VIRTUAL INFLUENCERS AND AI-GENERATED ADVERTISEMENTS: LEGAL CHALLENGES UNDER CONSUMER PROTECTION AND ADVERTISING LAWS IN INDIA

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ABSTRACT

The development of generative artificial intelligence (AI) has transformed digital advertising through the emergence of virtual influencers, synthetic endorsements and AI-generated promotional content. Virtual influencers, being computer-generated personalities designed to resemble human beings, increasingly engage consumers through social media platforms and brand collaborations. While these technologies offer commercial opportunities, they raise significant legal concerns regarding transparency, misleading representations, authenticity of endorsements and accountability under consumer protection and advertising laws.

This paper critically examines the legal challenges posed by virtual influencers and AI-generated advertisements within the Indian legal framework. It analyses the Consumer Protection Act, 2019, particularly its provisions concerning misleading advertisements and unfair trade practices, the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022, and the Advertising Standards Council of India's guidelines on influencer advertising. The paper investigates whether existing regulatory mechanisms adequately address fabricated testimonials, undisclosed synthetic identities, manipulated product demonstrations and the use of artificial personalities to influence consumer purchasing decisions. It further examines the challenges associated with determining liability among advertisers, brands, advertising agencies, virtual influencer operators and digital platforms.

Adopting a doctrinal and comparative approach, the study also considers the European Union's Artificial Intelligence Act, particularly its transparency obligations concerning AI-generated and manipulated content. It argues that although existing Indian consumer protection laws provide a foundation for regulating deceptive AI-driven advertising, the absence of a comprehensive, technology-specific framework creates uncertainties concerning disclosure, verification and enforcement. The paper proposes standardised disclosure requirements, riskbased regulatory oversight, clearer allocation of

responsibility and strengthened consumer awareness mechanisms. It concludes that the regulation of virtual influencers and AI-generated advertisements must balance technological innovation with transparency, accountability and the consumer's right to make informed choices. A responsive legal framework is essential to ensure that the growing integration of artificial intelligence into advertising does not undermine consumer trust or facilitate deceptive commercial practices.

Introduction

Advertising has historically relied upon human creativity, celebrity endorsements, testimonials and visual representations to influence consumer behaviour. The development of social media has expanded this landscape by enabling influencers to establish direct relationships with their audiences and promote products through seemingly personal recommendations. The emergence of generative artificial intelligence has introduced another significant development: the virtual influencer.

Virtual influencers are fictional, computer-generated personalities designed to resemble human beings and engage audiences through digital platforms. They may possess distinct names, appearances, personalities and narratives, and may participate in brand collaborations, product demonstrations and lifestyle promotions. Unlike conventional influencers, they do not necessarily possess physical existence or personal experiences. Nevertheless, their digital presence can create the impression of authenticity and interpersonal familiarity.

AI-generated advertising extends beyond virtual influencers. Advertisers can generate synthetic photographs, videos, voices, testimonials and product demonstrations, sometimes depicting events or experiences that never occurred. Such content can be produced at scale, modified for different audiences and distributed through targeted advertising systems.

These developments challenge conventional assumptions underlying advertising regulation. A consumer viewing an endorsement may reasonably believe that the speaker has personally used a product, possesses relevant expertise or is expressing an independent opinion. Where the speaker is an artificial personality, these assumptions may be misplaced.

The central legal question is therefore not whether artificial intelligence should be permitted in advertising, but whether consumers receive sufficiently accurate information to distinguish commercial persuasion from genuine experience and fact.

In India, the Consumer Protection Act, 2019 and the advertising standards developed by the Advertising Standards Council of India (ASCI) provide important mechanisms for addressing deceptive promotional practices. However, their application to synthetic identities, automated content generation and AI-mediated endorsements requires closer examination.

This paper evaluates the adequacy of the existing framework and proposes measures to preserve technological innovation while protecting consumers from deception.

Understanding Virtual Influencers and AI-Generated Advertisements

Concept and characteristics of virtual influencers

Virtual influencers are computer-generated characters possessing human-like appearances, personalities and behavioural characteristics. They may be entirely fictional or designed using combinations of computer-generated imagery, motion capture, generative AI and humanoperated social media accounts.

Their principal characteristics include:

1. **Synthetic identity:** Their appearance and personality may be created digitally rather than arising from an actual individual.

2. **Controlled communication:** Their statements, images and interactions may be managed by brands, advertising agencies or specialised digital studios.

3. **Commercial scalability:** A single virtual identity can be used across multiple campaigns without the logistical limitations associated with human endorsers.

4. **Perceived authenticity:** Human-like language, storytelling and interactive communication may encourage audiences to perceive the character as an independent personality.

5. **Continuous adaptation:** AI tools can generate content and responses tailored to particular audiences, platforms or marketing objectives.

The legal significance of these characteristics lies in the difference between a fictional character used transparently in advertising and a synthetic personality presented in a manner that creates

materially false impressions.

A clearly fictional animated character promoting a product is not necessarily misleading. The difficulty arises when a virtual influencer appears to offer an authentic personal testimonial, professional opinion or independently formed recommendation without adequate disclosure.

AI-generated advertisements

AI-generated advertisements are promotional communications created wholly or partly through artificial intelligence. They may include synthetic models, cloned voices, fabricated consumer testimonials, digitally altered product images and realistic videos showing products in situations that never occurred.

For example, a skincare company might use AI to create a virtual influencer who claims that a particular cream transformed her skin within seven days. If the content implies actual personal use or verified results, despite the absence of any genuine experience or adequate supporting evidence, the advertisement may create a misleading impression.

Similarly, an AI-generated video might depict a product performing more effectively than it does in reality. Even if the advertised product exists and the brand is genuine, the visual representation may distort the consumer's understanding of its characteristics.

AI-generated content is not inherently unlawful. Its legality depends on factors such as the truthfulness of its claims, the overall impression conveyed, the presence of material disclosures, the evidence supporting product representations and compliance with applicable sector-specific laws.

Indian Legal Framework Governing AI-Generated Advertising

Consumer Protection Act, 2019

The Consumer Protection Act, 2019 is the principal legislation governing consumer rights, unfair trade practices and misleading advertisements in India. Its statutory framework is relevant irrespective of whether an advertisement is created by a human, an automated system or a combination of both.

Section 2(28) defines a misleading advertisement in terms that encompass false descriptions,

false guarantees, misleading representations and deliberate concealment of important information, where the statutory conditions are satisfied.

This provision is significant because deception can arise from both affirmative statements and omissions. An advertisement may mislead by making an unsupported claim, manipulating a product demonstration or withholding information necessary to understand the nature of an endorsement.

Section 2(47), which defines unfair trade practices, is also relevant to misleading representations and other specified practices affecting consumers.

Section 2(9) recognises consumer rights, including the right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as applicable. Where AIgenerated advertising obscures material information or creates false expectations, these rights may be undermined.

Section 10 establishes the Central Consumer Protection Authority (CCPA), which is empowered to address violations of consumer rights, unfair trade practices and false or misleading advertisements prejudicial to the interests of consumers as a class.

Under Section 18, the CCPA performs functions that include protecting and enforcing consumer rights and preventing unfair trade practices and misleading advertisements. Section 21 empowers the Authority to direct the discontinuation or modification of misleading advertisements and impose statutory penalties in appropriate cases.

The Act therefore provides a technology-neutral foundation for regulating deceptive AIgenerated advertising. A brand cannot avoid consumer protection obligations merely because a misleading image, statement or video was produced using an AI tool.

Nevertheless, the application of the Act becomes more complicated when several entities participate in creating, approving and distributing the advertisement. Identifying the legally responsible parties may require examination of their respective roles, representations and involvement in the campaign.

Guidelines for Prevention of Misleading Advertisements and Endorsements, 2022

The Guidelines for Prevention of Misleading Advertisements and Endorsements for

Misleading Advertisements, 2022, issued under the Consumer Protection Act, provide a more specific regulatory framework for advertising practices.

The Guidelines address misleading advertisements, permissible advertising claims, bait advertisements, disclaimers and endorsements. They require endorsements to reflect the genuine, reasonably current opinion of the endorser and to be based on adequate information about, or experience with, the identified goods, product or service.

This requirement creates an important issue for virtual influencers. A fictional personality does not independently purchase, consume or experience a product in the manner of a human consumer. Its purported personal experience is ordinarily a representation generated or controlled by human operators.

A distinction must therefore be drawn between a fictional character promoting a brand and a character purporting to provide a genuine testimonial.

For example, a virtual influencer stating, "This is the product I am promoting for this campaign," does not necessarily represent that it has personally used the product. Conversely, a statement such as "I used this supplement and recovered from fatigue within three days" may create an impression of personal experience and verified efficacy.

The latter claim raises questions about the authenticity of the endorsement and the substantiation of the underlying product claim.

The Guidelines should consequently be interpreted alongside the statutory prohibition of misleading advertisements, rather than as creating an automatic prohibition on virtual influencers.

The Department of Consumer Affairs has explained that the Guidelines aim to prevent consumers from being deceived by unsubstantiated promises, misinformation and false claims.

Their objectives are directly relevant to synthetic advertising practices.

ASCI guidelines on influencer advertising

ASCI is a self-regulatory advertising body whose Code and guidelines establish standards for responsible advertising. Although ASCI is not a substitute for statutory regulators, its standards

are significant in evaluating digital advertising practices.

ASCI's influencer advertising guidelines expressly recognise virtual influencers as fictional, computer-generated people or avatars possessing realistic human characteristics and personalities.

Importantly, the guidelines require virtual influencers to disclose prominently and upfront that they are not interacting as real human beings. They also address the disclosure of material connections between advertisers and influencers.

Permitted disclosure labels include terms such as "Advertisement", "Ad", "Sponsored", "Collaboration" and "Partnership", subject to the applicable requirements.

These provisions respond to two distinct risks:

- **Identity deception:** Consumers may not realise that the influencer is fictional.
- **Commercial deception:** Consumers may not realise that the content is promotional or that the influencer has a material connection with the advertiser.

The two disclosures serve different purposes. Identifying a personality as virtual does not necessarily reveal that its content is sponsored. Likewise, labelling a post as an advertisement does not necessarily inform consumers that the person they are interacting with is artificial.

Both issues must be assessed in the circumstances of the campaign.

ASCI's approach is a useful foundation for virtual influencer regulation in India. However, selfregulatory standards depend substantially on compliance, monitoring and enforcement within the advertising ecosystem. Their effectiveness would be strengthened by clearer integration with statutory consumer protection enforcement.

Major Legal Challenges

Transparency and disclosure of artificial identity

The first major challenge concerns whether consumers can readily identify AI-generated content and virtual personalities.

Traditional advertising generally involves identifiable persons, fictional characters or recognisable commercial formats. Generative AI can produce realistic human faces, voices and interactions that make these distinctions less obvious.

A virtual influencer may maintain an elaborate online biography, share lifestyle photographs and interact with followers through conversational responses. Without adequate disclosure, consumers may incorrectly believe that the personality is a real person with genuine experiences and independent preferences.

The resulting problem is not simply that the character is fictional. It is that the fictional nature of the identity may be material to how consumers evaluate the recommendation.

Indian law should therefore distinguish between a clearly fictional promotional character and a virtual influencer whose presentation creates a misleading impression of human authenticity.

Although ASCI provides for upfront and prominent disclosure, questions remain concerning consistent application across short-form videos, livestreams, interactive avatars and AIgenerated voice content.

A disclosure placed in a profile description may be insufficient when a consumer encounters an isolated video outside that profile. Similarly, a brief or inconspicuous label may not effectively communicate the artificial nature of the personality.

Disclosure should be prominent, understandable and available at the point where the relevant representation is encountered.

Misleading endorsements and fabricated personal experiences

Endorsements influence consumer behaviour partly because they appear to communicate another person's opinion, expertise or experience. Virtual influencers complicate this model because their statements may be scripted, generated or controlled by the advertiser.

Suppose a virtual fitness influencer claims to have personally lost ten kilograms after using a particular nutritional product. If no real person has the represented experience, the statement may create a false testimonial. If the claim also suggests that the product reliably produces that result, additional questions arise concerning evidence and substantiation.

A fictional identity cannot independently possess personal experience in the ordinary human sense. Nevertheless, its operators may make factual claims through the character, and the advertising campaign may be assessed on the representations communicated to consumers.

The appropriate legal inquiry should therefore examine the advertisement as a whole: what is being claimed, whether consumers would reasonably understand the claim as factual, whether evidence supports it, and whether any disclosure adequately prevents deception.

A disclaimer that a character is virtual should not automatically excuse fabricated product claims. Transparency about the identity does not cure the absence of evidence supporting the product's advertised benefits.

Accountability and allocation of liability

AI-generated advertising commonly involves several participants: the advertiser, brand owner, marketing agency, virtual influencer operator, AI service provider and digital platform.

These participants may exercise different levels of control over the advertisement. The brand may determine the product claims, the agency may create the visual content, the operator may manage the virtual personality, and the platform may distribute the content to targeted audiences.

Determining responsibility becomes difficult when misleading content results from the interaction of several participants.

Under the Consumer Protection Act, 2019, liability must be assessed according to the applicable statutory provisions and the conduct of the relevant party. The advertiser's use of a third-party AI system does not, by itself, eliminate responsibility for an advertisement that it commissions and publishes.

Similarly, it would be inappropriate to assume that every AI developer or platform is automatically liable for every misleading advertisement generated or distributed through its technology. Their obligations depend on their legal role, conduct and the relevant statutory framework.

A more effective system would require clear contractual allocation of responsibilities, human

review of material product claims, retention of campaign records and documented approval procedures.

Such measures would improve traceability without imposing indiscriminate liability on every participant in the technological supply chain.

Manipulated visuals and false product demonstrations

AI-generated imagery can depict products in ways that are difficult to distinguish from authentic demonstrations.

A cosmetic product might be shown producing flawless skin through digitally generated imagery. An electronic device might appear to possess a feature that it does not have. A food product might be represented with an appearance or quantity materially different from what consumers receive.

These practices raise concerns under the provisions governing misleading advertisements and unfair trade practices.

The relevant question is whether the overall impression is likely to mislead consumers about a material characteristic of the product.

Not every artistic enhancement is deceptive. Advertising has long used lighting, editing, animation and stylisation. However, a visual technique may become legally problematic where it conveys a false factual representation or materially exaggerates product performance.

The use of AI should not create a lower standard of accuracy than conventional advertising. Where a generated demonstration is presented as evidence of actual product performance, the advertiser should be able to substantiate the representation.

Targeted persuasion and consumer vulnerability

AI technologies can facilitate the personalisation of advertisements based on audience characteristics, interests and online behaviour. Virtual influencers may also establish recurring interactions that encourage emotional attachment and perceived familiarity.

These features can intensify the persuasive effect of advertising, particularly among children and other vulnerable audiences.

For example, a virtual influencer popular among teenagers may promote a product through a narrative that presents purchasing it as necessary for social acceptance. If the content conceals its commercial purpose or uses misleading claims, the combination of emotional influence and inadequate transparency may impair informed decision-making.

The legal concern is not that persuasive advertising is inherently unlawful. Rather, it is that synthetic identities and personalised communication may make commercial persuasion harder to recognise.

Indian consumer protection law and applicable advertising standards already provide protections against misleading and exploitative advertising practices. However, implementation should account for the particular risks created by AI-generated interactions and content targeted at vulnerable consumers.

Intellectual property, likeness and unauthorised digital replicas

AI-generated advertisements may also use a real person's face, voice or recognisable identity without appropriate authorisation.

A synthetic advertisement could depict a celebrity endorsing a product despite the celebrity never having participated in the campaign. This may mislead consumers into believing that the individual has approved the product.

Such conduct raises issues extending beyond consumer law, including personality and publicity interests, passing off, copyright where applicable, and other relevant legal protections.

The legal analysis depends on the identity used, the nature of the material, the applicable rights and the circumstances of publication.

The consumer protection dimension is particularly significant where an unauthorised digital replica falsely implies endorsement. The advertiser may obtain commercial credibility by exploiting the trust associated with a real person's reputation.

Virtual influencers and AI-generated advertisements should therefore be evaluated not only in terms of whether the advertised product exists, but also whether the identity and endorsement presented are genuine or lawfully authorised.

Comparative Perspective: The European Union

The European Union offers a useful comparative model through Regulation (EU) 2024/1689, commonly known as the AI Act.

Article 50 establishes transparency obligations concerning certain AI systems and AIgenerated or manipulated content. These include obligations relating to informing individuals when they interact directly with AI systems and identifying certain artificially generated or manipulated content, subject to the provisions, exceptions and conditions of the Regulation.

The Act also addresses disclosure concerning deepfakes and specified AI-generated text.

The European Commission identifies 2 August 2026 as the date from which the relevant Article 50 transparency obligations apply. The precise obligations depend on the relevant provision, the role of the actor and the nature of the content.

This approach is significant because it treats transparency as a distinct regulatory concern rather than relying exclusively on whether content is misleading under general consumer law.

For example, an AI-generated advertisement may contain factually accurate product information while still creating uncertainty about whether the apparent endorser is a real human being. A specific transparency obligation can address that uncertainty independently of whether the product claim itself is false.

However, the European framework should not be transplanted into Indian law without considering differences in statutory structure, enforcement capacity and the existing regulatory environment.

Its principal lesson is that disclosure of synthetic content and regulation of misleading commercial claims are complementary, rather than interchangeable, safeguards.

Adequacy of the Existing Indian Framework

India's existing framework has several strengths.

First, the Consumer Protection Act, 2019 is sufficiently broad to address many forms of deceptive advertising regardless of the technology used to produce them. False representations do not become lawful merely because they are generated by artificial intelligence.

Second, the 2022 Guidelines provide a framework for evaluating endorsements, misleading claims and advertising practices.

Third, ASCI's recognition of virtual influencers and its disclosure requirements demonstrate that industry self-regulation has begun addressing the distinctive characteristics of synthetic personalities.

Nevertheless, important limitations remain.

First, disclosure standards require consistent implementation. Consumers should be able to identify virtual personalities and material commercial relationships across different formats and platforms.

Second, the authenticity of testimonials requires greater attention. Existing endorsement principles are relevant, but synthetic identities create questions about how an apparently personal experience should be represented and substantiated.

Third, responsibility across the advertising chain requires clarification. Brands, agencies and virtual influencer operators should have clear duties concerning verification, approval, disclosure and record-keeping.

Fourth, technical evidence can be difficult to obtain. AI-generated content may be modified, replicated or distributed through third-party accounts. Effective enforcement may require preservation of original advertisements, campaign instructions, sponsorship arrangements and relevant production records.

Fifth, the relationship between consumer law and AI-specific regulation remains important. Consumer protection law addresses deceptive commercial conduct, whereas AI

transparency rules can address the artificial origin of content. A comprehensive framework should coordinate these objectives.

The appropriate response is not necessarily to prohibit virtual influencers or require every advertisement using AI to carry an extensive disclaimer. Instead, the regulatory approach should be proportionate to the risk of consumer deception.

Recommendations for Legal and Regulatory Reform

Introduce clear, standardised disclosure practices

India should develop consistent disclosure standards for commercial content involving virtual influencers and materially AI-generated representations.

Where the synthetic nature of an identity is not obvious, a prominent disclosure such as "Virtual AI Influencer" or "AI-Generated Content" should be considered. Where the content is sponsored, a separate and equally understandable advertising disclosure should be used.

Disclosures should appear at the point of exposure and be accessible in the language and format appropriate to the audience. Video, audio and interactive content may require different presentation methods.

Establish a risk-based approach to AI-generated advertising

Regulation should distinguish between harmless creative uses and representations capable of materially misleading consumers.

For example, a fictional animated character introducing a product may require limited clarification where its fictional nature is obvious. By contrast, a realistic AI-generated testimonial concerning a health product may warrant more rigorous review because consumers could rely on the apparent personal experience when making purchasing decisions.

Risk assessment should consider the nature of the claim, the audience, the realism of the representation and the potential consequences of consumer reliance.

Clarify responsibilities among advertising participants

Advertisers should remain responsible for the accuracy of the claims they approve and publish,

subject to the applicable law. Agencies and virtual influencer operators should have defined responsibilities for compliance with disclosure requirements and the integrity of the content they produce.

Contracts should specify who verifies product claims, approves endorsements, applies disclosures, retains records and responds to complaints.

AI service providers and digital platforms should be subject to obligations appropriate to their respective roles under applicable law. Liability should not be imposed automatically merely because a service has been used to generate or distribute content.

Strengthen evidence and record-keeping requirements

Advertisers using AI-generated product demonstrations, endorsements or performance claims should retain relevant substantiation and campaign records.

Depending on the circumstances, records may include the original content, material prompts or production instructions, evidence supporting product claims, sponsorship agreements, approvals and disclosure versions.

Such requirements would help regulators distinguish legitimate creative production from fabricated testimonials and unsupported representations.

Improve consumer awareness and complaint mechanisms

Consumers should be educated to recognise sponsored content, synthetic endorsements and suspicious product claims. Digital platforms and advertising regulators should provide accessible reporting channels for misleading AI-generated promotions.

Where violations are established, corrective measures should address the misleading representation itself. These may include removing or modifying the advertisement, issuing appropriate corrections and imposing statutory penalties where authorised.

Protect children and other vulnerable audiences

Advertising involving virtual influencers should receive heightened scrutiny where it targets children or exploits their limited ability to distinguish commercial persuasion from authentic

personal communication.

Guidance should address age-appropriate disclosures, manipulative promotional techniques and unsupported claims in sensitive product categories.

These protections should be implemented consistently with existing consumer protection law and applicable sector-specific requirements.

Conclusion

Virtual influencers and AI-generated advertisements represent a significant evolution in digital marketing. They provide businesses with new opportunities for creative expression, personalised communication and commercial outreach. At the same time, they challenge the assumptions of authenticity and personal experience that have traditionally informed consumer responses to advertising.

Indian consumer protection law already provides important tools for addressing deceptive practices. The Consumer Protection Act, 2019, the 2022 Guidelines on misleading advertisements and endorsements, and ASCI's influencer advertising standards together establish a foundation for regulating synthetic commercial communications.

However, the existence of a general prohibition against misleading advertising does not resolve every issue created by generative AI. Questions concerning synthetic identity, fabricated testimonials, disclosure, evidentiary requirements and the allocation of responsibility require more consistent treatment.

The regulatory objective should be to ensure that technological innovation does not undermine the consumer's right to make informed choices. A virtual influencer may be fictional, but the commercial claims communicated through that identity must remain truthful, adequately substantiated and legally compliant.

India should therefore strengthen its existing framework through standardised disclosures, riskbased oversight, clear responsibilities for advertising participants and effective enforcement.

Comparative developments under the European Union's AI Act demonstrate the value of

treating transparency about synthetic content as a distinct regulatory concern.

Ultimately, the legitimacy of AI-driven advertising depends not merely on technological sophistication, but on whether consumers can understand the nature of the communication, assess its credibility and make purchasing decisions without being misled.

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