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California Adds a Synthetic-Performer Disclosure Rule:
What SB 1050 Means for Influencer Marketing

Introduction

In our recent article on AI transparency in influencer marketing, we explained that federal law does not require disclosure merely because AI was used. We identified New York's synthetic performer law (N.Y. Gen. Bus. Law § 396-b) as the leading state-specific rule. California has now enacted its own law. SB 1050 (Ch. 246, Stats. 2026) adds Business and Professions Code § 17610, effective January 1, 2027. This update explains the new law, how it maps onto the three categories of AI use discussed in our prior article, and a related California digital-replica amendment.

What SB 1050 Requires

Section 17610(b) makes it unlawful to create and cause to be published an advertisement that "prominently" includes a "synthetic performer" without a clear and conspicuous disclosure. Applying the law requires understanding what a synthetic performer is and when the use of such a performer is prominent in any given advertisement.

A synthetic performer is a digital figure, voice, or representation created in whole or in part using generative AI that creates the realistic impression of the audio, audiovisual, or visual performance of a human performer who is not recognizable as any identifiable natural person. Identifiable individuals are protected under other laws, including right of publicity laws.

A synthetic performer is used prominently in an advertisement when the performer does any of the following:

- appears in the foreground demonstrating or illustrating the product or service;
- provides or voices on- or off-camera narration or the commercial message; or
- illustrates or reacts to that narration or message.

The disclosure must use wording substantially similar to "this performance features a synthetic performer" or "no human performer is depicted." It must also be difficult to miss and understandable to a reasonable consumer in light of the medium, format, and context.

The statute defines advertisement broadly. It includes digital communications intended or reasonably expected to induce a purchase, including those distributed through online platforms. Because the definition of synthetic performer expressly includes "visual" performances, brands should treat sponsored still-image posts, not just video, as covered.

There are two exemptions. The first covers advertisements for expressive works, such as films and video games, where the synthetic performer is used consistently with the underlying work. The second covers uses of generative AI solely for language translation of a human performer or other accessibility features.

A violation is treated as a violation of the False Advertising Law (§ 17500) and may be enforced under the UCL. Public enforcers may seek civil penalties. Private plaintiffs who meet the UCL's standing requirements may seek injunctive relief and restitution, but not civil penalties. Because § 17500 also carries misdemeanor consequences, the bill potentially expands criminal exposure, although how that will apply to SB 1050 violations remains uncertain.

Covered advertising media have no independent screening obligation. After being served with a qualifying court order, however, they must remove, disable access to, or cease disseminating the advertisement in California, and stop accepting payment for further dissemination.

Mapping SB 1050 onto the Three Categories In Our Previous Article

AI-assisted real influencers. AI modifications of a real influencer generally fall outside SB 1050 so long as the influencer remains recognizable. Two cautions apply. First, under SB 1111, an AI edit that materially alters the fundamental character of an influencer's actual performance may itself be a "digital replica." Consent and contract scope therefore matter even when the influencer participated in the shoot. Second, an otherwise human advertisement can contain separate synthetic elements that independently trigger SB 1050. Examples include a synthetic voiceover that is not recognizable as any real person and that delivers the commercial message, as well as AI-generated supporting performers who react on screen to the product.

AI replicas of real influencers. These performers fall outside SB 1050 when the real person remains recognizable. Those replicas may instead implicate right-of-publicity law, digital-replica contract restrictions such as Labor Code § 927 where applicable, Lanham Act false-endorsement principles, and the FTC attribution principles discussed in our prior article. California has also strengthened the publicity side. SB 1111 amends Civil Code § 3344, the California right of publicity law, to provide that a "voice or likeness" includes a digital replica. A digital replica is a highly realistic representation readily identifiable as a person's voice or likeness, either where the person never performed or where the fundamental character of an actual performance has been materially altered. Unauthorized replica advertising is therefore squarely within the right of publicity law's statutory damages, profits, and fee-shifting regime. Conversely, a replica modified so heavily that the real person is no longer recognizable could fall within SB 1050's synthetic-performer definition instead.

Fully synthetic influencers. This is the core target of SB 1050. Our prior article suggested that California's BOT Act might not reach a virtual influencer whose posts are written by human operators. For advertising, SB 1050 makes that question largely academic. A typical sponsored post built around a realistic AI persona will often satisfy the prominence test. The disclosure should accompany each covered post; a profile or bio disclosure is unlikely to suffice. Notably, SB 1050 answers the identity question but not the experience question. Disclosing that "no human performer is depicted" does not make a persona's first-person claim about months of product use truthful. That issue remains governed by the FTC's Consumer Reviews and Testimonials Rule and the Endorsement Guides.

Key Differences from New York

Multistate campaigns should account for six differences:

1. California covers synthetic voices; New York excludes audio advertisements.
2. California reaches only generative AI; New York also covers performers created by "a software algorithm," potentially including traditional visual effects.
3. California requires disclosure only when the synthetic performer is used "prominently" in the advertisement; New York requires disclosure for any use at all of a synthetic performer.
4. California has no express knowledge requirement; New York requires actual knowledge.
5. California prescribes model wording; New York does not.
6. California imposes post-order takedown and payment obligations on advertising media.

For multistate campaigns, California's prescribed language is a sensible starting point for a uniform disclosure. Placement and presentation must still independently satisfy each state's conspicuousness requirement. Because California has no knowledge element, brands bear more risk when agencies, studios, or virtual-influencer operators use generative AI without telling them. That makes the AI-use disclosure provisions recommended in our prior article more important.

Open Questions

Some practical questions remain. Who is the liable "person" when a brand, agency, and persona operator each contribute to a post? What level of California-facing distribution suffices for campaigns created and managed outside the state? The Legislature also expressly declared its intent that the disclosure be a purely factual commercial disclosure, which signals that the drafters anticipated a compelled-commercial-speech challenge.

A Note on Pennsylvania

Pennsylvania's Artificial Intelligence Deceptive Advertising Act (Act 99 of 2026), effective December 21, 2026, takes a different approach. It is broader in subject matter but narrower in trigger. It covers images, video, and audio "significantly modified or generated" by AI, whether or not a performer is depicted. But disclosure is required only where an advertiser knowingly, recklessly, or willfully uses such content in a manner that creates a false consumer perception about the nature, origin, or authenticity of the advertised goods or services.

The disclosure must state that the advertisement contains AI-modified or AI-generated content. It must appear in the first instance and in the same medium as the content, and it must be durable where technically feasible. Text-only, evidently fictional, and parody or satire content is excluded. Enforcement rests with the Attorney General and district attorneys, with a civil fine of up to $3,000. The Act maps most directly onto two risks identified in our prior article: AI-altered product demonstrations and fabricated testimonials.

Next Steps

Before year-end, brands and agencies should take five steps:

1. Add California's prescribed disclosure to creative review for synthetic personas and AI voices, and apply it to each covered post.
2. Update influencer and agency agreements to allocate responsibility for identifying synthetic performers and making state-law disclosures.
3. Revisit replica and AI-editing provisions in light of SB 1111.
4. Audit audio and podcast advertising for AI narration.
5. Review AI-altered product demonstrations under Pennsylvania's Act and existing FTC principles.

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