TRUTH IN ADVERTISING.ORG

April 30, 2024

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Suite CC-5610 (Annex B)
Washington, DC 20580

Re: Impersonation SNPRM, R207000

Truth in Advertising, Inc. ("TINA.org") welcomes the opportunity to submit the following comment in conjunction with the Federal Trade Commission's ("Commission," "Agency" or "FTC") March 1, 2024 request for comments regarding its proposed amendments to the Rule on Impersonation of Government and Businesses ("Proposed Amendments").[1] We thank the Commission for the opportunity to participate in this rulemaking procedure. TINA.org strongly supports the Proposed Amendments to include impersonation of individuals in the Rule on Impersonation of Government and Businesses ("Impersonation Rule"). Technology has made it easier than ever to impersonate individuals – whether by mimicking a real person or creating a fabricated character or profile – and use those artifices to trick consumers out of their hard-earned money. TINA.org also urges the Commission to ensure that bots and avatars used to impersonate individuals are addressed in the Proposed Amendments.

I.   Interest of Commenter

TINA.org is a nonpartisan, nonprofit consumer advocacy organization whose mission is to combat deceptive advertising and consumer fraud; promote understanding of the serious harms commercial dishonesty inflicts; and work with consumers, businesses, independent experts, synergy organizations, self-regulatory bodies and government agencies to advance countermeasures that effectively prevent and stop deception in our economy. At the center of TINA.org's efforts is its website, www.tina.org, which provides information about common deceptive advertising techniques, consumer protection laws, and alerts about specific deceptive marketing campaigns – such as nationally advertised "Built in the USA" vans manufactured abroad;[2] pillows and essential oils falsely marketed as being able to treat chronic diseases;[3] and a delivery meal kit service that falsely advertises free meals.[4] The website is also a repository of information relating to consumer protection lawsuits and regulatory actions, and functions as a clearinghouse, receiving consumer complaints about suspicious practices, which TINA.org investigates and, when appropriate, takes up with businesses and regulatory authorities.

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[1] Proposed Amendments to Trade Regulation Rule on Impersonation of Government and Businesses, 89 Fed. Reg. 15072 (proposed Mar. 1, 2024), available at https://www.federalregister.gov/documents/2024/03/01/2024-03793/trade-regulation-rule-on-impersonation-of-government-and-businesses.

[2] MERCEDES-BENZ, TRUTH IN ADVERTISING, https://truthinadvertising.org/brands/mercedes-benz.

[3] MYPILLOW, TRUTH IN ADVERTISING, https://truthinadvertising.org/brands/mypillow/; DOTERRA, TRUTH IN ADVERTISING, https://truthinadvertising.org/brands/doterra/; YOUNG LIVING, TRUTH IN ADVERTISING, https://truthinadvertising.org/brands/young-living/.

[4] HELLOFRESH, TRUTH IN ADVERTISING, https://truthinadvertising.org/brands/hellofresh/.

Through its collaborative approach and attention to emerging issues and complexities, TINA.org has become a trusted source of expertise on matters relating to consumer fraud. TINA.org has testified before Congress on issues related to consumer protection, deceptive marketing and economic justice.[5] TINA.org also regularly advocates for consumer interests before the FTC and other governmental bodies and appears as amicus curiae in cases raising important questions of consumer protection law.[6] Since its inception, TINA.org has filed legal actions against hundreds of companies and entities, published more than 1,400 ad alerts, written over 1,000 news articles, and tracked more than 4,000 federal class actions alleging deceptive marketing. Notably, since 2015, state and federal agencies have obtained more than $250 million from wrongdoers based on TINA.org legal actions and evidence, and returned millions in ill-gotten gains to consumers.

II.   Impersonation Of Individuals Is Widespread, Causing Consumer Confusion And Financial Harm

As discussed below, TINA.org has investigated and tracked numerous examples of individual impersonation schemes involving fake celebrity endorsements, fictitious dating site users and sham social media profiles, among others. Given the enhanced abilities that scammers now have via artificial intelligence to convincingly impersonate people,[7] the Proposed Amendments will help stem the tide of impersonations that deceive Americans across multiple fronts.

A. Impersonation of Celebrities

Impersonating celebrities for monetary gain (and not for artistic or parody purposes) isn't new. But the tools for doing so have never been easier to access or yielded more convincing results. From fake celebrity endorsements of products to deceptively marketing art or music in a celebrity's name that was actually created by someone else, there are nearly endless examples of such false and misleading impersonations – and the confusion they cause consumers.

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[5] Safeguarding American Consumers: Fighting Fraud and Scams During the Pandemic Before the Subcomm. on Consumer Prot. and Com. of the Comm. on Energy and Com., 117th Congress (Feb. 4, 2021) (testimony of Bonnie Patten, Exec. Dir., Truth In Advertising), https://truthinadvertising.org/action/house-testimony-2021-summary-action/; Curbing COVID Cons: Warning Consumers about Pandemic Frauds, Scams, and Swindles Before the Subcomm. on Consumer Prot., Prod. Safety, and Data Sec. of the Comm. on Com., Sci., & Transp., 117th Congress (Apr. 27, 2021) (testimony of Bonnie Patten, Exec. Dir., Truth In Advertising), https://truthinadvertising.org/action/senate-testimony-2021-summary-action/.

[6] For example, TINA.org participated as amicus curiae in *AMG Capital Mgmt., LLC v. Fed. Trade Comm'n*, 141 S. Ct. 1341 (2021). (Brief of Amicus Curiae Truth In Advertising, Inc. in Support of Respondent, *AMG Capital Mgmt., LLC v. Fed. Trade Comm'n*, No. 19-508 (U.S. Dec. 7, 2020), available at https://www.supremecourt.gov/DocketPDF/19/19-508/162934/20201207192719389_19-508%20 brief.pdf.) TINA.org also filed an amicus curiae brief in *Federal Trade Commission v. Quincy Bioscience Holding Co., Inc.*, which reinstated a Section 13(b) suit against a business falsely marketing a dietary supplement to the elderly as clinically proven to improve memory. (Brief of Amici Curiae Truth In Advertising, Inc. et al. in Favor of Appellants and in Support of Reversal, *Fed. Trade Comm'n v. Quincy Bioscience Holding Co., Inc.*, 753 Fed. Appx. 87 (2d Cir. 2019) (No. 17-3745), available at https://truthinadvertising.org/wp-content/uploads/2018/03/Prevagen_Amici-Curiae-brief.pdf.)

[7] Dr Developers, *Navigating the Misconception: The Rise of AI-Generated Fake Celebrity Endorsements in Advertising*, LINKEDIN (Jan. 7, 2024), https://www.linkedin.com/pulse/navigating-misconception-rise-ai-generated-fake-celebrity-3ztke.

1. Fake Celebrity Endorsements

As TINA.org has reported, numerous celebrities – including Michael Jordan, George Clooney, Ariana Grande and Clint Eastwood – have sued companies for fabricating their endorsements to sell products.[8]

TINA.org has found this deceptive tactic to be particularly popular in the skin care and beauty products industry. In 2015, for example, TINA.org alerted consumers to several skin care companies who falsely claimed that celebrities including Ellen DeGeneres and Sandra Bullock were endorsing their products for their alleged anti-aging properties.[9] In the same year, TINA.org also posted an ad alert regarding a fake news site that deceptively claimed that Dr. Oz endorsed the skin care cream Neutratone.[10] And in 2020, TINA.org tracked a class-action lawsuit against advertisers of Nuvega Lash for allegedly using fake celebrity endorsements, inventing quotes from Oprah, Jessica Alba, Sandra Bullock and Jennifer Aniston.[11]

TINA.org has also alerted consumers to a number of companies selling CBD products using fake celebrity endorsements to market their products. A company that sells CBD gummies, UNBS, tried to tap into the "Dr. Oz effect" by using the television personality's name without his consent to market its products.[12] Another company, PureKana, falsely claimed that Paul McCartney had a special offer for their CBD gummies.[13] And CannaPro CBD falsely represented that Tom Hanks had endorsed its products.[14]

While certain instances of fake celebrity endorsements are simply the result of fabricated statements or the improper use of images that already exist, others stem from AI and the ability to convincingly mimic individuals.[15] The internet is awash with examples of this kind of celebrity "AI hell."[16] Scammers have created deepfake videos of Elon Musk purportedly

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[8] *Who's Who and Who's Sued: Celebrities Fight Back against Fake Endorsements*, TRUTH IN ADVERTISING (Jul. 21, 2022, updated Mar. 13, 2022), https://truthinadvertising.org/articles/whos-who-and-whos-sued-celebrities-fight-back-against-fake-endorsements/.

[9] *Anti-Wrinkle Creams: Ellen the Expert?*, TRUTH IN ADVERTISING (Jan. 14, 2015, updated May 20, 2015), https://truthinadvertising.org/articles/skin-care-products-ellen-expert/.

[10] *Ad Alert: Neutratone*, TRUTH IN ADVERTISING (Aug. 11, 2015), https://truthinadvertising.org/articles/neutratone/.

[11] Class-Action Tracker: Nuvega Lash, TRUTH IN ADVERTISING, https://truthinadvertising.org/class-action/nuvega-lash/.

[12] *Ad Alert: UNBS CBD Gummies*, TRUTH IN ADVERTISING (Nov. 10, 2021), https://truthinadvertising.org/articles/unbs-cbd-gummies/.

[13] *Ad Alert: PureKana CBD Gummies*, TRUTH IN ADVERTISING (Apr. 27, 2023), https://truthinadvertising.org/articles/purekana-cbd-gummies/.

[14] *Ad Alert: CannaPro CBD*, TRUTH IN ADVERTISING (Dec. 2, 2020), https://truthinadvertising.org/articles/cannapro-cbd/.

[15] NBC News, *Growing Number of Misleading Ads Using AI to Create Fake Celebrity Endorsements*, YOUTUBE (Dec. 3, 2023), https://www.youtube.com/watch?v=WtR0-TBauoU.

[16] John Herrman, *Celebrities Already Live in AI Hell*, N.Y. MAGAZINE (Jan. 15, 2024), https://nymag.com/intelligencer/2024/01/taylor-swift-and-other-celebrities-already-live-in-ai-hell.html.

promoting a cryptocurrency scam,[17] Gayle King seemingly promoting a weight-loss drug[18] and Tom Hanks appearing to sell a dental plan[19] – to name a few. Taylor Swift deepfake videos falsely offered free Le Creuset cookware sets,[20] while other videos used her likeness and those of other celebs to market Medicare and Medicaid plans.[21] One online "motivational coach" used deepfakes of Nigella Lawson, Piers Morgan and Oprah Winfrey to promote a self-help course that could allegedly change lives.[22] And a top YouTuber known as MrBeast warned consumers about fake AI-generated TikTok videos of his deepfake image offering $2 iPhones.[23]

Fake celebrity endorsements are widespread because, quite simply, celebrity endorsements work. A recent study found that consumers are more likely to buy a product endorsed by a celebrity and that they make their decisions faster than when evaluating a product not endorsed by a celeb.[24] Another study found that celebrity trust has a positive effect on both advertising and brand credibility.[25] And as one university reported last year:

> When a company hires a celebrity to endorse their product, depending on the celebrity, company sales can increase by approximately $10 million or by approximately 4% in sales. Companies can also receive up to .25% in stock returns with celebrity endorsements. When businesses use celebrities to endorse their brand, it increases the brand's visibility, enhances the credibility of that brand, and boosts the awareness of the product they are endorsing.[26]

Given that celebrity endorsements have great value for marketers (but are also expensive for marketers to obtain[27]), it is not surprising that unscrupulous advertisers have faked celebrity

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[17] Lulu Graham, *Elon Musk Used in Fake AI Videos to Promote Financial Scam*, RMIT UNIVERSITY AUSTRALIA (Aug. 15, 2023), https://www.rmit.edu.au/news/factlab-meta/elon-musk-used-in-fake-ai-videos-to-promote-financial-scam (describing how consumers lost money to a scam involving deepfake videos of Elon Musk).
[18] Tiffany Hsu and Yiwen Lu, *No, That's Not Taylor Swift Peddling Le Creuset Cookware*, N.Y. TIMES (Jan. 26, 2024), https://www.nytimes.com/2024/01/09/technology/taylor-swift-le-creuset-ai-deepfake.html.
[19] *Id.*
[20] Falon Fatemi, *Look What You Made Me Do: Why Deepfake Taylor Swift Matters*, FORBES (Feb. 1, 2024), https://www.forbes.com/sites/falonfatemi/2024/02/01/look-what-you-made-me-do-why-deepfake-taylor-swift-matters/?sh=517286227ac3.
[21] John Herrman, *Celebrities Already Live in AI Hell*, N.Y. MAGAZINE (Jan. 15, 2024), https://nymag.com/intelligencer/2024/01/taylor-swift-and-other-celebrities-already-live-in-ai-hell.html.
[22] James Kelly & Lora Jones, *Piers Morgan and Oprah Winfrey 'Deepfaked' for US Influencer's Ads*, BBC (Feb. 23, 2024), https://www.bbc.com/news/technology-67703018.
[23] Kalhan Rosenblatt, *MrBeast Calls TikTok Ad Showing an AI Version of Him a 'Scam'*, NBC NEWS (Oct. 3, 2023), https://www.nbcnews.com/tech/mrbeast-ai-tiktok-ad-deepfake-rcna118596.
[24] Simone D'Ambrogio et al, *How Celebrity Status and Gaze Direction in Ads Drive Visual Attention to Shape Consumer Decisions*, 40 PSYCHOLOGY & MARKETING 723-34 (2022), available at https://onlinelibrary.wiley.com/doi/full/10.1002/mar.21772.
[25] Shahzab Hussain et al, *Examining the Effects of Celebrity Trust on Advertising Credibility, Brand Credibility and Corporate Credibility*, 109 J. BUS. RESEARCH 472-88 (2020), available at https://www.sciencedirect.com/science/article/abs/pii/S0148296319307544.
[26] *Celebrity Endorsements: To Keep or Not to Keep?*, U. MARYLAND SCHOOL OF LAW (Apr. 4, 2023), https://www.law.umaryland.edu/content/articles/name-659567-en.html.
[27] *Id.* ("In 2012, Pepsi paid Beyoncé $50 million to appear in their Pepsi campaigns. … Even small businesses that hire local celebrities can expect advertising fees to begin at $5,000 to approximately $100,000.")

endorsements to market their products.[28] And this unbridled dishonesty harms consumers by tricking them into spending money they wouldn't have likely otherwise spent – often for scam products or investments.[29] For instance, the FTC sued Zurixx for allegedly luring consumers in with false celebrity endorsements and then charging them thousands of dollars for specious "trainings" on flipping houses.[30]

2. Impersonating Celebrity Voices

Unauthorized celebrity endorsements are not the only form of celebrity impersonation. For instance, in 2014 a class-action lawsuit was filed against Sony Music Entertainment for allegedly representing that all of the songs on the 2010 posthumous Michael Jackson album titled *Michael* were sung by Jackson when, according to plaintiffs, three of the songs were sung by an impersonator.[31]

The case made its way to the California Supreme Court, where TINA.org, the UC Berkeley Center for Consumer Law & Economic Justice, and others filed an *amici curiae* brief successfully arguing that Sony engaged in deceptive advertising when it promoted *Michael* as a Michael Jackson album.[32] More than eight years after the lawsuit was filed, the California Supreme Court ultimately determined that Sony had no free speech rights to engage in deceptive marketing of the album (by not disclosing the impersonator), and that the case could proceed pursuant to the state's false advertising statutes.[33]

While this Sony case is just one example, the potential for making imitation songs or other media has never been easier. With AI tools, one need not use an actual singer to create music that sounds convincingly like a well-known recording artist.[34] Instead, there are a number of easily accessible AI programs that allow scammers to imitate singers – or anyone else for that matter.[35]

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[28] *See, e.g.*, *Did Your Favorite Shark Tank Celebrity Really Endorse THAT? Probably Not*, FED. TRADE COMM'N (Feb. 17, 2023), https://consumer.ftc.gov/consumer-alerts/2023/02/did-your-favorite-shark-tank-celebrity-really-endorse-probably-not.

[29] For example, an Australian organization received over 200 complaints in one year amounting to over $142,000 in lost dollars to celebrity endorsement scams. *Consumers Urged to Be Wary of Celebrity Endorsement Scams*, AUS. COMPETITION & CONSUMER COALITION (Sept. 24, 2018), https://www.accc.gov.au/media-release/consumers-urged-to-be-wary-of-celebrity-endorsement-scams. *See also* Vicky Shaw, *People Losing Tens of Thousands Due to Fake Celebrity Endorsements – NatWest*, THE INDEPENDENT (May 31, 2023), https://www.independent.co.uk/money/people-losing-tens-of-thousands-due-to-fake-celebrity-endorsements-natwest-b2349001.html (A British bank warned consumers after multiple customers lost nearly a quarter of a million dollars in response to bogus advertisements featuring celebrities).

[30] *Operators of Investment Coaching Scheme Banned from Industry and Ordered to Pay Millions in Redress to Defrauded Consumers*, FED. TRADE COMM'N (Feb. 16, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/02/operators-investment-coaching-scheme-banned-industry-ordered-pay-millions-redress-defrauded.

[31] SONY MUSIC, TRUTH IN ADVERTISING, https://truthinadvertising.org/brands/sony/.

[32] Brief for UC Berkeley Center for Consumer Law & Economic Justice and Truth in Advertising, Inc. et al. as Amici Curiae Supporting Respondents, *Serova v. Sony Music Entm't*, 13 Cal. 5th 859 (Cal. 2022), available at https://truthinadvertising.org/wp-content/uploads/2020/12/Serova-v-Sony-amici-brief.pdf.

[33] *Serova v. Sony Music Entm't*, 13 Cal. 5th 859, 890 (Cal. 2022).

[34] Cade Metz, *OpenAI Unveils A.I. Technology That Recreates Human Voices*, N.Y. TIMES (Mar. 29, 2024), https://www.nytimes.com/2024/03/29/technology/openai-voice-engine.html.

[35] *See, e.g.*, SPEECHIFY, https://speechify.com/blog/celebrity-voice-over-generator/; GENERATE YOUR FAVORITE CELEBRITY'S VOICE USING AI, PLAY.HT, https://play.ht/use-cases/celebrity-voice-generator/; CELEBRITY

And consumers should not have to spend a multitude of years tangled up in litigation to be compensated for their resulting losses.

B. Fake Dating and Social Media Profiles

TINA.org has catalogued a number of examples of fake profiles on social media and dating apps used to trick and harm consumers. In 2014, TINA.org alerted consumers to the "Virtual Cupids" on dating site JDI, which used fake profiles to entice consumers into paying more for the site.[36] That same year, TINA.org investigated a company called Married But Lonely, which offered "elite flirt" profiles of individuals who were not real people but were created by the company allegedly for "entertainment purposes."[37] Similarly, the FTC took action against the dating site Ashley Madison for, among other things, luring consumers with fake profiles to pay for extra features.[38]

TINA.org has also tracked class-action lawsuits filed against dating apps for hosting fake profiles. In May 2018, a lawsuit was filed alleging that some messages sent to Match.com members were not actually from members of the dating site, but from fraudulent accounts used to artificially boost membership and lure in new customers.[39] A class action filed against dating app Tinder alleged that the app sent notifications to consumers indicating that other users "like" them to induce consumers to subscribe, when those "likes" were actually manufactured and not genuine.[40] And a lawsuit against dating app OkCupid alleged that the company enticed users to pay to see who had "liked" their profile when most, if not all, of the "likes" came from inactive accounts.[41]

Fake profiles pop up on social media sites as well. In 2022, TINA.org commented on the growing trend of AI-generated LinkedIn profiles, which companies deceptively use to drum up sales.[42] The Stanford Internet Observatory conducted an investigation "that uncovered more than 1,000 LinkedIn profiles using what appear to be faces created by artificial intelligence."[43]

IMPERSONATOR GPT, THERE'S AN AI FOR THAT, https://theresanaiforthat.com/gpt/celebrity-impersonator-gpt/;
CELEBRITY VOICE AI GENERATOR, WAVEL.AI, https://wavel.ai/studio/celebrity-voice-changer.

[36] *Feds Settle with Dating Websites over 'Virtual Cupids'*, TRUTH IN ADVERTISING (Nov. 5, 2014), https://truthinadvertising.org/articles/jdi-dating-online-settlement/.

[37] *Ad Alert: Married But Lonely*, TRUTH IN ADVERTISING (Jan. 10, 2014), https://truthinadvertising.org/articles/married-lonely/.

[38] *Caught Cheating: Affair Site Ashley Madison to Pay $1.6M*, TRUTH IN ADVERTISING (Dec. 14, 2016), https://truthinadvertising.org/articles/caught-cheating-affair-site-ashley-madison-pay-1-6m/.

[39] Class-Action Tracker: Match.com Subscribers, TRUTH IN ADVERTISING, https://truthinadvertising.org/class-action/match-com-subscribers/.

[40] Class-Action Tracker: Tinder Notifications, TRUTH IN ADVERTISING, https://truthinadvertising.org/class-action/tinder-notifications/.

[41] Class-Action Tracker: OkCupid, TRUTH IN ADVERTISING, https://truthinadvertising.org/class-action/okcupid/.

[42] Shannon Bond, *That Smiling LinkedIn Profile Face Might Be a Computer-Generated Fake*, NPR (Mar. 27, 2022), https://truthinadvertising.org/press/that-smiling-linkedin-profile-face-might-be-a-computer-generated-fake/.

[43] *Id.*

While not all dating and social media sites condone fake profiles,[44] the reality is that they often benefit from the additional traffic – and sometimes use them to their advantage. And the harms are serious: consumers are losing billions of dollars to the scammers creating fake profiles – an issue of which the Commission is well aware.[45] The FTC received more than 64,000 reports of romance imposter scams in 2023, with losses at a staggering $1.14 billion.[46] And, with AI tools, scammers can create unique, authentic-looking profile pictures to more convincingly target their victims[47] and instantly generate credible messages.[48] Further, scammers use AI to get around the attempted safeguards that apps use to authenticate individual users (like CAPTCHA and multi-factor authentication).[49] As AI impersonation advances,[50] so too will consumer harm – emphasizing the need for the Proposed Amendments.

C. Bots or Avatars That Appear to Be Controlled by Humans or Celebrities They Represent

One form of impersonation that is not directly addressed in the SNPRM is when AI- or bot-controlled avatars misleadingly represent people in virtual spaces. For example, virtual influencers are widely used to promote various companies, and often behave in ways that indicate they are human when they are not.[51]

TINA.org has investigated virtual influencers extensively.[52] Our database from a 2019-2020 investigation into the use of virtual influencers in social media marketing catalogued a sampling of 28 virtual influencers ranging from the human-like to the overtly cartoonish.[53] Virtual influencer Lil Miquela, for example, has millions of followers on TikTok and Instagram and

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[44] For example, some dating apps, like Bumble, are taking steps to mitigate this issue, by using AI to detect scam profiles and blocking those accounts. (Aisha Malik, *Bumble's New AI Tool Identifies and Blocks Scam Accounts, Fake Profiles*, TECHCRUNCH (Feb. 5, 2024), https://techcrunch.com/2024/02/05/bumbles-new-ai-tool-identifies-and-blocks-scam-accounts-and-fake-profiles/.)

[45] Lesley Fair, *"Love Stinks" – When a Scammer Is Involved*, FED. TRADE COMM'N (Feb. 13, 2024), https://www.ftc.gov/business-guidance/blog/2024/02/love-stinks-when-scammer-involved.

[46] *Id.*

[47] Sana Pashankar, *Scammers Litter Dating Apps With AI-Generated Profile Pics*, BLOOMBERG (Feb. 14, 2024), https://www.bloomberg.com/news/newsletters/2024-02-14/scammers-litter-dating-apps-with-ai-generated-profile-pics.

[48] Nolan Yamada, Angie Wong, Jack Casani, *Catfished by Code: The New Wave of AI Dating App Scams*, SANTA CLARA BUS. LAW CHRON. (Nov. 21, 2023), https://www.scbc-law.org/post/catfished-by-code-the-new-wave-of-ai-dating-app-scams.

[49] Daryna Antoniuk, *From AI with Love: Scammers Integrate ChatGPT into Dating-app Tool*, THE RECORD (Oct. 5, 2023), https://therecord.media/lovegpt-romance-scam-tool-uses-chatgpt.

[50] Matt Burgess, *The Real-Time Deepfake Romance Scams Have Arrived*, WIRED (Apr. 18, 2024), https://www.wired.com/story/yahoo-boys-real-time-deepfake-scams/.

[51] Laura Smith, *What Happens When Human Marketers Are Replaced, But Human Viewers Are Not*, TRUTH IN ADVERTISING (Oct. 10, 2023), https://truthinadvertising.org/blog/what-happens-when-human-marketers-are-replaced-but-human-viewers-are-not/.

[52] Virtual Influencers Database, TRUTH IN ADVERTISING, https://truthinadvertising.org/evidence/virtual-influencers-database/. *See also* Truth in Advertising, Comment Letter on Proposed Endorsement Guides June 22, 2020), https://truthinadvertising.org/wp-content/uploads/2020/06/TINA.org-Endorsement-Guides-Comment.pdf.

[53] *Id.*

more than 39 million views on YouTube.[54] These virtual influencers are shown eating, drinking, promoting products, attending events, making music videos and seemingly doing many other human activities. While their presence is not inherently deceptive, their "impersonation" of human beings can cause serious problems.

Notably, although many users understand that these influencers are not real people, a significant minority[55] of consumers do not realize they are fake. One study in 2019 found that 42 percent of Gen Z and Millennial consumers surveyed said they followed a virtual influencer without knowing it was a bot account.[56] And a 2023 study found that 29 percent of participants could not tell whether a virtual influencer was human or not, and an even larger percentage (32 percent) mistook a virtual influencer for a human.[57] These findings demonstrate that large swaths of the population are confused when encountering some of these highly lifelike virtual influencers. And these characters don't just post online – they gather sponsorships and advertise products, so the confusion is not innocuous; it can cause real, financial harm.[58]

This issue becomes even more pronounced when the primary consumers are children. For example, TINA.org submitted a complaint to the FTC against Roblox in 2022 for surreptitiously pushing advertising in front of the tens of millions of children who visit its site.[59] The platform allows brands to publish sponsored video games that covertly use AI-controlled promotional bots within their advergames.[60] These AI bots function as undisclosed avatar influencers for the brands – which children (and many adults) would not be able to determine or understand.[61]

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[54] Laura Smith, *What Happens When Human Marketers Are Replaced, But Human Viewers Are Not*, TRUTH IN ADVERTISING (Oct. 10, 2023), https://truthinadvertising.org/blog/what-happens-when-human-marketers-are-replaced-but-human-viewers-are-not/.

[55] FTC Policy Statement on Deception, Appended to Cliffdale Associates, Inc., 103 F.T.C. 110, 174 (1984), FED. TRADE COMM'N (Oct. 14, 1983), https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf.

[56] *Bot or Not?*, FULLSCREEN TBH COMMUNITY (2019), https://grin.co/wp-content/uploads/2021/10/Fullscreen_CGI-Influencers_Bot-Or-Not.pdf.

[57] Claudia Franke, Andrea Groeppel-Klein & Katrin Müller, *Consumers' Responses to Virtual Influencers as Advertising Endorsers: Novel and Effective or Uncanny and Deceiving?*, 52 J. ADVERTISING 4, (Jan. 2023), https://www.tandfonline.com/doi/abs/10.1080/00913367.2022.2154721.

[58] Influencer endorsements are very effective; the influencer platform market is valued in the tens of billions of dollars. (*See* Shengan Ren et al, *Endorsement Effectiveness of Different Social Media Influencers: The Moderating Effect of Brand Competence and Warmth*, 156 J. BUS. RESEARCH 113476 (2023) ("The trust that influencers create among their audience, together with their large numbers of followers, makes SMI's brand endorsements particularly attractive to advertisers.").) Because these endorsements increase consumer purchasing and brand credibility, consumers are harmed when they are tricked into thinking that an influencer has tried a product when in fact they are not a person at all. (Simone D'Ambrogio et al, *How Celebrity Status and Gaze Direction in Ads Drive Visual Attention to Shape Consumer Decisions*, 40 PSYCHOLOGY & MARKETING 723-34 (2022), available at https://onlinelibrary.wiley.com/doi/full/10.1002/mar.21772; *see also* Shahzab Hussain et al, *Examining the Effects of Celebrity Trust on Advertising Credibility, Brand Credibility and Corporate Credibility*, 109 J. BUS. RESEARCH 472-88 (2020), available at https://www.sciencedirect.com/science/article/abs/pii/S0148296319307544.)

[59] Letter to FTC from TINA.org re: Deceptive Marketing on Roblox, Apr. 19, 2022, https://truthinadvertising.org/wp-content/uploads/2022/04/4_19_22-Complaint-to-FTC-re-Roblox.pdf.

[60] *Id.*

[61] *See* Truth in Advertising, Comment Letter on Protecting Kids from Stealth Advertising in Digital Media (July 18, 2022), https://truthinadvertising.org/wp-content/uploads/2022/10/TINA-Comment-to-FTC-re-Protecting-Kids-from-Stealth-Marketing.pdf.

In addition to the Roblox avatar bots that represent brands, sometimes these bots represent real people. For instance, avatars representing real-life NBA stars Giannis Antetokounmpo and LeBron James gave away "free gifts" in Nike's Roblox experience Nikeland.[62] However, these avatars were not controlled by those individuals but instead were controlled by Nike using AI.[63] The children who may have thought they were interacting with their favorite stars were not informed that they actually were chatting with a bot.

The Commission should consider how the Proposed Rule would affect situations in which bots, AI-controlled avatars and virtual influencers "impersonate" human beings (whether real or fictional). This is particularly important if the bots are aimed at marketing products and services to children.[64]

D. Unauthorized Use of Content to Promote "Dupes"

For years, unscrupulous companies have been stealing the images and videos of people who post online about different products to promote their own products.[65] Models, influencers or even social media users who do not consider themselves influencers, often see their faces and voices used in ads for products that they have nothing to do with.[66] For instance, during the course of TINA.org's investigation into e-cigarette company Vapex, three different people informed TINA.org that the company had used their images alongside fake testimonials to market products without their knowledge or consent.[67]

Similarly, companies that make duplicate products or "dupes" – knockoffs of pricier, popular items – frequently use the original ads or ads from influencers online to promote their knockoffs, without any indication of what their actual products might look like.[68] By way of example,

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[62] Laura Smith, *What Happens When Human Marketers Are Replaced, But Human Viewers Are Not*, TRUTH IN ADVERTISING (Oct. 10, 2023), https://truthinadvertising.org/blog/what-happens-when-human-marketers-are-replaced-but-human-viewers-are-not/.

[63] *Id.*

[64] Truth in Advertising, Comment Letter on Protecting Kids from Stealth Advertising in Digital Media (July 18, 2022), https://truthinadvertising.org/wp-content/uploads/2022/10/TINA-Comment-to-FTC-re-Protecting-Kids-from-Stealth-Marketing.pdf.

[65] Emma Gray Ellis, *Companies Are Stealing Influencers' Faces*, WIRED (Feb. 21, 2020), https://www.wired.com/story/youtube-instagram-influencers-stolen-faces/.

[66] Sapna Maheshwari and Beimeng Fu, *Say No To The Dress*, BUZZFEED (Apr. 5, 2016), https://www.buzzfeednews.com/article/sapna/say-no-to-the-dress#.wmAPBwJXo; *see also* Audra Schroeder, *'They're Gonna Be Severely Disappointed, and Who Are They Gonna Think of? Me': Influencer Says Brand Selling Airpods Max Dupe, Swift Pods, Stole Her Content for TikTok Ad*, DAILYDOT (Oct. 21, 2022), https://www.dailydot.com/irl/swift-pods-airpod-max-dupe-stealing-content/.

[67] Letter from TINA.org to Fed. Trade Comm'n re Deceptive Advertising by Suspected Vapex Websites (July 17, 2014), https://truthinadvertising.org/wp-content/uploads/2016/02/FTCVapex.pdf.
In another example, a YouTube creator estimated that about 500 fake accounts had impersonated him to push various cryptocurrency scams. (Ray Parisi & Jessi Jospeh, *Instagram Accounts Created with Stolen Pics Push Fraudulent Crypto Schemes*, CNBC (Dec. 14, 2021), https://www.cnbc.com/2021/12/14/instagram-accounts-created-with-stolen-pics-push-bogus-crypto-schemes.html.)

[68] Maura Judkis, *In Gen Z's World of 'Dupes,' Fake is Fabulous — Until You Try It On*, WASH. POST (Mar. 22, 2023), https://www.washingtonpost.com/lifestyle/2023/03/22/dupes-shopping-trend-gen-z/.

TINA.org recently investigated Aria Valentina,[69] a company that purported to sell women's dresses and shoes online. While its website looked professional and advertised that its dresses were "exclusively designed for Aria Valentina," the website featured many of the exact same images of models wearing the advertised clothing – and much of the same language describing the dresses – as high-end London brand House of CB, and listed the dresses at a fraction of the price.[70] In one of its product listings, for example, Aria Valentina identified the model in the photograph as "Maria" when in reality, the woman in the photograph is established model Rona Mahal. The company ultimately removed all of its product listings in response to TINA.org's investigation.[71]

Even so, this particular form of impersonation rarely gets addressed. When influencers attempt to address the problem, they report that "companies rarely (if ever) respond to their emails, and the images often pop up online again as advertisements for different companies entirely within a few days or even hours."[72] With dupe products, it is often a game of whack-a-mole – even if one site rectifies the situation, several more sites can pop up in its place.[73] The Proposed Amendments, which will ban the misuse of "an individual's identifying information, including likeness or insignia, on a letterhead, website, e-mail, or other physical or digital place,"[74] could help to reduce this deceptive practice.

III. The Commission Should Adopt Proposed Section 461.5 To Address The Means And Instrumentalities Known To Be Used For Impersonation

In addition to the marketers directly engaged in impersonation scams, the companies that know or have reason to know that their tools and services are used for such deceptive and harmful impersonation should also be held accountable.

There are a growing number of companies that provide tools designed to convincingly mimic individuals. For instance, there are companies creating AI tools that are designed to imitate celebrity writing or chat styles. Bing's chat reportedly has a "celebrity" mode that instructs the AI to impersonate celebrities, allowing users to interact with virtual versions of their favorite stars.[75] Similarly, the website There's An AI For That has a Celebrity Impersonator GPT, which purports to "impersonate celebrities for interactive chats."[76] And Instagram is said to be testing a

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[69] *Ad Alert: Aria Valentina*, TRUTH IN ADVERTISING (Apr. 30, 2024), https://truthinadvertising.org/articles/aria-valentina/.

[70] *Id*. In another example, a YouTube creator showed how a company had impermissibly used her image to advertise and sell a hair piece on Amazon. (Loepsie, *I Ordered My Own Bangs Off Amazon*, YOUTUBE (Jan. 23, 2020), https://www.youtube.com/watch?v=W4oqCLnavIo.)

[71] *Id*.

[72] Emma Gray Ellis, *Companies Are Stealing Influencers' Faces*, WIRED (Feb. 21, 2020), https://www.wired.com/story/youtube-instagram-influencers-stolen-faces/.

[73] For instance, TINA.org found several other websites besides Aria Valentina using House of CB images.

[74] Trade Regulation Rule on Impersonation of Government and Businesses (proposed Mar. 1, 2024) (to be codified at 16 CFR Part 461), p. 21, https://www.ftc.gov/system/files/ftc_gov/pdf/r207000_impersonation_snprm.pdf.

[75] Lawrence Abrams, *Bing Chat Has a Secret 'Celebrity' Mode to Impersonate Celebrities*, BLEEPING COMPUTER (Mar. 4, 2023), https://www.bleepingcomputer.com/news/microsoft/bing-chat-has-a-secret-celebrity-mode-to-impersonate-celebrities/.

[76] *Celebrity Impersonator GPT*, THERE'S AN AI FOR THAT, https://theresanaiforthat.com/gpt/celebrity-impersonator-gpt/.

new program called "Creator A.I." that would allow influencers to interact with their followers via direct messages using a chatbot that impersonates their "voice."[77]

Further, there are a large number of websites and apps that allow users to generate audio content in the voices of celebrities, including (but not limited to), Speechify,[78] FakeYou,[79] TopMediaAI,[80] UberDuck,[81] VoiceAI,[82] Celebrity Voice Changer,[83] PlayHT,[84] Wavel[85] and Lovo AI.[86] One site even provides instructions on how to use Eleven Labs' Speech Synthesis to effectively impersonate a celebrity's voice (though in addition to detailed instructions, the post includes a disclaimer that you "probably shouldn't" do it).[87]

In addition to celebrity impersonation tools, there are AI tools known to be used in romance scams and fake dating app profiles. One tool used by romance scammers integrated ChatGPT into its software in order to better generate more believable texts, earning the nickname "Love-GPT."[88] That tool could also bypass CAPTCHA and "anonymize the access using proxies and browser anonymization tools" so that the fake profiles could avoid detection by the dating apps.[89]

Proposed Section 461.5 will incentivize the creators of these potentially harmful tools to take care in the distribution of their products and work to ensure that they are not used to deceive. It will also give the Commission more opportunities to make consumers whole in cases where these tools are knowingly employed in deceptive ways. There can be no doubt that such deceptive tactics will continue to flourish if not effectively reined in by regulators, and without the Proposed Amendments, critical equitable relief will be unavailable to the victims of these false and deceptive marketing tactics (particularly in light of the *AMG Capital Management* decision[90]).

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[77] Sapna Maheshwari and Mike Isaac, *Ready for a Chatbot Version of Your Favorite Instagram Influencers?*, N.Y. TIMES (Apr. 15, 2024), https://www.nytimes.com/2024/04/15/technology/instagram-influencers-chatbots.html.

[78] *Voice Cloning*, SPEECHIFY, https://speechify.com/voice-cloning/.

[79] FAKEYOU, https://fakeyou.com/.

[80] TOPMEDIAAI, https://www.topmediai.com/.

[81] UBERDUCK, https://www.uberduck.ai/.

[82] VOICEAI, https://voice.ai/.

[83] CELEBRITY VOICE CHANGER, https://celebrityvoicechanger.com/.

[84] *Celebrity Voice Generator*, PLAYHT, https://play.ht/use-cases/celebrity-voice-generator/.

[85] *Celebrity AI Voice Generator*, WAVEL, https://wavel.ai/studio/celebrity-voice-changer.

[86] *Lovo AI*, MURFAI, https://murf.ai/alternatives/lovo-ai.

[87] Seth Resler, *How to Use AI to Impersonate Celebrity Voices (And Why You Probably Shouldn't)*, JACOBS MEDIA (Apr. 3, 2023), https://jacobsmedia.com/how-to-use-ai-to-impersonate-celebrity-voices-and-why-you-probably-shouldnt/

[88] Threat Intelligence Team, *Love-GPT: How "Single Ladies" Looking for Your Data Upped Their Game with ChatGPT*, DECODED AVAST (Oct. 12, 2023), https://decoded.avast.io/threatintel/lovegpt-how-single-ladies-looking-for-your-data-upped-their-game-with-chatgpt/.

[89] *Id.*

[90] *AMG Capital Mgmt., LLC v. Fed. Trade Comm'n*, 141 S. Ct. 1341 (2021).

IV. The Commission Should Address Additional Forms of Individual Impersonation Not Included In The SNPRM

The FTC should make clear that the Proposed Amendments will also apply to impersonation situations in which AI-controlled avatars or virtual influencers "impersonate" individuals. Currently, the SNPRM states that the Proposed Amendments would cover the following instances in which "persons … misrepresent that they are or are affiliated with an individual":

> (1) calling, messaging, or otherwise contacting a person or entity while posing as an individual or affiliate thereof, including by identifying an individual by name or by implication; (2) sending physical mail through any carrier using addresses, identifying information, or insignia or likeness of an individual; (3) creating a website or other electronic service or social media account impersonating the name, identifying information, or insignia or likeness of an individual; (4) creating or spoofing an e-mail address using the name of an individual; (5) placing advertisements, including dating profiles or personal advertisements, that pose as an individual or affiliate of an individual; and (6) using an individual's identifying information, including likeness or insignia, on a letterhead, website, e-mail, or other physical or digital place.[91]

However, neither the text of the Proposed Amendments nor the SNPRM discussion directly address the use of AI-controlled avatars or virtual influencers that "impersonate" individuals, which could be "real or fictitious."[92] When avatars appear to be controlled by a celebrity when they are not (or appear to be controlled by a real human when they are actually a bot),[93] or when social media influencers appear to be humans enjoying a promoted product when they are not, will the Impersonation Rule apply, and if so, how? Clarity with regard to these issues will ensure that marketers understand their boundaries, and will help protect consumers, including the most vulnerable online users: minors.[94]

V. Informal Hearing

TINA.org does not believe there are any disputed issues of material fact that are necessary to resolve at an informal hearing regarding the proposed rulemaking.[95] However, should the Commission hold such a hearing, pursuant to 15 U.S.C. § 57a(c), TINA.org hereby requests the opportunity to participate in the hearing. TINA.org also requests the opportunity to conduct a cross-examination of individuals the Commission identifies as appropriate and required for a full

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[91] Trade Regulation Rule on Impersonation of Government and Businesses (proposed Mar. 1, 2024) (to be codified at 16 CFR Part 461), p. 21, https://www.ftc.gov/system/files/ftc_gov/pdf/r207000_impersonation_snprm.pdf.

[92] *Id*. at p. 32.

[93] *Roblox Metaverse Playing Games with Consumers*, TRUTH IN ADVERTISING (Apr. 19, 2022, updated Mar. 22, 2024), https://truthinadvertising.org/articles/roblox-metaverse-playing-games-with-consumers/ ("In Nikeland, there were even AI bots modeled after real life NBA stars Giannis Antetokounmpo and LeBron James, each of which were giving away Nike gear to players.").

[94] *See* Truth in Advertising, Comment Letter on Protecting Kids from Stealth Advertising in Digital Media (July 18, 2022), https://truthinadvertising.org/wp-content/uploads/2022/10/TINA-Comment-to-FTC-re-Protecting-Kids-from-Stealth-Marketing.pdf.

[95] 15 U.S.C. 57a(c)(2).

and true disclosure with respect to any purported disputed issues of material fact at the hearing, pursuant to 15 U.S.C. § 57a(c)(2)(B), as well as an opportunity to submit a written rebuttal.

VI.   Conclusion

As TINA.org's work, as well as the plethora of other reports and investigations, make clear, the impersonation of individuals has been and continues to be used to effectively deceive and harm consumers. And as these impersonation scams continue to grow and adapt with the advent of new technologies, so too must the reach and enforcement of consumer protection laws. For these reasons, TINA.org strongly supports the Proposed Amendments and urges the Commission to use them in all appropriate circumstances.

Sincerely,

Bonnie Patten
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Truth in Advertising, Inc. (TINA.org)