

## AI, Influencers, and Liability: What Marketing Agencies Need to Know Before Deploying AI Tools

Artificial intelligence is rapidly transforming influencer marketing. Marketing agencies now use AI tools to identify influencers, optimize campaigns, draft captions and marketing copy, analyze audience engagement, and even create entirely synthetic influencers and virtual personas.

As agencies increasingly integrate these tools into influencer campaigns, an important legal question emerges: what risks arise when AI becomes part of the advertising process?

The legal risk is not simply that AI is being used in influencer marketing; rather, the risk depends on how AI is being used. Although regulators have not yet issued detailed rules governing ordinary AI-generated captions or standard influencer post copy, existing advertising laws already create meaningful liability exposure for agencies deploying AI in marketing campaigns. At the same time, recent regulatory developments suggest that regulators are increasingly focused on AI-generated endorsements, synthetic personas, and fabricated testimonial-style content.

### **AI Is Already Embedded in Influencer Marketing**

AI tools are now integrated into nearly every stage of influencer marketing. Agencies commonly use AI to:

- identify influencers based on engagement metrics and audience demographics;
- optimize campaign performance;
- generate captions, scripts, or marketing copy;
- personalize messaging at scale; and
- create synthetic media, including virtual influencers and AI-generated personas.

These technologies can improve efficiency, reduce production time, and generate valuable audience insights, but they also create new legal questions concerning transparency, authenticity, and intellectual property.

Importantly, there is still relatively little AI-specific regulation governing ordinary AI-assisted marketing copy. Regulators have not announced broad rules requiring disclosure every time generative AI assists with drafting a caption or social media post.

For now, agencies should assume that AI-assisted influencer content will generally be evaluated under traditional advertising law principles.

### **Existing Advertising Law Still Applies**

The primary legal framework governing influencer marketing in the United States remains the Federal Trade Commission Act and the FTC's Endorsement Guides.

Under these rules:

- endorsements must be truthful and not misleading;
- material connections between advertisers and influencers must be clearly and conspicuously disclosed; and
- deceptive marketing practices may violate Section 5 of the FTC Act.

These standards apply regardless of whether marketing content is generated manually or produced with the assistance of AI.

For agencies, this means that AI-generated or AI-assisted influencer content must still be reviewed for compliance before publication. Regulators have signaled that companies remain responsible for marketing claims disseminated through automated systems, influencers, and digital advertising tools.

## Regulators are Beginning to Focus on Higher-Risk AI Uses

Although the law governing ordinary AI-generated captions remains relatively undeveloped, regulators are beginning to address higher-risk uses of AI in advertising more directly.

### The FTC's Fake Reviews and Testimonials Rule

The clearest example is the FTC's 2024 final rule banning fake reviews and testimonials.

The rule prohibits businesses from creating, purchasing, or disseminating fake reviews or testimonials, including content generated via AI. The rule specifically targets testimonials that falsely represent that a reviewer exists or actually used the product or service.

This development is significant because it directly addresses AI's ability to generate fabricated testimonial-style content at scale. While the rule is not specific to influencer marketing, agencies using AI tools to generate consumer-style endorsements, "first-person experience" narratives, or simulated product reviews may therefore face meaningful enforcement risk.

### New York's Synthetic-Performer Advertising Law

New York recently enacted legislation requiring advertisements that use a "synthetic performer" to include clear disclosure. The law, S.8420-A/A.8887-B, enacted in December 2025 and effective June 9, 2026, is particularly relevant to campaigns involving AI-generated human characters, synthetic influencers, and AI avatars used in advertising.

This statute is important for agencies experimenting with virtual influencers or AI-generated personalities because it moves beyond general deception principles and imposes an affirmative disclosure requirement when synthetic human personas are used in advertising.

### California's Digital-Replica Laws

California has also enacted laws addressing AI-generated replicas of a person's voice or likeness.

The two statutes that took effect January 1, 2025, AB 2602 and AB1836, protect performers and personalities from unauthorized digital replicas generated using artificial intelligence. Although these laws were developed primarily in the entertainment context, they may become increasingly relevant to influencer marketing campaigns involving cloned voices, AI-generated celebrity likenesses, or synthetic personas designed to resemble real individuals.

Together, these developments suggest that regulators are most concerned when AI is used not merely as a drafting tool, but as a mechanism to fabricate human identity, experience, or authenticity.

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## A Practical Framework for Evaluating AI Risk

A useful way to think about the above described risks is through a two-tier framework.

### Tier One: AI-Assisted Content Generation

Lower-risk uses of AI generally involve tools that assist with:

- caption drafting;
- copy suggestions;
- campaign optimization; and
- audience analytics.

Although agencies should always review AI-generated copy carefully, these uses typically raise familiar advertising-law risks, including misleading claims, inadequate disclosure, or unsupported representations.

### Tier Two: AI-Generated Personas and Testimonial Content

Higher-risk uses of AI involve:

- fake reviews or testimonials;
- synthetic endorsements;
- virtual influencers presented as real individuals; and
- cloned or replicated voices or likenesses.

These activities may implicate:

- FTC enforcement under the fake reviews rule;
- state synthetic-performer disclosure requirements;
- right-of-publicity and digital-replica claims;
- intellectual property disputes; and
- reputational harm.

## Risk Mitigation Strategies for Agencies

Marketing agencies should not assume that liability falls solely on brands or influencers. Regulators increasingly view agencies as active participants in advertising campaigns, particularly where agencies help develop campaign strategy, manage influencers, or create marketing content (See FTC's *Endorsement Guides: What People Are Asking*). As such, agencies should consider implementing practical safeguards before deploying AI tools in influencer campaigns.

### Establish Internal AI Governance Policies

Agencies should adopt internal policies addressing:

- acceptable uses of AI;
- required human oversight;
- review procedures for AI-generated content; and
- escalation processes for higher-risk campaigns involving synthetic personas or testimonials.

### Review Contracts Carefully

Contracts with influencers, clients, and technology vendors should address:

- responsibility for AI-generated content;
- disclosure obligations;
- likeness and publicity rights;
- intellectual property ownership; and
- indemnification for compliance failures or IP-related claims.

### Maintain Human Oversight

Human review remains critical. Agencies should consider implementing:

- disclosure checklists;
- pre-publication review procedures where feasible;
- monitoring of influencer compliance; and
- restrictions on AI-generated "first-person experience" claims unless verified.

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## Conclusion

Artificial intelligence offers marketing agencies powerful opportunities to scale influencer campaigns. At the same time, agencies should be especially mindful when AI is used to create or simulate human identity or experience, including fabricated testimonials, synthetic personas, or digital replicas.

Although the law remains less developed for ordinary AI-assisted captions and post copy, the key legal question for agencies is not simply whether AI is being used, but how it is being used.

Agencies that implement thoughtful compliance procedures, maintain human oversight, and structure contracts carefully will be better positioned to leverage AI responsibly while minimizing legal and reputational risk.

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