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INFLUENCER MARKETING AND CONSUMER PROTECTION: IS INDIAN LAW READY FOR THE CREATOR ECONOMY?

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ABSTRACT

Social Media Influencers ("SMIs") used to be brand endorsers, but as this sector expanded, they are now sellers, publishers, and even service providers. This shift has occurred from endorsement to what is now termed as "creator economy". It has outpaced the legal framework built to cater to advertising and disclosure. This paper discusses whether the Indian consumer protection law is ready for that shift. It examines the shift from traditional advertising to influencer marketing, the mechanisms by which SMIs shape consumer choices, and the risks that follow. It further evaluates India's response under the Consumer Protection Act, 2019, the CCPA's 2022 Guidelines, the Ministry of Consumer Affairs' 2023 Endorsement Know-How, and the ASCI's 2023 Influencer Guidelines, along with landmark judicial precedents. It argues that while India's endorsement-disclosure regime is developed, the law remains silent on creators acting as direct sellers, on cross-border creators, and on platform accountability for creator-led commerce.

INTRODUCTION

Advertising has always followed its audience. There has been a shift from traditional newspapers, hoardings and television to social media platforms like Instagram, YouTube and X. With this shift, a new intermediary has emerged between the brands and buyers, the Social Media Influencer, or "SMIs". They are individuals who build a personal following on online platforms and then use that trust to market products, making these endorsements appear as personal recommendations rather than advertisements. A 2025 survey found that about 60% of consumers trust influencer endorsements, and these endorsements shape about half of all purchase decisions.[1] These figures show why this phenomenon is legally significant. An endorsement delivered by a trusted personality is harder for a consumer to question than a billboard ever was, and correspondingly more damaging when it turns out to be false.

The role of SMIs has expanded beyond endorsements. What started as brand endorsement has expanded into a wider creator economy which encompasses affiliate marketing, subscription content, and direct-to-consumer sales conducted by creators themselves rather than by the brands they once merely endorsed. As creators increasingly act as sellers rather than mere endorsers, the question arises whether India's existing consumer protection framework is adequate to adapt to this shift.

THE CREATOR ECONOMY: FROM ENDORSEMENT TO ENTERPRISE

Traditionally, advertising was a one-way communication through newspapers, billboards and television, targeted at an anonymous mass audience. Influencer marketing completely flipped that structure. An SMI can review a product, answer comments, conduct polls, and respond to direct messages. This two-way communication makes the endorsement feel more like personal advice from a familiar figure rather than conventional advertisement. But this same interaction is also what makes the format risky.

Unlike traditional advertisement, influencer endorsement carries personal credibility rather than a brand's formal representation. False or exaggerated claims travel faster and are more persuasive than a similar claim in a conventional setup, because it appears to come from someone the audience already trusts.[2] Consumers often rely on an influencer's experience instead of independently assessing a product. As consumer trust has shifted from brands to creators, misleading endorsements have become a matter of consumer protection rather than merely an advertising issue.

This expansion has not stopped at endorsement. Many SMIs now monetise their following directly through their own merchandise, paid courses, subscription content, etc. In these arrangements, the creator is not lending credibility to someone else's product, but the creator itself is the seller. This is a question of concern because Indian law imposes different

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[1]Univ. of Portsmouth, New Research Unveils the "Dark Side" of Social Media Influencers and Their Impact on Marketing and Consumer Behaviour (2025).

[2]Savita & Ishwar Mittal, Effect of Social Media Influencers on Buying Behavior of Consumers and Impact on Their Decision, Soc. Sci. J. Advanced Rsch., 2023, at 1.

obligations on a seller than on an endorser. The current statutory and regulatory architecture was drafted with the endorsement scenario in mind, and its application to the creator-as-seller scenario is still a grey area.

INFLUENCER MARKETING AND THE CONSUMER DECISION PROCESS

Influencer marketing is a practice where brands pay social media influencers to promote products, while those influencers continue to present themselves as regular users rather than paid spokespeople. These influencers range from celebrities with millions of followers to micro-influencers with lesser following. But regardless of scale, the process remains presenting endorsement as testimony rather than advertisement.

The effect stems from a simple psychological tendency that people are more likely to trust advice from figures they like or relate to. Influencers deliberately develop personas that resonate with a particular audience for this reason.[3] When a fitness influencer endorses a protein supplement, followers tend to read the endorsement as an approval rather than an advertisement, and the influencer's on-screen use of the product functions as proof of its authenticity. This dynamic is especially prevalent among Gen Z consumers, who tend to value this perceived authenticity when making purchasing decisions.[4] As a result, a demonstration from a trusted influencer often reduces the perceived risk of trying a product that traditional brand advertising cannot. For instance, a consumer may purchase a gadget simply because a tech-guru recommends it after personally using it. Influencers have now become intermediaries in the consumer decision process, occupying a position between brand and buyer that neither traditional advertising nor peer recommendation previously filled.[5]

The role of intermediaries has both advantages and disadvantages. For brands, influencer partnerships are cheaper than conventional advertising and usually have higher engagement, especially with niche communities. For consumers, however, the same relationship can cause serious harm, because the trust, authenticity, and the appearance of independence associated with influencers are what make their false or unverified claims more dangerous than a scripted advertisement would be. An influencer who claims that a diet pill cured their obesity is likely to convince more consumers than an actor making a similar claim in a commercial, because

[3]Savita & Mittal, supra note 2.
[4]Divyaditya Singh, Impact of Influencer Marketing on the Purchase Intention of Gen Z Consumers in India, Int'l Educ. & Rsch. J. (2023).
[5]Aman Arya, Pooja Goel & Subhash Kumar Verma, Influencing the Purchase Path: Exploring Social Media Influencers' Role in E-Commerce Consumer Decision Making, ShodhKosh J. (2024).

the endorsement is perceived as a genuine personal experience rather than marketing.[6] SMIs therefore occupy an uneasy space between advertisement and personal advice. The same credibility they cultivate can help consumers make informed choices, but in the absence of adequate disclosure and verification, it can just as easily facilitate the spread of misleading claims.

THE PERILS OF BLIND TRUST: RISKS IN FOLLOWING INFLUENCERS

The increasing reliance of consumers on influencer content exposes them to several recurring risks. One risks is the spread of *Unsubstantiated Claims*. Influencers are paid to promote a product and sometimes make claims which are not scientifically backed. For example, a beauty influencer might claim that a cream removes wrinkles overnight despite having no scientific evidence to support the claim. Law requires such claims to be backed by some qualifications, but influencers do not always verify such claims before publishing them. As a result, consumers may make ill-informed health, financial, or lifestyle decisions. This became evident during COVID-19 when influencers promoted unapproved remedies as effective treatments.

Another risk is *Misrepresented Identity.* Influencers sometimes present themselves as qualified experts even when they are not. For example, a fitness guru claiming to be a nutritionist, and followers have no means of independently verifying those credentials. A related concern emerged with the rise of computer-generated personas, leading the 2023 ASCI guidelines to require virtual influencers to disclose that they are not real people, since consumers otherwise assume the authenticity that makes the content persuasive in the first place.

The next risk is *Knowingly Spreading False Information*. Some influencers repeat baseless claims, whether for financial gain or by simple ignorance, including legal or medical assertions that contradict professional opinion. Since the audience cannot distinguish a false influencer claim from an accurate one, such statements acquire undue credibility the moment a trusted figure publishes them.

To maintain engagement, influencers also resort to *Sensationalism*. They often describe products as life-changing or beyond criticism, and create unrealistic expectations. The problem aggravates when different influencers make conflicting claims about the same product, leaving consumers without a reliable basis for an informed choice.

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[6] Savita & Mittal, supra note 2.

Another major risk is *Undisclosed Sponsorship.* When a paid endorsement is not clearly labelled, followers are likely to read it as independent opinion, and many even recommend the product without realising that the original opinion was sponsored. This is precisely the harm that the CPA's guidelines and the ASCI code seek to prevent.

A new problematic situation arises when creators sell products or services directly to their audience rather than marketing those of a third party. In this situation, consumers interact with the creator as a seller rather than an independent reviewer. Yet the same trust dynamics are present here as well with equal or greater force. A follower who trusts a creator is less likely to check a product sold directly by the creator than one sold by an anonymous online marketplace. Existing disclosure requirements are designed around the endorsement relationship but do not address this kind of transaction, leaving a gap between the risk and the regulatory response to it.

None of these risks is hypothetical, nor do they depend on an influencer acting in bad faith. Even a good-intentioned SMI can mislead followers simply by repeating a claim without verifying it. If left unregulated, these risks can extend beyond a single purchase decision and gradually erode consumer confidence in digital commerce itself.

THE INDIAN REGULATORY AND JUDICIAL RESPONSE

A. The Consumer Protection Act, 2019

The Consumer Protection Act, 2019 ("CPA") is the principal statute governing advertising and marketing practice in India, rewritten from its 1986 predecessor to address e-commerce, unfair trade practices and misleading advertisements. Section 2(28) defines a "misleading advertisement" to include any advertisement that misrepresents facts about, or omits material information concerning, a product or service.[7] Sections 10 and 21 together empower the Central Consumer Protection Authority ("CCPA") to act, including on its own motion, against false or misleading advertisements and to order their discontinuation.[8] Section 21(1) authorises suo motu proceedings, so a complaint from an aggrieved consumer is not a precondition for enforcement.[9] Where a violation is established, the CCPA may debar the endorser from making endorsements for up to one year, and may impose a fine of up to ₹10 lakh for a first violation,

[7]Consumer Protection Act, No. 35 of 2019, § 2(28) (India).
[8]Consumer Protection Act, No. 35 of 2019, §§ 10, 21 (India).
[9]Id. § 21(1).

rising to ₹50 lakh for repeated violations.[10] Section 89 adds criminal liability for knowingly publishing a misleading advertisement, with imprisonment of up to two years on a first conviction and up to five years for a subsequent offence.[11] Read together, these provisions require producers, advertisers, publishers and influencers alike to exercise due diligence before endorsing a product, rather than disclaiming knowledge after the fact.[12]

The Supreme Court applied this framework in *Indian Medical Association v. Union of India*.[13] The case arose from Patanjali Ayurveda's continued advertisement of unproven cures for diabetes and hypertension despite a 2017 memorandum of understanding between the Ministry of AYUSH and ASCI intended to curb such claims.[14] The Court noted that Section 89 already exposed repeat offenders to a five-year term and a ₹50 lakh fine, and held that an endorser must possess adequate information or experience before making a claim and cannot simply repeat an unverified assertion. It clarified that celebrities and social media influencers bear equal liability as manufacturers for a misleading endorsement.[15] The judgment also highlighted repeated enforcement failures despite existing statutory sanctions, making judicial intervention necessary.

In the case of *Marico Ltd. v. Abhijeet Bhansali*,[16] the Bombay High Court found a YouTuber's video, questioning the purity of a coconut oil brand through an unscientific "freeze test", to be misleading and scientifically unsubstantiated. The Court held that an influencer with a substantial following owes a heightened duty of care and must support any published claim with credible evidence. It recognised that statements about a competitor's product are not immune from ordinary standards of substantiation merely because they are expressed as personal opinion.

A similar concern arose in 2022, when ASCI flagged more than 400 cryptocurrency advertisements for inadequate risk disclosure, leading to stricter rules for governing financial and investment-product endorsements.[17] These developments make it clear that influencers

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[10]Id. § 21.
[11]Id. § 89.
[12]Amita Pawar & Chinab Ahuja, Critical Analysis of Existing Legal Framework on Misleading Advertisements in India, 5 Int'l J. Advanced Legal Rsch. 85, 95-96 (2022).
[13]Indian Med. Ass'n v. Union of India, (2024) 8 S.C.C. 46 (India).
[14]Binay Sinha, Patanjali, Misleading Ads, and Art of Puffery: When Brands Take It Too Far, Bus. Standard (May 8, 2024).
[15]Indian Med. Ass'n v. Union of India (Patanjali Ayurved), Petition No. 1 of 2023 (India) (S.C., order dated May 7, 2024), https://www.scconline.com/blog/post/2024/05/07/patanjali-misleading-ads-case-celebrities-social-media-influencers-equally-liable-endorsing-misleading-ads-supreme-court/.
[16]Marico Ltd. v. Abhijeet Bhansali, (2020) 81 P.T.C. 244 (Bom.) (India).
[17]More Than 400 Ads on Crypto Violated Guidelines: Ad Council, Econ. Times (June 2022).

cannot avoid liability for a misleading endorsement by claiming ignorance of the product's actual qualities.

B. The CCPA Guidelines for Prevention of Misleading Advertisements, 2022

The CCPA's 2022 Guidelines supplement the CPA by requiring endorsements to reflect the influencer's genuine opinion, belief or experience rather than a fabricated claim.[18] Any claim must be supported by reasonable grounds, like certification, testing or published research. Uncertainty must also be disclosed through appropriate caveats, such as "results may vary." An influencer who endorses a product without verifying the claim, even inadvertently, may be treated as negligent under the Guidelines, making evidence-based endorsement a mandatory obligation.[19]

C. Ministry of Consumer Affair's "Endorsement Know-How" Guidelines, 2023

The Ministry of Consumer Affair's 2023 Endorsement Know-How guidelines require influencers to disclose any material connection with a brand through clear labels such as "Advertisement," "Sponsored," "Paid Promotion", etc. They must be placed prominently rather than buried within a caption or the comments section.[20] Influencers are also expected to retain records of their communications with advertisers to show compliance if questioned. The Ministry has treated undisclosed sponsorship as an unfair trade practice in itself, exposing the influencer to liability under the CPA irrespective of any liability arising from the advertisement itself.

D. ASCI Guidelines for Influencer Advertising in Digital Media, 2023

In August 2023, the Advertising Standards Council of India issued updated Influencer Advertising Guidelines that, for the first time, formally define "influencer," "virtual influencer" and "digital media."[21] The guidelines require paid content to be labelled visibly rather than concealed, and extend specifically to health and finance influencers, who must disclose their credentials, or the absence of them, when offering advice outside their expertise. ASCI's code

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[18]Khaitan Legal Assocs., Legal Implications of Social Media Influencers: Endorsements and Disclosures in India, Lexology (2025).
[19]Abhikalp Tomar, Legal Consequences of Social Media Influencers: Disclosures and Endorsements in India, VintageLegal (2025).
[20]Khaitan Legal Assocs., supra note 18.
[21]Advertising Standards Council of India, Press Release (Aug. 17, 2023).

carries no independent statutory penalty, but compliance is closely monitored and is frequently cited in CCPA and judicial proceedings, giving it practical, if indirect, legal force.

All of these read together establish that influencer marketing is no longer a legal grey area in India.

E. Where the Framework Does Not Reach

The existing framework was designed to address conventional endorsement. It becomes less certain when applied to the emerging forms of influencer activities. Three gaps stand out. First, a creator who sells a product directly, rather than endorsing a brand's product, may qualify as a "seller" under the E-Commerce Rules, 2020.[22] Yet neither the CCPA Guidelines nor the ASCI Code were drafted to address this situation, and it remains unclear how the due-diligence obligations designed for endorsers apply when a creator acts as principal. Second, none of the instruments address jurisdiction over creators based outside India who reach Indian consumers through foreign platforms, leaving enforcement to depend on platform cooperation rather than a statutory authority. Third, while the ASCI Guidelines extend disclosure obligations to virtual and computer-generated influencers, no instrument yet addresses liability where an AI-generated persona makes the claim, a gap that will widen as such personas become more common. These are not failures of drafting so much as evidence that the regulatory architecture was built for a narrower relationship than the one the creator economy now presents.

RECOMMENDATIONS

Closing the gaps requires more than incremental fixes. It requires extending an endorsement-era framework to a commerce-era reality. First, fake reviews, including those on creator-run storefronts, should be expressly classified as an unfair trade practice under the CPA. Although sections 2(28) and 2(47) are broad enough to cover such conduct,[23] the CCPA should issue a notification to clarify that fake reviews constitute non-compliant conduct. This would enable direct action rather than relying on case-by-case interpretation.

E-Commerce Rules, 2020 also need stronger enforcement. Despite the Ministry's warnings to platforms allowing fake reviews may themselves be engaging in UTPs,[24] the framework for

[22] Consumer Protection (E-Commerce) Rules, 2020, G.S.R. 419(E) (India).
[23] Consumer Protection Act, No. 35 of 2019, §§ 2(28), 2(47) (India).
[24] Jagmeet Singh, India Issues Guidelines to Curb Fake Reviews on E-Commerce Platforms, TechCrunch (2022).

identifying deceptive reviews under BIS's IS 19000:2022 is still voluntary.[25] Making these standards mandatory would require platforms to adopt fraud-detection and real-time monitoring systems rather than treat it as optional. Repeated failure should be treated as a deficiency of service in cases where failure causes consumers to purchase defective or misrepresented products.

Disclosure requirements also need stricter enforcement. The CCPA Guidelines, the MCA Know-How and the ASCI Code require influencers to disclose material connections, but compliance remains inconsistent. Regulators should penalise non-disclosure and require platforms to automatically label sponsored content rather than rely on influencer self-disclosure.

Finally, ASCI should strengthen oversight in high-risk sectors like health and finance. Better coordination among ASCI, the CCPA, digital platforms and the BIS would improve enforcement and consumer protection.

CONCLUSION

Indian law is, to an extent, ready for influencer marketing, but it is not yet ready for the creator economy that influencer marketing has become. Influencer marketing has shifted the locus of consumer trust from institutional advertising to individual endorsement, and Indian law has responded by treating that endorsement as advertising in substance, regardless of its personal packaging. The CPA, the CCPA Guidelines, the MCA's Endorsement Know-How and the ASCI Code together require influencers to disclose sponsored relationships and to substantiate the claims they make, and the courts have confirmed that influencers bear the same liability as any other endorser for a misleading claim.

But what is lacking is enforcement rather than design. Fake endorsements exist despite voluntary standards, platform accountability is underdeveloped, and disclosure requirements are inconsistent even where the applicable rule is clear. Closing these gaps through a mandatory review standard, platform liability for deceptive conduct, and stricter disclosure requirements are necessary if influencer marketing has to evolve into a transparent complement to consumer choice, rather than remain a persuasive but unaccountable substitute for it.

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[25]Bureau of Indian Standards, IS 19000:2022- Online Consumer Reviews and Ratings: Principles and Requirements (2022).