

Bot or not? The Rise of CGI Influencers

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by Sarah Robertson

In the not too distant past, consumer product brands hired celebrity figures to act as their official ambassadors. These celebrities appeared in traditional media such as TV commercials and celebrity interviews in print publications, as well as online. Jamie Lee Curtis spooning up Dannon Activia yogurt comes to mind.

But with the exponential growth of social media over the past ten years, brand power and influence has shifted away from celebrities to influencers such as bloggers, YouTubers and other everyday people who have developed niche expertise and authority. This "peer-to-peer marketing" is seen as being more authentic and relatable, which, based on the current consumer demand for authenticity, now better drives consumers to buy things. As we have covered extensively here, here and here, enforcement efforts of the Federal Trade Commission have been focused on appropriate disclosures for these social media influencers since their material connections to a consumer brand and the honesty of their brand experiences are not easy for consumers to discern.

So what is next on the brand influencer horizon in light of the rise of automated technology such as avatars and chat bots? Computer generated image (CGI) influencers.

These CGI influencers in fact already exist. Take Miquela Sousa, also known as Lil Miquela, a 19 year old Brazilian American avatar, who has amassed 1.4 million followers on Instagram as at the time of this post. Lil Miquela is an Instagram model and singer, and is dressed by fashion brands such as Fendi, Chanel and Versace and has also appeared in magazine spreads and music videos. Until Lil Miquela's account was attacked by another avatar, Bermuda @Bermudaisbae in April 2018, when Lil Miquela disclosed that she was a CGI, few people were aware that she wasn't a real human. Both Lil Miquela and Bermuda are said to be products of a California robotics and AI firm named Brud. Other examples of CGI influencers are Shudu, who is the "world's first digital supermodel" and whose posts featuring make-up products such as Rihanna's Fenty Beauty have garnered tens of thousands of likes. Shudu was created by the

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London based photographer, Cameron James Wilson.

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influencers such as Lil Miquela are attracting attention and expected to increase in number. Their primary appeal is their ability to let brands avoid some of the challenges that human influencers can bring, such as the high payments they command and the sometimes unpredictability of human influencers' behavior, which can result in FTC violations, reputational harm and more. CGI influencers also allow brands to control the look and personality of their brand ambassadors, with the goal, in some cases, of appealing to a broader range of audiences.

An open question is how the FTC disclosure requirements will apply in the CGI context, and whether CGI influencers should follow the same rules as human influencers. A threshold question that equally applies to other automated technologies, such as customer service chat bots, is whether a CGI influencer must disclose that they are not human. If a reasonable consumer would not be aware that the influencer is a digital creation, then such a disclosure may be necessary. A second is whether an avatar would have to disclose that there is a material connection between it and the consumer products that it is featuring and/or that the avatar's posts are ads. Although the FTC hasn't issued formal guidance on CGI influencers, FTC guidance on the related worlds of augmented and virtual reality point to this being required. The FTC has also been fairly consistent and persistent in requiring disclosure of relevant material connections, no matter how the connection has come about. And an FTC spokesperson has commented publicly that advertisers using CGI influencers should clearly identify their posts as ads.

Yet another issue is whether the product experiences of the avatar can ever be true so as to meet the FTC's testimonial requirements that endorsements reflect the honest opinions, findings, beliefs, or experience of the endorser. Some believe that it is the opinion of the creator of the CGI influencer that is actually being professed. Others argue that the FTC's Guides do not apply to CGI influencers at all, since these Guides only apply to an "individual, group, or institution." The former is the more likely standard that the FTC would adopt. All of this remains to be seen if or when the FTC issues further guidance on the consumer advertising practices of CGI influencers as they become more prevalent or enforcement action is taken.