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When Artificial Performers Enter Advertising, Disclosure Laws Follow

By Andrew Lustigman
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Advertisers and their digital agencies are increasingly relying upon artificial intelligence to create digital artificial actors and other synthetic performers for their advertising creative. This growing use of artificial talent has led to certain states enacting mandatory "artificial intelligence" disclosures that must appear clearly and conspicuously in such advertising. In particular, California has now joined New York in requiring such disclosures, followed most recently by the Commonwealth of Pennsylvania, which recently enacted its own version. While each of these laws has important differences, they share a common goal of informing consumers when AI-generated content, such as an artificially created actor that appears human, is used.

Given the importance of the entertainment industry in California and New York and its impact on the employment of actors and trades, it is not a surprise that stakeholders such as actor and other creative guilds and agencies (such as SAG-AFTRA) have been lobbying to regulate the use of artificial content that replaces human actors. To that end, New York enacted the first state synthetic performer disclosure requirement, effective June 9, 2026, and codified at New York General Business Law Section 396-b. The New York law requires advertisers to include a clear, conspicuous disclosure of the use of a synthetic performer whenever a commercial advertisement features an AI-generated, non-identifiable human synthetic visual performer.

California's recently passed version of the synthetic performer disclosure, California Senate Bill 1050,



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will be codified at California Business & Professions Code Section 17610 and will go into effect on Jan. 1, 2027. Building on New York's disclosure regime, the law defines a synthetic performer as a human-like digital figure, voice, or representation created in whole or in part using generative AI. Moreover, under California law, AI-created voice-overs and other uses of synthetic voice in advertising can trigger the disclosure obligation.

While New York does not mandate specific disclosure language, California's law specifies "wording substantially similar to 'this performance features a synthetic performer' or 'no human performer is depicted.'" Cal. Bus. & Prof. Code Section 17610(c). If an advertisement contains a synthetic performer, it must present a clear and conspicuous disclosure that informs the viewer either that a synthetic performer is being featured or that no human performer

is depicted. Moreover, California's law defines a "clear and conspicuous disclosure" as "a disclosure that is difficult to miss, easily understandable, and presented in a manner that a reasonable consumer would notice, read, and comprehend, taking into account the medium, format, and context in which the advertisement appears." Cal. Bus. & Prof. Code Section 17610(a)(3). New York does not expressly define "clear and conspicuous," but advertisers should expect regulators and courts to apply a comparable FTC-like standard. Thus, under California law, if an advertisement uses a synthetic performer, including a synthetic voice, the ad must contain a clear and conspicuous disclosure that the advertisement "features a synthetic performer" or substantially similar wording.

The California legislation provides several specific exceptions. Specifically excluded are certain uses of AI for expressive works such as movies, television shows, video games, or theatrical productions, provided that the synthetic performer's appearance or voice in the advertisement is identical to its actual use within the underlying creative piece. Cal. Bus. & Prof. Code Section 17610(d)(4). Also excluded are advertisements in which AI is used solely for language translation. Cal. Bus. & Prof. Code Section 17610(d)(5). Notably, the California disclosure obligations do not apply to broadcasters and digital advertising media unless a court finds the advertising violates the disclosure law, and the media provider is formally served with the court order. Cal. Bus. & Prof. Code Section 17610(e).

Expanding on California and New York's laws, on Oct. 22, 2026, Pennsylvania Governor Shapiro signed the Artificial Intelligence Deceptive Advertising Act (SB 806/Act No. 2026-99), which takes effect on Dec. 21, 2026. While sharing the goal of informing consumers about the use of artificial intelligence, Pennsylvania's disclosure requirement has a distinctive triggering element. The act amends Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P.S. Section 201-1, to prohibit an advertiser (an undefined term) from creating or disseminating an advertisement (also undefined) containing synthetic content (defined as images, videos, audio clips, or text that have been significantly modified or generated by AI) "*in a manner that creates a false consumer perception* about the nature, origin or authenticity of the goods or services being advertised without clear and conspicuous disclosure." (emphasis added). Thus, at least on its face, the act's disclosure obligation applies only to advertisements that create a false consumer perception regarding the advertised products or service's nature, origin, or authenticity.

Similar to New York, the Pennsylvania law does not prescribe verbatim disclosure language, although the disclosure "must state that the advertisement contains content that was modified or generated using artificial intelligence."Unlike California and New York, the Pennsylvania law dictates that the disclosure must be displayed the first-time synthetic content is presented and in the same medium as the synthetic content and must be permanent or "extraordinarily difficult" to remove. The disclosure obligations do not apply to content that is "evidently fictional," "parody, satire, commentary or criticism," or "limited to text."

In light of the uncertainty surrounding what constitutes a "false consumer perception" under Pennsylvania's nuanced triggering language, combined with the disclosure obligations of New York and California, advertisers should develop and implement meaningful artificial intelligence disclosures to be prominently placed in all advertising creative that features synthetic performers or other AI-generated or AI-modified content. This means prominently disclosing the use of an AI-created performer at an artificial performer's first appearance in an advertisement.

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