract based on sexual orientation.

Narratives of inequality and unfairness in the F1 Tarte drama

Cautiously calling out unequal treatment

We begin by examining how Bria constructed her relationship with Tarte and her experience of unequal treatment, as her first video ignited the 'drama'. Speaking directly to the camera in a grey hoodie, Bria tearfully explains that she is withdrawing from the trip with Tarte, providing two reasons why her itinerary might differ from that of her (white) counterparts. First, she reveals her assumption that Tarte uses metrics in their trip design, stating, 'I understand that my numbers are not like some of these other creators,' suggesting that audience size may govern unequal treatment by the brand. The itinerary serves as a site where the influencer industry's classification system becomes visible, which Bria suggests is personally felt and experienced as a reflection of self-worth: 'I'm being treated like a second-tier person or like I'm being ranked.' Although the blurred boundaries between personal and professional identity are not unique to influencers, as noted by Neff, Wissinger, and Zukin (2005) and Gill and Pratt (2008), we observe how this is mediated by 'like' culture (Gerlitz and Helmond 2013), which makes this conflation quantifiable.

Second, Bria carefully implies that unequal treatment may also be related to her racial identity. By saying 'I know that Cynthia had a similar experience', Bria connects her brand

trip to that of another influencer of colour, leaving the audience to decode what con-
stitutes similarity. Four days prior, South Asian influencer Cynthia Victor shared on TikTok
that her room on the Tarte trip to Turks and Caicos was smaller than the others. Bria
gestures towards a pattern of unequal treatment for influencers of colour on Tarte brand
trips. The implication that racial identity played a role is further alluded to near the end of
the video in a generalized statement: 'I will be damned as a Black creator if I accept
anything other than equal treatment on these trips'.

    We position Bria's cautious calling out of Tarte as illustrative of the precarity she faces.
On the one hand, her invitation to the Tarte brand trip indicates that Bria is successfully
managing the precarity of the influencer industry (Duffy et al. 2021). However, this does
not equate to security; she must continue to secure brand partnerships and manage her
relationships with both brands and audiences to ensure the ongoing financial viability of
her labor. While 'calling out' Tarte might contribute to her ongoing building of relation-
ships with the audience by demonstrating authenticity, it also involves accepting financial
risks that could influence her short-term relationship with the brand and her long-term
acquisition of brand deals. The precarity of managing these relational boundaries (Baym
2018) is heightened by her positionality, which adds to the risk Bria takes by withdrawing
from the brand trip and publicly sharing her experience. By refraining from labelling
Tarte's actions as racist or discriminatory, Bria partially shares the responsibility of 'calling
out' the brand with other TikTok users, who are more explicit in their videos about
interpreting her treatment, as the next section illustrates.

    The risk and impact of the callout are also evident through Bria's actions. In her second
video, she reframes it as a 'miscommunication,' stating that she has discussed the
situation with Tarte, hinting at a potential recalculation of risk. Unlike the negative
affective disclosure in her original video, which fosters a sense of authenticity
(Berryman and Kavka 2018) Bria speaks in polished, full sentences in the second video,
adopting a more formal tone that contributes to the curated, measured performance. This
effort to manage her visibility amid the escalating drama is also evident in her decision to
turn off comments and deactivate her account for a month. Considering influencers'
dependence on visibility for income, as previously mentioned, these actions highlight
how hypervisibility intersects with harassment, leaving the influencer vulnerable as both
an individual and a commercial actor.

Connecting unequal treatment to inequality

The understanding of unequal treatment as an act of racial discrimination or representa-
tion of racial inequalities is dominant in the dataset. Some videos centre on Bria's
experience, situating it in Tarte's problematic history of embracing diversity in their
influencer programme and the development of cosmetics products (Lawson 2020).
Black micro-influencer Ché March stitched Bria's original video, signalling
a legitimization of her testimony, before offering her response in which she moves
between assessing Tarte and Bria: 'Yet again here we are … Well done you for standing
up for yourself … The fact that this is happening again to the same brand'. This is
reinforced through her caption, where she expresses her sorrow that Bria had to endure
this and disgust for the brand. Videos also stitched Maureen's response videos to address
the gaslighting of lived experiences and critique the brand's communication. Maureen

'clears the air' by repudiating metrics as a basis for brand treatment ('nothing was decided based on the follower count') and equating differences in itineraries to a clash of personal values ('it turns out that people really wanted to go, you know, to that Sunday race. It was important to them. And I realised that the things that are important to me are maybe not important to everyone else'). This means that, according to Tarte, Bria's itinerary differed from other influencers because they randomly allocated race days rather than assignments based on the influencer's commercial value or reach. Maureen's second video also generalizes rather than engages with the particularities of Bria's experience. It shifts from a colourblind narrative to acknowledging 'the unequal treatment of Black creators within beauty creator programs' in the industry. This adds weight to Bria's implied assertion that racial identity significantly influenced brand treatment.

Some videos in our dataset also reference comments under Maureen's videos, calling out influencers and users for sharing supportive messages while highlighting the white identities of supporters. These creators also critique how calls for Bria to express gratitude are racially inflected. As Black beauty micro-influencer Taj Reid puts it, 'This is the reason why there is a huge pay disparity between creators in the beauty industry and across other industries because y'all just want us to be quiet and be happy with getting something. That's not enough'. Within her video, she reflects on her own experience of receiving a similar room on a brand trip, asking, 'What do we have to do in order to be treated fairly or like everybody else?'. Bria's unequal treatment by Tarte is a catalyst for discussing tokenism and racism in the influencer industry and society, thereby critiquing the white gaze that structures influencer and branding culture (Sobande 2024). The narrative of inequality is entangled with assessments of worth, the need to speak up and out and the construction of differences between Black influencers ('us' and 'we') and the assumed (white) audiences ('y'all') and industry. This supports Brock's (2020, 1) assessment that 'online identity has long been conflated with whiteness.' Here, the presumption of whiteness as the default identity of technoculture operates across influencer and TikTok cultures.

These videos make visible the assumption that influencers of colour like Bria are treated differently by brands. This is seen as unfair and wrong, yet predictable. It indicates that the inequalities of race, gender, class, and sexuality embedded within the influencer industry are not only experienced by influencers (Christin and Lu 2023; Duffy and Meisner 2023; Glatt 2022, 2023) but are also perceived by audiences. Consequently, TikTok creators and audiences express clear expectations that brands like Tarte have treated and will treat influencers unequally and that racial identity influences such decision-making.

The unequal spillover of Tarte F1 drama

Bria's unequal treatment has implications for the two Black influencers, Fannita and Niké, invited to the brand trip after Bria publicly withdrew. Videos in our dataset reveal that only these individuals were expected to express solidarity with Bria and combat inequality. Thus, the responsibility for addressing inequality was deflected from Tarte and Maureen. Black nano-influencer Reina describes this behaviour as 'playing pick me to the honey beige lady' in her caption. The derogatory term 'pick me girl' refers to young women perceived to conform to patriarchal ideals (Chen and Zeng 2022). Reina reinterprets this to

mock Fannita and Niké for deriving their self-worth, as evidenced by their acceptance of the Tarte trip, from their proximity to whiteness, embodied by Maureen ('honey beige lady'). Reina raises her eyebrows and squints her eyes as the 2018 callout by Black beauty influencers plays via greenscreen, reading the names of Tarte foundation shades aloud: 'fair sand, fair neutral, fair light neutral, light neutral . . .' to emphasize their disproportionate release of light skin tones (see also Lawson 2020). Other videos distinguished between the two influencers based on their experience and age. Black micro-influencer Jouelzy mentions she has 'a lot of grace for Fannita', but Niké has 'long given away that she's deeply anti-Black women at a minimum'.

The reference to individuals, including Fannita and Niké, occurs not only through practices of stitching their content, including screenshots and narrating their actions, but also through hashtags. We observe an increase in the number of videos with captions that include hashtags referring to Fannita and Niké, alongside a decrease in mentions of Maureen. The distribution of names in the drama, at the level of hashtags, demonstrates how attention increasingly focuses on Fannita and Niké, as illustrated in Figure 3.

Fannita and Niké faced increasing levels of harassment for accepting the invitation and for the content shared during the brand trip. This situation highlights not only the unequal treatment by brands but also how racial identity influences the treatment by audiences during brand trips, particularly in light of the unequal distribution of labor to call out brands (Lawson 2020). The spillover from Bria's unequal treatment illustrates the intersection of precarity and positionality. Because of their shared racial identity, only the participation of Black influencers was measured against the brand's values. Their business decisions became linked to Bria, creating a burden of solidarity by turning down work
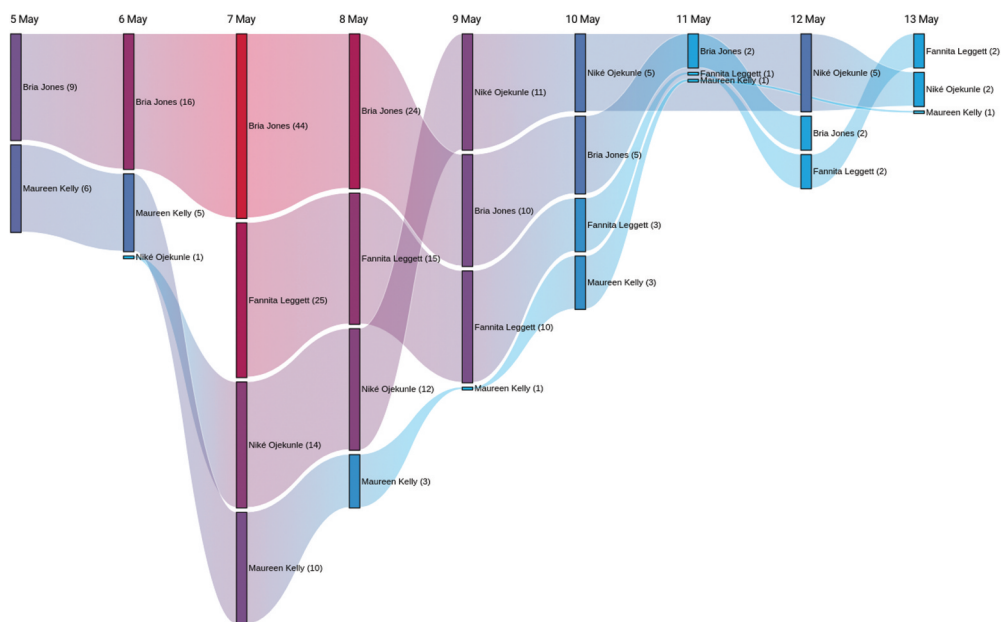
Figure 3. Visualisation of how the named individuals in hashtags change over time in F1 Tarte drama videos.

opportunities, which conflicts with the individualistic, capitalist nature of the influencer industry itself.

Brand trips and partnerships are positioned as a reflection and representation of the influencer's self-worth. As Black macro-influencer Whitney Madueke explains her views, she mobilizes notions of worth that play on economic and personal value: 'For them to have invited Bria, they know her worth. They know why they needed her there as part of the equation. And for people to think she is worthless . . . they don't know the business . . . Money and self-respect those two go together. That's the only way you can get what you truly deserve'. Here, we see that the commercial transaction is connected to the moral and economic worth of Bria, who is referred to as both an influencer and an individual. The portrayal of the influencer as someone who should be treated fairly by the brand and receive what they 'deserve' depends on the merging of the influencer with personal identity. These roles are disentangled, however, when considering the legal implications of the creator's potential qualification as a trader.

Rights of influencers as traders

While our analysis so far has focused on the personal identities of influencers, we now shift our attention back to their perspectives as traders. In what follows, we offer a brief legal analysis structured around two complementary perspectives: the extent to which influencers as professional market actors (e.g. traders and companies) may benefit from fundamental rights and the limits of policing unfairness in business-to-business (B2B) transactions. They are typically enshrined in treaties between states that pledge to uphold similar levels of protection for these fundamental rights. We focus on the EU legal framework for analytical purposes due to TikTok's global reach and its provision of a comprehensive set of norms based on a shared vision of fundamental rights that possess significant normative force, even on a global scale (termed the 'Brussels Effect' Bradford 2020). Moreover, the EU has a long-standing history of mandatory consumer protection legislation compared to the US.

If Bria were an EU citizen, she would benefit from the fundamental rights enshrined in the EU Charter for Fundamental Rights (CFR), which includes Article 21, prohibiting discrimination based on 'sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.' EU Fundamental Rights norms apply between states and citizens, but there is a degree of horizontal effect. In this context, it is relevant to assess whether Bria's right to non-discrimination based on race can serve as a framework through which we can observe her experience. Additional legislation is usually required for fundamental rights obligations to be imposed on non-state actors, such as companies, thereby enhancing the protection the state offers to citizens. Such additional legislation exists in labor law, where employees are in a weaker bargaining position in relation to their employer (Barnard 2014). The Race and Ethnicity Equality Directive (2000/43/EC) is particularly pertinent in this case, as it provides protection against discrimination in labor situations.

The Directive applies to employment, self-employment, and occupational situations. In 2023, the Court of Justice of the EU (CJEU) clarified the extent to which individual employment protections apply to self-employed individuals. Employment relations are

characterized by (a) the performance of effective and genuine economic activities, (b) remuneration, and (c) subordination – meaning a degree of control is exercised by the employer (Georgiou and Barnard 2023). To clarify employment protection for self-employed individuals, the most likely category that influencers such as Bria fall under, the CJEU adds the requirement of 'stability'. In the case of JK v. TP (C-356/21), JK created audiovisual content for the Polish public TV company (TP) through a series of short-term contracts until JK and his partner uploaded a video on YouTube addressing equal rights for same-sex couples. The Court recognized that self-employed individuals who work for a contracting party with a certain level of stability (paras 45–47) can benefit from the individual rights granted to workers.

However, influencers struggle to fulfil the requirement of activities pursued in a legal relationship characterized by a certain degree of stability. Due to the precarity of the industry, influencers have a portfolio of economic activities across different contracting parties and are subject to the instability of algorithmic recommenders. As a result, it is unlikely for influencers to make content for the same contracting parties over a longer time (Barnard 2023). Thus, it is also improbable that Bria benefits from the protections against discrimination offered by labor law. Consequently, we must examine whether influencers, considered as traders, receive protection against discrimination regarding fairness in commercial transactions.

Traders typically have significantly less protection and are, as market participants, traditionally less vulnerable than employees or consumers. Market economies are pre-mised on the idea of a voluntary exchange of goods and services, which is given legal footing through freedom of contract and is further underpinned by CFR article 16's Freedom to conduct a business. Freedom of contract assumes that parties have private autonomy based on the notion that they operate on equal footing (Basedow 2008). In B2B transactions, there are few limitations on the conduct of parties to ensure fairness in commercial negotiations and agreements. As a result, the commercial space becomes an arena where each economic actor must safeguard their own financial interests without any obligation to consider the interests of other parties when engaging in commerce with one another. Consequently, the principle of equal treatment is non-existent – similar situations are not necessarily treated similarly because the similarity depends on the ability of the market actor to 'fend for themselves' (Hesselink 2010). Influencers are thus not expected to consider the interests of brands when establishing their prices. Conversely, brands are not obligated to make the same offers to all influencers they collaborate with, as seen in the differences in Tarte's brand trip itineraries. Therefore, considering influencers as traders, we observe that remedies related to fairness are limited, if they exist at all. From a broader legal perspective, we can argue that if such remedies are scarce even within a legal system that strongly protects fundamental rights, they are unlikely to be available in more market-friendly jurisdictions. This reveals a gap in protection for influencers: Bria is not granted any safeguards against unfair treatment as a trader due to the discrimination she faces as an individual. Her services as a content creator do not fall under labor law protection and receive minimal legal support when viewed as a trader. For traders in the traditional sense of the legal concept, this situation is not necessarily problematic; however, the personhood of influencers is often conflated with their business of content creation. Clear solutions are not available. The CJEU is continuously expanding the definition of 'worker' as a necessity for labor law protection in

its case law, but it does not yet cover influencers. Protection is increasingly afforded to platform workers through the Platform Workers Directive and the Platform-to-Business Regulation. However, that only addresses protection vis-à-vis platforms, not companies like Tarte. Currently, protection could come from influencers themselves if they were to agree to jointly uphold a principle of equal treatment, ensuring that individuals in similar situations are treated similarly.

Conclusion

In this article, we have examined how narratives circulating during the Tarte F1 Drama present the brand treatment experienced by Bria as unequal and racially discriminatory, demonstrating the power imbalance between brands and influencers. Content produced by influencers and other creators reveals an expectation that racial inequalities and tokenism are baked into the influencer industry, indicating how both influencers (Are and Briggs 2023; Christin and Lu 2023; Duffy and Meisner 2023; Glatt 2022, 2023) as well as audiences connect monetization to structural inequalities. Based on this case study, we identify how Black influencers encounter a double bind when calling out such unequal treatment. It is Bria and other Black influencers who take on the labor of 'calling out' racism (Nakamura 2015, Lawson 2020), using their TikTok accounts to hold brands like Tarte to account for their influencer marketing practices and thus, take on risk for how this might impact future work opportunities. Simultaneously, it is Black influencers who are subject to increased surveillance and assessment of how their brand deals align with their values; akin to the gendered policing of inauthenticity (Duffy, Miltner, and Wahlstedt 2022), their influencer behaviour is disproportionately 'called out'.

Approaching the case study from a multidisciplinary perspective demonstrates how the status of influencers as economic actors, granted the same 'freedoms' as brands, reconfigures unequal treatment, as understood from an intersectional perspective. We argue that there is a tension between understanding the influencer as a person with lived experiences and the influencer as a commercial actor who enters into contractual relationships with brands. This entanglement of economic, social and personal assessments of worth is intensified because influencers leverage their personal identity through influencer marketing to generate revenue for their labor. The qualification of influencers as traders creates legal uncertainty over whether the framework of discrimination can be used to make sense of the brand treatment. Furthermore, the nature of the creator economy means that it is less likely for influencers to meet criteria that would extend them rights as workers, which would include protection from discrimination. As such, we see how reliance on traditional sources of income in the influencer industry contributes to the toll of managing relationships that Glatt (2023) discusses, which involves audiences and brands.

We want to conclude by reflecting on TikTok's role. Features like stitch, which allows video snippets to circulate after their deletion, and TikTok's algorithmic recommender systems, which facilitate visibility, intensify the unfolding of the F1 Tarte Drama. The specifics of the drama are subsumed within the logic of TikTok's platform capitalism; they are data fodder for the attention economy. TikTok itself is backgrounded in the critique: the issues of racial discrimination, unequal brand treatment, and lack of protections afforded to influencers, which are central to the drama, can be placed within the

continuity of misattribution and erasure of creative labor by Black influencers on TikTok (Taylor and Abidin 2024) and framing of influencers as creators who should be rewarded but not paid for their efforts (Annabell 2025), exemplifying the discursive power of TikTok's framing as a mere platform.

TikTok not only capitalizes upon surfacing and circulating discussions of discrimination in the creator economy but also feeds into the allocation of visibility that influencers like Bria rely upon. Metrics of engagement are treated as objective measurements of influence that reflect the 'reality' of value, but are also 'racialized representations' (Christin and Lu 2023) due to the bias inherent in recommender systems based on feedback loops and unbalanced training models. Although they are packaged as useful measurements that can be easily and seamlessly brought into contract negotiations, they are the product of an uneven distribution of visibility built into algorithmic systems that are racially inflected (Benjamin 2019; Noble 2018). Metrics, thus, facilitate and mediate the unequal access to monetization and treatment of influencers by brands, which potentially then perpetuates racialized patterns of paying influencers of colour at lower rates. This case study raises questions about what strategies and approaches influencers like Bria can take in combatting potentially unequal contracts as they negotiate reliant on metrics, as well as what forms of legal protection are currently afforded to them as 'traders' and whether we need to consider additional rights for influencers that go beyond what the law provides.

Note

1. Other influencers who shared TikTok videos from the brand trip included Chelsea Olivia (50.2k), Taylor Hale (66.8k), Carly Weinstein (512k followers), Ella Halika (730k) and Audrey Trullinger (1.7 M).

Disclosure statement

Funding

References

Abidin, Crystal. 2016. "Visibility Labour: Engaging with Influencers' Fashion Brands and #OOTD Advertorial Campaigns on Instagram." *Media International Australia* 161 (1): 86–100. https://doi.org/10.1177/1329878X16665177.

Annabell, T. 2025. "The Ideal Influencer: How Influencer Coaches and Platforms Construct Creators as Monetizing for the Right Reasons." *Social Media + Society* 11 (1). https://doi.org/10.1177/20563051251323951.

Are, Carolina, and Pam Briggs. 2023. "The Emotional and Financial Impact of De-Platforming on Creators at the Margins." *Social Media + Society* 9 (1). https://doi.org/10.1177/20563051231155103.

Bainotti, Lucia. 2023. "How Conspicuousness Becomes Productive on Social Media." *Marketing Theory* 24 (2): 339–356. https://doi.org/10.1177/14705931231202435.

Barnard, C. 2014. "EU Employment Law and the European Social Model: The Past, the Present and the Future" *Current Legal Problems* 67 (1): 199–237. https://doi.org/10.1093/clp/cuu015.

Barnard, Catherine. 2023. "The Serious Business of Having Fun: EU Legal Protection for Those Working Online in the Digital Economy." *International Journal of Comparative Labour Law and Industrial Relations* 39 (Issue 2): 125–150. https://doi.org/10.54648/IJCL2023008.

Basedow, J. 2008. "Freedom of Contract in the European Union." *ERPL* 16 (6): 901–923. https://doi.org/10.54648/ERPL2008069.

Baym, Nancy. 2018. *Playing to the Crowd: Musicians, Audiences, and the Intimate Work of Connection*. New York, NY: New York University Press.

Benjamin, Ruha. 2019. *Race After Technology: Abolitionist Tools for the New Jim Code*. Medford, MA: Polity.

Berryman, Rachel, and Misha Kavka. 2018. "Crying on youtube: Vlogs, self-Exposure and the Productivity of Negative Affect." *Convergence: The International Journal of Research into New Media Technologies* 24 (1): 85–98. https://doi.org/10.1177/1354856517736981.

Bishop, Sophie. 2021. "Influencer Management Tools: Algorithmic Cultures, Brand Safety, and Bias." *Social Media + Society* 7 (1). https://doi.org/10.1177/20563051211003066.

Bradford, Anu. 2020. "The Brussels Effect." In *The Brussels Effect*, edited by Anu Bradford, 25–66. 1st ed. New York: Oxford University Press. https://doi.org/10.1093/oso/9780190088583.003.0003.

Brock, André. 2020. *Distributed Blackness: African American Cybercultures*. New York, NY: NYU Press.

Chen, Shirley Xue, and Natasha Zeng. 2022. "Gaslight, Gatekeep, Girlboss': Memeified Femininities and Disidentification in Tiktok Youth Cultures." *AoIR 2022: The 23rd Annual Conference of the Association of Internet Researchers*, Dublin, Ireland.

Christensen, Ann-Dorte, and Sune Qvotrup Jensen. 2012. "Doing Intersectional Analysis: Methodological Implications for Qualitative Research." *Nordic Journal of Feminist and Gender Research* 20 (2): 109–125. https://doi.org/10.1080/08038740.2012.673505.

Christin, Angèle, and Yingdan Lu. 2023. "The Influencer Pay Gap: Platform Labor Meets Racial Capitalism." *New Media & Society* 26 (12): 7212–7235. April. https://doi.org/10.1177/14614448231164995.

Crenshaw, Kimberle. 1989. "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics." 31.

Duffy, Brooke. 2017. *(Not) Getting Paid to Do What You Love: Gender, Social Media, and Aspirational Work*. New Haven, CT: Yale University Press.

Duffy, Brooke, and Emily Hund. 2019. "Gendered Visibility on Social Media: Navigating Instagram's Authenticity Bind." 20.

Duffy, Brooke, and Colten Meisner. 2023. "Platform Governance at the Margins: Social Media Creators' Experiences with Algorithmic (In)visibility." *Media, Culture & Society* 45 (2): 285–304. https://doi.org/10.1177/01634437221111923.

Duffy, Brooke, Kate Miltner, and Amanda Wahlstedt. 2022. "Policing 'Fake' Femininity: Authenticity, Accountability, and Influencer Antifandom." *New Media & Society* 24 (7): 1657–1676. https://doi.org/10.1177/14614448221099234.

Duffy, Brooke, Annika Pinch, Shruti Sannon, and Megan Sawey. 2021. "The Nested Precarities of Creative Labor on Social Media." *Social Media + Society* 7 (2). https://doi.org/10.1177/20563051211021368.

Edwards, Sarah. 2022. "Branded Dreams, Boss Babes: Influencer Retreats and the Cultural Logics of the Influencer Para-Industry." *Social Media + Society* 8 (3): 20563051221116846. https://doi.org/10.1177/20563051221116846.

Fiers, Floor. 2023. "Inequality and Discrimination in the Online Labor Market: A Scoping Review." *New Media & Society* 25 (12): 3714–3734. https://doi.org/10.1177/14614448221151200.

Georgiou, Despoina, and Barnard, Catherine. 2023. "The Digitalisation of Work and the EU: Jurisprudential and Regulatory Responses in the Labour and Social Field." In *The Cambridge Handbook of Technological Disruption in Labour and Employment Law*, edited by Evert Verhulp, Gordon Anderson, and Marc De Vos, 30–52. Cambridge Law Handbooks. Cambridge: Cambridge University Press. https://doi.org/10.1017/9781108878647.003.

Gerlitz, Carolin, and Anne Helmond. 2013. "The Like Economy: Social Buttons and the data-Intensive Web." *New Media & Society* 15 (8): 1348–1365. https://doi.org/10.1177/1461444812472322.

Gill, Rosalind, and Andy Pratt. 2008. "In the Social Factory?: Immaterial Labour, Precariousness and Cultural Work." *Theory, Culture & Society* 25 (7–8): 1–30. https://doi.org/10.1177/0263276408097794.

Glatt, Zoë. 2022. "We're All Told Not to Put Our Eggs in One Basket': Uncertainty, Precarity and cross-Platform Labor in the Online Video Influencer Industry." *International Journal of Communication* 16 (August). https://ijoc.org/index.php/ijoc/article/view/15761.

Glatt, Zoë. 2023. "The Intimacy Triple Bind: Structural Inequalities and Relational Labour in the Influencer Industry." *European Journal of Cultural Studies*. August. https://doi.org/10.5210/spir.v2023i0.13422.

Goanta, Catalina, and Sofia Ranchordás. 2020. "The Regulation of Social Media Influencers: An Introduction." In *The Regulation of Social Media Influencers*, edited by Catalina Goanta and Sofia Ranchordás, 1–20. Cheltenham, UK: Edward Elgar Publishing.

Hesselink, Martijn. 2010. "Towards a Sharp Distinction Between B2B and B2C?: On Consumer, Commercial and General Contract Law After the Consumer Rights Directive." *European Review of Private Law* 18 (1): 57–102.

Lawson, Caitlin E. 2020. "Skin Deep: Callout Strategies, Influencers, and Racism in the Online Beauty Community." *New Media & Society* 23 (3): 596–612. https://doi.org/10.1177/1461444820904697.

Marwick, Alice. 2013. "Gender, Sexuality and Social Media." In *The Social Media Handbook*, edited by Jeremy Hunsinger and Theresa M. Senft, 59–75. New York, NY: Routledge. http://public.eblib.com/choice/publicfullrecord.aspx?p=1524159_0.

Nakamura, Lisa. 2015. "The Unwanted Labour of Social Media: Women of Colour Call Out Culture as Venture Community Management." *New Formations* 86 (86): 106–112. https://doi.org/10.3898/NEWF.86.06.2015.

Neff, Gina, Elizabeth Wissinger, and Sharon Zukin. 2005. "Entrepreneurial Labor Among Cultural Producers: 'Cool' Jobs in 'Hot' Industries." *Social Semiotics* 15 (3): 307–334. https://doi.org/10.1080/10350330500310111.

Nieborg, David B, and Thomas Poell. 2018. "The Platformization of Cultural Production: Theorizing the Contingent Cultural Commodity." *New Media & Society* 20 (11): 4275–4292. https://doi.org/10.1177/1461444818769694.

Noble, Safiya Umoja. 2018. *Algorithms of Oppression: How Search Engines Reinforce Racism*. New York, NY: New York University Press.

Peeters, Stijn. 2024. "Zeeschuimer." https://doi.org/10.5281/zenodo.13928612.

Phoenix, Ann. June 2006. "Interrogating Intersectionality: Productive Ways of Theorising Multiple Positioning." *Kvinder, Køn & Forskning* (2–3). https://doi.org/10.7146/kkf.v0i2-3.28082.

Rieder, Bernhard. 2016. "RankFlow." https://labs.polsys.net/tools/rankflow/ .

Senft, Theresa M. 2008. *Camgirls: Celebrity & Community in the Age of Social Networks*. New York, NY: Lang.

Sobande, Francesca. 2024. *Big Brands are Watching You: Marketing Social Justice and Digital Culture*. Oakland (Clf.): University of California Press.

Taylor, Zari A., and Crystal Abidin. 2024. "Where are All the Black Girls on Tiktok?: Exploring in-Group Community and (In)visibility Through #BlackGirlTikTok." *International Journal of Cultural Studies*. https://doi.org/10.1177/13678779241276751.

Williams, Melissa S. 1998. *Voice, Trust, and Memory: Marginalized Groups and the Failings of Liberal Representation*. Princeton, NJ: Princeton University Press.