



Review Article

SHOULD INFLUENCERS BE LEGALLY LIABLE FOR MISINFORMATION?

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KEYWORDS:

influencer liability, misinformation, social media regulation, FTC Endorsement Guides, Digital Services Act, free speech

ARTICLE HISTORY

Received Date: 03/01/2026

Revised Date: 07/01/2026

Accepted Date: 22/01/2026

Published Date: 05/03/2026

DOI: 10.69557/2czdkk06

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ABSTRACT

Social media influencers — individuals with large online followings who shape public opinion across health, finance, politics, and lifestyle domains — operate in a regulatory environment that lags significantly behind their societal impact. This article examines whether influencers should be held legally liable for spreading misinformation, drawing on peer-reviewed empirical studies, existing legal frameworks, and comparative international regulation. Evidence suggests that influencer-driven misinformation carries measurable public health and consumer harm: studies indicate that only 2.1% of TikTok nutrition content aligns with public health guidelines, and nearly one in five Americans trust health influencers over medical professionals. Current frameworks — including the U.S. Federal Trade Commission's Endorsement Guides, France's Law No. 2023-451, the EU's Digital Services Act, and India's Consumer Protection Act, 2019, and ASCI Guidelines for Influencer Advertising — address commercial deception but do not comprehensively regulate organic misinformation. Arguments favoring liability emphasize documented harm and the profit motive behind false content; counter-arguments invoke free speech protections, definitional ambiguity, and cross-jurisdictional enforcement challenges. This article concludes that a tiered, sector-specific liability framework — complemented by platform co-responsibility, codified Indian enforcement mechanisms, and international coordination — offers the most proportionate path to accountability without suppressing legitimate discourse.



INTRODUCTION

Every day, billions of people scroll through social media feeds curated not by editors or journalists, but by content creators — popularly known as influencers. With follower counts ranging from tens of thousands to hundreds of millions, these individuals wield extraordinary communicative power. They shape purchasing decisions, dietary habits, political views, and even medical choices. Yet, in many jurisdictions, they operate with far fewer legal constraints than a newspaper columnist or a licensed healthcare professional.

The question of whether social media influencers should face legal liability for spreading misinformation sits at one of the most contested crossroads of the digital age — where public health, free speech, consumer protection, and platform accountability collide. This article examines the scale of the problem, the existing regulatory landscape, the arguments for and against legal liability, and what a balanced framework might look like.

The Scale of the Problem

The influence wielded by content creators is not merely cultural — it carries measurable consequences for public behaviour. A 2024 survey of Millennials and Gen Z TikTok users found that over half had been influenced by nutrition trends on the platform, with 67% trying these trends more than once per week. More strikingly, just 2.1% of the nutrition content evaluated by researchers was consistent with established public health guidelines (ZOE, 2026). In parallel, a separate survey of 2,000 Americans by CharityRx found that nearly one in five Americans trust health influencers more than medical professionals in their local community — and half reported purchasing a health product after seeing it promoted on social media. Peer-reviewed research reinforces this concern. A 2025 study published in the *Journal of Marketing Communications* found that consumers exposed to posts by influencers are more likely to reshare misinformation, compounding its reach beyond any single post (Mulcahy et al., 2025). Research from the University of Vienna, drawing on 1,548 Gen Z participants, found that both outright misinformation and overgeneralized health claims by non-expert influencers led to equally detrimental outcomes, undermining belief accuracy and encouraging harmful behavioral intentions — regardless of whether the influencer was famous or fictitious (University of Vienna, 2025).

The stakes extend into life-threatening territory. A 2025 analysis in *Health Promotion International* found that American influencers and dietitians with large followings had partnered with food corporations to assert that artificial sweeteners carry no health risks — directly contradicting guidance issued by the World Health Organization (Denniss & Lindberg, 2025). Separately, a study of dietary supplements promoted by German influencers found that approximately two-thirds of the recommended doses exceeded national safety thresholds.

THE CURRENT LEGAL LANDSCAPE

United States

The primary federal framework governing influencer content in the United States is administered by the Federal Trade Commission (FTC). The FTC's Endorsement Guides require influencers to clearly disclose any material relationship — financial payment, free products, or other benefits — with brands whose products they promote. Non-compliance can result in civil penalties of up to \$53,088 per violation, indexed annually to inflation (Federal Trade Commission [FTC], 2025).



In October 2024, the FTC extended its authority through the Consumer Reviews and Testimonials Rule, which explicitly bans AI-generated fake reviews, the purchase of fake followers or views to misrepresent social influence, and the manipulation of consumer review scores. In 2024 alone, FTC enforcement actions returned \$337.3 million to consumers (FTC, 2025).

These obligations extend beyond individual influencers to commissioning brands. Legal experts at Traverse Legal (2026) note that the FTC has made clear that companies can be held liable when they fail to train or supervise the creators they engage, and that claiming ignorance is not a defence. In 2025, California saw a notable increase in consumer class-action lawsuits targeting both influencers and partnering brands, with influencers, agencies, and brands now frequently held jointly liable for deceptive marketing practices (Thakur Law Firm, 2025).

However, the FTC's authority is largely limited to commercial speech — paid endorsements and false product claims — and does not comprehensively regulate organic misinformation on topics such as health, vaccines, or politics. The broader legal shield for online speech in the United States derives from Section 230 of the Communications Decency Act of 1996, which protects internet platforms from liability for user-generated content. While this provision primarily protects platforms rather than individual creators, it shapes an ecosystem in which platforms have limited incentive to police content, reducing indirect accountability for creators.

International Frameworks

Other jurisdictions have moved more decisively. France passed Law No. 2023-451 in June 2023, becoming one of the first nations to establish a dedicated legal framework for influencers. The law defines an influencer as any natural or legal person who, for a fee, mobilises their reputation among an audience to disseminate content via electronic means, and imposes obligations on influencers, their agents, advertisers, and platforms alike (European Commission, 2025). The European Union's Digital Services Act, which came into full effect between 2024 and 2025, adds transparency requirements for commercial content across large platforms, creating a more structured accountability regime for content creators in EU member states. In the United

Kingdom, the Advertising Standards Authority (ASA) requires disclosures such as 'Ad' or 'Advert' at the start of any commercial post — a stricter standard than the relatively flexible norms prevailing in the United States.

The Indian Legal Framework

India presents a particularly instructive case study, given the scale of its influencer economy and the fragmented regulatory architecture that currently governs it. Unlike the United States or France, India does not yet possess a single, codified influencer law. Instead, accountability is distributed across four distinct instruments: the Information Technology Act, 2000; the

Consumer Protection Act, 2019, as enforced by the Central Consumer Protection Authority (CCPA); the self-regulatory Guidelines for Influencer Advertising in Digital Media issued by the Advertising Standards Council of India (ASCI); and sector-specific advisories from bodies such as the Securities and Exchange Board of India (SEBI) and the Food Safety and Standards Authority of India (FSSAI).

The Consumer Protection Act, 2019, and the CCPA

Section 21 of the Consumer Protection Act, 2019, empowers the CCPA to investigate false or misleading advertisements and to penalise not only manufacturers and advertisers but, distinctively, the endorser



personally. An endorser found liable may face a fine of up to ₹10 lakh, rising to ₹50 lakh for repeat violations, and may be barred from making endorsements for up to one year — three years for subsequent contraventions (Consumer Protection Act, 2019, S 21). Crucially, Section 21(5) provides endorsers with a due-diligence defence: liability is avoided only where the endorser can show they took reasonable steps to verify the claims made. This statutory architecture was tested in *Amitabh Bachchan v. CCPA* (2022), widely regarded as the leading precedent on endorser liability, in which the actor's promotion of a food product was scrutinised for compliance with due-diligence obligations, with the matter clarifying the standard of care expected of high-profile endorsers before they lend their name to a claim (IP and Legal Filings, 2025).

A second significant precedent, predating the 2019 Act but foundational to the broader jurisprudence on influencer accountability, is *Marico Ltd. v. Abhijeet Bhansali* (2020), in which the Bombay High Court granted an interim injunction against a YouTuber who had disparaged a branded coconut oil without adequate substantiation. Justice S. J. Kathawalla observed that social media influencers, regardless of the size of their following, bear a heightened responsibility to ensure the truthfulness of their statements given their capacity to shape consumer attitudes (RMLNLU Law Review, 2021). The decision was substantially reversed on appeal, with the Division Bench placing greater emphasis on the influencer's right to express genuine opinion, illustrating the continuing judicial struggle to balance free expression against consumer protection in this context.

The ASCI Guidelines for Influencer Advertising

In August 2023, ASCI introduced India's first formal definitions of "influencer" and "virtual influencer," alongside mandatory disclosure requirements specifying that promotional labels must remain visible for at least three seconds in short videos and for one-third of the runtime in longer content (Campaign Asia, 2025). Although ASCI is a self-regulatory body whose code does not carry independent statutory force, its findings are frequently adopted by the CCPA, giving its determinations practical legal consequence (KSandK, 2025). In April 2025, ASCI issued a further addendum imposing heightened obligations on influencers operating in the health, nutrition, and BFSI (banking, financial services, and insurance) sectors, including a requirement that influencers offering financial or medical advice disclose relevant qualifications and credentials.

Documented Instances of Influencer Misinformation in India

Empirical findings from ASCI's own monitoring confirm that the problem identified globally in this article is acute within India specifically. An ASCI study of India's Top Digital Stars 2024 list, drawn from Forbes India and covering creators with a combined reach exceeding eleven crore followers, found that 69% of posts failed to comply with mandatory disclosure norms, with fashion and lifestyle content, telecom promotions, and personal care products accounting for 62% of violations (Campaign India, 2025). In the cryptocurrency sector, the scale of the problem is starker still: ASCI data covering January to May 2022 found that influencers, rather than celebrities, were responsible for more than 92% of misleading virtual digital asset advertisements referred for investigation (Singh, 2022). More recently, ASCI's half-yearly complaints report for April–September 2025 recorded 76 cases found in violation of the ASCI Code and CCPA guidelines, the large majority of which were resolved through voluntary correction (ASCI, 2025). Separately, the Delhi High Court in 2024 restricted an influencer from disparaging a brand in health-related content, reaffirming that the constitutional guarantee of free speech is not absolute where commercial speech intersects with consumer welfare (Insights on India, 2025). Taken together, these figures suggest that disclosure failure and substantiation failure are not isolated lapses but a structural



feature of India's influencer economy, reinforcing the case for the comparative analysis that follows. Despite this body of enforcement activity, India's framework displays a structural gap that mirrors the broader concerns raised throughout this article: the CCPA and ASCI regimes are oriented chiefly toward commercial endorsements rather than organic misinformation, and no single statute defines an "influencer" for the purposes of general civil or criminal liability outside the advertising context. As one recent commentary observes, India's regulatory landscape remains fragmented across the CCPA, the IT Act and DPDP Act, ASCI, FSSAI, and SEBI, with the voluntary Indian Influencer Governance Council currently lacking real enforcement power — a gap that leaves emerging risks, including AI-generated promotional content, in a regulatory grey area (Outlook Business, 2025).

COMPARATIVE SUMMARY OF JURISDICTIONAL APPROACHES

Table 1 below summarises the principal regulatory approach, enforcement authority, and maximum sanction adopted by each jurisdiction discussed in this article, illustrating the comparative spectrum from purely self-regulatory codes to dedicated statutory frameworks.

Comparative summary of regulatory approaches to influencer liability across jurisdictions.

Jurisdiction	Primary Instrument	Enforcement Authority	Maximum Sanction
United States	FTC Endorsement Guides; Consumer Reviews and Testimonials Rule	Federal Trade Commission	Civil penalty up to \$53,088 per violation
France	Law No. 2023-451 (dedicated influencer statute)	National regulatory and judicial authorities	Criminal and civil penalties under general statute
European Union	Digital Services Act (2024–2025)	National Digital Services Coordinators; European Commission	Fines up to 6% of global turnover (platforms)
United Kingdom	CAP Code (ASAadministered)	Advertising Standards Authority	Takedown orders; referral to Trading Standards
India	Consumer Protection Act, 2019, S 21; ASCI Guidelines (selfregulatory)	Central Consumer Protection Authority; ASCI (selfregulatory)	Penalty up to ₹50 lakh; up to 3-year endorsement ban



THE CASE FOR LEGAL LIABILITY

Public Health and Consumer Protection

The most compelling argument for holding influencers legally liable for misinformation rests on the demonstrable harm their content can cause. Unlike opinion pieces in traditional media, which are clearly labelled as such, influencer content is often presented in an informal, peer-like register that blurs the boundary between personal anecdote and factual claim. When someone with five million followers asserts that a particular supplement cures a chronic illness, many followers will act on that advice without understanding that no medical evidence supports it. The BMJ noted in a December 2025 editorial that influencers enjoy freedoms unavailable to medical professionals — they are subject to minimal regulation and have unlimited time to nurture trust, enabling them to employ marketing techniques and share personal experiences without the professional accountability that binds doctors, nurses, or pharmacists (BMJ, 2025). A licensed physician who makes a false medical claim can face disciplinary action, civil liability, and loss of their licence. An influencer with comparable reach and, in many cases, greater audience trust, currently faces far fewer consequences.

If we accept that the function of a communication matters more than its medium, then an influencer dispensing medical advice to three million followers is functionally similar to a broadcaster doing the same — and should carry comparable responsibilities.

The Profit Motive

Legal accountability becomes harder to resist when misinformation is tied to financial gain. Influencers who promote unverified health products, dubious investment schemes, or politically motivated falsehoods often profit substantially from doing so. This is not merely careless speech; it is, in many cases, economically incentivised speech. The combination of profit motive, mass reach, and minimal factual standards represents a public interest concern that existing free speech protections were not designed to accommodate.

THE CASE AGAINST LEGAL LIABILITY

Freedom of Expression

The most fundamental objection to imposing legal liability on influencers for misinformation is grounded in the right to free speech. In the United States, the First Amendment offers robust — though not absolute — protections for speech, even speech that is false or misleading, provided it does not meet specific legal thresholds such as defamation or fraud.

Critics of regulatory overreach warn that imposing liability on individuals for sharing incorrect beliefs could chill legitimate public discourse and create a mechanism for governments or dominant institutions to silence dissenting perspectives — including those that later prove to be correct. History contains examples of minority viewpoints dismissed as misinformation that were eventually vindicated by evidence. The Bipartisan Policy Center (2025) notes that aggressive content regulation could incentivise severe censorship, particularly harming smaller platforms and individual creators who lack the legal resources of large media organisations.



The Problem of Definition

A practical obstacle to any liability framework is the difficulty of defining misinformation with legal precision. The line between a mistaken claim, an oversimplified generalisation, a matter of genuine scientific dispute, and deliberate falsehood is rarely clean. Courts would face the formidable challenge of distinguishing, for example, between an influencer who sincerely but incorrectly believes a dietary supplement is beneficial, and one who knowingly promotes a product they understand to be harmful. The University of Vienna study (2025) found that overgeneralised health messages were as harmful as outright false ones — but criminalising oversimplification would sweep up a vast proportion of all human communication, creating an unworkable legal standard.

Enforcement Challenges

Even if robust legislation were enacted, enforcement would present serious difficulties. Influencers operate across national borders; content produced in one country reaches audiences in dozens of others. Coordinating legal accountability across jurisdictions remains a major challenge, and well-resourced creators can often relocate or restructure their operations to circumvent national regulations.

A PATH FORWARD: BALANCED ACCOUNTABILITY

The debate need not be binary. A thoughtful legal framework can hold influencers meaningfully accountable without suppressing legitimate speech. Several principles might guide such an approach.

Tiered Liability Based on Harm and Intent. Legal liability should be most stringent where misinformation causes clear, documented harm and where there is evidence of financial motive or deliberate deception. Unintentional errors in good faith, promptly corrected, should attract softer regulatory responses.

Sector-Specific Standards. Health, finance, and electoral content warrant stricter standards than lifestyle or entertainment content, given their potential to cause serious harm. Influencers operating in these sectors should be held to disclosure and accuracy standards commensurate with their influence.

Platform Co-Responsibility. Platforms that profit from influencer content should share accountability for the information environment they create. The BMJ (2025) argued that regulating and moderating platforms and influencers is necessary, alongside fostering trust through verified communities and evidence-based content. The EU's Digital Services Act model, which places obligations on both creators and platforms, offers a useful template.

Education and Professional Standards. Non-punitive approaches — such as requiring disclosure of non-expert status in medical content, or partnerships between public health authorities and creators — can complement legal measures. A 2024 study published in the Journal of Medical Internet Research found that training programmes for health content creators modestly but meaningfully increased evidence-based messaging (JMIR, 2026).

International Coordination. Given the transnational nature of social media, effective regulation ultimately requires multilateral agreements and harmonised standards, as the EU's Digital Services Act begins to establish.

CONCLUSION

The question is not really whether influencers can spread misinformation — the evidence is overwhelming that they do, and that this carries real consequences for public health, consumer welfare, and social cohesion. The real question is whether society is prepared to design accountability mechanisms that are proportionate, enforceable, and respectful of fundamental liberties.

The answer is almost certainly yes — but it requires moving beyond the false dichotomy of no regulation versus



ensorship. A framework that holds influencers to the same basic standard of honesty that applies to advertisers, journalists, and medical professionals — without demanding infallibility — is both achievable and necessary. What is not acceptable, in an era where a single post can reach millions of people in minutes, is the continued pretence that influence and accountability can be entirely decoupled.

Translating the tiered liability framework proposed above into practice would require concrete legislative and institutional steps. In India specifically, this could begin with three measures. First, Parliament or the CCPA could place ASCI's currently voluntary disclosure code on statutory footing, converting its findings from persuasive guidance into directly enforceable obligations rather than relying on referral to the CCPA after the fact. Second, sector regulators — SEBI for financial content and FSSAI for nutrition and food-related claims — could be empowered to issue binding pre-clearance or registration requirements for influencers who routinely advise on regulated subject matter, mirroring the credentialing obligation ASCI introduced for health and BFSI influencers in 2025. Third, future amendments to the Information Technology Rules could extend the existing intermediary takedown timelines to organic, nonpaid misinformation with demonstrable public health impact, closing the gap between commercial-speech enforcement and the broader informational harms this article has documented. Globally, equivalent mechanisms — harmonised disclosure thresholds, crossborder enforcement cooperation between competition and consumer authorities, and mandatory platform reporting on creator compliance — would help ensure that the tiered framework proposed here is not merely aspirational but operationally enforceable.

Acknowledgments

No external contributors to acknowledge beyond the author.

Funding: This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

Conflict of Interest

The author declares no conflicts of interest with respect to the authorship or publication of this article.

Ethical Considerations

This article is a scholarly review and analysis of publicly available research, legal texts, and regulatory documents. No primary research involving human or animal subjects was conducted.

Accordingly, ethics committee approval and informed consent were not required.

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