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California Passes New Synthetic Performer Law

by Bryan J. Wolin

Two states have now passed laws intended to make it easier for consumers to distinguish real humans from AI-created ones. Following New York's first-in-nation passage of a law requiring advertisers to disclose the use of synthetic human performers in commercial advertising, California enacted a similar bill, SB-1050, on September 16, 2026, and it becomes effective on January 1, 2027.

KEY DIFFERENCES BETWEEN THE LAWS

Like New York, California now requires disclosures in many kinds of ads that incorporate realistic digital representations of humans who do not actually exist. But there are important differences between the two, beginning with their definitions of "synthetic performer." New York's law covers AI- *or* computer- generated figures. California's is narrower, only covering AI- generated ones. California is broader in other areas, however, including its coverage of audio-only ads (which are expressly *not* covered by New York's law). In other words, radio ads using AI-generated human voices may trigger California's law, but not New York's.

Both laws require disclosures, but California defines those disclosures in a stricter and more robust fashion. While New York requires advertisers to "conspicuously disclose" the presence of synthetic performers, California requires "clear and conspicuous" disclosures. California also defines those terms (unlike New York), including that the disclosures must be "difficult to miss," and provides model disclosure language advertisers may use.

California's law is materially narrower than New York's in one critical respect: it only applies when an ad "prominently" includes a synthetic performer. Conveniently, the statute defines what constitutes a "prominent" use: the synthetic performer is "In the foreground and demonstrating or illustrating the product or service," "Providing or voicing the on- or off-camera narration or commercial message," and/or "Illustrating or reacting to the on- or off-camera narration or commercial message." New York's law is not so limited and may therefore sweep up ads in which synthetic performers play even minor roles.

Importantly, the states' laws have different knowledge requirements. Liability under New York's law exists where the person responsible for an ad has actual knowledge that it uses a synthetic performer. California's law does not contain an express actual-knowledge limitation. Thus, California advertisers who rely on third parties—like ad agencies, production companies, or other vendors—must be especially diligent.

Finally, each state's penalties for advertisers who violate the law are different. New York has a stand-alone fixed penalty regime, imposing $1,000 for a first violation and $5,000 for subsequent violations. California instead folds its new law into the state's existing false-advertising and unfair-competition framework, thus making potential violations far more costly.

GUIDANCE FOR ADVERTISERS

The bottom line is this: when national advertising uses what appears to be a real human, but is not, the safe bet is to disclose. Taken together, California's and New York's laws cover most of the likely categories of ads in which synthetic performers might be deployed. And, as always, the best practice with disclosures of any kind is to ensure they are clear and conspicuous.

If you have questions related to advertising compliance—including whether your business is subject to or meeting New York's or California's synthetic performer disclosure requirements or any other concerns regarding advertising claims—please contact Kilpatrick's Advertising and Marketing team.