



Degree Program in Business Administration

Course of Intellectual Property Rights

Unfair Competition and Artificial Intelligence: a case study on the legal issues of Lisa AI and Scarlett Johansson in AI-driven marketing

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INTRODUCTION

In these recent years, artificial intelligence has changed the way companies communicate, compete, and interact with consumers. AI-based technologies are not anymore ‘behind-the-scenes tools’ but are now factors that drive market value, thanks to personalized ads or the rise of AI-generated fake influencers.

However, these innovations bring with its benefits also important legal and ethical concerns, especially when AI is used to impersonate real people, create fake advertisements, or exploiting copyrighted content. These practices blur the distinction between real and fake, and they breach consumer trust and fair competition.

This thesis analyzes these crucial issues starting from the 2023 Lisa AI case¹, in which the voice and image of actress Scarlett Johansson were used, without her consent, to promote the app. The case serves as a direct, real-life example of how AI is used in marketing and raises problems concerning breaches of personal rights, consumer deception, and unfair market advantages. It also reveals a broader legal issue since current regulatory systems are not following this advent of technology rapidly and therefore do not take into account the challenges and complexity that AI brings with it.

In *Chapter 1* we are going to analyze the Lisa AI case in detail, with the attention to the way in which the unauthorized use of Johansson identity violates several core legal provisions under U.S. law. We are mentioning those breaches that will be analyzed later, which are right of publicity², false endorsement in the Lanham Act³, and possible copyright infringement⁴ due to the use of clips taken from the movie *Black Widow*.

The chapter shows how media produced via AI can cross legal lines, especially when utilized to create powerful, but deceptive, content.

Chapter 2 develops this matter by examining how unfair competition is regulated in marketing in the world, with a focus European Union and the United States.

¹ Shanfeld, E. (2023b, November 1). Variety. *Variety*. <https://variety.com/2023/digital/news/scarlett-johansson-legal-action-ai-app-ad-likeness-1235773489/>

² Right of Publicity. (2008, November 19). *California - right of publicity*. <https://rightofpublicity.com/statutes/california>

³ United States Patent and Trademark Office. (n.d.). *Trademark statutes: 15 U.S.C. § 1125(a) – False designations of origin and false descriptions forbidden*. U.S. Department of Commerce. Retrieved May 28, 2025, from https://www.uspto.gov/sites/default/files/trademarks/law/Trademark_Statutes.pdf

⁴ Office, U. C. (n.d.-a). *Copyright Law of the United States | U.S. Copyright Office*. <https://www.copyright.gov/title17/>

It highlights how commercial communication is being revolutionized by artificial intelligence, sometimes to the point in which it is easy to mislead consumers or harm competitors. We are going to analyze the most important regulatory frameworks that takes this matter into account, such as the Unfair Commercial Practices⁵ and the Federal Trade Commission⁶.

Chapter 3 takes into consideration the growing impact of AI on consumer behavior and influencer marketing. It focuses on how virtual influencers, deepfakes, and AI-created content can simulate trust and shape consumers' perception, and also the issues that lack of transparency and disclosure bring.

It also shows how some new regulation, such as the EU AI Act⁷ and the FTC's updated Endorsement Guidelines⁸, try to bring back fairness and accountability to AI-driven content.

Chapter 4 is more oriented to the future in its scope, as a matter of fact it questions whether the current legal tools are adequate to take into account the rapidly evolving advent of AI in advertising.

It proposes reforms that focus on transparency, consent, and legal accountability, and also calls for better progress towards international harmonization.

By comparing legal theory with empirical case law, this thesis argues that there must be a more adaptive and comprehensive legal framework that is able to react to the threats and challenged posed by AI in marketing communication. Therefore, as technology evolves, so too must our legal standards, to better match the reality.

CHAPTER 1: CASE STUDY – Lisa AI & Scarlett Johansson

1.1 Case Overview

In October 2023⁹, the AI platform *Lisa AI: 90s Yearbook & Avatar* - an app in which users can generate images and videos thanks to artificial intelligence - and the well-known Hollywood actress Scarlett Johansson were involved in a major scandal.

Lisa AI launched a 22-seconds video advertisement using both vocal and visual elements that strongly resembles Scarlett Johansson. The video, which has been rapidly removed from the

⁵ Directive - 2005/29 - EN - EUR-Lex. (n.d.-b). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005L0029>

⁶ Federal Trade Commission. (2025, February 6). Federal Trade Commission. <https://www.ftc.gov/>

⁷ The Act texts | EU Artificial Intelligence Act. (n.d.). <https://artificialintelligenceact.eu/the-act/>

⁸ 16 CFR Part 255 -- Guides concerning use of endorsements and testimonials in advertising. (n.d.-d). <https://www.ecfr.gov/current/title-16/chapter-I/subchapter-B/part-255>

⁹ Shanfeld, E. (2023, November 1). Variety. *Variety*. <https://variety.com/2023/digital/news/scarlett-johansson-legal-action-ai-app-ad-likeness-1235773489/>

internet, contained actual clips of the actress taken from the Marvel film 'Black Widow', then transitioned into AI-generated visual and vocal content of the actress stating: '*What's up, guys? It's Scarlett and I want you to come with me [...]. It's not limited to avatars only, you can also create images with texts and even your AI videos. I think you shouldn't miss it*'¹⁰. The actress is therefore addressing viewers directly, leaving them with the impression of her being directly involved in and endorsed the app, causing a clear consumer deception and deepfake advertising.

Scarlett Johansson's legal team immediately released a statement requesting the removal of the advertisement from all platforms and confirming the actress was not, in any case, involved in the endorsement of the product nor given any kind of permission to use her figure. This led to the initiation of legal actions against the AI platform by the actress' legal team, which are however kept private, under the formal request of the latter.

Despite the efforts to maintain the case privately, it was inevitable that this would draw the public and media's attention due to the involvement of a celebrity and the diffusion of the content on social media, such as X (better known as the platform 'Twitter'¹¹). Nevertheless, the details and the involvement of the legal actions are still nowadays unknown to the public and therefore the effort should not be considered pointless. The case attracted not only the attention of the public but also the one of the legal and marketing communities. The reason is that the case is highly relevant as Scarlett Johansson's image was used in a commercial context and cannot be considered a parody or user creation, but without any doubt an advertisement intended to distort market competition and drive consumers towards the app.

Although the case faced a vast mediatic attention, it still did not stop other platforms from misappropriating Scarlett Johansson's figure, thus another similar case arose. In May 2024¹², the Open AI platform launched a voice assistant named 'Sky' having a voice that was found extremely similar to the actress' one. The latter stated the platform had previously requested the use of her voice, but this request was denied and continued by threatening the platform to pursue legal actions. Open AI CEO Sam Altman denied the celebrity's allegations stating it was merely a communication error between the two.¹³

The Open AI platform engaged in a dishonest practice which is growing important in the latest years, meaning 'deepfakes', a synthetic media that replicates in a realistic way an individual's voice or likeness. This tactic is extremely dangerous as it has the ability to spread fake or misleading information, exploiting the trust and reputation of the platform creating or sharing

¹⁰Hobbs, J. (2023, November 2). Scarlett Johansson takes legal action against AI app ripping off her likeness. *New York Post*. <https://nypost.com/2023/11/02/entertainment/scarlett-johansson-takes-legal-action-against-ai-app-ripping-off-her-likeness/>

¹¹An American microblogging and social networking service. *Wikipedia contributors*. (2025, May 21). *Twitter*. *Wikipedia*. <https://en.wikipedia.org/wiki/Twitter>

¹²Djajapranata, C. (2024, June 4). *OpenAI v. Scarlett Johansson? Law Professor Answers Legal Questions on AI-Generated Content - Georgetown University*. Georgetown University. <https://www.georgetown.edu/news/ask-a-professor-openai-v-scarlett-johansson/>

¹³Chatterjee, M. (2024, May 21). *Scarlett Johansson crashes a stuck Washington debate on AI*. Politico. <https://www.politico.com/news/2024/05/21/scarlett-johansson-washington-ai-debate-00159230>

the media¹⁴. These media are created thanks to machine learning algorithms¹⁵, which make it possible to create and replicate patterns or facial expressions without any consent by other parties. In marketing and advertising, ‘deepfakes’ are not merely innovative tools but are changing the way in which campaigns are created and shared to the public, blurring both ethical and legal boundaries.

The Open AI case, even though it did not involve the use of her likeness but only her voice, is still of paramount importance as it adds depth in the overall picture. However, it should be stated that the Open AI case did not attract much attention as it did not involve a commercial practice, contrary to the Lisa AI case. While the former merely involves the appropriation and replication of the voice, it had no effect on the market competition like the latter which was found to be explicitly promotional and intended to mislead consumers into believing the famous actress was endorsing the app. Having said so, the Lisa AI case is a clear real-world example of how media can breach not only legal boundaries but also fundamental rights of fair marketing and brand reputation.

The Lisa AI case, due to the intent to distort competition and the huge mediatic attention it received, shows the importance of updating the regulations to address these types of cases which were difficult to happen in the past before the digitalization. By remaining things unchanged, this could become the normality, leading to creating confusion and damaging the reputation of the brands.

The case is also making people realize how rapidly the digital marketplace is evolving, with AI having the chance to bypass traditional regulations on false endorsement and copyright.

It is also true to state that celebrities are aware of their public position and they are most likely to be victims of deepfake technology, as Scarlett Johansson also stated in an interview with *The Washington Post*: ‘Nothing can stop someone from cutting and pasting my image or anyone else’s onto a different body and making it look as eerily realistic as desired’¹⁶ highlighting celebrities are well aware of the risks they face.

However, with the growing importance of the AI market, not only celebrities but also influencers and private citizens can be affected by the actions of these platforms. The concern therefore raises both because of the portion of people affected but also because it is not only a matter of legal protection, but of public trust, consumer rights and psychological impact.

¹⁴ Yasar, K., Barney, N., & Wigmore, I. (2024, August 13). *What is deepfake technology?* WhatIs. <https://www.techtaraget.com/whatis/definition/deepfake>

¹⁵ Adee, S. (2024, March 8). What are deepfakes and how are they created? *IEEE Spectrum*. <https://spectrum.ieee.org/what-is-deepfake>

¹⁶ Harwell, D. (2018, December 31). Scarlett Johansson on fake AI-generated sex videos: ‘Nothing can stop someone from cutting and pasting my image.’ *The Washington Post*. <https://www.washingtonpost.com/technology/2018/12/31/scarlett-johansson-fake-ai-generated-sex-videos-nothing-can-stop-someone-cutting-pasting-my-image/>

1.2 Legal issues: right of publicity, false endorsement, and copyright infringements

The case of Lisa AI is crucial as it overlaps many legal domains, with the most affected ones being the right of publicity, false endorsement and possible copyright infringements. It also represents a turning point as the advent of artificial intelligence and digital media could lead to the normalization of these breaches, thus needing more boundaries to regulate these.

1.2.1 Infringement of the right of publicity

One of the central legal issues the Scarlett Johansson's case raised is the right of publicity. This right is aimed to protect individuals against the inappropriate commercial use of their appearance, voice or other attributes that make it distinctive¹⁷. In the United States, this right is governed by state law, with the most comprehensive framework being the one of California, as most of the public figures are located in that state, as the case in question.

As a matter of fact, the right of publicity is addressed by the California Civil Code section 3344¹⁸ which states it is considered against the law for any person - or corporation - to *'knowingly use another's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods or services, without such person's prior consent'*.

As a result, the law is aimed at protecting individuals, especially those that are most exposed to the public, from an unauthorized exploitation of their identity, in a commercial context.

It is of paramount importance to underline the commercial purpose, as the infringement of the right of publicity is considered a type of unfair competitive behavior, thus trying to gain a competitive advantage in the market using dishonest practices rather than competing fairly¹⁹.

With regards to the penalty of the infringement, the law provides two different alternatives to the injured party: it can either claim the actual damages and the profits made by the infringer; or a minimum of \$750 of statutory damages. On top of these, the harmed party can also claim for extra money for punitive damages and have the attorneys' fees covered. These are aimed at discouraging individuals from breaching this provision.

The Lisa AI case is a clear type of infringement of the right of publicity, as it involved the unauthorized use of an individual's - here Scarlett Johansson - voice and appearance in an advertisement. The video both tried to replicate her image in a very realistic way, by using clips from previous movies, but even used an AI-generated voice resembling hers in a way that

¹⁷Rothman, R. C. P. & J. E. (n.d.). *The First Amendment and the Right(s) of Publicity*. <https://www.yalelawjournal.org/article/the-first-amendment-and-the-rights-of-publicity>

¹⁸ https://california.public.law/codes/civil_code

¹⁹ Rothman, Jennifer E., *The Right of Publicity: Privacy Reimagined for a Public World (Introduction)* (May 7, 2018). *The Right of Publicity: Privacy Reimagined for a Public World*, Harvard University Press, 2018, Loyola Law School, Los Angeles Legal Studies Research Paper No. 2018-23

directly addressed viewers and promoted the app. These made the impression that the celebrity was involved in the commercial, therefore a misappropriation of identity for a commercial purpose and considered unlawful according to the California Civil Code section 3344.

The provision uses the term ‘photograph’ which is then specified in section b) as ‘*any photograph or photographic reproduction, still or moving, or any videotape or live television transmission, of any person, such that the person is readily identifiable*’²⁰. The case satisfies both the definition of photograph, being a videotape and the criteria of identifiability as Scarlett Johansson is a global-recognized actress.

Moreover, according to § 3344²¹, it is not necessary to prove intent in order to establish liability but it is sufficient to show that the unauthorized use of the identity happened with a commercial scope and there was no prior agreement between parties. This is crucial as it lowers the burden of proof of the injured party and therefore Scarlett Johansson’s attorneys had no need to show intent but only needed to demonstrate that her voice and likeness were used, without consent, to promote a product.

Scarlett Johansson was surely not the first victim of an infringement of the right of publicity; however, it is important to show how different cases from history to more recent years differ from each other due to the growing importance of digital media, artificial intelligence and updates in legal frameworks. This has changed the way in which companies communicate with customers and therefore different marketing and advertising tactics arise. The Lisa AI case reflects perfectly how these changes have an impact on consumers, yet we are going to briefly analyze two different cases to better understand these temporal and technological differences.

The first case dates back to 2008, regarding the publicity rights to make use of several photographs of Marilyn Monroe taken by Sam Shaw²². The dispute arose between *Shaw Family Archives Ltd* and *CMG Worldwide, Inc*²³. The former, by owning the copyrights to pictures taken of Marilyn Monroe by Sam Shaw, challenged CMG Worldwide and Marilyn Monroe LLC. The reason behind this complaint is the one that these companies both claim to have exclusive rights over these images due to the fact that they hold Monroe’s publicity rights. The US District Court for the Southern District of New York²⁴ ruled in favor of Shaw Family Archives Ltd, stating Marilyn Monroe did not hold any rights of publicity at the moment of the complaint and therefore the claim made by CMG was invalid. The reason is that, neither New York nor California, which were her two possible domiciles, recognized postmortem publicity

²⁰ California Civil Code § 3344 (b)

²¹ *California Civil Code section 3344 (2025)*. (n.d.). California.Public.Law. https://california.public.law/codes/ca_civ_code_section_3344

²² United States Court of Appeals for the Seventh Circuit. (2014, February 19). *Michael Jordan v. Jewel Food Stores, Inc., et al.*, No. 12-1992. <https://rightofpublicity.com/pdf/cases/jordanVJewel.pdf>

²³ *Shaw Family Archives Ltd. v. CMG Worldwide, Inc.*, 486 F. Supp. 2d 309 (S.D.N.Y. 2007).

²⁴ *Homepage | U.S District Court*. (n.d.). <https://www.nysd.uscourts.gov/>

rights at the time of her death, in 1962²⁵ and therefore there was no possibility of transferring or enforcing these rights.

The case highlights the historical limitations of the right of publicity, as a matter of fact post-mortem publicity rights are nowadays recognized in most jurisdictions, even if only governed at the state law level.

Moving on with the years, a second important case arose, the one between *Micheal Jordan* and *Jewel Food Stores, Inc.* The basketball player brought a lawsuit against the supermarket chain *Jewel-Osco*, for having published an advertisement portraying Jordan's recognition by the Basketball Hall of Fame, including his likeness, name and Jersey number (23) paired with the supermarket's logo and slogan²⁶. *Jewel Food Stores* argued claim was inadmissible as the advertisement could be considered a non-commercial speech and therefore protected under First Amendment²⁷ of the US Constitution.

The United States Court of Appeals for the Seventh Circuit²⁸ handled the case and ruled in favor of Micheal Jordan, due to the commercial nature of the ad which was associating the supermarket's brand identity with Micheal Jordan's image, even if no product was being promoted²⁹. In this case it reinforced the idea that using an individual's name or likeness can violate the right of publicity, even if there is no intent to promote a product or service, as long as it adds brand value.

The three cases mentioned reflect how legal disputes change among the years: the Monroe case reflects the limitations the right of publicity had in the past, as there were no provisions addressing post mortem rights; the Micheal Jordan's case represents one of the first steps towards a new marketing era, showing how these rights are protected towards advertisement; and finally the Lisa AI case highlights a new era in which the dominance is of artificial intelligence.

Despite Lisa AI's effort to make the case look like a simple failure to communicate, the fact that the platform decided to immediately remove the content from the internet can be interpreted as implicitly admitting the dishonest behavior. On the other hand, this action was the key to limiting the spread of the news and its circulation.

Lastly, it is of paramount importance to emphasize that the right of publicity has a twofold scope: on the one hand, at the individual and micro level, it protects individuals interests by avoiding unauthorized use of their identities; on the other hand, at the market and therefore macro level, it plays a broader economic scope as it ensures fair competitive practices within

²⁵ contributori di Wikipedia. (2025, March 27). *Morte di Marilyn Monroe*. Wikipedia. https://it.wikipedia.org/wiki/Morte_di_Marilyn_Monroe

²⁶United States Court of Appeals for the Seventh Circuit. (2014, February 19). *Michael Jordan v. Jewel Food Stores, Inc., et al.*, No. 12-1992.

²⁷*First Amendment*. (n.d.). LII / Legal Information Institute. https://www.law.cornell.edu/constitution/first_amendment

²⁸*United States Court of Appeals for the Seventh Circuit*. (n.d.). <https://www.ca7.uscourts.gov/>

²⁹ *Jordan v. Jewel Food Stores, Inc.*, 743 F.3d 509, 7th Cir. 2014

the market. Thus, misappropriation of someone's identity in a commercial context gives the party an advantage in the market which is obtained unfairly³⁰.

Hence, the Lisa AI case provides us an example of how an unethical use of AI can both distort market competition and violate individual rights.

At the individual level, the case violated many different rights besides the one of publicity such as:

- right to privacy³¹, as the case violated Scarlett Johansson's privacy both in false light, meaning picturing something deceptive, and by appropriating her likeness and image.
- right to human dignity³² especially important under EU law as it serves as one of the fundamental human rights; Lisa AI violated this right by generating a 'depersonalized' likeness of the celebrity.
- right to personal identity³³, therefore an individual's autonomy over its public identity was breached by appropriating Scarlett Johansson's images without her consent.
- moral rights³⁴ in order to grant protection to creators and authors of intellectual property works, breached by using copyrighted content without the consent.

These rights are fundamental not only because they protect the individuals, but because they provide an additional barrier to avoid unfairness in the market. Violating these rights involve most of the time some deceptive practices that reflect on the individual, the consumers and the market.

However, it is not to undermine the fact that artificial intelligence, when used fairly and transparently, can have positive effects as a communication tool or even stimulate creativity in some ways.

One important example is the '*Malaria Must Die, So Millions Can Live*'³⁵ campaign made in 2019 by David Beckham. In this video, the famous UK football player is shown as speaking 9 different languages, thanks to synthetic media and AI-based voices³⁶. In this case, the video was created having full consent by Beckham and with the purpose of sharing a global message

³⁰ 2023 McCarthy, The Rights of Publicity and Privacy

³¹ *right to privacy*. (n.d.). LII / Legal Information Institute. https://www.law.cornell.edu/wex/right_to_privacy

³² *Title I: Dignity*. (n.d.). European Union Agency for Fundamental Rights. <https://fra.europa.eu/en/eu-charter/title/title-i-dignity>

³³ Pino, G. (2000). *The right to personal identity in Italian private law: Constitutional interpretation and judge-made rights*. In M. Van Hoecke & F. Ost (Eds.), *The harmonization of private law in Europe* (pp. 225–237). Hart Publishing.

³⁴ Wooding, V., Esq. (2024, July 18). *Moral rights: author rights, international variations*. Counsel Stack Learn. <https://blog.counselstack.com/moral-rights-author-rights-international-variations/>

³⁵ ABC News. (n.d.). *David Beckham "speaks" nine languages for malaria campaign* [Video]. ABC News. <https://abcnews.go.com/International/video/david-beckham-speaks-languages-malaria-campaign-62271357>

³⁶ Davies, G. (2019, April 10). *David Beckham "speaks" 9 languages for new campaign to end malaria*. ABC News. <https://abcnews.go.com/International/david-beckham-speaks-languages-campaign-end-malaria/story?id=62270227>

of fighting malaria. With the help of AI to break down linguistic barriers, the video reached a wider span of audience, showing how this can result in positive outcomes.

Another similar case occurred in March 2023³⁷, when *Coca Cola Co.* launched the ‘Create Real Magic’ campaign, inviting users and artists to generate digital artworks using AI including the Coca Cola brand and their own ideas. This is a clear example of how AI, instead of blocking creativity, fosters it, also allowing multiple interaction of users among each other and with the brand.

Therefore, it is possible to state that the problem is not the artificial intelligence itself, but the way in which it is used. If there is full consent, transparency and is not harming any party, it can have positive effects such as enhancing customer engagement and foster creativity.

1.2.2 False endorsement

Another important legal issue that was raised by the Lisa AI case is false endorsement, which is sometimes associated with the right of publicity but in reality differs from it as it focuses more on consumer protection. As a matter of fact, false endorsement lies in the middle of advertising law and consumer law, becoming crucial when companies use celebrities to endorse their products. The aim of the provision is to ensure transparency in the marketplace and avoid misleading the public or create any kind of confusion as in a fair competitive market advertising campaigns need to not discredit competitors nor mislead consumers.

False endorsement happens when an individual’s identity - mostly celebrities - is used in a way which leads to the public believing it is promoting or endorsing a product or service, when in reality it has no connection or involvement with that good³⁸. This is precisely what happened in the Lisa AI case, as the video left the public with the impression that Scarlett Johansson was promoting the app.

In the United States, false endorsement is regulated under section 43(a) of the Lanham Act (15 U.S.C. § 1125(a))³⁹ and aims at stopping companies from acting unfairly in a way that deceives consumers, especially when this confusion is associated with the gain of a competitive advantage. The Lanham Act, or even called the Trademark Act of 1946⁴⁰ is mostly concerned

³⁷Wright, W. (2023, March 24). Coke launches ‘Create Real Magic’ AI art contest using GPT-4 and Dall-E 2. *The Drum*. <https://www.thedrum.com/news/2023/03/20/coke-launches-create-real-magic-ai-art-contest-using-gpt-4-and-dall-e>

³⁸Vondran, S. (2016, June 27). *Do I have a claim for false advertising under the federal Lanham Act?* *Vondran Legal*. <https://www.vondranlegal.com/federal-lanham-act-law-firm>

³⁹United States. (2005, October). *U.S. Trademarks Law, 15 U.S.C. §§ 1051 et seq.* World Intellectual Property Organization. <https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/us/us177en.pdf>

⁴⁰United States Patent and Trademark Office. (2013, November 25). *U.S. Trademark Law: Federal Statutes*. https://www.uspto.gov/sites/default/files/trademarks/law/Trademark_Statutes.pdf

with trademark protection, while also addressing unfair competition issues, including provisions regarding false and misleading advertising, misrepresentation of origin, and false endorsement.

section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)) *'prohibits the use of any false or misleading representation of fact which is likely to cause confusion as to the affiliation, connection, sponsorship or approval of a person with goods or services, specifically protecting individuals from the unauthorized commercial exploitation of their identity'*⁴¹.

At the core of the statute therefore there is the concept of confusion, as what matters is the overall impression the advertisement creates in the mind of the consumer. Even if the name of the public figure is not explicitly mentioned, but there is enough resemblance, the act is considered unlawful.

In Scarlett Johansson's video, there is both enough resemblance of her likeness and voice and even a phrase in which the actress introduces herself as 'Scarlett', making it a clear example of false endorsement. In the mind of the public, the actress is the face and voice of an advertisement, while this is not the reality and therefore the video clearly deceives consumers and creates confusion.

False endorsement has a negative impact on both sides as it affects the consumer - which has been misled - and the person whose identity has been exploited without consent.

Similarly to the right of publicity, there is no need to prove the act was made with intent, but the attention shifts on whether the consumer could be actually confused by the advertisement. In the video created by Lisa AI, it could be proved that consumers have been misled into thinking Scarlett Johansson was involved in the advertisement and therefore considered a breach of the provision.

Another motive for which false endorsement is crucial is the fact that it has a direct impact on market competition. When promoting any kind of product or service, the company needs to negotiate a contract and therefore facing transaction costs and other fees; however, by using artificial intelligence to create a false advertising, Lisa AI saved money in terms of forcing these contracts and also gained a wider range of viewers by exploiting a celebrity's identity in a way that companies that act fairly cannot do.

With the advent of technology, it is becoming easier to create these kinds of content and therefore there is the concern this will increase the risk of more frequent and less regulated false endorsement.

In summary, the case depicts an example of how false endorsement can easily happen especially nowadays as technology keeps evolving, thus causing a sense of concern among people due to the increased risk of being a victim of false endorsement. In order to maintain a fair environment, legal protections are essential and should be updated to match the digital world of today.

Since the case happened in the United States, the focus has been on the U.S. legal framework - therefore the Lanham Act - but it is important to point out that the same situation can also be

⁴¹ Lanham Act, 15 U.S.C. § 1125(a), 1946

dealt with by European Law. For the purpose of the analysis, we will focus on the European body of law in Chapter 3, when the core object will be unfair competition in marketing

1.2.3 Copyright Infringements

While the most concerning issues raised are right of publicity and false endorsement, the Lisa AI case also raised some worries about copyright infringements, for how media contents have been used without authorization. Even though they are not the first issues that come to mind, they still are important and need to be mentioned.

Copyright law grants exclusive rights to authors of original works of authorship, therefore it protects creative works such as movies, music, artwork but also software.

In the United States, these exclusive economic rights are granted under Title 17 of the U.S. Code⁴² and protection is granted automatically, meaning without need for filing any application, as the work is considered ‘*tangible medium of expression*’⁴³.

The author, in general, holds both moral and economic rights: moral rights protect and reward the personality of the author, reflecting a connection to the work; economic rights give control to the author over how the work is used or distributed⁴⁴.

Generally speaking, within the United States legal framework, it should be noted that the protection of moral rights is limited to specific cases expressly provided for by the Visual Artists Rights Act (“VARA”) of 1990⁴⁵. According to this, we can identify a major difference between the EU and US frameworks, as the European Union does not limit this moral right as the US provisions do.

Although moral rights are not as widely protected in the US as they are in the EU, some court rulings under the Visual Artists Rights Act (VARA) of 1990 have demonstrated how these rights can be effectively enforced. In *5Pointz v. Wolkoff*⁴⁶, one of the most important cases, 21 graffiti artists sued the owner of a warehouse complex in Queens, New York, after he whitewashed their murals overnight. The structure, called ‘5Pointz’, has developed into a well-known street art destination that draws visitors and artists from all over the world. In the end, the court decided that the developer's actions were considered a breach of the artists' moral rights and that the artworks were of "recognized stature" under VARA, meaning eligible for

⁴²United States Copyright Office. (2024, December 23). *Copyright law of the United States and related laws contained in Title 17 of the United States Code* (Circular 92). <https://www.copyright.gov/title17/title17.pdf>

⁴³U.S. Copyright Law, Title 17 §102 (a)

⁴⁴ in class material: Prof. Piselli

⁴⁵Philadelphia Volunteer Lawyers for the Arts. (2008). *The Visual Artists Rights Act of 1990. Arts & Business Council of Greater Philadelphia*. https://www.cabq.gov/artsculture/public-art/documents/visualartistsrightsact_philadelphivolunteerlawyersarts.pdf

⁴⁶Meiselman, J. (2018, February 15). How 5Pointz Artists Won \$6.75 Million in Lawsuit against Developer That Destroyed Their Work. *Artsy*. <https://www.artsy.net/article/artsy-editorial-5-pointz-artists-won-675-million-lawsuit-developer-destroyed-work>

protection. The judge awarded \$6.75 million in damages, marking a recognition that even temporary street art should deserve legal protection⁴⁷.

Another crucial case arose, involving famous muralist Kent Twitchell⁴⁸, which had been painting a mural of artist Ed Ruscha on the side of a federal building in Los Angeles for nine years. During a building renovation, the General Services Administration ordered the mural to be painted over without telling Twitchell. The latter filed a lawsuit under VARA and won one of the biggest settlements of its kind, meaning \$1.1 million⁴⁹. The case demonstrated the close connection between moral rights and the identity and work of the arts.

Although VARA only applies to specific types of visual art, these two cases show that the American legal system can recognize an artist's personal connection to its work. They also emphasize how destroying or unlawfully altering an artwork violates the artist's dignity and creative legacy, and therefore not a simple property dispute.

The question that arises is whether the Lisa AI case can be considered as an infringement of copyright law. The fine line that divides the case from being an infringement or not is the authorization to use clips of Scarlett Johansson taken from the Marvel movie '*Black Widow*'⁵⁰. If these clips have been used without consent by Marvel Studios, even if just for a few seconds, it can be considered a copyright infringement. Specifically, the doctrine of fair use, which is a legal exception that permits the use of copyrighted content without prior authorization in specific situations, is described in Section 107 of the U.S. Copyright Act⁵¹ and applies as long as it is taken into consideration: (a) the purpose of the use, (b) the nature of the content, (c) the substantiality and (d) the effect on the market value.⁵² In simpler terms, what matters is whether the clip is recognizable and substantial in a way that can affect the market, and there is no minimum time threshold.

The reason behind this lies in the fact that both the value of Marvel's brand and the association of Scarlett Johansson with the movie are considered commercial assets. Thus, the use of such content would necessitate a proper license in the absence of a valid fair use justification. The creators of Lisa AI may have illegally stolen the Black Widow clips' monetary worth as well as the market advantage provided by Scarlett Johansson's image. This behavior raises concerns about unfair commercial exploitation in AI-generated advertising and copyright infringement.

⁴⁷ McGrath, K. (2018, February 13). 5 Pointz developer who whitewashed artists' murals forced to pay them \$6.7 million. *Architectural Digest*. <https://www.architecturaldigest.com/story/5-pointz-developer-who-whitewashed-artists-murals-forced-to-pay-them-67-million>

⁴⁸ Artforum. (2023, September 26). Artforum. *Artforum*. <https://www.artforum.com/news/1-1-million-settlement-for-artist-of-painted-over-mural-188206/>

⁴⁹ Haithman, D. (2019, July 16). Artist Kent Twitchell settles suit over disappearing mural - Los Angeles Times. *Los Angeles Times*. <https://www.latimes.com/la-et-twitchell1-2008may01-story.html>

⁵⁰ Wikipedia contributors. (2025a, May 14). *Black Widow (2021 film)*. Wikipedia. [https://en.wikipedia.org/wiki/Black_Widow_\(2021_film\)](https://en.wikipedia.org/wiki/Black_Widow_(2021_film))

⁵¹ 17 U.S. Code § 107 - Limitations on exclusive rights: Fair use. (n.d.). LII / Legal Information Institute. <https://www.law.cornell.edu/uscode/text/17/107>

⁵² Harper & Row v. Nation Enterprises, 471 U.S. 539 (1985)

Lisa AI therefore, by making an unauthorized use, exploited this value to gain wider attention without facing the costs of licensing.

In the advertisement video there were both clips taken from the movie and both AI-generated ones, the latter being more complex to analyze because of its blurred line between fair and infringement.

The clip was created by the AI platform to replicate Scarlett Johansson's voice and appearance, but it was built on the copyrighted content of the Black Widow movie, and therefore we face an example of derivative work. Under copyright law, creating a derivative work refers to a work based on or derived from an existing work⁵³ and there is the need for authorization by the original right holder.

Obviously, there are some limitations and exceptions in copyright law, but the fact that these clips were used to advertise a product, these cannot apply in this case.

These exceptions are put in place to make sure authors' exclusive rights do not take precedence over other principles, such as the freedom of expression.

For example, parody falls under the fair use exception since it enables individuals to comment or criticize a work of creativity, and therefore playing a deeper social role⁵⁴. This exception however does not apply in the Lisa AI case, as the clips were utilized for product advertisement, with no critical or transformative intent, highlighting its commercial purpose. According to the U.S. statute, a license is necessary if the four fair use factors, meaning purpose, substantiality, and impact on the market, are not in favor of the use of the work⁵⁵. Therefore, in order to make an authorized use of these clips, Lisa AI should have bought a license from Marvel Studios.

The case is an example of the relation between copyright law and competition in the market, as it shows how using copyrighted work and a person's appearance without approval clearly distorts fair competition. Lisa AI gained wider visibility and consumer engagement without paying the licensing fees, therefore obtaining an unfair market advantage.

With the advent of artificial intelligence, there has been growing concern about legal recognition for AI-generated works, since AI cannot hold copyright under US law. This absence of legal recognition creates a problem, as Hristov highlights in his paper '*Artificial Intelligence and the Copyright Dilemma*'⁵⁶.

To address this issue, the author proposes that the legislation can designate the commissioning party or the developer of artificial intelligence as the presumed author, applying the 'work made for hire' discipline, to provide copyright protection without challenging authorship. This can

⁵³U.S. Copyright Law, Title 17 §106 (2)

⁵⁴ Leval, Pierre N. "Toward a Fair Use Standard." *Harvard Law Review*, vol. 103, no. 5, 1990, pp. 1105–36. *JSTOR*, <https://doi.org/10.2307/1341457>. Accessed 22 May 2025.

⁵⁵ Office, U. C. (n.d.). *Fair Use (FAQ) | U.S. Copyright Office*. <https://www.copyright.gov/help/faq/faq-fairuse.html>

⁵⁶ Hristov, Kalin, *Artificial Intelligence and the Copyright Dilemma* (September 1, 2016). *IDEA: The IP Law Review*, Vol. 57, No. 3, 2017, Available at SSRN: <https://ssrn.com/abstract=2976428>

be applied in the situation of Lisa AI, where an AI-generated image of Scarlett Johansson was used in an endorsement without any consent.

Even though artificial intelligence itself cannot be legally liable, the person who made or used the technology can be deemed the legitimate authors of unauthorized derivative work.

This raises both copyright and publicity rights issues, however the current is still not ready to address these issues properly. The problem therefore remains unsolved, thus in order to obtain recognition, the entity that develops the media needs to be treated as the presumptive right holder. Therefore, in the Lisa AI case, those who actually developed the advertisement video, could have claimed responsibility for creating an unauthorized derivative work.

The rise of AI not only has legal implications for copyright law, but also for economic fairness in the market creativity, as analyzed by Yang and Zhang in their paper ‘*Generative AI and Copyright: A Dynamic Perspective*’⁵⁷. By using AI to replicate copyrighted contents, companies, in our case Lisa AI, avoid the cost of licensing and forcing a contract; these imitations made at low cost provide companies with a competitive advantage with respect to other competitors, also harming the balance between innovation and fair compensation.

Another key element is the doctrine of fair use, as the training of AI to make contents can in some cases fall under the fair use exception, which permits the use of copyrighted work without consent of the owner⁵⁸. However, the two researchers point out that this exception should not be used as a loophole that permits the ‘zero-cost imitation’ in a way that harms the original owners, competitors and consumers, as this standard may affect negatively unfair competition. The Lisa AI case depicts this risk, as by using the fair use standard beyond its limits, companies engaging in AI contents can obtain an unfair competitive advantage.

In the end, the Lisa AI case shows the multiple types of copyright infringements the company could face and the blurred line between these and unfair competition. In addition it highlights the need to update the law to match the advent of artificial intelligence in the digital era.

1.3 The use of AI to breach competition.

The Lisa AI case, besides raising many legal issues as analyzed in the section above, portrays how artificial intelligence can be used to gain unfair competitive advantages in the market. From the point of view of the company, using the AI tools to simulate the actress’s voice and likeness but also using unauthorized copyrighted content, it was a way of bypassing the costs and barriers that are associated with marketing and intellectual properties.

⁵⁷ Yang, S. Alex and Zhang, Angela Huyue, *Generative AI and Copyright: A Dynamic Perspective* (February 4, 2024). Available at SSRN: <https://ssrn.com/abstract=4716233>

⁵⁸ Copyright Alliance. (2024, August 5). *Fair Use Exception to copyright* | Copyright Alliance. <https://copyrightalliance.org/education/copyright-law-explained/limitations-on-a-copyright-owners-rights/fair-use-exceptions-copyright/>

Certainly, the Lisa AI case is not the only example of how AI had a negative impact on individuals and the market and Scarlett Johansson is not the only victim. For example, a song called ‘*Heart on my sleeve*’⁵⁹ was created by AI by replicating the voices of Drake and The Weeknd, generating millions of streams. The track has never been officially authorized by both singers, highlighting a case of deepfake audio and video technology, a phenomenon which is growing concern of risk of deception and misappropriation⁶⁰.

These two risks are core issues that matter for the purpose of our thesis. From both a legal and market point of view, these cases distort fair competition as they permit individuals or entities to benefit from others’ reputation, likeness or creativity without paying the costs of forcing contracts needed in influencer endorsements and partnerships. By doing so, they do not only mislead consumers into thinking the content is real, but they also devalue the work of those influencers, authors or artists that behave fairly.

This is raising concerns as the risks of misleading consumers, or harming individuals keeps getting higher with the advent of artificial intelligence. Nowadays, most companies but even individuals that have access to AI tools can create unauthorized content and therefore there is the need to eliminate this risk.

The threat of deepfakes and AI-generated media goes beyond unfair commercial gains, as it tackles ethics and culture. In his paper ‘*Ocularcentrism and Deepfakes: Should Seeing Be Believing?*’⁶¹ Geddes introduces the term ‘ocularcentrism’, stating our strong reliance on social media makes us vulnerable to false beliefs when some content looks real. Therefore, AI is blurring the line between fabrication and fact, such as in the case of Lisa AI, in which the average consumer was left with the belief the endorsement was real.

This deception can have serious effects on the market, but also more important individual concerns; as a matter of fact, AI has been used to generate deepfake pornography, harming in serious ways individuals’ dignity and integrity⁶². While this has no effect on market competition, it is still important as it highlights how malicious intent can have severe consequences such as reputational and emotional harm and a mistrust in society.

With the help of artificial intelligence, companies are able to gain benefits while cutting costs, in a way that companies that behave in good faith cannot do. Endorsing and advertising a product or obtaining licensing for copyrighted contents come with their costs, that are entitled to reward the authors and the individuals. By bypassing these costs, there are negative effects for multiple parties such as consumers, which are misled; the right holders, which do not have

⁵⁹Veltman, C. (2023, April 21). When you realize your favorite new song was written and performed by . . . AI. *NPR*. <https://www.npr.org/2023/04/21/1171032649/ai-music-heart-on-my-sleeve-drake-the-weeknd>

⁶⁰<https://www.standard.co.uk/news/tech/kanye-west-rihanna-fake-ai-mashups-internet-b1074228.html>

⁶¹ Geddes, Katrina, *Ocularcentrism and Deepfakes: Should Seeing Be Believing?* (October 22, 2020). *Fordham Intellectual Property, Media & Entertainment Law Journal*, Forthcoming, Available at SSRN: <https://ssrn.com/abstract=3717287>

⁶²Deepfake porn nearly ruined my life. (2020, February 6). *ELLE*. <https://www.elle.com/uk/life-and-culture/a30748079/deepfake-porn/>

the right monetary compensation; individuals that see their face being used without authorization; and other companies in the market which lost their advantage due to the bad behavior of other companies.

Consequently, it could be said that artificial intelligence has a big and sometimes dangerous power that leads to the creation of trust and attention, and that sometimes is misleading. In the past, companies had to make significant efforts in both terms of time and money, in order to build brand reputation or make contracts with important celebrities. Contrary, nowadays with the use of AI, it is possible to make the world believe something that never happened in reality, like the example of Scarlett Johansson's video, which led viewers into thinking she was advertising the app, generating wider attention and trust.

By doing so, companies distort how the market works but also lead to other companies being discouraged to act properly as it takes so little effort to use AI to gain this competitive advantage. This could lead to a sequence of unfair competitive behaviors if not properly regulated, therefore there is the need to strengthen the law to match the necessities of today's marketplace.

The Lisa AI case took place in the United States and therefore treated by the U.S. law, but what the case generated is much more global as it raises the concern of these anti-competitive behaviors becoming the normality, damaging consumer trust and fair competition in the whole world. If we do not adapt quickly to these changes, this could lead to reality in which the unfair use of AI is the normal rather than the exception.

These observations of how AI can distort competition are the basis of a deeper analysis; in the next chapter our focus will be more theoretical, with a closer analysis at unfair competition in marketing and how these behaviors are addressed by the different legal frameworks, with particular attention to the European Union.

CHAPTER 2: UNFAIR COMPETITION IN MARKETING

In today's world, marketing has become an essential tool for companies and not only. Its importance is due to the fact that it shapes how consumers perceive value and how companies position themselves in the market; thanks to marketing, a firm can gain a competitive advantage against its competitors.

In particular, with the advent of technology, digital tools and artificial intelligence, the role of marketing has slightly changed according to the changes in which products and services are promoted and endorsed, therefore gaining importance but also legal complexity. In fact, thanks to new advertising tools, there is the risk of facing unseen marketing practices that can be considered unfair, as we have seen with the case of Lisa AI and Scarlett Johansson.

By saying so, unfair competition comes into play when companies or individuals use business and marketing strategies that are dishonest in a way that mislead consumers and distort competition. When taking into consideration competition, unfair competition law is primarily interested in conduct, meaning it is concerned with the companies' actions related to consumers, thus most importantly the type of marketing communication used. Communication is not just advertising, but it delivers value to consumers such that it influences their behavior, which is then reflected in the market.

As Kotler and Keller highlight in their work '*Marketing management*'⁶³, communication is important for creating impressions of a brand's products by customers, in establishing trust, and also in influencing market choice processes. This value-based approach to communication is also supported by Vargo and Lusch⁶⁴, who explain that in a service-dominant situation, value is created through the interactions among both companies and customers, including marketing messages. Deceptive, manipulative, or misleading communication violates not just customer expectations but also the rules of fair competition. Thus, when companies use AI-generated endorsements or deepfakes, not authorized, they change the informational environment that shapes consumer decision-making, influencing the market in an unethical and unlawful way⁶⁵.

Unfair competition law in marketing is crucial as it lies at the intersection between competition law, consumer protection and intellectual property rights. From the competition law point of view, it ensures businesses compete on fair terms; from the consumer protection one, it makes sure consumers are not misled or distorted by the commercial practices; lastly intellectual property law becomes important when these actions involve the unauthorized use of protracted elements like copyrighted contents or trademarks.

In this chapter, we are going to analyze in detail unfair competition in marketing, tackling the most used unfair commercial practices, with a particular focus on European Union and United States legal frameworks, while still managing to reference other important international provisions.

2.1 Deceptive competition in marketing: definition

We have stated already that marketing is important as it delivers value, thus the American Marketing Association defines it as 'the activity, set of institutions, and processes for creating, communicating, delivering, and exchanging offerings that have value for customers, clients, partners, and society at large'⁶⁶. According to this definition, marketing is not just a tool used

⁶³ Kotler, P., & Keller, K. L. (2016). *Marketing management* (15th ed.). Pearson.

⁶⁴ Vargo, S. L., & Lusch, R. F. (2004). Evolving to a new dominant logic for marketing. *Journal of Marketing*, 68(1), 1–17.

⁶⁵ Schulz, W., & Held, T. (2021). Unfair commercial practices in the digital age: The role of deceptive marketing. *Journal of Consumer Policy*, 44(2), 179–199. *L'Oréal and Johnson & Johnson*

⁶⁶ American Marketing Association. (2025, May 9). *What is Marketing? — The Definition of Marketing — AMA*. <https://www.ama.org/the-definition-of-marketing-what-is-marketing/>

by companies, but it is considered a core business strategy, as it builds relationships, maintains trust and provides an advantage in the market.

However, when companies use marketing to convey a message that in some ways distort competition or confuse the consumer, we face what we call deceptive competition.

Deceptive competition in marketing refers to a commercial practice that misleads consumers with the aim of gaining a competitive market advantage, obtained unfairly.

There are different types of unfair behaviors such as false endorsement, deceptive pricing or misrepresentation of products which we will all analyze later in the chapter.

The Lisa AI case is a clear example of how the digital world has changed the way in which companies communicate with consumers, and how this can lead to unseen dishonest practices.

The advertisement left consumers with the impression that Scarlett Johansson had a connection with the app, which was not true and therefore misled the viewers; this false impression is a case of deceptive competition through marketing.

For the purpose of the analysis, we are going to focus our attention to two different frameworks in particular, the European Union and the United States ones, but still addressing some other important international treaties, such as the Paris Convention.

In the European Union, unfair competition is addressed primarily by the *Unfair Commercial Practices Directive* (Directive 2005/29/EC)⁶⁷, aiming at contributing a proper functioning of the market and a degree of consumer protection⁶⁸.

Article 5 handles the prohibitions of unfair commercial practices, which are considered unfair if ‘contrary to the requirements of professional diligence’ and ‘materially distort or likely to materially distort the economic behavior of the average consumer’⁶⁹. In other words, a commercial act is considered unfair if it goes against the standard of honest market behavior expected when operating in good faith, but also if it deceives the consumer’s decision-making process; in order to be considered unlawful, both elements of the article need to be present.

The Directive then specifies the difference between misleading actions and misleading omissions in Article 6 and Article 7 respectively.

It could be considered misleading action if a company provides false or distorted information, whereas a misleading omission occurs if a company fails to deliver details that are essential for the consumer to make an informed choice.

In order to ensure a commercial practice is actually misleading, EU law applies the ‘average consumer test’, which was defined in the *Gut Springenheide* case (Case C-210/96)⁷⁰, in which the Court of Justice of the European Union provided a definition of average consumer as someone who is ‘reasonably well-informed, observant and circumspect’. By saying so, the

⁶⁷ Directive - 2005/29 - EN - EUR-LEX. (n.d.-b). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005L0029>

⁶⁸ Article 1 Directive 2005/29/EC

⁶⁹ Article 5 Directive 2005/29/EC

⁷⁰ EUR-LEX - 61996CJ0210 - EN - EUR-LEX. (n.d.). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61996CJ0210>

consumer is considered an individual that is aware of its surroundings and not completely gullible, but also not a marketing expert. This test is extremely important as it focuses on how a typical consumer could interpret the message sent by the practice, taking particular attention to the overall impression the consumer is left with by the action or omission.

Therefore, under this test, even if the company does not lie but provides a deceptive perception to the customer, then the practice is considered misleading.

In the Lisa AI case, it was never stated in the video that Scarlett Johansson was endorsing the app, but the advertisement clearly implied her involvement, leaving consumers with the confidence that the endorsement was real. This is an example supporting the concept that what matters is the overall impression the consumer has and not the actual lie or omission. As a matter of fact, the advertisement video made by Lisa AI can be considered deceptive according to Article 6(2)(a) of the UCPD, which prohibits ‘any marketing of a product... that create confusion with any products, trademarks, trade names or other distinguishing marks of a competitor’ and that leads the consumer to make a choice it would have not taken otherwise⁷¹.

The UCPD is supported by other regulatory frameworks in order to be more comprehensive, such as the *E-Commerce Directive*⁷² and the *Directive on Misleading and Comparative Advertising*⁷³, the latter considered the first attempt of harmonization of unfair competition among the European Union. The Directive, that will be analyzed more in detail in the next paragraph, has a special focus on advertising while also addressing fair conduct between companies, which is not taken into consideration by the Directive on Unfair Commercial Practice as it is mostly concerned with marketing measures towards consumers.

In the United States, unfair competition in marketing is addressed by the Federal Trade Commission Act, more in detail in section 5⁷⁴, which takes into consideration ‘unfair, deceptive and abusive acts’ and sets a standard for determining whether the practice can be considered deceptive. According to this three-part test laid out by FTC Policy Statement on Deceptive Acts and Practices⁷⁵: first, there must be ‘*a representation, omission or practice that is likely to mislead the consumer*’; then the attention shifts to the ‘*consumer’s perception conveyed by the message which must be reasonable under the circumstances*’; lastly, ‘*the act or omission must be material*’,⁷⁶ meaning it must be likely to influence the consumer’s decision making process.

⁷¹ Article 6(2) Directive 2005/29/EC

⁷² *Directive - 2000/31 - EN - e-commerce directive - EUR-Lex.* (n.d.). <https://eur-lex.europa.eu/eli/dir/2000/31/oj/eng>

⁷³ *Directive - 2006/114 - EN - EUR-LEX.* (n.d.-b). <https://eur-lex.europa.eu/eli/dir/2006/114/oj>

⁷⁴ Federal Deposit Insurance Corporation. (2024, December). VII. Unfair, Deceptive, and Abusive Practices – Federal Trade Commission Act/Dodd-Frank Act. In Consumer Compliance Examination Manual (pp. VII–1.1–VII–1.10). <https://www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/documents/vii-1-1.pdf>

⁷⁵ Federal Trade Commission. (1983, October 14). *FTC policy statement on deception.* https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf

⁷⁶ Board of Governors of the Federal Reserve System. (2004). *Federal Trade Commission Act Section 5: Unfair or Deceptive Acts or Practices.* Retrieved from <https://www.federalreserve.gov/boarddocs/supmanual/cch/ftca.pdf>

In the Lisa AI case, all three elements are satisfied and therefore considered a deceptive practice. It firstly involves a misleading practice as the platform used Scarlett Johansson's voice and likeness in a way that implies her involvement; then, due to this, it left the average consumer with the impression that she was endorsing the app; third, the act can be considered material as this perception may drive consumers to trust or download the app due to the celebrity endorsing it. Thus, the case fits within the definition of deceptive practice under section 5 of the FTC Act.

Besides the definition of deceptive, the Federal Trade Commission also assesses whether the practice is considered unfair, by setting an unfairness standard. In order to be considered unfair, (a) *'the act must or be likely to cause substantial injury to consumers'*, which usually refers to monetary harm; (b) *'consumers must not be reasonably able to avoid the injury'*, meaning they cannot avoid it due to the effect the act has on their ability to make decision; then (c) *'the injury must not be outweighed by countervailing benefits to consumers or to competition'*⁷⁷, meaning the injury must be greater than the possible benefits provided by the act.

Both standards apply to traditional advertisements but also new forms of digital marketing, which are emerging in the latest years. As a matter of fact, the FTC updated its 'Endorsement Guides' in 2023⁷⁸, to better match these changes in the way products and services are marketed, including also social media, influencers and AI-generated advertisements.

This approach aligns with the one of the European Union, even if the two legal frameworks differ in the structure and the way in which the case is handled.

In addition to the Federal Trade Commission Act, unfair competition is also handled by the Lanham Act § 43(a)⁷⁹ stating *'any person that uses in commerce any word, symbol (...) or false representation of facts that is likely to cause confusion (...) in a commercial advertising'* shall be liable in a civil action.

The Lisa AI case, therefore, falls both within the Federal Trade Commission Act and the Lanham Act, leaving the company with possible both regulatory penalties and civil litigation.

In addition to European Union and United States laws, international law also addresses unfair competition in some important treaties. The most important treaty is the Paris Convention, in particular Article 10bis⁸⁰. According to the treaty, unfair competition is defined as *'any act of competition contrary to honest practices in industrial or commercial matters'*⁸¹ and prohibits

⁷⁷ Federal Deposit Insurance Corporation. (2024, December). *VII. Unfair, Deceptive, and Abusive Practices – Federal Trade Commission Act/Dodd-Frank Act*. In *Consumer Compliance Examination Manual* (pp. VII–1.1–VII–1.10). <https://www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/documents/7/vii-1-1.pdf>

⁷⁸ 16 CFR Part 255 -- *Guides concerning use of endorsements and testimonials in advertising*. (n.d.-b). <https://www.ecfr.gov/current/title-16/chapter-I/subchapter-B/part-255>

⁷⁹ 15 U.S.C. 1125: *False designations of origin; false description or representation, January 2023 (BitLaw)*. (n.d.). <https://www.bitlaw.com/source/15usc/1125.html>

⁸⁰ Bodenhausen, G. H. C. (1968). *Guide to the application of the Paris Convention for the Protection of Industrial Property, as revised at Stockholm in 1967*. World Intellectual Property Organization. https://www.wipo.int/edocs/pubdocs/en/intproperty/611/wipo_pub_611.pdf

⁸¹ Article 10 bis (2), Paris Convention

*'acts that create confusion (...); false allegations(...); and indications or allegations (...) ny person that uses in commerce any word, symbol (...) or false representation of facts that is likely to cause confusion (...) in a commercial advertising' shall be liable in a civil action. that mislead the public*⁸². As we can see, the treaty is aligned with both EU and US frameworks, reflecting the effort to make global harmonization and commitment to the fair functioning of the market.

At the national level different legal frameworks address unfair competition, however there could be different ways in which it is handled, especially regarding enforcement measures. For example, Germany and Austria follow an integrated approach addressing both consumers and competitors' interests; on the other hand, France adopts a dual approach with different regulations to address consumer protection and unfair commercial practices, with the addition of possible criminal charges.

These differences, however, are mostly procedural as the core content of the provisions need to be aligned with others in order to ensure a smooth handling of unfair competition in marketing.

In conclusion, unfair competition in marketing reflects the emerging changes of the modern economy due to the growing significance of artificial intelligence and digital media, ensuring a harmonized framework around the world. The question that arises is whether these regulations are enough or there is the need for continuous changes and updates to match today's and future reality.

2.2 Deceptive and Misleading Advertising

One of the most common and problematic type of unfair competitive practice is misleading advertising; we define it 'problematic' due to the fact that it usually does not involve outright lies but furtive acts such as omitting some details or presenting the facts in a way that can lead consumers into believing in something that is not the reality. All of these practices add legal complexity as they blur the line between a great communication strategy and a dishonest practice. It is not prohibited to enhance the qualities of a product or company and try to hide its downsides in a marketing campaign, however what is considered unlawful is to distort the reality and harm the consumer by manipulating its decisions in an unfair way.

Deceptive advertising is therefore wrong both legally, ethically and economically as the decisions made by consumers can have severe effects on the market. Deceptive advertising harms competitors as it breaches the fairness of the market, while also destroying customer's trust. As already stated, unfair competition is the body of competition law that is concerned with the consumer point of view and therefore what is most important is the perception of the consumer rather than the actual lie or omission made by the company: as long as the consumer is found to be misled or confused, then the practice could be considered unfair.

⁸² Article 10 bis (3), Paris Convention

From a legal point of view, false or deceptive advertising refers to ‘(...) *publicly distributing an advertisement that contains an untrue, misleading, or deceptive representation or statement which was made knowingly and with the intent to promote the sale of property, goods, or services to the public*’⁸³. According to this definition, even partial truths, omissions and emotional appeals can breach the law, as long as they deceive customers⁸⁴.

As already noted in paragraph 1, deceptive advertising is addressed by different legal frameworks in the European Union, since unfair competition is not fully harmonized and mostly flexible and open to case law. On the other hand, in the United States, the matter is handled by the Federal Trade Commission, under section 5 of the FTC Act, and by the Lanham Act 5 U.S.C. § 1125(a)⁸⁵.

The principal EU legislation concerning this matter is the Unfair Commercial Practice Directive (UCPD)⁸⁶, which is reinforced by additional frameworks such as the Consumer Rights Directive (2011/83/EU)⁸⁷ which guarantees a higher degree of protection to consumers, and the E-Commerce Directive (2000/31/EC)⁸⁸ extending this protection to the digital sphere. These provisions require clear disclosure of terms, prices and promotional contents in order to ensure transparency and a well-informed decision making, in the market and online platforms.

3.2.1 Comparative Advertising

Another fundamental legal provision is the Misleading and Comparative Advertising Directive (2006/114/EC)⁸⁹, as comparative advertising represents the fine line between fair and unfair and most of the times this fairness is hard to identify.

Comparative advertising means ‘*any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor*’⁹⁰, in other words directly or indirectly comparing or referencing a competitor’s good or brand.

Comparative Advertising is not prohibited by law, but there are strict legal rules and the aim of the Directive is to provide these conditions under which the act is permitted, found in Article 4. These criterias are set to balance the competitive benefits of transparent comparison with the need to protect both competitors and consumers from dishonest behaviors; a comparative advertising must satisfy these 8 cumulative criterias in order to be considered fair:

(a) *it is not misleading;*

⁸³ Merriam-Webster. False advertising. <https://www.merriam-webster.com/legal/false%20advertising>

⁸⁴ Martin Senftleben. Protection against unfair competition in the European Union: from divergent national approaches to harmonized rules on search result rankings, influencers and greenwashing.

⁸⁵ 15 U.S. Code § 1125 - False designations of origin, false descriptions, and dilution forbidden. (n.d.). LII / Legal Information Institute. <https://www.law.cornell.edu/uscode/text/15/1125>

⁸⁶ Directive 2005/29/EC <https://eur-lex.europa.eu/eli/dir/2005/29/oj>

⁸⁷ Directive 2011/83/EU <https://eur-lex.europa.eu/eli/dir/2011/83/oj/eng>

⁸⁸ Directive 2000/31/EC <https://eur-lex.europa.eu/eli/dir/2000/31/oj/eng>

⁸⁹ Directive 2006/114/EC <https://eur-lex.europa.eu/eli/dir/2006/114/oj>

⁹⁰ Article 2(c) Directive 2006/114/EC

- (b) *it compares goods or services meeting the same needs or intended for the same purpose;*
- (c) *it objectively compares one or more material, relevant, verifiable and representative features of those goods and services, which may include price;*
- (d) *it does not discredit or denigrate the trade marks, trade names, other distinguishing marks, goods, services, activities or circumstances of a competitor;*
- (e) *for products with designation of origin, it relates in each case to products with the same designation;*
- (f) *it does not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products;*
- (g) *it does not present goods or services as imitations or replicas of goods or services bearing a protected trademark or trade name;*
- (h) *it does not create confusion among traders, between the advertiser and a competitor or between the advertiser's trade marks, trade names, other distinguishing marks, goods or services and those of a competitor.*⁹¹

In the interest of better understanding this type of competitive practice, we are going to briefly analyze a case of comparative advertising being illicit.

The case refers to a dispute between *L'Oréal and Johnson & Johnson*⁹² that arose after the latter launched a campaign advertising one of its anti-wrinkle products, stating it was 'up to three times more effective' than other facial creams, including one made by L'Oréal. The company therefore contested the advertisement, claiming it was misleadingly comparing products and also improperly using the L'Oréal trademark.

The case was first handled by the Italian 'Giuri dell'autodisciplina pubblicitaria'⁹³, which stated the campaign was misleading because the comparison involved non-homogeneous products, as the two products had different compositions and purposes, and the claim of superior effectiveness was not supported by adequate scientific evidence. The campaign was found to violate Article 15 of the 'Codice di autodisciplina della comunicazione commerciale'⁹⁴.

Then the case was handled by the Court of Turin which confirmed the illicity of the campaign, but also found an additional element: the use of the L'Oréal trademark in a misleading and denigratory context. Johnson & Johnson was sanctioned to pay €200,000 for damages, plus the reimbursement of the legal fees incurred by L'Oreal for the complaint; L'Oréal was rewarded with 50% of the increased revenue Johnson & Johnson earned during the two months following the campaign, calculated under Article 125 of the Italian Industrial Property Code⁹⁵.

⁹¹ Article 4 Directive 2006/114/EC

⁹²Vecchi, G. (2021, December 5). *Due casi recenti di pubblicità comparativa*. MediaLaws. <https://www.medialaws.eu/due-casi-recenti-di-pubblicita-comparativa/>

⁹³ Italy's advertising self-regulation jury that rules on unethical or misleading ads based on the IAP Code of Self-Regulation.

⁹⁴Articolo 15: Comparazione <https://www.iap.it/codice-e-altre-fonti/il-codice/>

⁹⁵Codice della proprietà industriale (decreto legislativo 10 febbraio 2005, n. 30, aggiornata con le modifiche introdotte dalla legge 24 luglio 2023, n. 102)

The advertisement violated multiple of the criterias found in Article 4 of the Directive on Misleading and Comparative Advertising⁹⁶, as it was found:

- (a) misleading
- (b) comparing non-equivalent goods
- (c) lacking objective and verifiable data
- (d) discrediting the competitors brand and denigrating the trademark
- (f) unfairly benefitting from the competitor's reputation

This represents an example of how important the conditions for a fair comparative advertising in order are to ensure transparency for customers and do not discredit competitors.

This kind of advertising distorts market relations and consumers' decision making, as it undermines the trustworthiness of comparative advertising. The latter, as stated in multiple papers and articles, must be objective, capable of being verified, and not discrediting⁹⁷. Moreover, using a competitor's trademark for derogatory purposes has been prohibited in both the Italian and European Union jurisprudence, which have shown that this use not only leads to consumer confusion but also takes unfair advantage of the commercial reputation and value of trademarks⁹⁸.

This case shows the conflict between aggressive marketing and legal limits, particularly in those sectors in which reputation and brand name are crucial in determining competition.

In the broader sector, the more digital advertising is automated and personalized, created by algorithms produced by AI, the greater is the risk for misleading or comparative. AI tools can automatically replicate misleading, without the necessary human attention, therefore leading to a greater risk for companies to be liable for unfair commercial practices and trademark infringement⁹⁹. The L'Oréal case is therefore a reminder for future cases: it does not matter whether the advertisement is generated by a human or a machine, the legal and ethical requirements for fairness, honesty, and truthfulness in advertising are the same.

3.2.2 Historical and recent case examples

The focus now will be on some examples of how easily advertising can turn into a misleading one, due to dishonest acts, omissions or the advent of digital tools to make promotions.

One of the most famous historical examples remains the mid-20th century cigarette advertisements. Most famous companies, such as Lucky Strike or Camel, used to run marketing campaigns for their products, which were cigarettes, stating they were 'recommended by

⁹⁶ Article 4 Directive - 2006/114 - EN - EUR-LEX. (n.d.-c). <https://eur-lex.europa.eu/eli/dir/2006/114/oj>

⁹⁷ Weatherill, S. (2016). *EU Consumer Law and Policy* (2nd ed.). Edward Elgar Publishing.

⁹⁸ Ghidini, G. (2010). *Innovation, competition and consumer welfare in intellectual property law* / Gustavo Ghidini. Edward Elgar.

⁹⁹ Babikian, John. (2024). *Balancing Acts: Ethics, Regulation, and Accountability in AI Law and Policy*.

doctors' or citing other health-related deception. In the figure below, a campaign made by R. J. Reynolds is shown, showing a slogan that became popular and was used for most campaigns made by him between 1940 and 1947¹⁰⁰: 'More Doctors smoke camels than any other cigarette'



Figure 1¹⁰¹

Another important campaign of these times was the one made by Lucky Strike claiming cigarettes were 'less irritating as toasting removed irritants that cause throat irritation and coughing'¹⁰².

¹⁰⁰Everyday, V. (2018, May 6). 30 outrageous vintage cigarette ads claimed that "More doctors smoke camels than any other cigarette" | Vintage News Daily. Vintage News Daily. <https://vintagenewsdaily.com/30-outrageous-vintage-cigarette-ads-claimed-that-more-doctors-smoke-camels-than-any-other-cigarette/>

¹⁰¹ Crawford, S. (2025, May 8). Deceptive Advertising: Selling snake oil in the digital Age - 2025. Inkbots Design. <https://inkbotdesign.com/deceptive-advertising/>

¹⁰² Advertisements: '20,679 Physicians Say Luckies are less irritating'

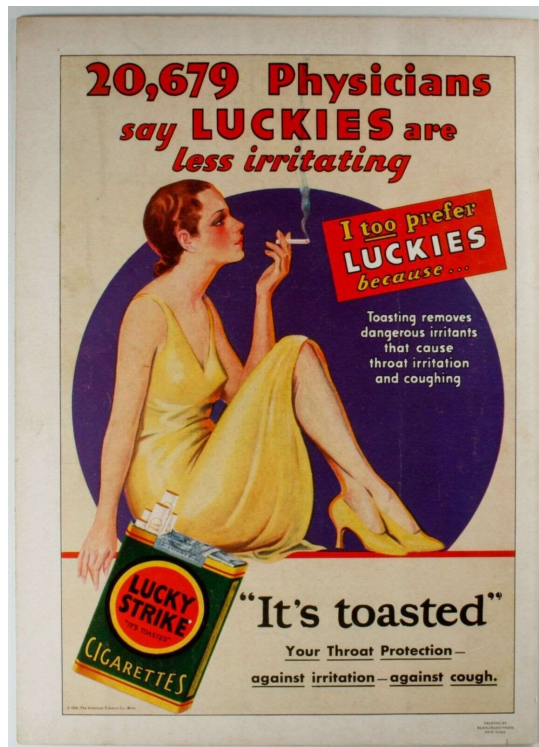


Figure 2¹⁰³

These campaigns were based on manipulated data and fictional endorsement and nowadays are considered 'health-related deceptive advertisements'¹⁰⁴, considered illegal both under EU and US legal frameworks due to their major negative effect on customers' decision making.

Moving onto more recent years, a case that faced enormous mediatic attention is the Chiara Ferragni and Balocco case¹⁰⁵ in 2023, in which the influencer and the company engaged in a partnership for selling 'pink pandoro', branded Chiara Ferragni. However the two parties made statements and advertisements, directly linking the purchase to donations to the children's hospital Regina Margherita', therefore making buyers believe a part of the profit made by the product sales would have been donated to charity. The problem that arose was that the €50.000 donation was made before the launch of the product and therefore had no relation with product sales.

¹⁰³Lucky Strike Cigarettes Advertisement 20,679 physicians Luckies less irritating | #4562565290. (n.d). Worthpoint. <https://www.worthpoint.com/worthopedia/lucky-strike-cigarettes-advertisement-4562565290>

¹⁰⁴Health claims. (2025, March 11). Federal Trade Commission. <https://www.ftc.gov/news-events/topics/truth-advertising/health-claims>

¹⁰⁵Lucarelli, S. (2022, December 14). *Il pandoro benefico di Chiara Ferragni è soltanto marketing e non beneficenza. Domani.* <https://www.editorialedomani.it/politica/italia/il-pandoro-benefico-di-chiara-ferragni-e-soltanto-marketing-e-non-beneficenza-cngbwjdn>



Figure 3¹⁰⁶

The Italian antitrust authority (Autorità Garante della Concorrenza e del Mercato ‘AGCM’) found the campaign to be misleading consumers by making them believe part of their purchase would be donated to charity, while this was not the case. The AGCM found that both companies had violated the principles of professional diligence and transparency, according to the *Unfair Commercial Practices Directive* and its Italian implementation in the *Consumer Code* in articles 20–22¹⁰⁷.

According to this, Chiara Ferragni brand was fined over €1 million and Balocco had a separate sanction for violating the UCPD standards¹⁰⁸.

The case is important as it shows how easily consumers can be misled when emotional appeals are involved, especially due to the trust they had in the influencer Chiara Ferragni, known to be active in charity donations in the past. By exploiting her credibility and her customer loyalty, the two brands gained additional revenue in a dishonest way. As a matter of fact, many studies show that consumers tend to place higher levels of trust in those influencers or celebrities that are actively engaged in charitable and ethical events. Therefore, this positive association with social causes, also influences consumers’ perception of the promoted product or service, as highlighted in the research paper ‘*In Influencers We Trust? A Model of Trust Transfer in Social Media Influencer Marketing*’.

The case was then passed off as a ‘communication error’¹⁰⁹ by Chiara Ferragni, leading to losing all the credibility of her followers. This is a clear example of how trust and reputation can erode when influencers lose their credibility.

¹⁰⁶Decripto. (2023, December 15). *Chiara Ferragni multata dall'Antitrust, il Codacons: "Denunciamo per truffa aggravata"*. <https://decripto.org/chiara-ferragni-multata-dallantitrust-il-codacons-denunciamo-per-truffa-aggravata/>

¹⁰⁷ Italian Republic. (2005). *Consumer Code (Legislative Decree No. 206 of 6 September 2005)*. Retrieved from <https://www.codicedelconsumo.it/english-version/>

¹⁰⁸ Della Concorrenza E Del Mercato, A. G. (n.d.). *AGCM - Sanzione di oltre 1 milione alle società riconducibili a Chiara Ferragni e di 420 mila euro a Balocco per pratica commerciale scorretta*. (C) AGCM - Autorità Garante Della Concorrenza E Del Mercato. <https://agcm.it/media/comunicati-stampa/2023/12/PS12506-->

¹⁰⁹ Il Sole 24 ORE. (2023, December 18). *Le scuse di Chiara Ferragni "Un milione di euro al Regina Margherita"* [Video]. YouTube. <https://www.youtube.com/watch?v=jB75zxzE1Tg>

In the paper ‘*Influencers and reputation: Chiara Ferragni, Instagram and the Pandora Gate scandal*’¹¹⁰ this is analyzed in detail: Chiara Ferragni’s followers felt betrayed not so much as consumers, but rather as members of an active digital fan community. This breach of trust caused huge mediatic attention but also a loss of business reputation; as a matter of fact, most high-end fashion brands terminated their association with her, and her sponsored posts faced a huge decline in the following months.

However, even though her follower count decreased, her engagement in social medias, especially Instagram grew, but mostly in the form of negative and offensive comments. This shows high engagement levels do not necessarily translate into positive attitude or general brand health. The Ferragni case is an example of how trust and authenticity are crucial in influencer marketing, and how a simple breach of these can lead to severe consequences.

It can be seen how different examples of misleading advertising change throughout the years, especially due to the advent of new platforms used to promote products, such as social media, new ‘faces of marketing campaigns’, like influencers or bloggers, and new digital tools used to create these advertisements. The Lisa AI case brings all these new changes together in a simple and short advertisement: the video was created with artificial intelligence and appeared on social medias like Twitter (now ‘X’) and portrayed Scarlett Johansson, a celebrity, as the ‘face of the ad’.

The reality is therefore changing, and the different types of competitive behaviors will keep evolving to match the market’s needs. However, if regulations do not change at the same time as new strategies, the line between fair and unfair will be more blurred and companies can exploit loopholes to gain competitive advantages at the harm of others. We will focus on these future consequences in the next chapters, after observing the current most used unfair competitive strategies.

2.3 Strategies and types of unfair competition

A type of false advertising which is growing concerns is ‘**greenwashing**’, a practice in which companies use ‘misleading or false environmental or sustainability claims to appeal consumers’¹¹¹. By doing so, they try to target a narrow area, the eco-friendly consumers. Greenwashing is particularly harmful as it misleads consumers’ choices, destroying her trust and leads to the creation of an unfair competitive advantage. As environmentalism is growing in importance, many consumers are now willing to pay more for sustainable products and therefore this practice has become more popular.

¹¹⁰ Velasco-Molpeceres, A., Miranda-Galbe, J., & Prieto-Muñiz, M. (2024). Influencers and reputation: Chiara Ferragni, Instagram and the Pandora Gate scandal. *Universitas*, 41, 123–148. <https://doi.org/10.17163/uni.n41.2024.05>

¹¹¹ Warren, R. (2025, May 1). *What is greenwashing?* The Motley Fool. <https://www.fool.com/terms/g/greenwashing/>

A famous example of greenwashing is the Volkswagen ‘Dieselgate’ scandal. In 2009 the company launched a wide marketing campaign promoting its ‘clean diesel’ cars¹¹². However, in 2015, it was found that Volkswagen had installed defeat devices in the vehicles, which manipulated emission tests to pass regulatory standards, when in reality they emitted pollutants that exceeded the legal limits¹¹³.

The case was handled by the United States law, and the marketing campaign was found to be violating the FTC Act § 5¹¹⁴ and considered a case of deceptive marketing. The case ended with a settlement, in which the company had to repay more than \$9.5 billions to consumers that were misled and purchased the cars¹¹⁵.

Another strategy which is commonly used is ‘**deceptive pricing**’ in which consumers are manipulated and misled about the true cost of a product or service. Some common practices are hiding fees, falsely representing discounts or bait-and-switch¹¹⁶; the latter represents a tactic used in which the consumer is attracted by the advertisement of a low-cost item and then forced or encouraged to buy an expensive one¹¹⁷.

In Italy, a case occurred where Vodafone was fined €4.6 millions¹¹⁸ by the AGCM for advertising mobile offers at prices that did not reflect the total costs to consumers. Vodafone promoted an all-inclusive plan, while failing to deliver additional costs the consumers needed to pay such as activation fees. In addition to this, for promoting the ‘fibra’ the company tried to hide from consumers that it needed an additional fee in order to enjoy this fast line, after the free-trial period.

The case shows how non-transparency can have an enormous effect on the fairness of the market, even when no actual lies are involved.

Product misrepresentation represents a type of anticompetitive practice in which companies make false or misleading claims about the product’s quality, nature or composition, in a way

¹¹²Natural Resources Defense Council. (n.d.). *What is greenwashing?* <https://www.nrdc.org/stories/what-greenwashing>

¹¹³Theadcompare. (2025, March 6). *5 misleading advertising examples in 2025*. TheAdCompare. <https://theadcompare.com/advertising/misleading-advertising/>

¹¹⁴15 U.S. Code § 45 - *Unfair methods of competition unlawful; prevention by Commission*. (n.d.). LII / Legal Information Institute. <https://www.law.cornell.edu/uscode/text/15/45>

¹¹⁵*In final court summary, FTC reports Volkswagen repaid more than \$9.5 billion to car buyers who were deceived by “Clean Diesel” ad campaign*. (2025, March 5). Federal Trade Commission. <https://www.ftc.gov/news-events/news/press-releases/2020/07/final-court-summary-ftc-reports-volkswagen-repaid-more-95-billion-car-buyers-who-were-deceived-clean>

¹¹⁶VanBockel, T. (2024, September 27). *Deceptive pricing: legal risks and how to avoid them*. Attorney Aaron Hall. <https://aaronhall.com/deceptive-pricing-legal-risks-and-how-to-avoid-them/>

¹¹⁷bait and switch. (2025). In *Merriam-Webster Dictionary*. <https://www.merriam-webster.com/dictionary/bait%20and%20switch>

¹¹⁸Ore, I. S. 2. (2018, April 27). *Vodafone, multa Antitrust da 4,6 milioni per pubblicità ingannevole. Il Sole 24 ORE*. <https://www.ilsole24ore.com/art/vodafone-multa-antitrust-46-milioni-pubblicita-ingannevole-AEdDSpfE>

that it can substantially influence consumers' decisions.¹¹⁹ This strategy is mostly achieved by using labels and packaging, trying to hide some important facts.

An example in which a company misrepresented a product's quality is the case of Samsung with the Galaxy S4. The company portrayed the phone as significantly faster than others by manipulating test results; the device was found to be programmed to detect when specific benchmarking apps were running, boosting CPU and GPU performance, misleading consumers into believing the device was running at faster speed than other phones, but in reality it was untrue. The reality was that the processors were running at low speed when performing real-world tasks.¹²⁰

The case, similarly to the others, shows how even a subtle detail of a product's capacity can have such an influence on market competition.

As already stated, unfair competition law often overlaps with intellectual property law, especially in cases involving unauthorized use of protected signs or symbols. An example is trademark infringement, when an entity used the name, mark, or other identifying aspect of another company without authorization, usually in a way that causes create confusion regarding the nature or character of the product.

This behavior not only undermines the legal role of trademarks, which is to ensure the origin and steady quality of a product, but also reflects a more general trend of unethical competition. Dinwoodie and Janis¹²¹, in their article observe that many cases of trademark infringement are also associated with deceptive competitive practices that distort market competition. Then, Ginsburg¹²² also adds that it was found that trademark and unfair competition laws often work together, especially where firms try to take exploit the reputation or identity of a competitor's mark.

The Court of Justice of the European Union¹²³ has taken into consideration this dual nature of infringement in many judgments. For example, in the case of *Arsenal v. Reed*¹²⁴, the court held that non-commercial uses of a trademark could also be illegal if they dilute its natural function, meaning to specify the true commercial origin of goods.

¹¹⁹ Team, L. (2025, February 14). *Can You Sue a Company for Lying About a Product?* - LegalClarity. LegalClarity. <https://legalclarity.org/can-you-sue-a-company-for-lying-about-a-product/>

¹²⁰ Top Class Actions. (2013, October 4). *Galaxy S4 class action lawsuit says Samsung rigged speed tests.* Top Class Actions. <https://topclassactions.com/lawsuit-settlements/lawsuit-news/galaxy-s4-class-action-lawsuit-says-samsung-rigged-speed-tests/>

¹²¹ Dinwoodie, G. B., & Janis, M. D. (2008). *Trademark and unfair competition law: Critical concepts in intellectual property law.* Edward Elgar Publishing.

¹²² Ginsburg, J. C. (2008). Overlapping copyright and trademark protection in the United States. *Columbia Law Review*, 113(1), 1–56.

¹²³ *Court of Justice of the European Union* | European Union. (n.d.). European Union. https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/court-justice-european-union-cjeu_en

¹²⁴ *EUR-LEX* - 62001CJ0206 - EN - EUR-LEX. (n.d.). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62001CJ0206>

An important case arose in Italy, when Plasmon launched a comparative advertisement promoting its children's food over Barilla's, stating its products were 'most suitable for children' rather than the competitors because of a lower percentage of pesticides. The advertisement was comparing Plasmon's signature biscuits with Mulino Bianco's 'Macine', referencing Barilla by name, which started a legal dispute with a positive outcome.



Figure 4¹²⁵

The case was handled by the Tribunale di Milano¹²⁶, which ruled in favor of Barilla as the campaign was found to be deceptive and misleading. Besides this, the court also found that Plasmon had used Barilla's registered name in an unauthorized way in a way in which it harmed the reputation of the brand, while Plasmon enjoyed wider attention and visibility thanks to this. The company therefore not only misled consumers but also gained a competitive advantage at the discredit of its competitors by using its trademark in a denigratory way.

This refers to the use of a trademark for a commercial purpose in a way that harms, diminishes or affects the reputation of the competitor's brand. It is a phenomenon that happens mostly in comparative advertising, as there is the explicit mention of the other's brand or trademark itself, and this leads to creative a negative association to it.

To sum up, having analyzed many of the unfair competitive practices, thus deceptive comparative advertising, false endorsements, and deceptive trademark applications, for example, shows that unfair competition is not limited to a predefined set of behaviors; it is a dynamic legal doctrine. The absence of proper harmonization between legal frameworks,

¹²⁵ Guerra tra Plasmon e Barilla per pubblicità. (n.d.). Corriere Della Sera. https://www.corriere.it/salute/11 dicembre 01/plasmon-barilla-guerra_c9791d6a-1c04-11e1-8ed7-30f7808a816f.shtml

¹²⁶ Martini, E. (2022, June 13). *Il Tribunale di Milano conferma: la pubblicità comparativa di Plasmon vs Barilla era illecita* — Martini Manna & Partners. Martini Manna & Partners. <https://www.martinimanna.it/blog/il-tribunale-di-milano-conferma-la-pubblicita-comparativa-di-plasmon-vs-barilla-era-illecita>

combined with the advent of technological and social changes, means that courts and case law play a crucial role in defining and updating the provisions regarding unfair competition.

The cases considered in this chapter, such as abuse of trademarks in comparative advertising, as seen in *L'Oréal v. Johnson & Johnson*, to loss of reputation after deceptive influencer marketing, as witnessed by *Ferragni & Balocco*, show that unfair competition tends to use trust, brand image, and consumer perception together with market power. This is particularly important in the digital marketing, where brand reputation and customer loyalty are effective means of competition.

These examples demonstrate how legal systems are responding to changes in marketing strategies, but they also underscore that the exploitation of consumer trust and informational asymmetry is a central characteristic of much contemporary unfair competition.

This is essential to broader purpose of our thesis, which analyzes the overlaps of artificial intelligence, influencer marketing, and unfair competition law. As advertising is starting to rely more on artificial intelligence, there are some legal questions that arise: Who is liable when AI copies unfair behavior? Are current legal mechanisms adequate to address these new marketing tactics?

The following chapter will delve into such questions, focusing on how artificial intelligence is affecting consumer perception and market competition.

CHAPTER 3: THE IMPACT OF AI ON MARKET COMPETITION

Artificial intelligence is not considered anymore just technology, thus it is a crucial tool for shaping how businesses operate, communicate and compete in the market. AI's initial aim was to analyze data or streamlining logistics, but then it rapidly evolved and is nowadays used to generate creative content, influence consumer choices or stimulate human interactions.

This is especially noticeable in fields where value depends on creativity and symbolic work. As explained by Handke¹²⁷ in his study which looks at intellectual property within creative industries, AI blurs the lines between simply assisting and creating, by bringing in algorithms that can take part in creative tasks. These systems are not just helpful tools anymore, but they are actively creating content, designing, and brainstorming, that are all functions that used to be done solely by human beings.

¹²⁷ Handke, C. (2016). Intellectual property in creative industries: The economic perspective. In C. Waelde & A. Brown (Eds.), *Research Handbook on Intellectual Property and Creative Industries* (pp. 103–123). Edward Elgar Publishing.

Similarly, Raco¹²⁸ points out that AI's role in art and expression can drive the world into new legal and conceptual territory because what was once seen as exclusively related to human imagination are now shared with generative algorithms. In fact, this raises important questions about who owns creative work, what makes something authentic, and what it really means to be a creator.

All of these changes are not just happening in the field of art, they are also entering digital marketing and branding. Today, AI is used to develop advertisements, marketing campaigns, create virtual influencers, and deliver personalized customer experiences.

In all these areas, AI is not merely following instructions, it is shaping how culture is produced and how markets operate, leading to the need for both economic and legal actions.

This shift in the nature and purpose of AI is of paramount importance in the world of marketing, where value is the key component and AI is changing the way value is created and communicated¹²⁹. Besides value, another key component in marketing is trust, which can be jeopardized by AI, as it blurs the line between real or fake, which we will focus on later.

Artificial intelligence has its advantages and disadvantages: on the one hand it creates opportunities for efficiency and innovation; on the other hand, it disrupts fair competition, erodes trust and impedes human creativity. The question that arises and that is shaping AI-driven marketing's future is: What happens if brands rely on AI tools to replicate or create content and simulate endorsements?

This chapter delves into the evolving role of AI in market competition, with a special focus on the new realities, rather than traditional marketing, such as influencer and AI-driven marketing but also its effects on individual's trust and legal frameworks.

3.1 The impact the Lisa AI case has on influencer and AI-driven marketing

According to McKinsey¹³⁰ influencer marketing refers to a collaboration between social media users and brands to promote a brand's products or services and it has grown in importance in digital advertising in the recent years. This type of marketing is built on the idea of using trusted individuals on social media to shape consumer perceptions and behaviors. This strategy works as it relies on the assumption that audiences usually place more confidence in recommendations from these figures, especially when they appear to offer personal opinions rather than scripted promotions.

An influencer should not be considered merely a marketing tool, but a social relationship asset that brands have available and can collaborate with; as a matter of fact an influencer is an

¹²⁸ Raco, C. (2020). L'intelligenza artificiale irrompe nel mondo dell'arte: l'apertura di nuove frontiere giuridiche. *Legalità, Lavoro e Responsabilità*, 2, 48–62.

¹²⁹ Kotler, P., Keller, K. L., & Chernev, A. (2022). *Marketing management* (16th ed.). Pearson Education Limited.

¹³⁰ *What is influencer marketing?* (2023, April 10). McKinsey & Company. <https://www.mckinsey.com/featured-insights/mckinsey-explainers/what-is-influencer-marketing>

individual that has the ability of driving the purchasing decision of the followers because of their knowledge, position and relationship with the audience¹³¹ and therefore as the name suggests their goal is to influence people.

The influencer marketing's world is divided into five main categories based on their reach and follower count: 'nano-influencers' (1K - 10K), 'micro-influencers' (10K - 100K), 'mid-tier influencers' (100K - 5000K), 'macro-influencers' (500 K - 1M), and 'mega-influencers' (1M+)¹³². It goes without saying that there are many different types of influencers categorized not based on their reach but based on the content they typically provide, for example food influencers, travel influencers, vlog personality or fashion influencers; however for the purpose of our analysis the focus relies more on the differences in number of audience.

Each type of influencer plays a specific and different role in marketing campaigns, for example nano and micro-influencers tend to have smaller but more engaged audiences. They are crucial as the content they provide feels more personal and therefore, thanks to the small but strong community they have built, they are more trusted than other celebrities. An example of micro influencer can be @stafemeri¹³³: this Instagram account is handled by this couple of micro-influencers which provide the community with travel suggestions, engaging with partners such as restaurants or shops, while also providing their personalized itinerary for different cities. By building this small community and having closer relationships with it, the audience usually see them more as 'friends' giving out advice rather than celebrities.

On the other hand, macro and mega-influencers are usually full-time creators or public figures such as football players, models or entrepreneurs. Their advantage is that they can help brands reach millions of people, but their endorsements may feel less personal and therefore there is less trust in what they are promoting. For instance, Cristiano Ronaldo (@cristiano)¹³⁴ is the most followed person in the world and therefore the reach is enormous, but at the same time the audience feel him like a brand-ambassador rather than a product user and therefore they place less trust in what it promotes.

Due to these differences, brands typically mix influencer types and engage with smaller influencers for credibility and bigger influencers for visibility.

Influencer marketing is therefore appealing as it relies on emotions, trust and building relationships with the audience. However, the advent of artificial intelligence is starting to disrupt this balance as it is now used to stimulate influence and drive consumers' behavior, instead of being a tool for data analytics.

¹³¹ Influencer Marketing Hub. (2025, February 7). *What is an Influencer? – Social Media Influencers Defined [Updated 2024]*. <https://influencermarketinghub.com/what-is-an-influencer/>

¹³² Studies, S. (2022, February 24). *Types of influencers explained: nano, micro, macro, and mega* | Social studies. Social Studies. <https://socialstudies.io/articles/types-of-influencers-explained-nano-micro-macro-and-mega/>

¹³³Stefano Stafie e Maria Grazia Fini. Micro-influencer focusing on travels <https://www.instagram.com/stafemeri/>

¹³⁴Cristiano Ronaldo. Football Player. <https://www.instagram.com/cristiano/>

This change in technology presents both opportunities and challenges. AI has the potential to be both a threat and an opportunity, according to Forbes¹³⁵.

On the one hand, it provides effective tools that improve targeting, personalization, and marketing efficiency, enabling brands to distribute personalized messages at scale.

On the other hand, overuse or abuse of it could result in a loss of authenticity, which is one of the main advantages of conventional influencer marketing. If not appropriately disclosed, AI-generated content has the potential to destroy consumer trust and raise moral or legal concerns.

One of the most important developments of the recent years in this field is the creation of AI-generated influencers, an example being @lilmiquela¹³⁶ an influencer created by artificial intelligence who has reached millions of followers while also collaborating with brands. These digital figures are created using advanced models and allow brands to fully control aspects of their appearance and the messages they provide; in this way they are fully programmable and consistent, while also costing less than human influencers in the long-term¹³⁷.

For brands this can represent a type of revolution, but there are also other AI tools they can use that are less revolutionary and can be used to make social media marketing campaigns more efficient or to help predicting trends¹³⁸.

Some examples of platforms used are ‘CreatorIQ’¹³⁹ and ‘Upfluence’¹⁴⁰ which exploit artificial intelligence to analyze influencer profiles, suggesting matches based on demographics, content type, and engagement history. Additionally, HypeAuditor¹⁴¹ uses AI to detect bot-driven engagement and audience authenticity.

From a brand’s point of view these tools represent an advantage as it reduces costs, it helps reduce inefficiency, boost return on investment (ROI) and allows campaigns to be adjusted in a short time thanks to trends predictions. As a matter of fact, thanks to the ability of AI to automate tasks such as consumer segmentation, brands can reduce time and costs, making it easier to focus on strategy rather than repetitive work.

For example, Tesla is able to optimize energy usage and improve its products by using AI to collect data from its vehicles, while also using different AI tools to automate manufacturing processes¹⁴².

Artificial intelligence also allows brands to make better decision, due to data-driven decisions

¹³⁵ Kastenholz, C. (2024, April 3). *Council Post: The role of AI in Influencer Marketing*. Forbes. <https://www.forbes.com/councils/forbesagencycouncil/2024/04/03/the-role-of-ai-in-influencer-marketing/>

¹³⁶ Lil Miquela. AI-generated mega influencer <https://www.instagram.com/lilmiquela/>

¹³⁷ Ngu, T. (2025, March 23). *AI influencer Marketing Success: Real-World Case Studies & Examples*. Hashmeta. <https://hashmeta.com/blog/ai-influencer-marketing-success-real-world-case-studies-examples/>

¹³⁸ Erica Santiago (2023, November 17). *AI Influencer Marketing: How Artificial Intelligence Could Change Influencer Marketing* <https://blog.hubspot.com/marketing/ai-influencer-marketing>

¹³⁹ <https://www.creatoriq.com/>

¹⁴⁰ <https://www.upfluence.com/>

¹⁴¹ <https://hypeauditor.com/>

¹⁴² Zharovskikh, A. (2024, August 28). *AI efficiency: Cost reduction with AI*. InData Labs. <https://indatalabs.com/blog/ai-cost-reduction>

on where to allocate budget or effectively. It can do so by predicting which channels will perform better or targeting the right costumers, leading to a greater return on investment¹⁴³.

The problem arises when these AI tools have a negative effect on creativity and authenticity; therefore, the use of AI helps make campaigns more precise, but at the expense of risking making them feel less personal and transparent.

There is the need to balance the benefits and the ethical and competitive consequences, which are becoming more prominent in the sector.

The Lisa AI is an example of how the downsides are outweighed by the benefits and how this represents a tangible impact on influencer and AI-driven marketing, by showing how AI can be misused to simulate trust and manipulate consumer perception. Unlike synthetic influencers like Lil Miquela, which are clearly AI generated, Lisa AI used real footage and voice imitation to fabricate a promotion made by Scarlett Johansson, without her consent or engagement. The act made by Lisa AI is not just unethical, but it is also breaching competition law as it was strategically misleading.

This video revealed to both consumers and marketers how easily the use of AI can breach several rules, and how brands can bypass traditional relationships with influencers, together with the transaction costs of forcing contracts or licensing. From the brand's point of view, this created a competitive advantage, but on the other hand it increased skepticism towards influencer content in general and disrupted trust. The reason behind this is that the audience starts to no longer be sure about the genuineness of contents and therefore emotional trust towards influencer marketing begins to erode.

The Lisa AI also represents the first steps towards discussions about regulations and transparency as it breached many competition rules. Due to this, companies are now facing the pressure of disclosing the use of AI in campaigns to ensure consumers are not misled and individual's personalities are protected. Moreover, there are also stricter rules for platforms and tech-experts in relation to AI processing.

For example, in the United States the Federal Trade Commission (FTC) is taking steps forward in updating section 5, which prohibits misleading marketing practices. The update should extend the section to AI-generated endorsements and social media influencers, which can both be liable if the content provided misleads consumers or distorts competition, especially with regards to copyright law.

These actions show that the law is willing to regulate artificial intelligence especially when consumer protection and intellectual property rights intersect.

¹⁴³ Casey, G. (2025, February 27). *Maximizing efficiency and ROI in AI initiatives: A Guide to Cost Optimization - RSM Technology*. RSM Technology. <https://technologyblog.rsmus.com/technologies/microsoft/maximizing-efficiency-and-roi-in-ai-initiatives-a-guide-to-cost-optimization/>

Similarly, in the European Union, a new regulation came into force recently which addresses illegal content, transparent advertising and disinformation. The regulation in question is the EU Digital Service Act¹⁴⁴, which imposes transparency obligations to digital platforms and users. Even though the Act does not address primarily or directly artificial intelligence, it regulates behaviors in online platforms, such as social media, and therefore it regulates AI-based functionalities used by digital platforms, such as articles 26¹⁴⁵-27¹⁴⁶ refers to label advertising, including AI-generated ads.

In 2024, came into force the first European legal framework addressing directly artificial intelligence: the Artificial Intelligence Act¹⁴⁷ which adopts a risk-based approach by classifying AI systems into different levels of concern: those involving unacceptable risk, those that are high-risk, and those involving limited or negligible risk. AI tools controlling human behavior or exploiting individual weakness are put under the unacceptable risk category and are prohibited. Nevertheless, high-risk systems, such as those applied in consumer profiling, biometric sorting, or automated decision-making, need to pass strong criteria of transparency, security, and human monitoring¹⁴⁸.

One of the most significant contributions of the AI Act to the influencer and marketing world is that it puts pressure on transparency where AI is used to produce or interact with content. To put it in perspective, if a system uses AI to produce a deepfake or to impersonate a real person, then it must inform the user that the content is not authentic. The regulation also holds AI providers responsible to monitor their systems after deployment and imposes penalties for non-compliance of up to €35 million or 7% of the previous year's worldwide turnover of an enterprise¹⁴⁹.

This is especially relevant for our case as the AI-generated impersonation of Scarlett Johansson, used without her consent to promote a commercial product, demonstrates exactly the abuse the Act tries to prevent. Under this new legislation, content like the Lisa AI advertisement would likely fall into the limited or high-risk category and would have to comply with strict disclosure and consent requirements, which in this case were not met.

By doing so, the Artificial Intelligence Act attempts to reestablish consumer faith in AI-produced content while also imposing the principle of fairness and accountability on AI-driven marketing.

¹⁴⁴ *Regulation - 2022/2065 - EN - DSA - EUR-LEX.* (n.d.). <https://eur-lex.europa.eu/eli/reg/2022/2065/oj>

¹⁴⁵ Article 26. EU Digital Service Act. *Regulation - 2022/2065 - EN - DSA - EUR-LEX.* (n.d.).

¹⁴⁶ Article 27. EU Digital Service Act. *Regulation - 2022/2065 - EN - DSA - EUR-LEX.* (n.d.).

¹⁴⁷ *Regulation - EU - 2024/1689 - EN - EUR-LEX.* (n.d.). <https://eur-lex.europa.eu/eli/reg/2024/1689/oj>

¹⁴⁸ *AI Act enters into force.* (2024, August 1). European Commission. https://commission.europa.eu/news/ai-act-enters-force-2024-08-01_en

¹⁴⁹ *Artificial Intelligence Act: deal on comprehensive rules for trustworthy AI | News | European Parliament.* (n.d.). <https://www.europarl.europa.eu/news/en/press-room/20231206IPR15699/artificial-intelligence-act-deal-on-comprehensive-rules-for-trustworthy-ai>

3.2 Artificial Intelligence's influence on consumer perception

As already mentioned, artificial intelligence is no longer merely a tool used for data analysis or other background purposes, it now directly affects how consumers evaluate and interact with brands. AI can improve user experience by personalizing and optimizing services, thanks to tool like chatbots, which are software programs that simulate human conversations¹⁵⁰, or predictive analytics which lead smoother digital interactions. Many consumers enjoy the benefits these platforms provide as they result in greater efficiency and faster responses to their needs¹⁵¹.

Therefore, when AI is used fairly and effectively, it can create a greater sense of familiarity between customers and brands, enhancing loyalty.

However, this trust can quickly erode when AI starts taking more active and persuasive roles such as creating marketing campaigns or advertisements, creating 'fake influencers', or generating automatic texts. When performing these types of actions, customers become more skeptical when they are aware that a content is produced by a machine rather than a human being and therefore issues of transparency and credibility begin to arise.

'AdvertisingWeek' in its article '*Building Consumer Trust in the Age of AI*'¹⁵² has shown that 57% of consumers believe AI poses a significant threat to their privacy and that 62% of Americans do not trust AI to make ethical decisions, especially in areas in which emotional distress is involved.

This concept is supported by a research work of Oliver Schilke and Martin Reimann, in their paper '*The transparency dilemma: How AI disclosure erodes trust*'¹⁵³. The work shows how the disclosure of AI-generated content, even if there is intention to be transparent, can erode trust; this happens because people interpret the use of AI in the creative process as a sign of reduced authenticity and lack of empathy, as the machine cannot add emotions to the creation. For example, an AI-generated influencer will lack emotions and therefore the audience will feel less secure about what it is trying to promote, in comparison with a real-life influencer. In the context of influencer endorsement, emotions play a crucial role in driving consumers' decisions and therefore the knowledge that AI is involved will lead to skepticism and lower engagement.

This can be seen as a paradox, as transparency is commonly associated with building trust, rather than eroding it, but in the context of AI influencer marketing this will lead to a more

¹⁵⁰Terra, J. (2024, February 29). What is an AI chatbot, and how do they work? - Caltech. Caltech -. <https://pg-p.ctme.caltech.edu/blog/ai-ml/what-is-ai-chatbot-how-do-they-work>

¹⁵¹ Akbar, M. U., Ibrahim, Nabil, S. J., Iqbal, K. A., & Islam, A. (2024). The Influence of Artificial Intelligence on Consumer Trust in E-Commerce: Opportunities and Ethical Challenges. *European Journal of Theoretical and Applied Sciences*, 2(6), 250-259. [https://doi.org/10.59324/ejtas.2024.2\(6\).20](https://doi.org/10.59324/ejtas.2024.2(6).20)

¹⁵² Week, A. (2025, February 20). *Building consumer trust in the age of AI*. <https://advertisingweek.com/building-consumer-trust-in-the-age-of-ai/>

¹⁵³ Schilke, O., & Reimann, M. (2025). The transparency dilemma: How AI disclosure erodes trust. *Organizational Behavior and Human Decision Processes*, 188, 104405. <https://www.sciencedirect.com/science/article/pii/S0749597825000172>

complex challenge for brands, that have to be careful about transparency while maintaining customer trust and loyalty.

The AI scenario keeps adding complexity, as many AI tools and models lack explainability and are untransparent in their nature. As a matter of fact, some AI technologies are deployed as ‘black-box technologies’¹⁵⁴ as they operate in ways that are hard to understand both for users but sometimes developers too, as stated in the paper ‘*Transparency and explainability of AI systems: From ethical guidelines to requirements*’¹⁵⁵. Content created or decisions made by these types of technology may lead consumers into being suspicious, especially when they have no knowledge of what data has been used, and therefore putting less trust in the system.

In influencer marketing, this is particularly important because the credibility of an advertisement depends mostly on perceived honesty and credibility. If a follower begins to investigate whether the content is real or manufactured, the emotional connection built between the influencer and the follower begins to erode and consequently the endorsement will be less valued.

The issues artificial intelligence brings out are not only at the individual perception’s level, but also broader implications in the digital market. Having access to important AI tools can provide companies with big competitive advantages, due to the fact they can access data more quickly, they can be more efficient and create advertisements with less human labor. Even if done transparently and fairly, this has an overall negative effect in market competition as only large corporations can have access to this type of AI technology, discouraging smaller companies, which are left with the only option of licensing and rebranding AI creations made by big techs¹⁵⁶.

For the purpose of our thesis, it is crucial to address these issues as it delves around unfair competition in AI-driven influencer marketing. The Lisa AI case highlights perfectly all of this: by using AI to produce a celebrity endorsement, it exploited trust from consumers, gaining a competitive advantage thanks to a deception instead of gaining it fairly due to value or building a relationship. This type of misuse not only has a negative effect on consumers, which are misled, but also leaves honest competitors with an unfair disadvantage in the market.

In order for AI to enhance trust rather than destroying it, it has to work on making it more transparent, even though there are consequences to face. When talking about transparency, it does not mean merely showing AI has been used but explaining almost step-by-step the way in which it has been used, how data is gathered and analyzed and how the machine came up with the final outcome.

¹⁵⁴ GeeksforGeeks. (2024, December 27). *What is Black Box AI?* GeeksforGeeks. <https://www.geeksforgeeks.org/what-is-black-box-ai/>

¹⁵⁵ Balasubramaniam, N., Kauppinen, M., Rannisto, A., Hiekkänen, K., & Kujala, S. (2023). Transparency and explainability of AI systems: From ethical guidelines to requirements. *Information and Software Technology*, 159, 107197. <https://www.sciencedirect.com/science/article/pii/S0950584923000514>

¹⁵⁶ Kak, A. (2023, December 5). Make no mistake—AI is owned by Big Tech. *MIT Technology Review*. <https://www.technologyreview.com/2023/12/05/1084393/make-no-mistake-ai-is-owned-by-big-tech/>

To preserve consumers' trust, companies working with AI technologies should adhere to the ethical and regulatory standards provided by the European Union's AI Act. As a matter of fact the only way in which fair competition and genuine relationships with customers are ensured is by adopting a transparent and ethical use of AI.

3.3 Legal and ethical implications

The rapid advancement of artificial intelligence has significantly changed the legal frameworks governing consumer protection and marketing. Historically, European and United States laws all delved around traditional forms of advertising such as print, broadcast television, and radio commercials where a deception was typically clearly evident and identifiable¹⁵⁷. Directives such as the Misleading and Comparative Advertising Directive¹⁵⁸ and the Unfair Commercial Practices Directive¹⁵⁹ in Europe, and the Lanham Act in the United States, were created around traditional definitions of deceptive and misleading advertisement, typically in the form of explicit statements that were easier to verify and regulate.

The integration of artificial intelligence into marketing, however, has complicated the legal landscape. AI-driven practices like 'deepfakes', synthetic influencers and AI-recommended content have blurred the limits of responsibility and visibility, and therefore leading to the necessity of having comprehensive overhauls of these legal frameworks. Thomson Reuters¹⁶⁰ reports that AI technologies have destabilized conventional legal approaches by introducing different nuances to the identification and regulation of fraud, and therefore requiring more advanced legal provisions. Before the advent of AI, the rules were only addressing companies, or well-defined entities but this is now changing and they extend also to platform providers, developers, and creators of algorithms¹⁶¹.

Consequently, recent regulations are following this behavior; an example is the European Union which enacted the Artificial Intelligence Act, dealing with matters entirely related to artificial intelligence. Unlike previous laws, this Act categorizes AI systems according to risk level and requires disclosure requirements for transparency, strict human supervision, and bans on certain activities, such as unauthorized AI-created endorsements.

¹⁵⁷Admin, I. W. (2020, October 8). *Unfair Competition Committee: Recent developments in influencer marketing and unfair Competition - International Trademark Association*. International Trademark Association. <https://www.inta.org/news-and-press/inta-news/unfair-competition-committee-recent-developments-in-influencer-marketing-and-unfair-competition/>

¹⁵⁸Directive - 2006/114 - EN - EUR-LEX. (n.d.). <https://eur-lex.europa.eu/eli/dir/2006/114/oj/eng>

¹⁵⁹Directive - 2005/29 - EN - EUR-LEX. (n.d.). <https://eur-lex.europa.eu/eli/dir/2005/29/oj/eng>

¹⁶⁰Jamesju. (2025, May 16). *AI and Law: 2025 guide for legal professionals*. Thomson Reuters Law Blog. <https://legal.thomsonreuters.com/blog/ai-and-law-major-impacts/>

¹⁶¹Kerry, C. F. (2023, July 7). How privacy legislation can help address AI. *Brookings*. <https://www.brookings.edu/articles/how-privacy-legislation-can-help-address-ai/>

Parallel to this, the Digital Services Act (DSA) and the Platform-to-Business Regulation¹⁶² entails more platform accountability and transparency about AI use in advertising and content moderation, thus holding platforms accountable for AI-created misleading content.

According to Frosio¹⁶³, the DSA introduces a more proactive and structured approach to platform responsibility, which represents a significant change from the previous E-Commerce Directive.

Nowadays, platforms, and in particular the largest ones, are expected to actively identify and mitigate risks rather than just responding when something goes wrong. This entails increasing the transparency of their algorithms and implementing measures to stop the spread of damaging or deceptive content, including AI-generated content. By encouraging platforms to take responsibility for the impact their AI systems have on users and public discourse, the DSA tries to make the digital environment safer and more equitable.

The United States follows the same path as the European Union, as a matter of fact a shifting regulatory interpretation by institutions such as the Federal Trade Commission has occurred. The FTC has broadened its classic enforcement under the Section 5 of the FTC Act, extending to explicitly cover AI-generated and virtual endorsements, resulting in a sign of a more modern approach toward addressing deception in digital environments¹⁶⁴. Also state laws such as California's Civil Code §3344, which is the state law addressing the Lisa AI case, which were originally intended for human-created endorsements, are now being used to address unauthorized synthetic endorsements, such as in the cases of deepfakes and celebrity posts through AI.¹⁶⁵

Besides this, the emergence of AI itself is also influencing legal practice. As per the American Judicature Society's report¹⁶⁶ artificial intelligence is revolutionizing legal research, contract analysis, verification of compliance, and even the enforcement of legal standards. It is also highlighted that AI-based tools are now helping regulators and lawyers explore complex cases, and therefore directly affecting how legal frameworks are formulated, interpreted, and enforced. These technological advancements have pushed legal professionals to become more flexible, to make them more efficient to handle complex issues arising from the misuse of AI.

This revolution is aware of the necessity for continual legal development. Unlike in previous frameworks, current and future provisions must be adaptable and detailed enough to cover rapidly evolving AI technologies. The Lisa AI case demonstrates precisely why adaptability is so essential: the use of AI technology went far beyond legal tools in a remarkably short period,

¹⁶² Regulation - 2019/1150 - EN - p2b regulation - EUR-Lex. (n.d.). <https://eur-lex.europa.eu/eli/reg/2019/1150/oj/eng>

¹⁶³ Frosio, G. (2021). *From the E-Commerce Directive to the Digital Services Act* [Working paper]. SSRN. <https://doi.org/10.2139/ssrn.3772864>

¹⁶⁴ Section 5. (2025, February 6). Federal Trade Commission. <https://www.ftc.gov/section-5>

¹⁶⁵ International Trademark Association (INTA). (2023). *Recent developments in influencer marketing and unfair competition*.

¹⁶⁶ Gates, E. (2025, May 8). *How will AI affect the legal field? Revolutionizing the future of law*. American Judicial System. <https://www.ajs.org/how-will-ai-affect-the-legal-field/>

demonstrating the urgent necessity for precise, authoritative, and current regulatory guidance on a continuous basis.

CHAPTER 4: INFLUENCER AND AI-DRIVEN MARKETING

The overlap between artificial intelligence and influencer marketing is transforming the nature of digital marketing and consumer interactions. As a matter of fact, influencers do not focus anymore on static sponsored content or individual-driven campaigns; indeed, they are currently using tools like generative AI, synthetic media, and algorithms that ensure deeper personalization compared to human-driven contents. Influencers are usually considered as genuine, human, and emotional individuals, but nowadays, due to AI they tend to be imitated or replaced by AI-generated personas, and this leads to a blurred line between human and artificial entities.

This phenomenon can have both its downsides and upsides: on the bright side, it can provide new possibilities for marketing by improving the scalability, meaning reaching a wider audience without the need to increase resources, and accuracy, therefore the ability to target the right audience with the right message. These positive effects can be achieved thanks to the use of AI to analyze and personalize data in a way individuals cannot do.

However, it is crucial to maintain the right balance in order to avoid the ethical, legal and social issues AI can provide.

This chapter will discuss the existing legal frameworks that regulate influencer marketing, then analyze the impact of artificial intelligence on endorsers and influencers, and at the end some considerations about the changes in regulations that try to deal with these technological advancements.

4.1 Legal frameworks addressing influencer marketing

Influencer marketing has experienced a rapid change, from being considered a niche tactic to being one of the central component of today's digital marketing, and this has brought with it the need to develop the existing legal framework to match this new reality.

Social media influencers started as being considered merely product endorsers, however nowadays they are seen as professional agents of brand identity, contributing to delivering market value in the sector. These individuals have the ability to persuade and drive consumers towards the right direction according to the brand, and this is now enhanced thanks to the use of algorithms and AI, which become both an opportunity and a challenge for legal systems to ensure fairness, transparency, and consumer protection in markets.

In the United States, this regulatory framework rests on the *Federal Trade Commission* (FTC),

which can also be seen as a global reference by other legal frameworks due to its dominance. The FTC's *Endorsement Guides*, which have been updated in 2023, state that any ‘*material connection between the influencer and the brand must be disclosed clearly*’¹⁶⁷.

This material connection can be represented by payments, gifts, free product trials or any other way in which the individual is tied to a particular brand.

It is important to highlight that AI-generated endorsement, according to the recent updates, is explicitly being addressed by the FTC, stating that it should follow the same rules as traditional influencer marketing but with the need to disclose both the sponsorship and the use of AI¹⁶⁸.

This shows how important it is to act transparently, whether the endorsement is made by human or digital tools, as it poses risks to mislead if not used correctly.

Canada's legal approach is similar to the one of the FTC, which we have just addressed. The most important legal frameworks that address this issue are the *Competition Act*¹⁶⁹ and the *Canadian Code of Advertising Standards*¹⁷⁰. The *Competition Act* states that the provisions for deceptive marketing practices apply also to influencer marketing, and therefore it does not matter where and how the advertisement takes place, if in social media platforms or other. Social media influencers are required to disclose all the material connections they have with the brand, like in the US framework.

The European legal frameworks are starting to strengthen enforcement. There are some general Directives States follow, such as the *EU Unfair Commercial Practices Directive* and the *E-Commerce Directive*, which we have mentioned already; however each member state can apply its own interpretation and enforcement.

For example, Germany follows a strict enforcement style under the UWG¹⁷¹, which is the *Act against Unfair Competition* and courts state that even content made with unpaid products need disclosure if they seem of a promotional nature.

Under the *French Consumer Law*¹⁷², influencers have to disclose sponsorship through a native language label like ‘publicité’ or ‘sponsorisé’, and breaching these provisions can result in severe, including the need to remove the infringing content.

Therefore, Member States follow the EU directives but there are some national differences, which show that while the EU is aligned on transparency, implementation lacks harmonization.

¹⁶⁷ *Guides concerning the use endorsements and testimonials in advertising*. (2023, July 26). Federal Register. <https://www.federalregister.gov/documents/2023/07/26/2023-14795/guides-concerning-the-use-of-endorsements-and-testimonials-in-advertising>

¹⁶⁸ *FTC guidelines for influencers: Everything you need to know in 2025 - InBeat Agency*. (n.d.). InBeat Agency. <https://inbeat.agency/blog/ftc-guidelines-for-influencers>

¹⁶⁹ Legislative Services Branch. (2024, December 15). *Consolidated federal laws of Canada, Competition Act*. <https://laws-lois.justice.gc.ca/eng/acts/c-34/>

¹⁷⁰ *The Canadian Code online – Ad standards*. (n.d.). <https://adstandards.ca/code/the-code-online/>

¹⁷¹ *Act against Unfair Competition (Gesetz gegen den unlauteren Wettbewerb – UWG)*. (n.d.). https://www.gesetze-im-internet.de/englisch_uwg/englisch_uwg.html

¹⁷² Lemaire, C., & Camus, A. (2025, April 9). *Consumer Protection Laws and Regulations France 2025*. International Comparative Legal Guides International Business Reports. <https://iclg.com/practice-areas/consumer-protection-laws-and-regulations/france>

The United Kingdom, through the *Advertising Standards Authority*¹⁷³ and *Competition and Markets Authority*¹⁷⁴, also follows strict and aggressive measures. Influencers must clearly label sponsored content using terms such as ‘#ad’, and not following these rules lead to regulatory warnings and damage to individual’s reputation.

In Italy, both legal and self-regulatory frameworks work together.¹⁷⁵ The *Italian Consumer Code* is in charge of prohibiting covert advertising, which is a type of advertising hidden in another media¹⁷⁶, and the *Istituto dell'Autodisciplina Pubblicitaria*¹⁷⁷ offers comprehensive guidance for these matters, including its Digital Chart¹⁷⁸, which address the use of hashtags such as ‘#sponsorizzato’ or ‘#pubblicità’ at the beginning of posts in order to ensure visibility¹⁷⁹.

All these rules reinforce a common principle among the states, which is the fact that influencer marketing must be immediately identifiable as such, without deceiving the followers.

Therefore there are some common standards: transparency is maintained at the global level, and both brands and influencers are held equally accountable for disclosure. It is important to state that these rules are increasingly concerned with AI-generated content.

As a matter of fact, industry groups like the Performance Marketing Association¹⁸⁰ are now requesting more clarity and well-coordinated standards for synthetic media and algorithmically optimized content.

Having said so, regulations are still reactive. For instance, INTA recently stated that many countries are only at the very beginnings of developing solid legal frameworks on influencer marketing¹⁸¹.

This is particularly true of emerging markets, in which formal regulations are still lacking, and enforcement is weak, usually based on self-regulation or case-by-case examination. With the rapid transformation of influencer marketing, which is enhanced by the use of AI, legal systems are now working fast to update their regulations.

¹⁷³ Practice, A. S. a. |. C. O. A. (n.d.-b). *Home*. ASA | CAP. <https://www.asa.org.uk/>

¹⁷⁴ *Competition and Markets Authority*. (2025, April 30). GOV.UK. <https://www.gov.uk/government/organisations/competition-and-markets-authority>

¹⁷⁵ Italian Republic. (2005). *Consumer Code: Legislative Decree No. 206 of September 6, 2005*. https://www.codicedelconsumo.it/Codice_del_consumo_english_version.pdf

¹⁷⁶ Mathur, V. (n.d.). *Covert Advertising - The new age form of Advertising | Analytics Steps*. https://www.analyticssteps.com/blogs/covert-advertising-new-age-form-advertising#google_vignette

¹⁷⁷ IAP. (2025, April 30). *IAP - Istituto Autodisciplina Pubblicitaria - Regole pubblicità corretta*. <https://www.iap.it/>

¹⁷⁸ IAP. (2024, November 5). *Regolamento Digital Chart - Regole influencer marketing*. <https://www.iap.it/codice-e-altre-fonti/regolamenti-autodisciplinari/regolamento-digital-chart/>

¹⁷⁹ International Trademark Association. (2023). *Recent developments in influencer marketing and unfair competition*. <https://www.inta.org>

¹⁸⁰ Performance Marketing Association. (2025, January 15). *Performance Marketing Association - the PMA*. The PMA. <https://thepma.org/>

¹⁸¹ International Trademark Association. (2023). *Recent developments in influencer marketing and unfair competition*. <https://www.inta.org>

This means that without the necessary regulatory regimes, influencer marketing will have a free path to consumer deception and unfair competitive advantage.

As suggested in this chapter, by the entry of the artificial intelligence in the sector, these issues will be growing importance and will continuously bring legal and ethical marketing in the digital era at their limits.

4.2 How can AI take over the role of influencers and endorsers

Artificial intelligence is now more than a supporting tool for marketing, it is basically becoming an influencer itself. With generative AI and deepfake technologies, it is now possible for brands to develop virtual individuals that undertake the same role as human influencers. Artificial influencers such as Lil Miquela, as already mentioned, or Aitana Lopez¹⁸² are crucial examples of this phenomenon, that provide full brand alignment, continuous availability, and affordability¹⁸³.

These digital representations do not age, it is hard for them to make mistakes or need conventional agreements and are particularly attractive to entities that prefer consistency and control, but need to face the ethical and social risks associated with it, such as loss in credibility and trust by the followers.

Artificial intelligence has also revolutionized back-end marketing processes, which refers to the marketing done with existing consumers, aiming at generating profit¹⁸⁴.

There are some platforms, such as those mentioned previously in the chapters, for example CreatorIQ or Influency¹⁸⁵ that use machine learning to automate influencer-brand pairing, campaign reporting, and content planning, with the aim of delivering hyper-segmented marketing with less human labor.

Other platforms such as ChatGPT¹⁸⁶ or Claude AI¹⁸⁷ are now also used to create scripts, images, and synthetic content, increasing content personalization and optimization, while having the need to comply with regulatory standards, such as transparency and ethical consideration, that however tend to be avoided often¹⁸⁸.

As a matter of fact, this advent of AI provides ethical and legal concerns. The *Lisa AI case*, where the image and voice of Scarlett Johansson were allegedly used by third parties for

¹⁸² AI-generated influencer Aitana Lopez https://www.instagram.com/fit_aitana/

¹⁸³ StackInfluence. (2024). *AI influencers: The future of marketing*. StackInfluence. <https://stackinfluence.com/ai-influencers-the-future-of-marketing/>

¹⁸⁴ *Front End vs. Back End Marketing?* | Todd Brown. (n.d.). <https://toddbrown.me/front-end-vs-back-end-marketing/>

¹⁸⁵ Influency. (2020). *Influency, the most complete influencer marketing platform in the market*. Influency. <https://influency.com/blog/en/influency-the-most-complete-influencer-marketing-platform-in-the-market>

¹⁸⁶ OpenAI. (2025). *ChatGPT* (May 27 version) [Large language model]. <https://chat.openai.com>

¹⁸⁷ Anthropic. (2025). *Claude* (May 27 version) [Large language model]. <https://claude.ai>

¹⁸⁸ Lee, J. (2024, February 27). *The future of marketing in the era of AI: 2025 outlook*. OWDT. <https://owdt.com/article/the-future-of-marketing-in-the-era-of-ai/>

promotional activities without her consent, shows the potential for right of publicity violation, consumer deception and false endorsement. This case also represents the need for clearer legal standards for digital protection in the era of AI.

Consumers are now afraid of manipulation and lack of authenticity, and this is also reflected in the wider marketing profession. According to Adobe¹⁸⁹ there is the need for a "human-centered AI" strategy, which ensures that marketing and creativity remains authentic and personal, therefore against trading transparency and trust for efficiency.

Meanwhile, Missouri State University's Dr. Ismet Anitsal¹⁹⁰ points out how, despite the fact that AI can generate personalized engagement in a rapid and effective way, improve automation and expand predictive analytics, it fails in delivering the spontaneity and emotional richness customers find in human-to-human relationships. Having said so, the key that will revolutionize marketing is to find the perfect balance between technological advancement and ethical considerations.

In addition, Forbes' article¹⁹¹ '*The Ethical and Legal Considerations of Influencer Marketing and AI Photo-Editing Tools*' highlights the role played by AI-powered editing tools in introducing beauty standards that are unrealistic, especially in industries like fashion and wellness, where AI-generated images can have a heavy effect on consumer attitudes.

All these issues highlight the need for regulatory frameworks that ensure ethical use, transparency, and responsibility as AI systems mimic human behavior.

4.3 How will the future of regulations be due to the advent of AI and influencers

As artificial intelligence become increasingly settled in digital marketing, regulatory authorities are now forced to confront their legal and ethical implications.

The traditional frameworks that are based on human conduct, consent, and authorship are nowadays insufficient for an environment in which endorsements, interactions, and even identities can be artificially generated and therefore there is the need for an update.

In the European Union, the new AI Act classifies AI tools used by influencers based on their risk, with those simulating human engagement as 'high-risk', therefore subject to mandatory transparency, a more detailed human attention, and special disclosure of AI-generated

¹⁸⁹ Thornton, R. (2025, March 21). *The future of marketing with (human-centered) AI*. Adobe. <https://business.adobe.com/blog/the-future-of-marketing-with-human-centered-ai>

¹⁹⁰ Communication, S. (2024, October 14). *How AI is transforming marketing - News - Missouri State University*. News. <https://news.missouristate.edu/2024/10/03/how-ai-is-transforming-marketing/>

¹⁹¹ Duke, D. (2023, August 3). *Council Post: The Ethical and Legal Considerations of Influencer Marketing and AI Photo-Editing Tools*. Forbes. <https://www.forbes.com/councils/forbesbusinesscouncil/2023/08/03/considerations-of-influencer-marketing-and-ai-photo-editing-tools/>

content¹⁹². The reason behind this is that these can have an impact on consumers' fundamental rights.

These policies are then supported by the Digital Services Act (DSA) and the upcoming Digital Fairness Act¹⁹³, which considers the fact that consumers behave differently on online platforms rather than offline. The provisions apply not only to influencers but also to companies that deploy or use influencers, and they highlight two key issues, which are the lack of transparency in paid promotions and safety concerns related to the content promoted¹⁹⁴.

The United States are also taking steps in updating their laws. In fact, the Federal Trade Commission has updated its Endorsement Guides to explicitly include artificially generated influencers. These guides force AI influencers to reveal sponsorships and material connections with brands in the same way human influencers do¹⁹⁵.

There are also some legislative measures that are still pending, such as the No Fakes Act¹⁹⁶ aiming to restrict the unauthorized commercial use of an individual's image, voice, or likeness in AI applications, therefore trying to limit the phenomenon of deepfakes¹⁹⁷.

This regulation would have been of paramount importance in addressing the issue of Lisa AI using Scarlett Johansson's likeness in a commercial as it tackles the core matters of the case.

According to the National Law Review¹⁹⁸, several states in the United States, in particular California, Colorado, and Illinois, are shifting their attention to automated decision-making and algorithmic accountability. These efforts reflect increasing awareness that AI's impact extends to more than just conventional privacy issues and therefore influencing commercial communication and consumer attitude.

The government is not the only organization that is taking into account the issues AI brings in influencer marketing, as a matter of fact other entities such as the Performance Marketing Association, which is a non-profit trade association that represents the performance marketing industry. The PMA is looking for a unified method of regulation by stating AI influencers must have the same level of transparency as human influencers.

¹⁹² Benlian, A., Pfeiffer, J., Jussupow, E., Thiebes, S., & Maedche, A. (2024). High-risk artificial intelligence. *Business & Information Systems Engineering*, 66(2), 123–127. <https://doi.org/10.1007/s12599-025-00942-6>

¹⁹³ *Digital Fairness Act (DFA) | Updates*. (n.d.). <https://www.digital-fairness-act.com/>

¹⁹⁴ Cooper, D., Van Quathem, K., Oberschelp de Meneses, A., & Bertrand, A. (2025, April 15). *Digital Fairness Act Series – Topic 1: Influencer Marketing*. Inside Privacy. <https://www.insideprivacy.com/consumer-protection/digital-fairness-act-series-topic-1-influencer-marketing/>

¹⁹⁵ *16 CFR Part 255 -- Guides concerning use of endorsements and testimonials in advertising*. (n.d.-c). <https://www.ecfr.gov/current/title-16/chapter-I/subchapter-B/part-255>

¹⁹⁶ U.S. Congress. (2024). *H.R. 9551 – NO FAKES Act of 2024*. <https://www.congress.gov/bill/118th-congress/house-bill/9551/text>

¹⁹⁷ *MSN*. (n.d.). <https://www.msn.com/en-us/news/technology/industry-leaders-urge-senate-to-protect-against-ai-deepfakes-with-no-fakes-act/ar-AA1Fetu7>

¹⁹⁸ Friel, A. L., & Jacobson, J. B. (2025, May 5). *States shifting focus on AI and automated decision-making*. The National Law Review. <https://natlawreview.com/article/states-shifting-focus-ai-and-automated-decision-making>

Some researchers have argued that there is a sense of urgency in modifying these frameworks. Koulu and Kontiainen in their paper ‘*How will AI shape the future of law?*’¹⁹⁹ argue the legal response must change from slow, reactive regulations to adjustment to anticipatory governance, meaning those that aligns technology with democratic and ethical values.

They are concerned that without binding regulation, companies will adopt superficial ethical standards to avoid stricter legislation without meaningful accountability; this phenomenon is also called ‘*ethics washing*’²⁰⁰ in other words when companies deceive consumers about making fair and kind choices.

Consumer psychology significantly influences behavior, especially in marketing due to the fact that companies try to influence the consumers’ decisions. A recent study made by Omeish et al²⁰¹ have highlighted how AI and human influencers shape parasocial relationships and credibility with followers, with a narrower focus on the platform Tik Tok in Egypt and Jordan. According to the researchers, AI influencers are able to create emotional connections and perception of credibility in a way that is similar to humans.

However, while human influencers rely more on cultural familiarity, AI influencers are effective in fostering a sense of community and connection, especially in those cultures in which belonging to a certain group is highly valued.

This paper underline how powerful these AI-created individuals are in having a psychological impact, which raises concerns about credibility, authenticity and emotional influence.

In conclusion, the future regulation of influencer marketing will require interdisciplinary cooperation, disclosure obligations, and global coordination. Legal regimes will have to adapt not only to the technical workings of AI but to the social, psychological, and economic implications of its use.

CONCLUSION

The thesis started with the case study on Lisa AI, which showed how AI can breach both law and ethics on the internet. What looked like a problem involving a celebrity then became a bigger and urgent problem, which is the increasing ability of AI to copy human identity, simulate endorsements, and distort the competitive market in ways that current laws are still not able to regulate.

¹⁹⁹ Koulu, R., & Kontiainen, L. E. (Eds.). (2019). *How will AI shape the future of law?* University of Helsinki Legal Tech Lab Publications. https://www.helsinki.fi/assets/drupal/2022-11/how_will_ai_shape_the_future_of_law_2.pdf

²⁰⁰ Polley, C. (2024, October 23). *What is ‘ethics washing’ (and how to spot it)*. The Sustainable Agency. <https://thesustainableagency.com/blog/what-is-ethics-washing-and-how-to-spot-it/>

²⁰¹ Omeish, F., Shaheen, A., Alharthi, S., & Alfaiza, A. (2025). Between human and AI influencers: parasocial relationships, credibility, and social capital formation in a collectivist market: A study of TikTok users in the Middle East. *Discover Sustainability*, 6(1), 116. <https://doi.org/10.1007/s43621-025-00891-w>

Throughout the chapters, the thesis discussed how this phenomenon impacts not just individual rights, such as the right of publicity and right against false endorsement, but the more general issues of fair competition in marketing.

More specifically, it discussed how AI intersects with the US's and EUs laws of unfair competition. Both these jurisdictions provide some form of legal protection, but the comparative analysis showed that these laws are not adapt to this era in which synthetic material can be created and spread widely, without any form of consent and transparency.

As the thesis explored deceptive advertisements and influencer marketing, it pointed out how AI has started to change the traditional communication strategies between brands and consumers.

Influencers, which were considered being real and connecting with humans, are nowadays being copied or substituted with AI-created ones. This raises some important questions such as: When does influence turn into manipulation? When does creativity turn into stealing ideas? And when do machines become the faces of marketing, instead of humans?

What emerged is that AI technologies do more than just bring new tools, they are beginning to change the way we communicate. Traditional advertising depended on the fact that consumers could distinguish between real and fake messages.

However, AI makes this line more blurred; as a matter of fact, deepfakes, AI-generated endorsements or influencers make it hard to identify what is real and what is not, typically without the knowledge of the audience.

The thesis also questioned the fragility of consumer trust in this matter. As Chapter 3 explored, if consumers cannot understand clearly whether a message, endorsement, or influencer is real, then their trust in digital communication can be breached²⁰².

This is not merely a problem of individual consumers, but of society as loss in consumer trust and credibility affect the way in which decisions are made, especially when there is a sort of manipulation.

The AI Act and the recent FTC guidelines are moving in the right direction, but they do not go deep enough in the matter. The laws are more focused on the consequences of the action after they occur than on providing clear rules and guides. This analysis then reflects the need for a whole new framework of law and ethics that understands how AI changes identity, consent, and influence.

This thesis does not offer ultimate solutions, but it is concerned with posing some questions that consider the kind of digital culture we are building.

As a matter of fact, innovation is also achieved thanks to how we design, govern, and utilize AI technologies, which reflects our values. If we let efficiency and better access to become

²⁰² Kumar, R., & Velasquez, M. (2024). *The influence of artificial intelligence on consumer trust in e-commerce: Opportunities and ethical challenges*. *European Journal of Theoretical and Applied Sciences*, 2(6), 250–259. [https://doi.org/10.59324/ejtas.2024.2\(6\).20](https://doi.org/10.59324/ejtas.2024.2(6).20)

more important than fairness, accountability, and respect for human identity, we are failing to regulate technology, we are helping it change these boundaries²⁰³.

In conclusion, the future of communication, fair competition, and marketing will depend not merely on what we can do with AI, but also on whether we choose to preserve human values.

²⁰³ Zuboff, S. (2019). *The age of surveillance capitalism: The fight for a human future at the new frontier of power*. PublicAffairs.

Bibliography

- Meiselman, J. (2018, February 15). How 5Pointz Artists Won \$6.75 Million in Lawsuit against Developer That Destroyed Their Work. Artsy. <https://www.artsy.net/article/artsy-editorial-5-pointz-artists-won-675-million-lawsuit-developer-destroyed-work>
- 15 U.S. Code § 1125 - False designations of origin, false descriptions, and dilution forbidden. (n.d.). LII / Legal Information Institute. <https://www.law.cornell.edu/uscode/text/15/1125>
- 15 U.S. Code § 45 - Unfair methods of competition unlawful; prevention by Commission. (n.d.). LII / Legal Information Institute. <https://www.law.cornell.edu/uscode/text/15/45>
- 15 U.S.C. 1125: False designations of origin; false description or representation, January 2023 (BitLaw). (n.d.). <https://www.bitlaw.com/source/15usc/1125.html>
- 16 CFR Part 255 -- Guides concerning use of endorsements and testimonials in advertising. (n.d.-b). <https://www.ecfr.gov/current/title-16/chapter-I/subchapter-B/part-255>
- 17 U.S. Code § 107 - Limitations on exclusive rights: Fair use. (n.d.). LII / Legal Information Institute. <https://www.law.cornell.edu/uscode/text/17/107>
- 2023 McCarthy, The Rights of Publicity and Privacy
- Act against Unfair Competition (Gesetz gegen den unlauteren Wettbewerb – UWG). (n.d.). https://www.gesetze-im-internet.de/englisch_uwg/englisch_uwg.html
- AI Act enters into force. (2024, August 1). European Commission. https://commission.europa.eu/news/ai-act-enters-force-2024-08-01_en
- Akbar, M. U., Ibrahim, Nabil, S. J., Iqbal, K. A., & Islam, A. (2024). The Influence of Artificial Intelligence on Consumer Trust in E-Commerce: Opportunities and Ethical Challenges. *European Journal of Theoretical and Applied Sciences*, 2(6), 250-259. [https://doi.org/10.59324/ejtas.2024.2\(6\).20](https://doi.org/10.59324/ejtas.2024.2(6).20)
- Anthropic. (2025). Claude (May 27 version) [Large language model]. <https://claude.ai>
- Artforum. (2023, September 26). Artforum. Artforum. <https://www.artforum.com/news/1-1-million-settlement-for-artist-of-painted-over-mural-188206/>
- Artificial Intelligence Act: deal on comprehensive rules for trustworthy AI | News | European Parliament. (n.d.). <https://www.europarl.europa.eu/news/en/press-room/20231206IPR15699/artificial-intelligence-act-deal-on-comprehensive-rules-for-trustworthy-ai>
- Babikian, John. (2024). Balancing Acts: Ethics, Regulation, and Accountability in AI Law and Policy. *bait and switch*. (2025). In Merriam-Webster Dictionary. <https://www.merriam-webster.com/dictionary/bait%20and%20switch>
- Balasubramaniam, N., Kauppinen, M., Rannisto, A., Hiekkänen, K., & Kujala, S. (2023). Transparency and explainability of AI systems: From ethical guidelines to requirements. *Information and Software Technology*, 159, 107197. <https://www.sciencedirect.com/science/article/pii/S0950584923000514>
- Benlian, A., Pfeiffer, J., Jussupow, E., Thiebes, S., & Maedche, A. (2024). High-risk artificial intelligence. *Business & Information Systems Engineering*, 66(2), 123–127. <https://doi.org/10.1007/s12599-025-00942-6>
- Bodenhause, G. H. C. (1968). Guide to the application of the Paris Convention for the Protection of Industrial

Property, as revised at Stockholm in 1967. World Intellectual Property Organization. https://www.wipo.int/edocs/pubdocs/en/intproperty/611/wipo_pub_611.pdf

Casey, G. (2025, February 27). Maximizing efficiency and ROI in AI initiatives: A Guide to Cost Optimization - RSM Technology. RSM Technology. <https://technologyblog.rsmus.com/technologies/microsoft/maximizing-efficiency-and-roi-in-ai-initiatives-a-guide-to-cost-optimization/>

Communication, S. (2024, October 14). How AI is transforming marketing - News - Missouri State University. News. <https://news.missouristate.edu/2024/10/03/how-ai-is-transforming-marketing/>

Competition and Markets Authority. (2025, April 30). GOV.UK. <https://www.gov.uk/government/organisations/competition-and-markets-authority>

Cooper, D., Van Quathem, K., Oberschelp de Meneses, A., & Bertrand, A. (2025, April 15). Digital Fairness Act Series – Topic 1: Influencer Marketing. Inside Privacy. <https://www.insideprivacy.com/consumer-protection/digital-fairness-act-series-topic-1-influencer-marketing/>

Court of Justice of the European Union | European Union. (n.d.). European Union. https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/court-justice-european-union-cjeu_en

Crawford, S. (2025, May 8). Deceptive Advertising: Selling snake oil in the digital Age - 2025. Inkbot Design. <https://inkbotdesign.com/deceptive-advertising/>

Della Concorrenza E Del Mercato, A. G. (n.d.). AGCM - Sanzione di oltre 1 milione alle società riconducibili a Chiara Ferragni e di 420 mila euro a Balocco per pratica commerciale scorretta. (C) AGCM - Autorita' Garante Della Concorrenza E Del Mercato. <https://agcm.it/media/comunicati-stampa/2023/12/PS12506-->

Digital Fairness Act (DFA) | Updates. (n.d.). <https://www.digital-fairness-act.com/>

Dinwoodie, G. B., & Janis, M. D. (2008). Trademark and unfair competition law: Critical concepts in intellectual property law. Edward Elgar Publishing.

Directive - 2000/31 - EN - e-commerce directive - EUR-Lex. (n.d.). <https://eur-lex.europa.eu/eli/dir/2000/31/oj/eng>

Directive - 2005/29 - EN - EUR-LEX. (n.d.-b). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005L0029>

Directive - 2006/114 - EN - EUR-LEX. (n.d.-b). <https://eur-lex.europa.eu/eli/dir/2006/114/oj>

Directive 2000/31/EC <https://eur-lex.europa.eu/eli/dir/2000/31/oj/eng>

Directive 2011/83/EU <https://eur-lex.europa.eu/eli/dir/2011/83/oj/eng>

Duke, D. (2023, August 3). Council Post: The Ethical and Legal Considerations of Influencer Marketing and AI Photo-Editing Tools. Forbes. <https://www.forbes.com/councils/forbesbusinesscouncil/2023/08/03/considerations-of-influencer-marketing-and-ai-photo-editing-tools/>

Erica Santiago (2023, November 17). AI Influencer Marketing: How Artificial Intelligence Could Change Influencer Marketing <https://blog.hubspot.com/marketing/ai-influencer-marketing>

EUR-LEX - 62001CJ0206 - EN - EUR-LEX. (n.d.). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62001CJ0206>

Federal Trade Commission. (2025, February 6). Federal Trade Commission. <https://www.ftc.gov/>

Friel, A. L., & Jacobson, J. B. (2025, May 5). States shifting focus on AI and automated decision-making. The National Law Review. <https://natlawreview.com/article/states-shifting-focus-ai-and-automated-decision-making>
Front End vs. Back End Marketing? | Todd Brown. (n.d.). <https://toddbrown.me/front-end-vs-back-end-marketing/>

Frosio, G. (2021). From the E-Commerce Directive to the Digital Services Act [Working paper]. SSRN. <https://doi.org/10.2139/ssrn.3772864>

FTC guidelines for influencers: Everything you need to know in 2025 - InBeat Agency. (n.d.). inBeat Agency. <https://inbeat.agency/blog/ftc-guidelines-for-influencers>

Gates, E. (2025, May 8). How will AI affect the legal field? Revolutionizing the future of law. American Judicial System. <https://www.ajs.org/how-will-ai-affect-the-legal-field/>

Geddes, Katrina, Ocularcentrism and Deepfakes: Should Seeing Be Believing? (October 22, 2020). Fordham Intellectual Property, Media & Entertainment Law Journal, Forthcoming, Available at SSRN: <https://ssrn.com/abstract=3717287>

Ghidini, G. (2010). Innovation, competition and consumer welfare in intellectual property law / Gustavo Ghidini. Edward Elgar.

Ginsburg, J. C. (2008). Overlapping copyright and trademark protection in the United States. Columbia Law Review, 113(1), 1–56.

Guides concerning the use endorsements and testimonials in advertising. (2023, July 26). Federal Register. <https://www.federalregister.gov/documents/2023/07/26/2023-14795/guides-concerning-the-use-of-endorsements-and-testimonials-in-advertising>

Haithman, D. (2019, July 16). Artist Kent Twitchell settles suit over disappearing mural - Los Angeles Times. Los Angeles Times. <https://www.latimes.com/la-et-twitchell1-2008may01-story.html>

Handke, C. (2016). Intellectual property in creative industries: The economic perspective. In C. Waelde & A. Brown (Eds.), Research Handbook on Intellectual Property and Creative Industries (pp. 103–123). Edward Elgar Publishing.

Harper & Row v. Nation Enterprises, 471 U.S. 539 (1985)

Hristov, Kalin, Artificial Intelligence and the Copyright Dilemma (September 1, 2016). IDEA: The IP Law Review, Vol. 57, No. 3, 2017, Available at SSRN: <https://ssrn.com/abstract=2976428>

IAP. (2024, November 5). Regolamento Digital Chart - Regole influencer marketing. <https://www.iap.it/codice-e-altre-fonti/regolamenti-autodisciplinari/regolamento-digital-chart/>

IAP. (2025, April 30). IAP - Istituto Autodisciplina Pubblicitaria - Regole pubblicità corretta. <https://www.iap.it/>

- Il Sole 24 ORE. (2023, December 18). Le scuse di Chiara Ferragni “Un milione di euro al Regina Margherita” [Video]. YouTube. <https://www.youtube.com/watch?v=jB75zxE1Tg>
- Influencer Marketing Hub. (2025, February 7). What is an Influencer? – Social Media Influencers Defined [Updated 2024]. <https://influencermarketinghub.com/what-is-an-influencer/>
- Influencity. (2020). Influencity, the most complete influencer marketing platform in the market. Influencity. <https://influencity.com/blog/en/influencity-the-most-complete-influencer-marketing-platform-in-the-market>
- International Trademark Association (INTA). (2023). Recent developments in influencer marketing and unfair competition.. (2023). Recent developments in influencer marketing and unfair competition. <https://www.inta.org>
- Italian Republic. (2005). Consumer Code: Legislative Decree No. 206 of September 6, 2005. https://www.codicedelconsumo.it/Codice_del_consumo_english_version.pdf
- Jordan v. Jewel Food Stores, Inc., 743 F.3d 509, 7th Cir. 2014
- Kak, A. (2023, December 5). Make no mistake—AI is owned by Big Tech. MIT Technology Review. <https://www.technologyreview.com/2023/12/05/1084393/make-no-mistake-ai-is-owned-by-big-tech/>
- Kastenholz, C. (2024, April 3). Council Post: The role of AI in Influencer Marketing. Forbes. <https://www.forbes.com/councils/forbesagencycouncil/2024/04/03/the-role-of-ai-in-influencer-marketing/>
- Kerry, C. F. (2023, July 7). How privacy legislation can help address AI. Brookings. <https://www.brookings.edu/articles/how-privacy-legislation-can-help-address-ai/>
- Kotler, P., & Keller, K. L. (2016). Marketing management (15th ed.). Pearson.
- Koulu, R., & Kontiainen, L. E. (Eds.). (2019). How will AI shape the future of law? University of Helsinki Legal Tech Lab Publications. https://www.helsinki.fi/assets/drupal/2022-11/how_will_ai_shape_the_future_of_law_2.pdf
- Kumar, R., & Velasquez, M. (2024). The influence of artificial intelligence on consumer trust in e-commerce: Opportunities and ethical challenges. *European Journal of Theoretical and Applied Sciences*, 2(6), 250–259. [https://doi.org/10.59324/ejtas.2024.2\(6\).20](https://doi.org/10.59324/ejtas.2024.2(6).20)
- Lanham Act, 15 U.S.C. § 1125(a), 1946
- Lee, J. (2024, February 27). The future of marketing in the era of AI: 2025 outlook. OWDT. <https://owdt.com/article/the-future-of-marketing-in-the-era-of-ai/>
- Legislative Services Branch. (2024, December 15). Consolidated federal laws of Canada, Competition Act. <https://laws-lois.justice.gc.ca/eng/acts/c-34/>
- Lemaire, C., & Camus, A. (2025, April 9). Consumer Protection Laws and Regulations France 2025. International Comparative Legal Guides International Business Reports. <https://iclg.com/practice-areas/consumer-protection-laws-and-regulations/france>
- Leval, Pierre N. “Toward a Fair Use Standard.” *Harvard Law Review*, vol. 103, no. 5, 1990, pp. 1105–36. JSTOR, <https://doi.org/10.2307/1341457>. Accessed 22 May 2025.

Mathur, V. (n.d.). Covert Advertising - The new age form of Advertising | Analytics Steps. https://www.analyticssteps.com/blogs/covert-advertising-new-age-form-advertising#google_vignette

McGrath, K. (2018, February 13). 5 Pointz developer who whitewashed artists' murals forced to pay them \$6.7 million. Architectural Digest. <https://www.architecturaldigest.com/story/5-pointz-developer-who-whitewashed-artists-murals-forced-to-pay-them-67-million>

Merriam-Webster. False advertising. <https://www.merriam-webster.com/legal/false%20advertising>

MSN. (n.d.). <https://www.msn.com/en-us/news/technology/industry-leaders-urge-senate-to-protect-against-ai-deepfakes-with-no-fakes-act/ar-AA1Fetu7>

Ngu, T. (2025, March 23). AI influencer Marketing Success: Real-World Case Studies & Examples. Hashmeta. <https://hashmeta.com/blog/ai-influencer-marketing-success-real-world-case-studies-examples/>

Office, U. C. (n.d.-a). Copyright Law of the United States | U.S. Copyright Office. <https://www.copyright.gov/title17/>

Office, U. C. (n.d.). Fair Use (FAQ) | U.S. Copyright Office. <https://www.copyright.gov/help/faq/faq-fairuse.html>

Omeish, F., Shaheen, A., Alharthi, S., & Alfaiza, A. (2025). Between human and AI influencers: parasocial relationships, credibility, and social capital formation in a collectivist market: A study of TikTok users in the Middle East. *Discover Sustainability*, 6(1), 116. <https://doi.org/10.1007/s43621-025-00891-w>

Performance Marketing Association. (2025, January 15). Performance Marketing Association - the PMA. The PMA. <https://thepma.org/>

Pino, G. (2000). The right to personal identity in Italian private law: Constitutional interpretation and judge-made rights. In M. Van Hoecke & F. Ost (Eds.), *The harmonization of private law in Europe* (pp. 225–237). Hart Publishing.

Polley, C. (2024, October 23). What is 'ethics washing' (and how to spot it). The Sustainable Agency. <https://thesustainableagency.com/blog/what-is-ethics-washing-and-how-to-spot-it/>

Practice, A. S. a. |. C. O. A. (n.d.-b). Home. ASA | CAP. <https://www.asa.org.uk>

Raco, C. (2020). L'intelligenza artificiale irrompe nel mondo dell'arte: l'apertura di nuove frontiere giuridiche. *Legalità, Lavoro e Responsabilità*, 2, 48–62.

Regulation - 2019/1150 - EN - p2b regulation - EUR-Lex. (n.d.). <https://eur-lex.europa.eu/eli/reg/2019/1150/oj/eng>

Regulation - 2022/2065 - EN - DSA - EUR-LEX. (n.d.). <https://eur-lex.europa.eu/eli/reg/2022/2065/oj>

Regulation - EU - 2024/1689 - EN - EUR-LEX. (n.d.). <https://eur-lex.europa.eu/eli/reg/2024/1689/oj>

Right of Publicity. (2008, November 19). California - right of publicity. <https://rightofpublicity.com/statutes/california>

Right to privacy. (n.d.). LII / Legal Information Institute. https://www.law.cornell.edu/wex/right_to_privacy

Rothman, Jennifer E., *The Right of Publicity: Privacy Reimagined for a Public World (Introduction)* (May 7, 2018).

The Right of Publicity: Privacy Reimagined for a Public World, Harvard University Press, 2018, Loyola Law School, Los Angeles Legal Studies Research Paper No. 2018-23

Schilke, O., & Reimann, M. (2025). The transparency dilemma: How AI disclosure erodes trust. *Organizational Behavior and Human Decision Processes*, 188, 104405.

<https://www.sciencedirect.com/science/article/pii/S0749597825000172>

Schulz, W., & Held, T. (2021). Unfair commercial practices in the digital age: The role of deceptive marketing. *Journal of Consumer Policy*, 44(2), 179–199. L'Oréal and Johnson & Johnson

Shanfeld, E. (2023b, November 1). *Variety*. *Variety*. <https://variety.com/2023/digital/news/scarlett-johansson-legal-action-ai-app-ad-likeness-1235773489/>

StackInfluence. (2024). AI influencers: The future of marketing. StackInfluence. <https://stackinfluence.com/ai-influencers-the-future-of-marketing/>

Studies, S. (2022, February 24). Types of influencers explained: nano, micro, macro, and mega | Social studies. Social Studies. <https://socialstudies.io/articles/types-of-influencers-explained-nano-micro-macro-and-mega/>

Team, L. (2025, February 14). Can You Sue a Company for Lying About a Product? - LegalClarity. LegalClarity. <https://legalclarity.org/can-you-sue-a-company-for-lying-about-a-product/>

The Act texts | EU Artificial Intelligence Act. (n.d.). <https://artificialintelligenceact.eu/the-act/>

The Canadian Code online – Ad standards. (n.d.). <https://adstandards.ca/code/the-code-online/>

Thornton, R. (2025, March 21). The future of marketing with (human-centered) AI. Adobe. <https://business.adobe.com/blog/the-future-of-marketing-with-human-centered-ai>

U.S. Congress. (2024). H.R. 9551 – NO FAKES Act of 2024. <https://www.congress.gov/bill/118th-congress/house-bill/9551/text>

United States Patent and Trademark Office. (n.d.). Trademark statutes: 15 U.S.C. § 1125(a) – False designations of origin and false descriptions forbidden. U.S. Department of Commerce. Retrieved May 28, 2025, from https://www.uspto.gov/sites/default/files/trademarks/law/Trademark_Statutes.pdf

Vargo, S. L., & Lusch, R. F. (2004). Evolving to a new dominant logic for marketing. *Journal of Marketing*, 68(1), 1–17.

Velasco-Molpeceres, A., Miranda-Galbe, J., & Prieto-Muñiz, M. (2024). Influencers and reputation: Chiara Ferragni, Instagram and the Pandora Gate scandal. *Universitas*, 41, 123–148. <https://doi.org/10.17163/uni.n41.2024.05>

Weatherill, S. (2016). *EU Consumer Law and Policy* (2nd ed.). Edward Elgar Publishing.

Week, A. (2025, February 20). Building consumer trust in the age of AI. <https://advertisingweek.com/building-consumer-trust-in-the-age-of-ai/>

What is influencer marketing? (2023, April 10). McKinsey & Company. <https://www.mckinsey.com/featured-insights/mckinsey-explainers/what-is-influencer-marketing>

Yang, S. Alex and Zhang, Angela Huyue, Generative AI and Copyright: A Dynamic Perspective (February 4, 2024). Available at SSRN: <https://ssrn.com/abstract=4716233>

Zharovskikh, A. (2024, August 28). AI efficiency: Cost reduction with AI. InData Labs. <https://indatalabs.com/blog/ai-cost-reduction>

Zuboff, S. (2019). The age of surveillance capitalism: The fight for a human future at the new frontier of power. PublicAffairs.

ABC News. (n.d.). David Beckham “speaks” nine languages for malaria campaign [Video]. ABC News. <https://abcnews.go.com/International/video/david-beckham-speaks-languages-malaria-campaign-62271357>

Adee, S. (2024, March 8). What are deepfakes and how are they created? IEEE Spectrum. <https://spectrum.ieee.org/what-is-deepfake>

Admin, I. W. (2020, October 8). Unfair Competition Committee: Recent developments in influencer marketing and unfair Competition - International Trademark Association. International Trademark Association. <https://www.inta.org/news-and-press/inta-news/unfair-competition-committee-recent-developments-in-influencer-marketing-and-unfair-competition/>

American Marketing Association. (2025, May 9). What is Marketing? — The Definition of Marketing — AMA. <https://www.ama.org/the-definition-of-marketing-what-is-marketing/>

Board of Governors of the Federal Reserve System. (2004). Federal Trade Commission Act Section 5: Unfair or Deceptive Acts or Practices. Retrieved from <https://www.federalreserve.gov/boarddocs/supmanual/coh/ftca.pdf>

California Civil Code section 3344 (2025). (n.d.). California.Public.Law. https://california.public.law/codes/ca_civ_code_section_3344

Chatterjee, M. (2024, May 21). Scarlett Johansson crashes a stuck Washington debate on AI. Politico. <https://www.politico.com/news/2024/05/21/scarlett-johansson-washington-ai-debate-00159230>

Codice della proprietà industriale (decreto legislativo 10 febbraio 2005, n. 30, aggiornata con le modifiche introdotte dalla legge 24 luglio 2023, n. 102)

Copyright Alliance. (2024, August 5). Fair Use Exception to copyright | Copyright Alliance. <https://copyrightalliance.org/education/copyright-law-explained/limitations-on-a-copyright-owners-rights/fair-use-exceptions-copyright/>

Decripto. (2023, December 15). Chiara Ferragni multata dall'Antitrust, il Codacons: "Denunciamo per truffa aggravata".. <https://decripto.org/chiara-ferragni-multata-dallantitrust-il-codacons-denunciamo-per-truffa-aggravata/>

Deepfake porn nearly ruined my life. (2020, February 6). ELLE. <https://www.elle.com/uk/life-and-culture/a30748079/deepfake-porn/>

Djajapranata, C. (2024, June 4). OpenAI v. Scarlett Johansson? Law Professor Answers Legal Questions on AI-Generated Content - Georgetown University. Georgetown University. <https://www.georgetown.edu/news/ask-a-professor-openai-v-scarlett-johansson/>

Everyday, V. (2018, May 6). 30 outrageous vintage cigarette ads claimed that “More doctors smoke camels than

any other cigarette” | Vintage News Daily. Vintage News Daily. <https://vintagenewsdaily.com/30-outrageous-vintage-cigarette-ads-claimed-that-more-doctors-smoke-camels-than-any-other-cigarette/>

Federal Deposit Insurance Corporation. (2024, December). VII. Unfair, Deceptive, and Abusive Practices – Federal Trade Commission Act/Dodd-Frank Act. In Consumer Compliance Examination Manual (pp. VII–1.1–VII–1.10). <https://www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/documents/7/vii-1-1.pdf>

Federal Trade Commission. (1983, October 14). FTC policy statement on deception. https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf

First Amendment. (n.d.). LII / Legal Information Institute. https://www.law.cornell.edu/constitution/first_amendment

Guerra tra Plasmon e Barilla per pubblicità. (n.d.). Corriere Della Sera. https://www.corriere.it/salute/11_dicembre_01/plasmon-barilla-guerra_c9791d6a-1c04-11e1-8ed7-30f7808a816f.shtml

Harwell, D. (2018, December 31). Scarlett Johansson on fake AI-generated sex videos: ‘Nothing can stop someone from cutting and pasting my image.’ The Washington Post. <https://www.washingtonpost.com/technology/2018/12/31/scarlett-johansson-fake-ai-generated-sex-videos-nothing-can-stop-someone-cutting-pasting-my-image/>

Health claims. (2025, March 11). Federal Trade Commission. <https://www.ftc.gov/news-events/topics/truth-advertising/health-claims>

Hobbs, J. (2023, November 2). Scarlett Johansson takes legal action against AI app ripping off her likeness. New York Post. <https://nypost.com/2023/11/02/entertainment/scarlett-johansson-takes-legal-action-against-ai-app-ripping-off-her-likeness/>

Homepage | U.S District Court. (n.d.). <https://www.nysd.uscourts.gov/>

In final court summary, FTC reports Volkswagen repaid more than \$9.5 billion to car buyers who were deceived by “Clean Diesel” ad campaign. (2025, March 5). Federal Trade Commission. <https://www.ftc.gov/news-events/news/press-releases/2020/07/final-court-summary-ftc-reports-volkswagen-repaid-more-95-billion-car-buyers-who-were-deceived-clean>

Jamesju. (2025, May 16). AI and Law: 2025 guide for legal professionals. Thomson Reuters Law Blog. <https://legal.thomsonreuters.com/blog/ai-and-law-major-impacts/>

Lucarelli, S. (2022, December 14). Il pandoro benefico di Chiara Ferragni è soltanto marketing e non beneficenza. Domani. <https://www.editorialedomani.it/politica/italia/il-pandoro-benefico-di-chiara-ferragni-e-soltanto-marketing-e-non-beneficenza-cngbwjdn>

Lucky Strike Cigarettes Advertisement 20,679 physicians Luckies less irritating | #4562565290. (n.d.). Worthpoint. <https://www.worthpoint.com/worthopedia/lucky-strike-cigarettes-advertisement-4562565290>

Martin Senftleben. Protection against unfair competition in the European Union: from divergent national approaches to harmonized rules on search result rankings, influencers and greenwashing.

Martini, E. (2022, June 13). Il Tribunale di Milano conferma: la pubblicità comparativa di Plasmon vs Barilla era

illecita — Martini Manna & Partners. Martini Manna & Partners. <https://www.martinimanna.it/blog/il-tribunale-di-milano-conferma-la-pubblicita-comparativa-di-plasmon-vs-barilla-era-illecita>

Ore, I. S. 2. (2018, April 27). Vodafone, multa Antitrust da 4,6 milioni per pubblicità ingannevole. Il Sole 24 ORE. <https://www.ilssole24ore.com/art/vodafone-multa-antitrust-46-milioni-pubblicita-ingannevole-AEdDSpfE>

Philadelphia Volunteer Lawyers for the Arts. (2008). The Visual Artists Rights Act of 1990. Arts & Business Council of Greater Philadelphia. https://www.cabq.gov/artsculture/public-art/documents/visualartistsrightsact_philadelphiavolunteerlawyersarts.pdf

Rothman, R. C. P. & J. E. (n.d.). The First Amendment and the Right(s) of Publicity. <https://www.yalelawjournal.org/article/the-first-amendment-and-the-rights-of-publicity>

Shanfeld, E. (2023, November 1). Variety. Variety. <https://variety.com/2023/digital/news/scarlett-johansson-legal-action-ai-app-ad-likeness-1235773489/>

Shaw Family Archives Ltd. v. CMG Worldwide, Inc., 486 F. Supp. 2d 309 (S.D.N.Y. 2007).

Theadcompare. (2025, March 6). 5 misleading advertising examples in 2025. TheAdCompare. <https://theadcompare.com/advertising/misleading-advertising/>

Title I: Dignity. (n.d.). European Union Agency for Fundamental Rights. <https://fra.europa.eu/en/eu-charter/title/title-i-dignity>

Top Class Actions. (2013, October 4). Galaxy S4 class action lawsuit says Samsung rigged speed tests. Top Class Actions. <https://topclassactions.com/lawsuit-settlements/lawsuit-news/galaxy-s4-class-action-lawsuit-says-samsung-rigged-speed-tests/>

United States Copyright Office. (2024, December 23). Copyright law of the United States and related laws contained in Title 17 of the United States Code (Circular 92). <https://www.copyright.gov/title17/title17.pdf>

United States Court of Appeals for the Seventh Circuit. (2014, February 19). Michael Jordan v. Jewel Food Stores, Inc., et al., No. 12-1992. <https://righttopublicity.com/pdf/cases/jordanVJewel.pdf>

United States Court of Appeals for the Seventh Circuit. (n.d.). <https://www.ca7.uscourts.gov/>

United States Patent and Trademark Office. (2013, November 25). U.S. Trademark Law: Federal Statutes. https://www.uspto.gov/sites/default/files/trademarks/law/Trademark_Statutes.pdf

United States. (2005, October). U.S. Trademarks Law, 15 U.S.C. §§ 1051 et seq. World Intellectual Property Organization. <https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/us/us177en.pdf>

VanBockel, T. (2024, September 27). Deceptive pricing: legal risks and how to avoid them. Attorney Aaron Hall. <https://aaronhall.com/deceptive-pricing-legal-risks-and-how-to-avoid-them/>

Vecchi, G. (2021, December 5). Due casi recenti di pubblicità comparativa. MediaLaws. <https://www.medialaws.eu/due-casi-recenti-di-pubblicita-comparativa/>

Veltman, C. (2023, April 21). When you realize your favorite new song was written and performed by . . . AI. NPR. <https://www.npr.org/2023/04/21/1171032649/ai-music-heart-on-my-sleeve-drake-the-weeknd>

Vondran, S. (2016, June 27). Do I have a claim for false advertising under the federal Lanham Act? Vondran Legal. <https://www.vondranlegal.com/federal-lanham-act-law-firm>

Wooding, V., Esq. (2024, July 18). Moral rights: author rights, international variations. Counsel Stack Learn. <https://blog.counselstack.com/moral-rights-author-rights-international-variations/>

Wright, W. (2023, March 24). Coke launches 'Create Real Magic' AI art contest using GPT-4 and Dall-E 2. The Drum. <https://www.thedrum.com/news/2023/03/20/coke-launches-create-real-magic-ai-art-contest-using-gpt-4-and-dall-e>