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CGI SOCIAL MEDIA INFLUENCERS – LEGAL ISSUES

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Introduction

Mequila Sousa or Lil Mequila, if you've never heard of her, go and check out "lilmequila" on Instagram.

She's a 19-year-old Brazilian-American social media influencer from Downey, California with a following of more than 2 million people. She takes selfies, has a boyfriend, interacts with her followers, and promotes big fashion brands such as Prada, Calvin Klein, Nike, etc. She's also a musician and has 2 hit singles on Spotify. However, there's just one small catch, she's not real, she's an "it".

What is it?

Lil Mequila is a computer-generated imagery ("CGI"), created by LA based secretive startup Brud, which is worth more than \$125 million and doesn't even have a proper website. Lil Mequila is not the only one, there are other CGIs also, such as Bermuda and Shudu and their Instagram accounts portray a full blown fictional life blurring the fine line between human and being perceived as human. Practically, in terms of value to the brands, this is a much better model for brands than a human social media influencer as there are far less issues as compared to when dealing with humans and much more control over the campaign.

Issues

However, the potential of this model raises some fundamental concerns and threats for the whole industry at so many levels. Blending this with AI, it could change the whole dynamics of the industry in future.

As per Federal Trade Commission's Guidelines ("**FTC Guidelines**"); "You can't talk about your experience with a product if you haven't tried it." Interestingly, these CGIs' sip Starbucks, use Bath & Body Works products, endorse clothes and makeups and have lost 20 pounds by using weight loss products. Apparently, it is not possible for a CGI to experience anything of the sort.

Also, legal ambiguity over diverse aspects with regard to CGIs endorsing brands on social media leaves room for brands to leverage on the opportunity till the loopholes are addressed and regulated by the appropriate authorities. Such as FTC Guidelines mandates the influencers to; (i) disclose their relationship with the brand, (ii) mention that they were paid or given the item, and (iii) not to misleadingly promote the product. FTC Guidelines further states that; "if the audience understands the influencer's relationship to the company whose products are being recommended, then a disclosure isn't needed. These guidelines are for the humans, even if they're applicable for CGIs also, clearly, customers can not be aware of the complex relationship between the CGI and the company. Even if it is disclosed that they are robots and not humans, it cannot be certainly stated that they are not misleading consumers which is an intrinsic advertising principle.

Another paramount issue is with regards to the imputation of liability in case of unlawful acts by the CGI. At earlier stages, principles of vicarious liability will make the company liable for the acts, but to identify the dissemination point would still be a challenge. Moreover, complexity will increase when blended with AI.

Conclusion

No doubt that this model has an unprecedented potential for the brands, however, it is also evident that this requires for more specific and separate laws and it would be interesting to see the response of something like this in India.

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