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**WHO WEARS THE BLAME? LAW, LIABILITY AND THE RISE OF
VIRTUAL FASHION INFLUENCERS**- Alvira Chadha¹**ABSTRACT**

Once a futuristic concept, virtual influencers - computer-generated personas with no physical existence, have become a significant force in fashion marketing. Built on AI, machine learning, and Computer- Generated Imagery, digital personalities like Lil Miquela, who has partnered with Prada and Calvin Klein², now shape consumer behaviour and advertising strategy, despite lacking any legal personhood of their own. Herein, a legal question becomes unavoidable to discuss- Wherein a virtual influencer deceives consumers, who is legally responsible- the brand, developer, platform, or all three? And what laws protect consumers from being blindly swayed away by these influencers?

EMERGENCE OF VIRTUAL FASHION INFLUENCERS

Influencer marketing, accelerated by the growth of social media during the COVID-19 pandemic, has evolved from traditional celebrity endorsements to endorsements by computer-generated digital personalities designed to interact with audiences and promote brands on social media. As fashion and beauty industries still remain the constant benefactors of this format, because both industries operate on idealised aesthetics, a virtual influencer removes major obstacles that a brand cannot fully control in a human partnership.

RESEARCH PROBLEM

The legal framework currently governing areas of consumer protection, endorsements and advertisements has an inherent legal void, that they were built for a world in which an endorser or advertiser could only be a real person capable of being held legally accountable.

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²How AI Influencers Are Changing Digital Marketing: Trends, Risks & Future Outlook, THE AI JOURNAL, <https://aijourn.com/how-ai-influencers-are-changing-digital-marketing-trends-risks-future-outlook/>

Unlike humans, virtual influencers cannot be sued, held in contempt, or held accountable for false claims, as they lack intent, reputation, and legal personhood. So, the fundamental question is whether existing advertisement and consumer protection laws in India are adequate to regulate AI-generated fashion influencers³, or whether a specialised regulatory framework is required to allocate liability among brands, developers, and platforms?

EXISTING LEGAL FRAMEWORK

1. Consumer Protection Act, 2019⁴

The law under Section 28(2)⁵ protects consumers by explaining a false or misleading advertisement, and empowers the CCPA under Section 21 (1) ⁶to impose penalties for false or misleading advertisements; critically, the Act's liability structure does not turn on who or what delivered the endorsement but on who created or authorised the misleading claim. In other words, the act was not written with virtual influencers in mind, but its human-specific focus on who authorised the claim, meaning it can be stretched to cover entities without amendment. Apparently, Section 21 is broad enough, covering liability of multiple entities; whatsoever, it lists the categories of people against whom action may be taken, without explaining how responsibility should be divided when a virtual influencer advertises, or an endorsement is created through a multi-party production chain, a typical modus operandi in the fashion industry.

2. CCPA Guidelines on Misleading Advertisements, 2022 ⁷

These impose a due-diligence obligation on endorsers to verify claims before endorsing a product/service, a requirement only making in 'endorsements by real humans', since the virtual influencer by itself cannot verify anything; it only repeats whatever information is programmed into it. To say simply, the guidelines provide that the endorser has a legal duty. But never clarify that, wherein the endorser itself is an artificial influencer, on whom does this duty shift to, the brand, AI developer or the platform publishing its content?

³ Sarah Marsh, *Brands Using AI-Generated Influencers to Promote Products on Social Media*, THE GUARDIAN (June 21, 2026), <https://www.theguardian.com/technology/2026/jun/21/brands-using-ai-generated-influencers-to-promote-products-on-social-media>

⁴Consumer Protection Act, No. 35 of 2019 (India).

⁵Consumer Protection Act, No. 35 of 2019, § 28(2) (India).

⁶ Consumer Protection Act, No. 35 of 2019, § 21(1) (India).

⁷ Central Consumer Protection Authority, *Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements*, 2022 (India).

3. ASCI's Guidelines for Influencer Advertising (2021)⁸

The ASCI, mandates that influencer content include clear disclosure labels, like "advertisement," "sponsored," or "collaboration" and also that these obligations extend to virtual and AI-generated influencers on similar humanistic terms. None of these frameworks, however, addresses the elephant in the room- that the endorser itself is artificial; but merely that the post is sponsored, which is a different consumer protection altogether.

JUDICIAL PRECEDENTS

India has no reported judicial decision specifically addressing AI endorsement liability. However, existing precedents⁹ on misleading advertisement establish similar principles¹⁰; that consumer deception is a definite legal wrong, regardless of who or what produced it, a principle that may legitimately apply to virtual influencers, giving sufficient legal importance to the subjected problem.

TWO UNRESOLVED GAPS

1. Disclosure of artificiality, not merely sponsorship

Traditional disclosure rules focus primarily on whether an endorsement is sponsored. However, in the case of virtual influencers, disclosure must extend to the artificial nature of the endorser. A consumer who knows that a post is paid can reasonably alter his decision; but a consumer who believes the endorser is a real person may not be able to make an informed decision at all. This distinction is particularly significant in the beauty and fashion sectors, where consumers often rely heavily on an influencer's perceived identity and appearance, while making purchasing decisions.

2. Liability allocation

Existing law identifies primary actors but it does not provide role- based hierarchy responsibility. Typically, four parties sit between a virtual fashion influencer and the consumer, being, the brand commissioning the endorsement, the advertising or marketing agency, the AI developer & the platform hosting the content; whatsoever the Indian law provides no rule for which one of these bears primary responsibility, creating a legal lacuna

⁸Advertising Standards Council of India, *Guidelines for Influencer Advertising in Digital Media* (2021).

⁹ *Horlicks Ltd. v. Zydus Wellness Prods. Ltd.*, 2020 SCC OnLine Del 873 (India).

¹⁰ *Common Cause v. Union of India*, (2018) 5 SCC 1 (India).

that is likely to have severe consequences, keeping in mind the growth of AI influencer culture.

COMPARITIVE STUDIES

In the USA, Section 5 of the FTC Act¹¹ and the Endorsement Guides¹² require transparent disclosure of virtual endorsements, placing liability on brands and controllers. Article 50 of the EU AI Act mandates transparency for specified AI-generated content¹³, while the UK framework¹⁴ holds advertisers responsible for preventing misleading virtual influencer advertising.

RECOMMENDATIONS

In order to resolve these issues, either an entirely new legal framework dedicated to regulate only virtual influencers, must be created, being specific enough to not get generic, or the existing consumer protection regime must be updated, addressing futuristic challenges posed by virtual influencers in fashion marketing.

Whatsoever, the first step should be to legally define the term "virtual influencer", removing ambiguity regarding the applicability of advertising/ endorsement regulations, while mandating clear disclosure requirement whenever any digital content features a virtual influencer.

Apart from sponsorship labels, consumers must be informed that the endorser is artificial and that any significant digital alteration inter alia, has been made using AI, enabling consumers to make informed purchasing decisions. Moreover, artificiality disclosure must be made binding rather than voluntary, expanding ASCI's current self-regulatory code, since a "sponsored" label alone doesn't tell a consumer the endorser isn't real.

Additionally, the law must place primary liability on one of the four parties, as a virtual influencer cannot exercise any due diligence. At the same time, a shared liability framework should be introduced to allocate responsibility among these four parties according to their respective roles thus, addressing the current uncertainty. Furthermore, all AI-generated

¹¹15 U.S.C. § 45(a)(1)

¹²Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 C.F.R. pt. 255 (2023)

¹³*Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024, art. 50, 2024 O.J. (L 168) 1.*

¹⁴Digital Markets, Competition and Consumers Act 2024, c. 13, §§ 225-226, 231 (UK).

fashion advertisements should undergo mandatory, unbiased human review before publication, ensuring that product claims are truthful, visuals are not misleading, and all required disclosures have been made. Social media platforms should complement these measures by introducing visible labels identifying AI-generated influencers rather than solely relying on hashtags.

Such targeted reforms would strengthen the legal framework of the future, promoting transparency and accountability.

CONCLUSION

As AI reshapes fashion advertising, consumer trust increasingly depends on legal certainty and effective regulation. The issue is no longer whether virtual influencers should be permitted, but whether their use complies with consumer protection, disclosure, and accountability standards. The law must therefore evolve with technology to ensure that innovation does not undermine informed consumer choice or facilitate deceptive digital advertising.

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