


The Hypervulnerability of the Fan Following Brands of Products Linked to Football Clubs

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Abstract

This article, through the deductive method and theoretical research, aims to present the consumer's vulnerability to the offer of products promoted by football clubs. It will be analyzed how sports entities seek to promote the economic activity in which they are inserted by offering products and services linked to the brand they bear, this practice being one of their main sources of revenue. And, as this activity within the context of the values promoted by sport and the affective bond between fans and football clubs can generate hypervulnerability in this segment of consumers.

Keywords

Behavioral Vulnerability, Sport as an Economic Activity, Brand, Consumer Rights, Commercial Offer

1. Introduction

The cult of the body, according to Lipovetsky (2007), is the hallmark of a period in which there was a shift in the discourse of modernity. More precisely, it marks a historical moment initiated by the defeat of the utopias that emerged in 1968 in much of the world.

It is embedded in the so-called third phase of consumption, in which the consumer relationship has an emotional appeal, and the act of consumption does not necessarily represent the fulfillment of a consumer's need, but rather a demonstration of their lifestyle and the way they identify themselves in hypermodern society. This society is characterized by the superficiality of human relationships, the transience of life situations, and a frantic pursuit of unattainable happiness.

In general terms, the first phase of consumption coincides with the second phase of the industrial revolution, marked by the predominance of Taylorist and

Fordist models in industrial production lines (Lipovetsky, 2007). This allowed the industrialization process to supply products that were destined for, and consequently consumed by, only the elite of society. At that time, most people, including peasants and factory workers, were concerned solely with their own subsistence, and consumption was primarily directed towards the elite, with products meeting the utilitarian needs of this class. It was the dawn of consumerism.

In the second phase, which coincides with the post-war period, consumption undergoes a process of massification, extending beyond the elite to the newly emerging middle class, composed of workers and peasants. Here, the division of social classes intensifies, and consumption begins to symbolize the social class to which the consumer belongs. Generally, the massification of consumption strongly impacts the middle class, emphasizing durable household goods such as cars, refrigerators, televisions, stoves, etc. Luxury consumption remains exclusive and restricted to the elite, while middle-class consumption reflects their social status and the cultural values of the time, notably family, patriarchy, and property.

With the advent of the internet and the consolidation of the economic movement of globalization, the third phase of consumption emerges, which continues to this day. Now, consumption is no longer solely about meeting the utilitarian needs of the consumer or symbolizing their social class; it extends to the individual.

The postmodern individual begins to express their subjectivity and lifestyle through the act of consumption. This act becomes emotional, losing its connection to any objective element such as the utility of the product or its social category, and instead links to a desire in the pursuit of what is termed artificial happiness. This happiness does not necessarily reflect human aspirations and needs, but rather an oasis created by the phenomenon of the culture industry, which fuels the capitalist system.

And it is within this context of the third phase, centered on the individual, that the process of the aestheticization of life also emerges. Consumption becomes the privileged means of “self-care” in an individualistic manner, without state oversight, as this role, in hypermodern times, no longer belongs to the state. What remains, therefore, is the individual’s responsibility for their own self-care.

In the hypermodern era in which we live, consumption has gained such significance that it has fostered an almost absolute belief that “we are what we consume.” This notion is grounded in the idea that consumer goods serve as a reflection of one’s personality, preferences, and character, as though an individual’s image is solely dependent on the things they own (Lipovetsky, 2007).

Thus, products are acquired and internalized as ideal substitutes for so-called consumer dreams, which are driven by advertising. A pair of Nike shoes, for instance, can make a boy from the American suburbs, a Midwestern teenager, or a young WASP from Sutton Palace feel like a basketball player from Harlem. There is nothing more useful to humans than illusion. Illusion is a basic necessity, something that keeps us alive. This is why, in Brazil, you may find televisions in places where there is no food. Dreaming is a physiological necessity for humans. Nike

represents a dream, and the company understands that, in today's world, the most effective point of sale for a product is in the hidden corners of the human mind and soul (Guanaes, 1994).

The third phase of consumption is characterized by emotional consumption, defined by an endless pursuit of well-being through what is purchased. In this context, the ideal model of happiness becomes the absolute reference of consumer society and must, therefore, be measurable through objects and symbols of comfort, that is, based on visible criteria, capable of being perceived by others (Baudrillard, 2008).

Thus, what emerges is the consolidation of a consumption of symbols, possessing its own language, essential for individuals to establish relationships with one another, as human interaction increasingly depends on consumption. In this context, consumer goods serve as a necessary communication channel between people, capable of identifying potential affinities. The prevailing logic is that those who consume the same things share similar preferences and, therefore, belong to the same group (Lipovetsky, 2007).

The process of acquiring goods becomes increasingly complex, as it entails the adoption of values that signify to which group an individual belongs. Aware that failing to meet imposed standards may lead to exclusion or stigmatization, the consumer becomes a hostage to the fear of inadequacy. This creates an endless cycle driven by the desire for social approval, which is promised through material possessions. In this third phase, society exists in what Debord termed the "inverted world," where the truth is merely a fleeting aspect of falsehood (Debord, 2007). In today's hypermodern society, it is not enough to simply acquire the ever-changing symbols of consumer culture (Adorno, 2002); rather, one must publicly display these acquisitions, preferably on social media, and tie one's sense of well-being to the number of virtual "friends" who approve of the moment.

Zygmunt Bauman emphasizes that modern relationships have become individualized, and even politics, which once played the role of mediating between the public and private, between the state and the nation, has now become an appendage of the transnational capitalist economy. Politics serves as a means of facilitating the movement of capital, providing the conditions and "clearing the path" for the economy to develop (Bauman, 2021).

For the Polish thinker, public policy also loses its public content and the task of safeguarding public interests, shifting instead to serve private economic interests, in a clear concession to the pressures of capital.

In this sense, public policies, particularly in health care, reflect a reduction of the state's role and the maximization of the market. Consequently, the pursuit of health has become an individual responsibility through the market, a condition that is widely accepted in contemporary culture and common sense.

In this sense, health also becomes a commodity, and its logic follows the dictates of the third phase of consumption, characterized by being an expression of subjectivity in pursuit of artificial happiness.

The pursuit of health through the market is a result of the expanding glorification of a sports-oriented and narcissistic culture, which establishes a logic that imposes the need for individuals to have a beautiful and healthy body as a universal mandate (Trinca, 2006).

As a result, the discourse of a healthy lifestyle gains increasing prominence in the culture of health consumption. It is in this context that aesthetics become intertwined with the construction of the perception of health and what is considered to be healthy (Silva, Neves, Japur, Penaforte, & Penaforte, 2018).

In this context, Gumbrecht's exploration of the aesthetics of sport, particularly in *In Praise of Athletic Beauty* (2006), further illustrates how this pursuit of a "beautiful and healthy body" aligns with broader cultural trends. Gumbrecht's concept of "focused intensity" in sports, where athletes and spectators alike experience moments of transcendence and aesthetic appreciation, mirrors the societal shift towards valuing physical excellence and grace as markers of health (Shorkend, 2019).

This ties into the broader phenomenon of aestheticization described by Lipovetsky, where the boundaries between art and daily life blur, and the body itself becomes a central focus of aesthetic judgment. Sport, under this lens, becomes not just a physical activity but a form of cultural expression that reinforces the ideals of beauty, health, and performance, further entrenching the notion that to be healthy is also to be aesthetically pleasing. This fusion of sport, health, and aesthetics reflects the growing integration of beauty standards into everyday life, aligning with the logic of health consumption and the cultural glorification of the body (Lipovetsky, 2007).

2. Hypermodernity and Sport

Hypermodernity has significantly impacted the way people deal with their own bodies, stemming from the central idea it generates: the pursuit of artificial happiness, marked by hedonistic traits and self-satisfaction. In this context, the body becomes a primary means of expressing individual identity and seeking fulfillment, often driven by external pressures and societal ideals.

If in modernity the concern with the body was strictly related to maintaining its biological-functional aspect, occupying a secondary role in defining individual personality, in hypermodernity it also becomes an expression of people's lifestyle, driven by a frantic pursuit of longevity and high productive performance. A beautiful, youthful, and high-performing body, according to the standards imposed by the cultural industry, is idealized, leading individuals to undergo various aesthetic procedures and miracle formulas in an attempt to achieve it, despite the fact that this goal is often unattainable.

Thus, there is an exaggerated concern of the hypermodern individual with the body, manifested through aesthetic procedures, surgeries, diets, and other regimens. The standard of a slim and fit body is linked to messages of success and happiness. Human "life" has come to be measured by the necessity of "self-care."

Vitality is now directly associated with physical activity, aesthetic procedures and surgeries, and the consumption of so-called healthy foods, all tied to the image of success and happiness. In this way, hypermodern life imposes a new ideal: the aestheticization of life. This ideal values aesthetic guidelines under the perspective of the “well-being” discourse, tied to the spectacle of those labeled as “healthy”.

As Baudrillard teaches, the body helps to sell. Beauty helps to sell. Eroticism equally promotes the market. And this is not the least of the reasons that, ultimately, guide the entire historical process of the “liberation of the body.” The same thing happens with the body as with labor power. It is important that it be “liberated and emancipated” in order to be rationally exploited for productivity purposes. Just as the free determination and personal interest—formal principles of the worker’s individual freedom—are necessary for labor power to be converted into wage demand and exchange value, it is also necessary for the individual to rediscover their own body and reinvest it narcissistically—the formal principle of pleasure—so that the force of desire can be transformed into a demand for rationally manipulable objects/signs. It is essential that the individual take themselves as an object, as the most beautiful of objects and the most precious material of exchange, so that, at the level of the deconstructed body, of deconstructed sexuality, an economic process of profitability can be instituted (Baudrillard, 2008).

In light of this, the “market” appropriates the discourse of “well-being” and becomes embedded in the everyday lives of consumers, offering alternatives such as the pursuit of youth tied to the image of success and happiness, the necessity of undergoing aesthetic procedures and plastic surgeries, and the quest for physical activity and healthy eating to achieve a body profile shaped by the cultural industry.

This potential did not go unnoticed by companies, especially football clubs, which began associating their brands with this imagery-based ideology. By aligning the promotion of their products and services with consumers’ experiences of leisure, health, well-being, and emotion, football clubs maximize the opportunities for brand promotion and reinforcement of their names, concepts, and products, all aimed at generating high profitability.

One aspect that makes the market in which football clubs operate unique is precisely the passion of the fans. This passion manifests as a strong element of personal identification between brand and consumer, creating an emotional bond rarely seen in other consumer practices. On one hand, hypermodernity drives consumption as a defining aspect of individual personality, while on the other, the passion that connects fans to football clubs plays a central role. As a result, the act of consumption, for the consumer/fan, can be seen as a way to legitimize their belonging to a community that is emotionally tied to a sports entity whose brand symbolizes the inherent values of that sports group.

2.1. Sport as an Economic Activity

From the perspective of the Brazilian constitutional text, sport should be characterized as a fundamental right. Sport has the power to unite people, overcome

barriers, and promote cooperation among individuals and communities. In addition to its physical dimension, sport also carries social, cultural, and political impact. In this context, sport can be recognized as a third-generation human right, based on the principle of solidarity and aimed at ensuring a dignified life for all.

The effective implementation of sport as a human right requires joint actions from governments, sports organizations, and civil society to overcome challenges and take advantage of the opportunities it offers.

In this sense, this protection is enshrined in Article 217, Chapter III, titled “On Education, Culture, and Sports,” of the 1988 Federal Constitution. Let us examine the text:

Article 217. It is the duty of the State to promote formal and informal sports practices as a right of each individual, observing the following:

I—the autonomy of sports governing bodies and associations regarding their organization and functioning; II—the allocation of public resources for the promotion of educational sports as a priority and, in specific cases, for high-performance sports; III—differentiated treatment for professional and non-professional sports. IV—the protection and encouragement of sports manifestations of national origin.

[...]

§3. The public authority shall encourage leisure as a form of social promotion.

Thus, the State plays a predominant role as a promoter of sports activities, as [Miranda \(2007: p. 11\)](#) teaches: it is the responsibility of the State to provide conditions for all individuals to have access to sports practice, which presupposes the construction of adequate facilities, the implementation of physical-sports activities in educational institutions and the corresponding regulation of their exercise, the establishment of mechanisms for the distribution of public resources aimed at the development of sports activities in general, among other actions that fall under its constitutional duty to promote sports, in light of Article 217, caput, of the Constitution ([Miranda, 2007](#)).

On one hand, sport can be seen as a public policy to be implemented by the State; on the other, it can be considered an effective means of promoting global economic and social development, currently taking on business-like dimensions in both its management and organization.

Sport has evolved from being merely a form of entertainment and competition to becoming a powerful economic activity worldwide. From the organization of sporting events to the production and sale of sporting equipment, sport encompasses a wide range of sectors that drive economic growth.

Thus, in contemporary capitalist society, the sports market has a significant influence on consumption. According to Giovanni, whether in the form of sports spectacles or individualized physical practices, it is undeniable that in recent decades, sport (and physical activity in general) has become a vast and ever-growing field of economic investment. This growth, as could be expected, is closely tied to mass media and the emergence of a massive industrial production network of

equipment, artifacts, gyms, events, and mega-events, underscoring the importance of these phenomena compared to previous periods (Giovanni, 2005).

The professional sports industry today represents a business platform full of opportunities. The fan, once seen as merely passionate about the sport, is now regarded as a customer-consumer. The game, once viewed as entertainment, has given way to business ventures. Clubs, which were initially born from social interaction within communities, now focus on developing and selling players, as well as promoting products and services in a consumer market sustained by sports, which has become their primary source of revenue.

Competition is no longer confined to the sports spectacle or the field. It now extends into meetings of corporate-owned clubs. When a championship is won, products are promoted and sold, which seem to be key to the success of the athletes.

Thus, football clubs invest significant amounts in developing the image of players, commercializing products and services, and promoting initiatives with their sponsors.

It is important to highlight that sports consumption carries a wealth of meanings, going beyond the simple logic of use value or exchange value. Once this symbolism of sport is understood, the consumer can use it as a means of externalizing their personality or, alternatively, to signal which group they belong to or aspire to be part of.

Moreover, the hosting of small and medium-scale sporting events plays a crucial role in reinforcing this commercialization and consumption of sports, while simultaneously generating significant social benefits for the host communities. According to recent studies, such as Faten (2023), these events do not only provide short-term economic boosts but also foster long-term social impacts, including community pride, increased sports participation, and enhanced social cohesion.

The relationship between these social benefits and the potential for hosting future events is particularly noteworthy. As communities experience the positive outcomes from hosting smaller events, they are more likely to bid for and host additional events in the future, further contributing to both local development and the broader sports economy. Thus, the business of sport extends beyond mere economic transactions, intertwining with social, cultural, and communal identities, as these events reinforce not only consumer behavior but also collective aspirations and local pride.

According to Solomon (2000), brand loyalty to sneakers, idols, or soft drinks helps individuals define their place in modern society, and these choices also assist each individual in forming connections with others who share similar preferences.

Additionally, the economic impact on sport and its associated brands is undeniable, with the global sports market expected to reach \$599.9 billion by 2025, driven by sponsorships, broadcasting rights, and the commercialization of athletes and events (Deloitte, 2021). The influence of sports brands such as Nike and Adidas, which hold significant shares in the global sports apparel market, has been

particularly prominent. Nike, for example, reported a revenue of \$44.5 billion in 2021, highlighting how brand power extends beyond product sales to encompass broader cultural and social significance (Nike, 2021).

The growing commercialization of sports has not only transformed the financial landscape for leagues and clubs but has also altered the way sports are consumed, creating synergies between athletes, brands, and consumers. This shift reinforces the idea that sports are no longer just about competition; they are also about building narratives and identities around brands, athletes, and teams, which resonate with a global audience and contribute to a multi-billion-dollar industry. Such trends suggest that the economics of sport and branding have become deeply intertwined, with both benefiting from and contributing to the other's growth.

2.2. The Use of the Brand by Football Clubs

As discussed in the previous chapter, sport has become a significant market within economic activity. As such, both organizing entities, whether federations, clubs, and especially athletes, have become influential agents in shaping consumer habits.

In this sense, the set of values amalgamated by each brand provides a certain attractive power. This attractive power can be understood as the likelihood of inducing the consumer to purchase a new product marked by a renowned brand, as it conveys a set of characteristics with which the consumer is already familiar, thereby creating a specific expectation. Here, we are attempting to define attractive power as a potential or an “enhanced possibility of sale.” (Gusmão, 1996)

Indeed, sport can be classified as a modern consumption experience. Based on the passionate bond that connects a fan to a particular football club, the market seeks to expand this emotional loyalty by creating a kind of umbilical cord of self-identification with the brand represented by the sports entity. This is achieved through the ideological assimilation of supposed values shared among the team's supporters, making it difficult to believe that the consumer, when engaging in the act of consumption, is fully emancipated in their cognitive and volitional functions.

As previously noted in an earlier chapter, in the hypermodern era, consumption has gained such significance that it has fostered the near-absolute belief that “we are what we consume,” based on the idea that consumer goods reflect each individual's personality, preferences, and character, as if their image depended solely on these factors.

This has led to an excessive concern about what others think of one's consumption symbols, since these symbols must convey the appropriate image of their owners.

Thus, the advertising communication promoted by sports entities, as a persuasive tool aimed at convincing the public to purchase a specific product, service, or brand, is not merely intended to inform about the functional aspects of what is being promoted. Rather, it seeks to exalt worldviews, convey messages, values, and ideas, with the goal of establishing stronger emotional ties with the club's brand and achieving the effective loyalty of the fan.

Consequently, appealing to the emotional aspect of the fan/consumer has become the gravitational center of brand development by football clubs. Understanding what triggers emotion has therefore become the cornerstone for marketing professionals and advertisers in their efforts to engage the consumer in a deep and lasting manner.

According to Philip Kotler, we are currently witnessing the emergence of Marketing 3.0. Kotler explains that the phase of Marketing 1.0 developed during the industrial era and was focused on promoting standardized products to anyone willing to buy them. Marketing 2.0, in turn, arose in the current information technology era, requiring marketers to pay more attention to the needs of consumers who are now better informed and able to compare various offers. In this phase, marketers need to segment the market and develop superior products for a specific target market, guided by the rule that “the customer is king.” (Kotler, Kartajaya, & Setiawan, 2010).

While Marketing 3.0 is also focused on consumer satisfaction, companies practicing this approach aim to satisfy consumers on a deeper level, delving into the realm of aspirations, values, and spirit.

Thus, fans, once regarded as eternally devoted to the club out of love for the jersey, are now seen as clients and consumers. The game changes for their enjoyment and consumption.

3. Consumer Vulnerability

The Brazilian Consumer Protection Code (Law No. 8078/90) recognizes the consumer as a vulnerable subject in the marketplace (Article 4, Item I, of the CDC), establishing this as a principle of the National Consumer Relations Policy.

In this context, the study of behavioral economics becomes prominent. Its basic concepts stem from the cognitive perspective of psychology, through which an understanding of the cognitive processes that influence behavior is sought—in this case, the consumer’s ability to imagine alternatives before making a decision, to discover new paths based on past experiences, and to generate mental images of the world around them, and how this will influence their act of consumption (de Azevedo & Andreazza, 2021).

Behavioral economics studies reveal that individuals have limitations in exercising full rationality when making decisions. Thus, behavioral economics exposes, in psychological terms, the legally recognized vulnerability of the consumer, particularly in the pre-contractual phase, when they are exposed to the offer of an advertised product or service (Tversky & Kahneman, 1974).

Indeed, from the principle of vulnerability outlined in Article 4, Item I, of the Consumer Protection Code, arises the legal presumption that any consumer, regardless of other attributes, is vulnerable. A second point worth highlighting is the consolidation of the notion of aggravated vulnerability, which the Code already mentioned in Articles 37, §2 (children) and 39, IV (“weakness... considering their age, health, knowledge, or social condition”), now referred to as hypervulnerability,

consolidated in the jurisprudence of the Superior Court of Justice (STJ): “the hypervulnerable, (...) are precisely those who, because they are minorities and often discriminated against or ignored, suffer more from the massification of consumption and the ‘homogenization’ of differences that characterize and enrich modern society (...) Being different or a minority, due to illness or any other reason, does not mean being less of a consumer, less of a citizen, or deserving of second-class rights or merely rhetorical protection from the legislator.” (Brazil, 2005).

Hypervulnerability refers to the factual and objective social situation in which a consumer’s vulnerability is aggravated by personal circumstances apparent or known to the supplier, such as reduced age (e.g., baby food or advertising aimed at children) or advanced age (e.g., special care for the elderly, in accordance with both the Code and the Elderly Statute, including advertising related to credit for the elderly), or illness (e.g., gluten intolerance and the provision of information in medication leaflets) (Verbicaro, Rodrigues, & Ataíde, 2018).

In other words, while the “general” vulnerability under Article 4, I, is presumed and inherent to all consumers (especially considering their position in contracts, the focus of this work), hypervulnerability is inherent and “special” to a consumer’s personal situation, whether permanent (prodigality, incapacity, physical or mental disability) or temporary (illness, pregnancy, illiteracy, age) (Marques & Miragem, 2012).

In the same vein, Paulo Sérgio Feuz teaches that, in accordance with legal doctrine, the mere fact that the legislator recognizes specific protection for the consumer, as stated in Article 5, XXXII, implies inequality in the relationship. This is why the consumer deserves specific protection from the State.

Thus, the Consumer Protection Code acknowledges that there is a party in the consumer relationship who is weak and vulnerable—the consumer. This is established in Article 4, Item I, of the aforementioned legal document, recognizing that this weakness is real. It is, therefore, presumed—an absolute presumption—that the consumer, regardless of social class, is the weaker party in the consumer relationship (Feuz, 2010).

The Brazilian Superior Court of Justice has already recognized the state of social hypervulnerability of individuals and groups in relation to human health. As such, the following have been recognized as hypervulnerable: 1) an indigenous group in need of medical-dental assistance (Brazil, 2009); 2) individuals with physical, sensory, or mental disabilities (Brazil, 2007); 3) individuals with celiac disease, sensitive to gluten (Brazil, 2008).

Thus, hypervulnerability would be a factual and objective situation that aggravates the vulnerability of a physical consumer due to personal circumstances that are apparent or known to the supplier, such as reduced age, advanced age, illness, or a person in a special care situation.

In effect, while the general vulnerability under Article 4, Item I, is presumed and inherent to all consumers, hypervulnerability is specific and unique to the personal circumstances of an individual consumer.

Thus, contrary to the modern and liberal conception of the individual—understood as a rationally autonomous subject, capable of discerning and choosing with full awareness and freedom regarding the social realities around them—the postmodern conception of the individual (the hypermodern consumer) lacks, in reality, this full capacity. In the context of contemporary consumer society, their consciousness is revealed to be fragmented or, in a certain way, depersonalized.

The consumer, as a postmodern subject, is understood in relation to the group or collective to which they belong, and from which they establish their relationships with product and service providers. In this dynamic, the decision-making power over production and contractual content is granted solely to the supplier, leaving the consumer exposed to all sorts of harms—both material and non-material—as well as to market abuses, whether contractual or not. Additionally, consumers face situations of excessive economic imbalance, such as over-indebtedness in consumer credit contracts, a phenomenon that is worsening daily in our country.

For all these reasons, it can be stated that in the context of postmodern consumer society, legal systems for consumer protection have emerged as expressions of a global legal policy aimed at protecting the vulnerable. Consumer protection has become a matter of significant public social interest and economic public order, requiring appropriate and effective intervention by the State in economic activities, whether under public law or private law, to correct situations that demonstrate excessive imbalances in consumer legal relationships (Cavaliere Filho, 2019).

Fan Hypervulnerability

Sporting events are characterized by drawing thousands of people to sports venues, whether they are stadiums for football, volleyball, basketball, tennis, or even motorsport. In this regard, Article 142, §1, of Law No. 14,597/23 (the Brazilian General Sports Law) establishes that the spectator of a sporting event, whether a fan or not, who has purchased the right to enter the venue where the event takes place, is considered a consumer.

Thus, those who watch the sporting event via television or any other form of broadcast do not qualify as consumers in the sense of spectator-consumers under the General Sports Law.

In any case, even a fan who is not physically present in the stadium qualifies as a consumer, but under the concept established by the Consumer Protection Code, which is the fundamental norm for consumer protection. From this perspective, a sporting event of interest to the Brazilian population can effectively involve almost the entire society simultaneously, placing them in the position of active participants in the consumer market.

Regarding the concept of a consumer, it is important to note that the Consumer Protection Code has established, in more than one provision, definitions or characteristics that qualify certain individuals as consumers in the strict sense, as well as those considered consumers by analogy (or by extension) (Marques, 2006).

In this regard, attention should be given to the provisions of Article 2 of the Brazilian Consumer Protection Code (CDC), which defines the strict concept of a consumer. Articles 17 and 29 of the CDC introduce the concept of a consumer by analogy. The first provision (Article 17) refers to a victim of an event resulting from a defect in a product or service, while the second (Article 29) applies to identifiable or non-identifiable individuals who are subject to commercial practices that are inconsistent with the principles outlined in the CDC.

Thus, the fan-consumer is not limited to someone who purchases a ticket and gains the right to watch a football, tennis, or volleyball match in person at the venue or stadium. The fan-consumer includes anyone who, even from a distance or through another medium—such as streaming on a mobile device or television—watches the same event as those attending the sports arena.

In this sense, considering that appreciation, support, and engagement are presumed (Article 178 of Brazilian Law No. 14,597/23), it is the responsibility of the supplier to demonstrate that a particular individual does not qualify as a fan.

Article 3 of the Consumer Protection Code establishes the concept of a supplier, as well as that of a product and a service. The definition of a supplier must necessarily encompass those who, due to the risk of their activity, can introduce products or services into the consumer market.

Regarding the General Sports Law, Article 142, §1 defines as a supplier the sports organization responsible for organizing the competition, along with the organization holding home-field advantage, if applicable, or alternatively, both competing sports organizations, as well as other individuals or legal entities that hold the rights to stage the event or match.

Thus, it can be said that the fan, as a consumer, benefits from a distinct legal protection system compared to the general consumer, precisely because of their unique situation as a subject driven by passion.

The very definition of a fan, as provided in Article 178 of the Brazilian General Sports Law, describes any person who appreciates, supports, or associates with any sports organization that promotes the practice of sports in the country and follows a particular sport. This includes the spectator-consumer of a sports event, highlighting the emotional and passionate aspect. The definition begins with the verb “appreciate,” which denotes the sense of enjoying or liking something, thus referring to the feelings and sensations experienced by the subject of the verb.

In strict accordance with principles, no one would doubt the applicability of the Consumer Protection Code (CDC) to consumer relations involving the fan as a subject of consumption, if it were not for the regulation provided by the General Sports Law. In fact, the General Sports Law acknowledges the peculiar situation of the fan-consumer, defined by the passion that connects them to the sport.

While the General Sports Law directly addresses sports as a spectacle and an economic activity, focusing on the spectator-consumer relationship, particularly in relation to the direct connections generated by the sporting event, it is undeniable that the market appropriates this relationship to extend it into other fields of

economic activity, especially in the sale of products or services bearing brands licensed by football clubs or other sports organizations.

It is quite common for companies to seek proximity to prestigious figures, the protagonists of these events, in order to sell products and services. Thus, the presence of a large contingent of people—fan-consumers—along with sponsors who invest money in advertising and athletes who sometimes attain the status of heroes, makes these events, and their resulting impacts, significant and influential with public authorities.

Thus, Article 217 of the Brazilian Federal Constitution gains prominence, as it addresses the impact of sports by assigning the State the responsibility to promote sports practices, emphasizing their social nature and their goal of generating well-being and social justice.

On the other hand, the market that emerges from sports activities incorporates them into the economic activity context (Article 57 of the Brazilian General Sports Law), and must, therefore, adhere to the constitutional principles of economic order, particularly consumer protection (Article 170, Section V, of the Brazilian Federal Constitution).

In light of this goal of well-being and social justice, it is essential for public authorities to recognize the hypervulnerability of the fan-consumer in order to restore balance within the consumer relations fostered by this economic activity.

In this regard, it is important to bring up the lesson from Pablo Stolze Gagliano and Rodolfo Pamplona Filho's work, which addresses the civil-constitutional perspective of contracts. This serves as a paradigm for our understanding that it is necessary to recognize the hypervulnerability of the fan-consumer to better interpret the consumer relations within this economic activity, with the aim of achieving social justice.

As we see it, the process of constitutionalizing Civil Law has led us to rethink the social function of property, and as a result, the entire ideology surrounding contracts has been revised, particularly in terms of respect for human dignity.

In a truly democratic state governed by the rule of law, a contract will only fulfill its social function when, without compromising the free exercise of private autonomy, it:

- 1) Respects human dignity, especially as reflected in fundamental rights and guarantees;
- 2) Admits the relativization of the principle of equality between contracting parties—only applicable to truly equal contracts, which are currently the minority;
- 3) Enshrines an implicit clause of objective good faith, inherent in every bilateral contract, imposing secondary duties of loyalty, trust, assistance, reliability, and information;
- 4) Respects the environment;
- 5) Respects the social value of labor.

All these circumstances together shape the principle of the social function of contracts, as established in Article 421 of the Brazilian Civil Code.

It is crucial to emphasize, however, that the recognition of this principle does not negate private autonomy and free enterprise. On the contrary, it calls for their re-education. In this sense, Nelson Nery Jr. teaches that the social function of contracts does not oppose private autonomy but aligns and harmonizes with it. A similar conclusion was reached at the “Civil Law Conference,” as reflected in the following conclusion: “The social function of the contract, as provided for in Article 421 of the Brazilian Civil Code, does not eliminate the principle of contractual autonomy but mitigates or reduces the scope of this principle when meta-individual interests or concerns related to human dignity are present.”

Therefore, in light of the above, we could, without prejudice to the definition already presented, and from a more structural perspective, reconceptualize a contract as a bilateral legal transaction in which the parties, aiming to achieve certain patrimonial interests, align their wills to create a primary legal obligation (to give, to do, or not to do), as well as secondary legal obligations derived from objective good faith and the overarching principle of the social function of contracts. (Pamplona Filho & Gagliano, 2005)

Indeed, any and all consumer relations (legal transactions in the broad sense) involving the fan-consumer must be interpreted in light of this modern civil-constitutional perspective on legal transactions, particularly guided by the principles of human dignity, objective good faith, and the social function of contracts. This approach seeks to prevent abuses of rights or consumer harassment (which can lead to over-indebtedness) by entities that economically benefit from the passion that fuels the entire ecosystem of sports practices.

4. Final Considerations

From this article, we observe that in hypermodern society, consumption has shifted from fulfilling a physiological or functional need to representing one’s personality, status, and lifestyle. It has become an emotional form of consumption, often characterized by decisions that deviate from rationality, which is why there is an increasing demand from companies for marketing strategies based on the study of behavioral economics.

The decision-making process preceding consumption is influenced by heuristic rules that can lead to biases, further aggravating consumer vulnerability in the behavioral realm.

In this same context, the aestheticization of life develops daily, marked by the worship of the body according to aesthetic standards defined by the market and cultural industry. In the pursuit of an often unattainable ideal of beauty for most of the population—generated within a framework of seeking artificial happiness—consumers have their rationality affected, making them susceptible to the heuristic rules embedded in commercial practices grounded in behavioral economics.

In this context, sports organizations seek to introduce products and services tied to their brands into the market, leveraging the passionate attachment of fans, which is a unique aspect of this consumer relationship. In the race for profit,

inherent in capitalist society, the market has found mechanisms to exponentially increase its reach within the fan base.

As a result, the consumer, already characterized as vulnerable under the Consumer Protection Code, faces heightened vulnerability due to these commercial practices in the outlined context, making them hypervulnerable. This demands special attention from the consumer protection system to ensure adequate safeguards are in place.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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