DELEGATED PERSUASION: AGENCY THEORY AND INFLUENCER LIABILITY IN INDIA

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ABSTRACT

Influencer marketing has become one of the most commercially significant forms of advertising in India, and one of the least legally resolved. Creators promote products across sectors skincare, health supplements, financial services, betting platforms in a format that looks personal but functions as paid commercial communication. India has regulatory instruments to address this: the Consumer Protection Act, 2019, the Central Consumer Protection Authority's endorsement guidelines, and the Advertising Standards Council of India's influencer advertising standards. What these instruments have not adequately resolved is who bears legal responsibility when a jointly produced, brand-funded endorsement turns out to be misleading. This paper argues that agency principles, applied functionally to the Indian regulatory context, provide a more coherent basis for answering that question than disclosure-based rules alone. It develops the concept of delegated commercial persuasion to explain the influencer-brand relationship, analyses the relevant provisions of the Indian Contract Act, 1872, and draws on ASCI's Half-Yearly Complaints Report 2025–26 to show that the current framework has not produced meaningful compliance. The paper concludes that a disclosure failure and a misleading representation are analytically distinct harms, and that Indian law already has the tools to treat them as such what is needed is the will to use them.

Keywords: influencer marketing, agency theory, consumer protection, disclosure, liability, ASCI, CCPA, misleading advertisements

I. Introduction

Indian consumers encounter hundreds of sponsored posts a day. Most of them do not know that's what they are looking at. An influencer recommends a supplement, a trading platform, a skincare serum and because the recommendation comes from someone the viewer follows and trusts, it lands differently than a banner ad ever could. That gap between the appearance of personal advice and the reality of paid commercial promotion is where the legal problem begins.

Consumer protection law has long recognised that a misleading communication is not just one that states something false. It includes communications that create a false impression through framing, omission, or context. When an influencer posts without disclosure, the commercial character of the message is hidden. The viewer cannot assess the recommendation the way she would a conventional advertisement. In high-risk categories like health products, financial services, and betting platforms, acting on that recommendation can cause real harm.[1]

What follows asks a question that existing regulation has left largely unanswered: when that harm occurs, who is legally responsible? The influencer who published the post? The brand that funded and directed it? Or both, and if so, on what basis? Disclosure rules tell us what must be revealed. They say nothing about accountability when revelation fails. That is the gap this paper is concerned with, and agency principles are the doctrinal resource it turns to in order to fill it.

II. Research Question

This paper seeks to answer whether disclosure-based regulation is sufficient to allocate liability in influencer marketing and whether agency-law principles provide a more coherent framework for accountability. The thesis is that disclosure identifies sponsorship, but agency theory explains responsibility. While disclosure remains necessary, it is insufficient to resolve questions of liability when misleading endorsements are jointly created and monetised by brands and influencers.

[1] Catalina Goanta and Sofia Ranchordás (eds), *The Regulation of Social Media Influencers* (Edward Elgar 2020) 1–20.

III. Methodology

This paper adopts a doctrinal research methodology. It examines the Consumer Protection Act, 2019, the Central Consumer Protection Authority's Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022, ASCI's influencer advertising guidelines, judicial observations, regulatory reports, and selected case studies from India. Limited comparative reference is made to the United States Federal Trade Commission's endorsement framework and the United Kingdom's Advertising Standards Authority code, only to clarify the Indian liability problem and not to propose transplanting either foreign model wholesale.

IV. Scope of Study

This paper focuses on liability arising from misleading endorsements and sponsored influencer content. It does not attempt to address all legal issues associated with influencer marketing, such as taxation, intellectual property disputes, or data privacy concerns. The analysis is confined to consumer protection, disclosure obligations, and the allocation of responsibility between brands and influencers, which are the issues most directly implicated by misleading endorsements.

V. Literature Review

The regulatory conversation around influencer marketing has been dominated by one question: is it disclosed? Across consumer law, marketing ethics, and digital advertising scholarship, the primary measure of compliance has been whether a sponsored post carries an adequate label.[2] This framing has real practical advantages disclosure requirements are easy to draft, easy to monitor, and easy to communicate to regulated actors. But focusing on the label has come at the cost of a harder question, which is whether anyone is actually accountable when the label is missing or the claim behind it is false. Disclosure emerged as the dominant regulatory response largely because it is easier to implement and enforce than substantive liability allocation. That practical convenience has shaped the field more than its conceptual adequacy warrants.

[2]Goanta and Ranchordás (eds) (n 1), providing a comparative survey of disclosure-based regulatory approaches across the European Union, the United States, and Asian jurisdictions.

Duffy and Hund's work on the commercial architecture of influencer culture makes this problem visible. Their analysis shows that the performance of authenticity is not incidental to influencer marketing it is the whole point.[3] Platforms and brands invest in making sponsored content look spontaneous and personal, which means the persuasive effect of the "personal recommendation" format survives a disclosure label far better than regulators tend to assume. Goanta and Ranchordás make a related observation: transparency requirements in influencer markets address the surface of the problem, but leave open what happens when those requirements are breached and harm results.[4] That question of consequence rather than compliance is where this paper begins.

On the empirical side, Boerman, Willemsen, and Van Der Aa studied the effect of sponsorship disclosures on persuasion knowledge in the Facebook context. Their finding was sobering: consumers struggle to activate scepticism even when a disclosure is present, and the more closely the commercial message is integrated into the creator's personal style, the weaker the disclosure effect becomes.[5] Wojdynski and Evans reached a similar conclusion in their study of native advertising formats, demonstrating that lower disclosure recognition is a structural feature of these formats, not a function of label quality.[6] The implication is that the problem is not solved by better labels. It runs deeper than that.

While existing scholarship has explored influencer-brand relationships through agency concepts, and questions of shared accountability and intermediary responsibility have received attention in other contexts, the application of agency principles as a doctrinal framework for allocating liability in the Indian influencer-marketing context remains underdeveloped. The legal question is not only whether sponsorship is visible to the consumer. It is whether, when sponsorship exists and misleading content is published, Indian law can identify the responsible party and hold them to account.

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[3]Brooke Erin Duffy and Emily Hund, '"Having It All" on Social Media: Entrepreneurial Femininity and Self-Branding Among Fashion Bloggers' (2015) 1 *Social Media and Society* 1, 11.

[4]Goanta and Ranchordás (eds) (n 1) 1–20.

[5]Sophie C Boerman, Lotte M Willemsen and Eva P Van Der Aa, '"This Post Is Sponsored": Effects of Sponsorship Disclosure on Persuasion Knowledge and Electronic Word of Mouth in the Context of Facebook' (2017) 38 *Journal of Interactive Marketing* 82, 89.

[6]Bartosz W Wojdynski and Nathaniel J Evans, 'Going Native: Effects of Disclosure Position and Language on the Recognition and Evaluation of Online Native Advertising' (2016) 45(2) *Journal of Advertising* 157, 165.

VI. Conceptual Framework: Delegated Persuasion

The term "delegated commercial persuasion" is used in this paper to capture something specific about how influencer marketing works. Brands do not simply pay for exposure. They commission a particular kind of communication one that reaches audiences through a trusted personal voice rather than through an identifiable corporate channel. The influencer provides the voice, the audience, and the sense of personal endorsement. The brand provides the message, the money, and the commercial objective behind both.

What makes this arrangement legally significant is the gap it creates for consumers. A viewer who encounters a brand advertisement knows, before she reads a word, that she is looking at advertising. A viewer who encounters an influencer's post does not necessarily know this. She may treat the recommendation as the influencer's genuine opinion. That impression of personal, unmediated advice is not a side effect of the format. It is what the brand is paying for. The commercial value of the arrangement depends entirely on the consumer not perceiving it as advertising.

This is why disclosure alone falls short. A label at the top of a post may technically satisfy a regulatory requirement. But it does not change who controlled the message, who stood to benefit from the consumer's reliance on it, or who should bear legal responsibility when the message was misleading. Those questions require a different framework. Agency principles, adapted to the Indian regulatory context, provide one.

VII. The Indian Legal Framework

A. Consumer Protection Act, 2019

The Consumer Protection Act, 2019 is the principal statute governing misleading advertisements in India. Section 2(28) defines a misleading advertisement broadly it covers not only statements that are literally false but any advertisement likely to mislead consumers about the nature, characteristics, or quality of a product, or that amounts to an unfair trade practice.[7] Section 21 extends enforcement authority to endorsers. Under section 21(3), an endorser who makes a false or misleading statement about a product attracts direct liability.[8]

[7] Consumer Protection Act 2019 (Act 35 of 2019), s 2(28).
[8] Consumer Protection Act 2019 (Act 35 of 2019), s 21(3).

The provision does not require proof that the endorser knew the statement was false. Where specific positive claims are made about efficacy, safety, or results the endorser is treated as personally responsible for them.

The penalty regime is notable. Section 21 allows the CCPA to impose fines of up to ten lakh rupees for a first contravention by an endorser, rising to fifty lakh rupees for subsequent contraventions.[9] An endorser may also be prohibited from making any endorsement for up to three years. These are serious consequences on paper. The persistent gap between what the statute permits and what enforcement has actually produced is part of what makes the accountability problem this paper identifies so difficult to dismiss as a mere regulatory technicality.

B. CCPA Guidelines, 2022

In 2022, the CCPA issued guidelines specifically targeting misleading advertisements and endorsements across all media, including digital and social media.[10] The guidelines require endorsers to have genuinely used or experienced the products they promote, to express honest opinions rather than scripted brand messaging, and to disclose any material connection with the advertiser. An endorsement that overstates results, repeats brand claims the endorser has no basis to verify, or omits the commercial relationship is treated as misleading under this framework. Importantly, this closes much of the space that influencers might otherwise occupy by pleading ignorance about what they were saying on a brand's behalf.

C. ASCI Influencer Advertising Guidelines, 2021

The Advertising Standards Council of India has its own detailed framework for influencer advertising, issued in 2021 and updated since.[11] Under these guidelines, sponsored content must carry a disclosure label that is prominent, placed at the beginning of the content, and unambiguous. Labels like "Paid Partnership" or "Ad" are acceptable; phrases like "Thanks to [Brand]" buried in a long caption are not. The guidelines draw a sensible distinction between content that a brand has commissioned and directed, and content that merely mentions a

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[9]Consumer Protection Act 2019 (Act 35 of 2019), ss 21(5) and 21(6).

[10]Central Consumer Protection Authority, *Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022* (Ministry of Consumer Affairs, Food and Public Distribution, 2022) (hereinafter 'CCPA Guidelines 2022').

[11]Advertising Standards Council of India, *Guidelines for Influencer Advertising in Digital Media* (ASCI, 2021, as updated), available at <www.ascionline.in> accessed September 2025.

product without any commercial relationship.

ASCI's guidelines go further in practical specificity than either the CPA or the CCPA framework. That granularity matters, but it comes with a structural constraint: ASCI has no power to fine. It can require modification or withdrawal of content, and it can refer non-compliant cases to government bodies, but the financial deterrent that might change the underlying cost-benefit calculation for brands and influencers is not available to it. This is not a minor gap. It is one of the reasons compliance rates remain poor despite a framework that, on paper, covers the relevant conduct comprehensively.

VIII. Why Agency Theory Matters

Consumer protection law tells us that a misleading advertisement is actionable. Tort law may provide a basis for damages where harm results. What neither framework addresses cleanly is the allocation question where, between a brand that funds and directs a campaign and an influencer who executes and publishes it, does legal responsibility sit? Agency theory is useful here because it is built around exactly that question. It focuses on relationships of authorisation, control, and benefit, and it provides a principled basis for distributing responsibility among actors who have jointly participated in a commercial act. Liability should, on this view, be proportionate to the degree of participation in creating the misleading representation.

The conceptual distinction that matters here is between disclosure and liability. Disclosure is an informational requirement. It tells the consumer that a commercial relationship exists. Liability is an accountability mechanism. It tells the law who answers when that relationship produces harm. A regulatory system that has the first without the second will always struggle with the kind of structural non-compliance ASCI's data reveals because without credible liability, the incentive to comply with disclosure requirements in the first place is weakened.

Agency principles also offer something practically workable. Rather than requiring courts or regulators to decode private contractual arrangements, the framework asks observable questions: who controlled the content, who paid for it, who benefited from the consumer's reliance on it, and what impression did the post create? These questions can be answered from the face of the campaign. That makes agency theory not just doctrinally appropriate but regulatorily useful.

IX. Agency Analysis Under the Indian Contract Act, 1872

A. The Statutory Framework

The Indian Contract Act, 1872 provides the foundational framework for agency relationships in Indian law. Section 182 defines an agent as a person employed to do any act for another, or to represent another in dealings with third persons, with the person on whose behalf the act is done being the principal.[12] Section 186 confirms that the authority of an agent may be express or implied, with implied authority arising from the circumstances of the case.[13] These provisions do not require a formal written contract designating someone as "agent" before an agency relationship can be recognised. What matters is the substance of the arrangement and the degree of control and representation actually involved.

Section 237 is the most significant provision for influencer marketing. It provides that where a person has by words or conduct induced a third party to believe that another has authority to act on their behalf, the principal is bound by acts done within the scope of that apparent authority.[14] A brand that provides a campaign brief, supplies products for review, approves content before publication, and compensates a creator on a performance basis creates conditions in which a consumer may reasonably believe the influencer speaks with the brand's authorisation. The contract between them may not use the word "agency," but the consumer-facing effect is analytically similar to apparent authority and may carry equivalent legal consequence.

Section 196 provides that where a person ratifies an act purportedly done on their behalf but without prior authority, the ratification is equivalent to original authority.[15] Where a brand knowingly adopts influencer-generated content, reposts it on its own channels, or incorporates it into a paid media campaign, that adoption amounts to functional ratification. Having reaped the commercial benefit of the content, the brand cannot credibly claim that the influencer's representations were entirely independent of it.

[12]Indian Contract Act 1872 (Act 9 of 1872), s 182.
[13]Indian Contract Act 1872 (Act 9 of 1872), s 186.
[14]Indian Contract Act 1872 (Act 9 of 1872), s 237; see also Pollock and Mulla, *The Indian Contract and Specific Relief Acts* (15th edn, LexisNexis 2021) 870–875.
[15]Indian Contract Act 1872 (Act 9 of 1872), s 196.

B. Functional Liability Allocation

Agency theory does not require every influencer to be classified as a formal legal agent. Rather, it provides a functional framework for allocating responsibility where commercial persuasion is jointly created, controlled, and monetised by multiple actors. The relevance of agency theory therefore lies not in formal classification, but in its ability to explain how liability should be distributed when misleading endorsements cause consumer harm. It bears emphasis that influencer relationships differ significantly in their contractual structure and commercial control: the degree of brand direction, the extent of content approval, and the nature of compensation all vary. Liability should be assessed accordingly, and proportionate to actual participation in creating the misleading representation.[16]

That assessment should follow three factors: control, benefit, and consumer-facing representation. On control: where a brand has provided detailed content direction specifying claims to be made, products to be shown, language to be used it has exercised enough control over the message to share in the legal consequences of a misleading one. The influencer who executes that brief may also bear responsibility. But the brand cannot escape liability by pointing to the influencer as the publisher.

On benefit: the commercial gains of the endorsement flow primarily to the brand. The influencer receives payment, but the downstream consumer conversion and market uptake are brand outcomes. Where benefit is structured around a commercial result for the brand, legal responsibility cannot fairly be confined to the person who delivered the message.

On consumer-facing representation: a consumer who relies on an influencer's recommendation because the influencer appears expert or credible in the relevant category is relying on a representation the brand has actively helped build. That credibility is a commercial asset the brand exploits deliberately. Responsibility for what is said through it cannot simply be delegated away.

X. Why Disclosure Is Insufficient

The case for disclosure regulation starts from a reasonable premise: if consumers know a post is sponsored, they can factor that into how much weight they give it. For a careful adult

[16] Avatar Singh, *Law of Contract and Specific Relief* (12th edn, Eastern Book Company 2017) 622–628.

purchasing something low-stakes in a category she knows well, this may be true.[17] For a consumer encountering a health claim, a financial product, or a betting platform promotion, the premise holds less reliably. Vulnerability, unfamiliarity, and the specific format of influencer content personal, conversational, often delivered mid-story all reduce the practical effect of a disclosure label, even when the label is technically present.

There is also a more fundamental issue. A disclosure failure and a misleading representation are analytically distinct harms. The first deprives the consumer of information about the commercial relationship behind the content. The second causes the consumer to act on a false or unsubstantiated claim. Disclosure rules address the first. They do not touch the second.[18] A post that says “#ad” while claiming a supplement cures a medical condition is technically disclosed but still misleading. The consumer who read the post and bought the product was not harmed because she didn’t know it was sponsored. She was harmed because she believed something that wasn’t true. No label changes that.

So who answers for it? That is the question disclosure rules leave open. If the brand wrote the claim and the influencer repeated it, responsibility belongs to both but on what legal basis, and in what proportion? Disclosure rules have nothing to say. Agency principles do, which is why they are the more useful tool for this part of the problem.

XI. Consumer Risk and the Accountability Gap

Fragmented responsibility produces weak deterrence. When a brand can point to the influencer as an independent contractor, and the influencer can point to the brand brief as the source of the problematic claim, neither actor has full ownership of the misleading message. That diffusion is not an accident it is a predictable feature of how influencer-brand relationships are structured, and it has real consequences for enforcement.

A misleading post reaches consumers before any regulator can intervene. By the time a complaint is processed, the post may have been taken down, the brand may have issued a clarification, and the consumer who made a purchase decision based on what she read has no practical recourse. Clearer liability allocation holding the brand, the influencer, or both

[17] CCPA Guidelines 2022 (n 10), para 7.

[18] Consumer Protection Act 2019 (Act 35 of 2019), s 2(28). The statutory definition of misleading advertisement covers the overall impression created by a communication, not merely the technical accuracy of individual statements within it.

accountable based on who controlled the content and who benefited from its circulation changes the incentive structure before the post goes live, not after.

When responsibility is diffuse, no one takes full ownership of the accuracy of the commercial message. The brand assumes the influencer will handle the disclosure. The influencer assumes the brand has substantiated the claims. The consumer bears the cost of both assumptions being wrong.

XII. Empirical Indicators of Systemic Non-Compliance

The empirical foundation for this paper's argument is ASCI's Half-Yearly Complaints Report 2025–26, covering April to September 2025.[19] ASCI reviewed 6,841 complaints and investigated 6,117 advertisements, with 98 per cent of processed advertisements requiring modification or withdrawal. Digital media accounted for 97.24 per cent of all violations, with Meta platforms alone accounting for nearly 79 per cent of digital violations. Ninety-three per cent of violations were identified through proactive monitoring rather than consumer complaint, which demonstrates that the violations are visible and detectable at scale, not confined to obscure or niche content.

Of the 1,173 influencer advertisements investigated, 98 per cent required modification, and 59 per cent involved products disallowed by law. Offshore and illegal betting constituted the largest single category of violation, with 4,578 betting cases identified. Of those, 4,575 were escalated to the Ministry of Information and Broadcasting, the Indian Cybercrime Coordination Centre, and the Directorate General of GST Intelligence.[20] Of the total betting cases, 683 involved sponsored influencer promotions. In the personal care category, which recorded the highest number of misleading advertisements overall, 53 per cent of violations involved influencer non-disclosure, with skin care accounting for 66 per cent of those violations.

The most striking finding concerns ASCI's dipstick study of the Forbes India Top 100 Digital Stars 2024, who collectively command a following of over 110 million. Examining posts across Instagram, Facebook, and YouTube between March and July 2025, the study found that 76 per

[19] Advertising Standards Council of India, *Half-Yearly Complaints Report 2025–26: April to September 2025* (ASCI, 2025) (hereinafter 'ASCI Half-Yearly Report 2025–26'), available at <www.ascionline.in> accessed November 2025.

[20] ASCI Half-Yearly Report 2025–26 (n 19). Cases were escalated to the Ministry of Information and Broadcasting, the Indian Cybercrime Coordination Centre (I4C), and the Directorate General of GST Intelligence (DGGI).

cent of these top influencers failed to meet disclosure norms, up from 69 per cent the previous year.[21] Of those cases, 65.8 per cent involved no disclosure at all, 19.7 per cent involved incorrect disclosure, and 14.5 per cent involved disclosure buried in a manner unlikely to be noticed. Post-investigation compliance improved to 97 per cent, but the pattern of correcting course only after intervention, rather than in anticipation of it, is precisely what a reactive, disclosure-only framework produces.

The persistence of a 98 per cent modification rate across multiple reporting periods, despite years of public disclosure guidance and a well-publicised regulatory framework, raises a question the data alone cannot answer but strongly suggests: why does systematic non-compliance continue? One explanation is strategic non-compliance. Where the commercial benefits of an inadequately disclosed or misleading endorsement significantly outweigh the expected costs of enforcement, rational actors may choose to violate regulatory norms. The figures from the 2025–26 report are consistent with this inference. The fact that post-investigation compliance improved to 97 per cent indicates that the regulated actors are capable of compliance; the fact that they do not comply in advance of investigation indicates that enforcement pressure, not internalised obligation, is the operative incentive. A disclosure-only framework cannot solve this, because it does not alter the underlying cost-benefit calculus. What is needed is a liability framework that makes accountability credible and pre-emptive rather than corrective and slow.

XIII. Case Studies

A. Betting Promotions

Offshore and illegal betting promotions represent the clearest case for why the liability allocation problem matters independently of disclosure. ASCI's 2025–26 report identifies betting as the most violative category, with 683 of the 1,173 influencer advertisements processed falling in this sector.[22] The legal problem in these cases goes beyond a failure to label. Offshore betting platforms operate in violation of Indian law, and influencer promotion of such platforms represents participation in an illegal commercial scheme regardless of whether the post carries a disclosure label. A consumer who sees "#ad" on a post promoting an

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[21] ASCI Half-Yearly Report 2025–26 (n 19). The dipstick study covered the Forbes India Top 100 Digital Stars 2024, examining posts on Instagram, Facebook, and YouTube published between March and July 2025.
[22] ASCI Half-Yearly Report 2025–26 (n 19).

illegal betting platform is not meaningfully protected by that label.

The question of who bears responsibility here is acute. The offshore platform directing the promotion is typically outside Indian jurisdiction. The influencer who posts the content is within jurisdiction and has delivered an illegal commercial message to a domestic audience. A disclosure-only framework cannot address this because the harm is not primarily informational. The consumer does not need more information about the commercial nature of the post. She needs the law to hold the person who made the promotion accountable and to deter such promotions prospectively. That is a liability function, not a disclosure function, and it requires an accountability framework rather than a labelling rule.

B. Patanjali and the Endorser Responsibility Question

The proceedings arising from *Indian Medical Association v Union of India* are the most significant domestic precedent for the proposition that those who participate in health-related promotion cannot claim full insulation from liability for the claims they amplify.[23] The Supreme Court's intervention in matters concerning Patanjali Ayurved's misleading health advertisements, including contempt proceedings against its promoters in 2024, signals a judicial willingness to look through the commercial structure of a promotion and assess the responsibility of those who participated in communicating a misleading message. The Court's concern was with the public health impact of claims that suggested curative or medically significant effects without scientific substantiation, a concern that applies with equal force to influencer content making similar claims in health and wellness categories.

The Patanjali matter also illustrates the ratification principle discussed in Part IX above. Where a brand's principals and promoters have repeatedly and publicly endorsed the brand's claims, participated in advertising campaigns, and built their public presence around the brand's messaging, they cannot subsequently disown those claims when the claims are found to be misleading. The same logic applies to brands that adopt influencer-generated content on their own channels: having ratified the content through adoption and commercial use, they cannot credibly disclaim the representations it contains.

[23] *Indian Medical Association v Union of India*, Writ Petition (Civil) No 645 of 2022 (Supreme Court of India), including contempt proceedings and orders passed in 2024 concerning Patanjali Ayurved Limited's misleading health advertisements. See also 'Misleading Ads Case: Influencers, Celebrities Should Take Responsibility for Product Promotion, Says SC' *Business Today* (7 May 2024).

C. Personal Care and the Problem of Soft Deception

The personal care category in ASCI's 2025–26 report recorded the highest total number of misleading advertisements, with 53 per cent of those violations involving influencer non-disclosure of paid relationships.[24] The legal problem in skincare and wellness promotion is often not that a single statement is demonstrably false, but that the cumulative impression created by the post is misleading. An influencer who describes a product as having "transformed her skin," demonstrates it in a heavily filtered video, and uses terms such as "natural" and "dermatologist-tested" without substantiation creates a misleading impression even if each individual claim could be technically defended in isolation.

This is what this paper describes as soft deception, and it is particularly resistant to a disclosure-only regulatory response. A label telling the viewer the post is sponsored does not undo the impression created by stylistic choices, selective evidence, filtered demonstrations, and unqualified testimonials delivered with apparent personal conviction. Liability in such cases must engage with the content and framing of the representation, and that engagement requires asking who controlled the message and who was responsible for the claims embedded in it. Those are agency-theory questions, not disclosure questions.

XIV. Comparative Lessons

The comparative discussion here is narrow and purposeful. It is not offered as a model for transplantation but as evidence that other jurisdictions have faced the same regulatory ceiling and found themselves reaching beyond disclosure to address it. In the United States, the Federal Trade Commission's Endorsement Guides have long required that material connections between endorsers and advertisers be clearly and conspicuously disclosed.[25] The 2023 revision raised the bar further, specifying that disclosure must be placed where consumers actually look and be genuinely difficult to miss. Crucially, the FTC treats non-disclosure not as a procedural failure but as a substantive form of deception the hidden commercial relationship makes the entire communication misleading as to its independence.

The United Kingdom's Advertising Standards Authority takes a similar approach through the

[24]ASCI Half-Yearly Report 2025–26 (n 19). Within the personal care category, skin care accounted for 66 per cent of violations, hair care for 17 per cent, and cosmetic products for 13 per cent.

[25]Federal Trade Commission, *Guides Concerning the Use of Endorsements and Testimonials in Advertising* (16 CFR Part 255, revised 2023), ss 255.0 and 255.5.

CAP Code, which requires that marketing communications be obviously identifiable as advertising before the consumer engages with the persuasive content itself.[26] The "obviously identifiable" standard is not satisfied by a technical label. It asks whether a reasonable consumer, encountering the post for the first time, would recognise it as advertising. That is a comprehension test, not a compliance test, and the distinction matters.

What both jurisdictions illustrate is a shared regulatory trajectory: the recognition that disclosure, even when well-designed, cannot by itself deliver accountability. Both the FTC and ASA frameworks have shifted progressively toward asking not merely whether a label is present but whether the communication as a whole misleads and who is responsible for that. This concern with the relationship between commercial influence and legal responsibility is precisely the space that agency principles are designed to occupy. The Indian framework has the statutory foundation to move in the same direction. What has been missing is a coherent doctrinal basis for doing so, and that is what this paper proposes.

XV. Towards a Coherent Framework

The reform case is not a choice between disclosure and liability. Both serve different functions and both are needed. Disclosure gives consumers the information to make informed choices. Agency-based liability allocation gives regulators and courts a principled basis for holding actors accountable when those choices are distorted by a misleading sponsored communication. Without the second, the first produces the pattern ASCI's data documents: formal compliance after investigation, and systematic non-compliance before it.

Where a brand has provided detailed content direction, it should share liability for the resulting message regardless of what the contract calls the relationship. Where a brand has adopted, amplified, or commercially exploited influencer-generated content on its own channels, the ratification principle under Section 196 of the Contract Act should apply: the brand takes ownership of the content and the representations it contains. Where an influencer has published misleading content in a high-risk category, the fact that a brand brief initiated the engagement does not extinguish her personal responsibility. Executing a misleading brief for payment is its

[26]Committee of Advertising Practice, *The UK Code of Non-broadcast Advertising and Direct and Promotional Marketing* (CAP Code, 12th edn), r 2.1; Advertising Standards Authority, *Influencer's Guide to Making Clear That Ads Are Ads* (ASA, 2022).

own commercial act.

At the regulatory level, sector-specific obligations for health, financial, and betting-related content would concentrate enforcement where consumer harm is most acute. A searchable public record of CCPA outcomes for repeat violators would improve deterrence without requiring new legislative authority. ASCI's proactive monitoring model has shown that violations in high-risk sectors are detectable at scale institutionalising that model with expedited referrals to the CCPA would shorten the gap between identification and consequence.

Table 1: Current Position and Proposed Reforms

Issue	Current Position	Limitation	Proposed Reform
Disclosure	Required by CCPA guidelines and ASCI standards	Often hidden, incorrectly styled, or placed after persuasive content has been consumed	Require disclosure at the point of first consumer engagement, assessed against a consumer comprehension standard
Liability	Shared in theory under CPA section 21	Fragmented in practice; brands and influencers each disclaim responsibility, producing an accountability gap	Apply agency principles to allocate liability functionally based on control, benefit, and consumer-facing representation
Enforcement	Primarily complaint-driven via ASCI	Reactive and slow relative to the content lifecycle; actors correct course only after intervention	Proactive monitoring in high-risk sectors with expedited referral to CCPA and a public record of repeat violators

XVI. Limitations

This study is limited by its doctrinal methodology and reliance on regulatory materials, published reports, and secondary literature. It does not include consumer surveys, platform-side data, or interviews with industry participants, and therefore cannot directly assess consumer perception of disclosure in practice or the private compliance conduct of brands and influencers within their contractual relationships. The empirical section draws on ASCI's aggregate reporting data, which captures processed complaints and proactive monitoring findings but not the full universe of non-compliant content in active circulation. These limitations are inherent to the doctrinal approach adopted and do not affect the doctrinal argument advanced, but they should be acknowledged as constraints on the breadth of the empirical claims made in Part XII.

XVII. Conclusion

The legal question at the centre of this paper is deceptively simple. When a brand pays an influencer to promote a product, and that promotion turns out to be misleading, who answers for it? India has a regulatory framework that nominally addresses this question. In practice, the answer has been: no one in particular. Brands point to the influencer as the publisher. Influencers point to the brand as the source of the claims. The consumer who made a decision based on the misleading content is left without a meaningful remedy, and both parties walk away with the commercial benefit of the promotion intact.

Agency principles provide a more useful analytical framework for addressing this than disclosure rules alone. An approach grounded in control, commercial benefit, and consumer-facing representation offers a principled basis for liability that does not depend on how the parties have labelled their arrangement. The empirical record supports the need for this move. ASCI's Half-Yearly Complaints Report 2025–26 shows that 76 per cent of India's top digital influencers failed to meet disclosure norms, that 98 per cent of influencer advertisements investigated required modification, and that the single most violative category involved sponsored promotion of illegal platforms. A disclosure-only approach has not reduced that pattern not because the rules are poorly drafted, but because disclosure addresses the informational gap without touching the accountability gap. The persistence of near-universal non-compliance across multiple reporting periods is itself evidence of a structural problem, not a knowledge one.

The Indian Contract Act already provides the doctrinal tools needed to apply agency principles to influencer-brand relationships. The Consumer Protection Act provides the enforcement architecture. What has been missing is a more consistent and explicit application of those tools, so that neither party in a joint commercial promotion can comfortably disclaim responsibility for the misleading content they produced together.

As commercial persuasion becomes increasingly personalised and embedded within digital culture, effective consumer protection will depend not merely on revealing sponsorship, but on ensuring that responsibility follows influence.