

NY “Synthetic Performer” Law Goes into Effect

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On June 9, a New York law that requires companies to “conspicuously disclose” when their ads include any “synthetic performer” will take effect. Many advertisers who have attempted to get ahead of the law’s requirements have found that the law raises some questions to which there aren’t clear answers.

The term “synthetic performer” generally refers to an asset that was created using generative AI or a software algorithm and is intended to emulate an actual (but not identifiable) human. Here are some common questions advertisers have been asking themselves about that term:

- Does the law apply if the synthetic performer only appears in the background of an ad, such as in a crowd? The law doesn’t seem to draw a distinction between “principal performers” and “extras.”
- Does the law apply if an ad includes only part of a performer, such as just a hand and wrist modeling a watch? Again, the law doesn’t seem to draw a distinction.

In the absence of any guidance, many companies plan to take a conservative approach and include disclosures for “extras” and parts of performers that were created by AI. Note, though, that the statute also encompasses creation by a “software algorithm”—a term that isn’t defined—so it could also encompass assets created by other technologies.

There are also questions about how to make the required disclosures. For example:

- What words does an advertiser have to use? The law doesn’t seem to mandate any specific words.
- What constitutes a conspicuous disclosure? Again, the law doesn’t elaborate on this.

Although some advertisers plan to use the term “synthetic performer” in their disclosures, others plan to use more commonly understood terms, such as “AI-generated image.” As for the “conspicuous” requirement, there are other laws and cases that illustrate what that could mean but it remains to be seen what NY regulators will expect in this context.

The law includes some exceptions. For example, it generally doesn’t apply to ads or promotional materials for expressive works, audio ads, or instances in which the use of AI “solely involves the language translation of a human performer.” Most other ads are covered, though.

Advertisers will want to work with their agencies to understand when ads include synthetic performers so that they can add the necessary disclosures to their ads. A violation of the law may result in a civil penalty of \$1,000 for a first violation and \$5,000 for any subsequent violation.

Fortunately, there is no private right of action.