

AI-Assisted, Replicated, and Synthetic Influencers: Legal Risks and When to Disclose AI

Introduction

GenAI is changing how brands and marketing agencies create, edit, distribute, and scale influencer content. GenAI tools can:

- Draft and edit captions, scripts, and talking points.
- Generate or modify images, video, and audio.
- Clone voices and create digital replicas of real people.
- Create virtual influencers with no corresponding human identity.
- Produce consumer reviews and testimonials at scale.

These capabilities raise a recurring question for brands and agencies: when must consumers be told that AI was used to create or modify influencer content? There is currently no general FTC rule requiring disclosure solely because AI was used. However, existing consumer protection law applies regardless of whether content is created by a human, an AI system, or both, and AI-specific disclosure obligations are emerging in state law, platform policies, and the EU AI Act. Under federal law, the more useful question is whether the use of AI changes what consumers are likely to believe about the advertisement, particularly its source, its authenticity, or the experience of the person making the endorsement.

The answer depends heavily on how AI is used. This article examines three categories:

- **AI-assisted real influencers.** A real influencer remains the speaker and source of the endorsement, while GenAI helps create or modify the content (see [AI-Assisted Real Influencers](#)).
- **AI replicas of real influencers.** AI creates content depicting an identifiable real person saying or doing something the person did not actually record, such as through voice cloning, digital replicas, or synthetic video (see [AI Replicas of Real Influencers](#)).
- **Fully synthetic influencers.** AI creates the influencer itself, resulting in a fictional persona that may have a realistic appearance, voice, personality, and social media presence without any corresponding human identity (see [Fully Synthetic Influencers](#)).

Each category raises different transparency concerns, but the analysis begins with familiar advertising law: what the advertisement communicates to a reasonable consumer, and whether that communication is truthful and not misleading. This article then offers a framework for assessing AI transparency across all three categories (see [Assessing AI Transparency](#)) and practical strategies for managing risk (see [Managing Risk](#)).

Key Rules at a Glance

The legal framework for AI-generated influencer content is discussed in detail in *GenAI in Advertising and Influencer Marketing: The Legal Framework (2026 Update)*. In summary, the authorities that most often drive the analysis are:

- **FTC Act Section 5.** An advertisement is deceptive if it is likely to mislead reasonable consumers about something material, judged by its net impression. Objective claims must be substantiated before they are made, including claims suggested or drafted by AI (15 U.S.C. § 45(a)(1); FTC Policy Statement on Deception, appended to *Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 174 (1984)).
- **Endorsement Guides.** Endorsements must reflect the honest opinions and experience of the endorser, an endorser who is represented as using a product must be a bona fide user, and material connections must be disclosed clearly and conspicuously. The Guides apply to virtual influencers, and advertisers, endorsers, and intermediaries such as agencies may all be liable (16 C.F.R. §§ 255.0(b), 255.1(a)–(f), 255.5).
- **Consumer Reviews and Testimonials Rule.** Businesses may not create or disseminate reviews or testimonials that misrepresent that the reviewer exists, used the product, or had the experience described, and violations may result in civil penalties (16 C.F.R. § 465.2).
- **State AI disclosure laws.** New York requires advertisements that include AI-generated synthetic performers to disclose that fact (N.Y. Gen. Bus. Law § 396-b), and California prohibits using undisclosed bots to mislead people about their artificial identity in order to incentivize a purchase (Cal. Bus. & Prof. Code §§ 17940 to 17943).
- **Rights of publicity and digital replica laws.** State laws restrict unauthorized commercial use of a person's name, likeness, or voice, and several states limit the enforceability of vague digital replica provisions in contracts (see, for example, Cal. Lab. Code § 927; N.Y. Gen. Oblig. Law § 5-302).
- **Platform policies and the EU AI Act.** Major platforms require labels for realistic AI-generated or altered content, and the EU AI Act requires disclosure of deepfake content (Article 50(4), Regulation (EU) 2024/1689).

AI-Assisted Real Influencers

AI assistance involving real influencers is likely the most common category. A real influencer remains the source of the endorsement, while GenAI may be used to:

- Draft, rewrite, or translate captions and scripts.
- Generate alternative versions of an approved post.
- Retouch photographs or video, or generate or modify backgrounds.
- Modify the influencer's appearance or voice.
- Generate portions of a video.
- Develop product claims or talking points.

Legal Risks

There is no general FTC rule requiring an influencer to disclose AI use merely because AI helped draft or edit content. However, these uses vary substantially in their legal significance. Key risks include:

- **Undisclosed material connections.** A paid relationship remains a material connection that generally must be clearly and conspicuously disclosed, whether or not AI was used to create the post (16 C.F.R. § 255.5(a)). Disclosing the sponsorship does not cure a false or misleading claim in the advertisement (16 C.F.R. § 255.1(a); FTC, *.com Disclosures: How to Make Effective Disclosures in Digital Advertising* (Mar. 2013)).

- **AI-generated claims.** GenAI can produce confident statements that are unsupported or incorrect. For example, an AI tool asked to turn approved talking points into a script may add that “clinical research proves” the product improves a condition by 40% when no such research exists. That a claim originated with AI does not reduce the advertiser’s substantiation obligation. The same risk arises when an influencer runs approved claims through a GenAI tool to put them in the influencer’s “own voice,” which can introduce new numbers, studies, or comparisons that were never approved. Influencers who make unsupported claims that go beyond their personal experience may also be liable (16 C.F.R. § 255.1(e)).
- **Altered product demonstrations.** An AI edit that adjusts lighting presents a different issue than an edit that makes a skincare product appear to eliminate wrinkles that remain visible in the original footage. The question is whether the modification creates a materially different impression about the influencer, the product, or its results. Long before GenAI, the Supreme Court upheld the FTC’s position that an undisclosed simulated demonstration offered as visual proof of a product claim is deceptive (FTC v. Colgate-Palmolive Co., 380 U.S. 374 (1965) (undisclosed mock-up in a shaving cream commercial)). The UK Advertising Standards Authority has applied similar reasoning to beauty filters in influencer advertising (ASA Rulings on Skinny Tan Ltd and We Are Luxe Ltd t/a Tanologist Tan (Feb. 3, 2021)).
- **Altered appearance.** The Endorsement Guides treat as deceptive an image that misrepresents a material attribute of the endorser, such as using a photograph that exaggerates the results the endorser achieved (16 C.F.R. § 255.1(g)). AI edits to an influencer’s appearance raise the same concern when the alteration relates to the product’s claimed effect.
- **Platform labeling.** Realistic AI alterations may trigger platform labeling requirements even where the law does not. Platform policies typically distinguish between realistic synthetic content, which must be labeled, and productivity uses such as drafting scripts or captions, which generally need not be.

AI Replicas of Real Influencers

Voice cloning, generative video, and digital replicas can create content depicting an influencer saying or doing things the influencer never recorded. The resulting advertisement may be difficult for consumers to distinguish from genuine content. For example, a brand might generate a video in which an influencer appears to say, “I’ve used this product every day for six months, and it completely transformed my skin,” although the influencer never recorded the statement or used the product for six months.

Legal Risks

The central FTC concern is not that the content is artificial, but whether consumers are likely to attribute synthetic statements, conduct, opinions, or experiences to the real person depicted. Key issues include:

- **Two distinct disclosure questions.** A sponsorship disclosure, such as #ad, tells consumers about the commercial relationship. It does not tell consumers that the influencer never recorded the video, spoke the words, or had the experience portrayed.
- **False attribution.** An endorsement must reflect the endorser’s honest opinions and experience, and an advertiser may not use an endorsement to convey a representation that would be deceptive if made directly (16 C.F.R. § 255.1(a)). An endorsement may not be reworded in a way that distorts the endorser’s opinion or experience (16 C.F.R. § 255.1(b)), and if the advertisement represents that the influencer uses the product, the influencer must have been a bona fide user (16 C.F.R. § 255.1(c)). AI makes false attribution more convincing but does not change the underlying deception principle.

- **Statements after the relationship changes.** A replica can continue generating content long after the original campaign. An advertiser may use a celebrity endorsement only while it has good reason to believe the endorser continues to hold the views presented, and may continue representing that an endorser uses a product only while it has good reason to believe the endorser remains a bona fide user (16 C.F.R. § 255.1(b), (c)). A replica that keeps praising a product after the influencer has stopped using it, or after the relationship has ended, raises both endorsement and publicity concerns.
- **Disclosure of synthetic content.** There is no general FTC rule requiring every synthetic image, voice, or video used in advertising to carry an AI label, and no FTC rule squarely addresses the authorized use of a real influencer's replica. The FTC's proposal to extend its Impersonation Rule to individuals has not been finalized and would principally address unauthorized impersonation. The risk is greater where a reasonable consumer would believe that the real influencer personally recorded the content, made the statement, demonstrated the product, or experienced the claimed result.
- **Consent is not substantiation.** An influencer's approval of synthetic content cannot convert an experience that never occurred into a genuine first-person endorsement.
- **Publicity and replica laws.** Unauthorized replicas may violate state right of publicity and digital replica laws and support Lanham Act false endorsement claims (see, for example, Tenn. Code Ann. § 47-25-1101 et seq.; 15 U.S.C. § 1125(a)(1)(A); *Waits v. Frito-Lay, Inc.*, 978 F.2d 1093 (9th Cir. 1992)). State publicity claims have proven viable against AI voice clones (*Lehrman v. Lovo, Inc.*, No. 1:23-cv-08269, 2025 WL 1902547 (S.D.N.Y. July 10, 2025)). Even where the influencer has signed an agreement, vaguely drafted replica provisions may be unenforceable in some states (see Cal. Lab. Code § 927; N.Y. Gen. Oblig. Law § 5-302; 815 ILCS 550/1 et seq.). A general grant of rights to use an influencer's name, image, likeness, voice, and content may not clearly extend to a replica that generates new statements the influencer never made.
- **EU disclosure.** Replica content in campaigns that reach the EU may require deepfake disclosure under the EU AI Act (Article 50(4), Regulation (EU) 2024/1689).

Fully Synthetic Influencers

A virtual influencer may have a realistic appearance, name, voice, personality, social media presence, and apparent life story without corresponding to any real person. The persona may post, interact with followers, express opinions, and promote products much like a human creator. The more realistic the persona, the less obvious its synthetic nature may be, particularly when it speaks in the first person about apparent personal experiences.

Legal Risks

Virtual influencers raise two distinct deception questions:

- **Identity.** Whether consumers understand that the influencer is synthetic rather than a real person.
- **Experience.** Whether the advertisement represents or implies that an actual product experience occurred when it did not.

For example, a virtual influencer post stating, "I've been using this product for six months, and my skin has never looked better. #ad," discloses the sponsorship. Even if the persona is clearly identified as AI-generated, neither disclosure creates an actual six-month product experience.

Key issues include:

- **Fabricated experiences.** The Consumer Reviews and Testimonials Rule prohibits testimonials that materially misrepresent the testimonialist's existence, use of the product, or experience (16 C.F.R. § 465.2). Brands should not use AI to create fictional customer reviews or use a synthetic persona to convey a first-person experience in a way that suggests a real person had it. A useful test is whether a human influencer who never used the product could truthfully make the same statement. If not, a synthetic influencer should not make it either.
- **Reported experience and summaries.** A synthetic persona that reports what actual customers say, rather than claiming its own experience, shifts the analysis from the endorser's honesty to substantiation. The underlying reviews must be genuine and representative, and the presentation must not distort what consumers think of the product (16 C.F.R. § 255.2(d)). Brands that use AI to summarize verified reviews should retain the underlying data and a record of how the summary was produced.
- **Material connections.** Virtual influencers can be endorsers under the Endorsement Guides, so material connection disclosure obligations apply (16 C.F.R. §§ 255.0(b), 255.5).
- **Identity disclosure.** There is no FTC rule requiring every virtual influencer to be labeled as AI-generated, but omitting that information may be more significant where an advertisement depends on consumers believing the persona is human. New York now requires advertisements that include a synthetic performer to disclose that fact conspicuously, where the advertiser has actual knowledge of the synthetic performer's use (N.Y. Gen. Bus. Law § 396-b (effective June 9, 2026)). A photorealistic virtual influencer in a campaign reaching New York audiences is likely to fall within the law. California's BOT Act may apply where the persona's interactions with followers are automated, though perhaps not where human operators write the posts (Cal. Bus. & Prof. Code §§ 17940 to 17943).
- **Placement of disclosures.** A disclosure that appears only in a profile or bio may not shape the overall impression of a post that users encounter through recommendations, sharing, or search. The Endorsement Guides state that a material connection disclosure placed only on a profile page is not clear and conspicuous, and similar reasoning applies to AI disclosures (16 C.F.R. § 255.0(g)(9); FTC, Disclosures 101 for Social Media Influencers (Nov. 2019); FTC, .com Disclosures: How to Make Effective Disclosures in Digital Advertising (Mar. 2013)).
- **Resemblance to real people.** A persona described as fictional can still implicate a real person's rights if its face, voice, or mannerisms evoke an identifiable individual. Courts have long held that deliberately imitating a distinctive voice or evoking a celebrity's identity to sell a product can violate the right of publicity, even without using the person's actual image or recording (see, for example, *Midler v. Ford Motor Co.*, 849 F.2d 460 (9th Cir. 1988)). Prompts instructing an AI tool to create a persona that resembles a particular person may later serve as evidence of intent.
- **Substantiation.** Objective product claims made by a synthetic influencer remain advertising claims that require substantiation.

Assessing AI Transparency

A rule requiring disclosure whenever AI is used does not fit the range of technologies in influencer marketing.

A more useful analysis considers whether AI:

- Creates or simulates a real person's statements or experience.
- Creates a fictional person or persona.
- Would lead a reasonable consumer to believe that a human personally said, did, experienced, or endorsed what the advertisement portrays.
- Materially alters a product demonstration or other evidence supporting an advertising claim.
- Would, if not disclosed, leave consumers with a materially different understanding of the advertisement.
- Triggers a state, platform, or foreign disclosure requirement regardless of the deception analysis.

These questions reflect a distinction between:

- **AI assistance.** Technology helps a human create content while the human remains the actual source of the relevant experience, opinion, or communication.
- **AI authenticity substitution.** Technology creates an apparent experience, opinion, speaker, or endorsement that does not actually exist.

The distinction is not absolute. A modest editing function can become significant depending on what it changes. However, the distinction focuses attention on the element of influencer marketing that AI most directly affects: authenticity.

Managing Risk

Internal AI Policies

Brands and agencies should consider adopting AI policies that:

- Identify approved AI tools and permitted uses, including uses by influencers and agency personnel.
- Classify uses by risk, distinguishing AI assistance from replicas and synthetic personas.
- Prohibit prompts that reference a real person by name or seek to imitate an identifiable person's appearance or voice unless the person has consented in writing.
- Require human review of AI-generated consumer-facing content for factual accuracy, unsupported claims, hallucinations, and misleading implications, and compare AI output against a library of approved, substantiated claims.
- Require heightened review of AI edits to product demonstrations and influencer appearance, focusing on whether an edit changes what consumers are likely to believe about the product or its results.
- Add a question to creative review asking whether AI was used to create, modify, translate, or personalize the content, and how.
- Track state, platform, and foreign disclosure requirements by campaign and jurisdiction.
- Retain prompts, outputs, and approval records, which may be needed to substantiate claims or respond to a challenge.

Influencer Briefs and Agreements

Influencer briefs and agreements should:

- Address AI use expressly, including whether influencers may use GenAI to expand or rephrase approved talking points, and require review of any new claims the AI introduces. A practical rule is that AI may change the tone of approved claims but not their substance.
- Prohibit modifying content after approval, including through AI tools, without resubmitting it for review.
- Require influencers to confirm that first-person statements reflect their actual experience with the product.
- Address digital replica rights expressly and separately from general name, image, and likeness grants, including whether AI training, voice cloning, and synthetic content are permitted, what may be generated and for which campaigns, statements the replica may never make, approval rights, duration, post-termination use, retention or deletion of models and training data, and compensation. Provisions should include a reasonably specific description of intended uses, and brands should consider confirming that the influencer was represented by counsel, consistent with applicable state law (see, for example, Cal. Lab. Code § 927; N.Y. Gen. Oblig. Law § 5-302; 815 ILCS 550/1 et seq.).
- Allocate responsibility for platform labeling and state law disclosures.

Agency Agreements

Agencies may be liable as intermediaries for their roles in creating or disseminating deceptive endorsements (16 C.F.R. § 255.1(f)). Agency agreements should require the agency to disclose its use of AI tools for the brand's work, route all AI-generated or AI-modified content through the brand's legal review, comply with the brand's AI policy, and allocate liability for AI-generated claims and unauthorized likeness or voice use through representations, warranties, and indemnities.

Replica and Synthetic Content Review

Before publishing replica or synthetic influencer content, brands and agencies should consider:

- Whether the influencer actually made the statements attributed to the influencer.
- Whether the influencer had the product experience portrayed, and still holds the views and uses the product as represented.
- Whether the synthetic content introduces claims or opinions beyond those the influencer actually expressed.
- Whether a reasonable consumer would understand the content to be a genuine recording or the persona to be a real person.
- Whether a synthetic persona resembles an identifiable real person.
- Where any AI disclosure is placed, and whether it will travel with the post when it is shared or recommended.
- Whether first-person statements by a virtual influencer, such as "I use this every morning" or "this worked for me," describe experiences that do not exist.

Monitoring and Response

The Endorsement Guides expect advertisers to monitor their endorsers' compliance and to remedy problems when they are discovered (16 C.F.R. § 255.1(d)). Monitoring should extend to content after it is approved, because AI tools make post-approval edits easy. If problematic AI-generated content is published, brands should remove it while preserving the post, prompts, outputs, and related communications, determine how the content was created and approved, assess whether corrective statements are needed, review agency and influencer contract remedies, and update their processes to prevent recurrence.

- Add a question to creative review asking whether AI was used to create, modify, translate, or personalize the content, and how.
- Track state, platform, and foreign disclosure requirements by campaign and jurisdiction.
- Retain prompts, outputs, and approval records, which may be needed to substantiate claims or respond to a challenge.

Conclusion

In the first two articles in this series, “AI, Influencers, and Liability: What Marketing Agencies Need to Know Before Deploying AI Tools” and “GenAI in Advertising and Influencer Marketing: The Legal Framework (2026 Update),” we explained that the key legal question for brands and agencies is not simply whether AI is being used in influencer marketing, but how it is being used. The three categories examined in this article bear that out. Each raises a different question: whether a real influencer remains the source of the experience and opinion, whether AI is putting words and conduct in a real person’s mouth, or whether a fictional persona is presenting a first-person experience that never happened. The common thread is the line between AI assistance, where a human remains the source of the experience or opinion, and AI authenticity substitution, where technology creates an experience, opinion, speaker, or endorsement that does not exist.

Federal law still does not require disclosure solely because AI was used, but the FTC applies existing deception, substantiation, and endorsement principles fully to AI-generated content. Endorsements must reflect genuine opinions and experiences, claims must be substantiated whether or not AI drafted them, and the Consumer Reviews and Testimonials Rule gives the FTC a civil penalty remedy for fabricated testimonials, including those delivered through a synthetic persona. At the same time, New York now requires disclosure of synthetic performers in advertising, states continue to expand digital replica protections and limit vague replica provisions in contracts, platforms require labels for realistic AI content, and the EU AI Act’s deepfake disclosure requirements now apply.

Brands and agencies should classify each use of AI by risk and adopt policies to match. Influencer agreements should address digital replica rights expressly and separately from general name, image, and likeness grants. A replica should not attribute statements or experiences to a real influencer that the influencer did not actually make or have, and a synthetic persona should not make a first-person claim that a human who never used the product could not truthfully make. Post-approval edits should be controlled, records of prompts and outputs retained, and state, platform, and EU requirements tracked campaign by campaign.

Those that evaluate AI based on what it does and how consumers will understand the result, rather than simply whether it was used, will be better positioned to use GenAI effectively while minimizing legal and reputational risk.

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