Influencing AI: Advertising Law, Generative Search, and Online Influence

Brought to you by Venable's Autorenewal Solutions Team (VAST)

Venable.com/VAST

Shahin O. Rothermel
Partner | +1 202.344.4550 | sorothermel@Venable.com

Ari N. Rothman
Partner | +1 310.229.9909 | anrothman@Venable.com

Ellen Berge
Partner | +1 202.344.4704 | etberge@Venable.com

VENABLE LLP

Agenda

- Background: Generative Engine Optimization
- Search Engine Optimization: Legal Issues
- Advertisers' Responsibility for Content Created by Third Parties
- The Federal Trade Commission's (FTC) Position on Engagement Manipulation
- Practical Steps to Reduce Risk

Questions? Please ask through the chat!
Slides will be shared after the presentation

VENABLE LLP

Background: Generative Engine Optimization

VENABLE LLP

What are SEO, GEO, and AEO?

- **Search Engine Optimization (SEO)**: A practice of optimizing website content, structure, and other factors to improve a website's visibility and ranking in traditional search engine results
  - Get a website to appear prominently in search results and encourage users to click through
- **Generative Engine Optimization (GEO)**: The practice of optimizing online content and other digital information to increase the likelihood that generative artificial intelligence (AI) systems, such as ChatGPT, Google AI Overviews, and Perplexity, will reference, cite, recommend, or otherwise incorporate a company or its products into AI-generated responses
  - Influence how a company, product, or service is represented (i.e., described, cited, or recommended in responses generated) in AI-generated answers
  - This does not matter, even if the advertiser controls the AI-generated response
- **Answer Engine Optimization (AEO)**: The practice of optimizing content so that search engines, voice assistants, and AI-powered answer systems can identify and present it as a direct answer to a user's question
  - Optimize your company's content to be selected or cited as the answer to a question
- Some overlap: Some marketers use AEO as a broad category encompassing optimization for AI-generated answers, while others treat GEO as a distinct subset focused specifically on generative AI systems

VENABLE LLP

What Is Generative Engine Optimization (GEO)?

Traditional SEO

Optimize pages to rank in a list of search results. A consumer clicks through, sees the brand's own site.

Generative Engine Optimization

Shape the content AI platforms ingest so the brand is mentioned, recommended, or described favorably in a synthesized answer (with or without source attribution).

Common GEO mechanisms:

- Structured, "AI-friendly" content, FAQs, and comparison pages built for model retrieval
- Seeding third-party sites, listicles, forums, and community platforms that AI tools frequently cite
- Upvoting favorable posts and downvoting critical ones; coordinated employee or agency engagement
- Paid placements, affiliate content, and influencer posts that may later be ingested by AI systems
- *Influences the information that the AI system encounters and relies upon when generating an answer.*

VENABLE LLP

SEO, GEO, and AEO: Example

- SEO: The company optimizes its website so that it appears among the top Google search results when someone searches for “best running shoes”

- AEO: The company structures and develops content to increase the likelihood that a search or answer engine uses its information to answer: “What features should I look for in running shoes for a triathlon?”

- GEO: The company creates and promotes content, including on third-party websites, to increase the likelihood that a chat or generative AI system recommends its running shoes when a consumer asks: “Which running shoes should I buy for a triathlon?”

VENABLE LLP

How Engagement Can Influence AI-Generated Answers

01 **Advertiser promotes / seeds favorable content**
Reddit recommendation, YouTube review, forum discussion

02 **Engagement increases**
Upvotes, comments, shares, views, ratings

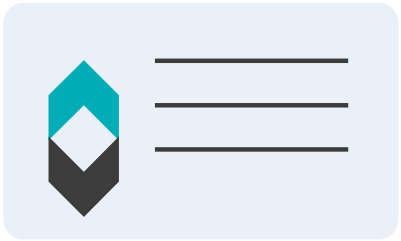
03 **Content may gain visibility and discoverability**
Greater prominence, discoverability, or third-party attention

04 **AI engine retrieves the content**
Search indexing, retrieval, source selection

05 **AI-generated answer may be influenced**
Brand mention, favorable comparison, recommendation, citation

VENABLE LLP

AI Draws on User-Generated Content and Third-Party Conversations



Reddit

Community threads

Posts • comments • upvotes



YouTube

Creator content

Reviews • videos • comments



Review Sites

Consumer feedback

Ratings • testimonials



Forums / Q&A

Specialized expertise

Answers • discussion

VENABLE LLP

Search Engine Optimization: Legal Issues

VENABLE LLP

Search Engine Optimization (SEO)

Search Engine Optimization marketing raised questions about when, how, and under what circumstances companies can manipulate how consumers can find information about their products

- When does search optimization become deceptive advertising?
- Can a company be liable for influencing content presented by a third party?
- When does the use of a competitor's name or trademark cross the line into unlawful conduct?

Takeaway from SEO litigation: Optimizing content to influence search results is generally lawful, but companies remain subject to traditional advertising, trademark, and unfair competition laws for:

(1) the methods used and (2) the representations made to consumers to achieve that visibility

VENABLE LLP

Search Engine Optimization: Legal Issues

Primary areas of dispute:

- Trademark manipulation: Using competitors' trademarks in website metadata or search advertising to attract consumers
- Misleading search results: Creating website descriptions, landing pages, or other content that misrepresented a business's identity or affiliation
- Search ranking manipulation: Using artificial links, keyword stuffing, or other techniques to influence search engine rankings
- Deceptive SEO services: Misrepresenting a marketing company's ability to guarantee search placement or claiming an affiliation with Google

VENABLE LLP

Lawsuits Challenging SEO and Search Rankings

Case	Issue	Summary
Brookfield Commc'ns v. West Coast Ent. (9th Cir. 1999)	Competitor trademark in website metatags	Court applied "initial interest confusion" to metatag use; later courts have narrowed the doctrine
Search King v. Google (W.D. Okla. 2003)	Challenge to demotion of a site that sold links	Search rankings treated as opinion protected by the First Amendment
KinderStart.com v. Google (N.D. Cal. 2007)	Antitrust and speech claims over lowered rankings	Claims dismissed; ranking decisions largely left to the search engine
e-ventures Worldwide v. Google (M.D. Fla. 2017)	Delisting of an SEO firm's client sites	Removal decisions protected as editorial judgment
United States v. Google (D.D.C. 2024)	Monopolization of general search and search text ads	Court found Google unlawfully maintained monopolies; remedies phase followed

VENABLE LLP

Keyword Bidding: Trademark and Antitrust Litigation

Case	Holding / Outcome
Rescuecom v. Google (2d Cir. 2009)	Selling trademarks as keywords can be "use in commerce" under the Lanham Act
Network Automation v. Advanced Sys. Concepts (9th Cir. 2011)	Likelihood of confusion turns on the ad's text, labeling, and context, not the keyword purchase alone
1-800 Contacts v. Lens.com (10th Cir. 2013)	Keyword bidding on a competitor's mark, without the mark in ad copy, did not show likely confusion
Multi Time Machine v. Amazon (9th Cir. 2015)	Clearly labeled search results for a brand the site does not sell were not likely to confuse
1-800 Contacts v. FTC (2d Cir. 2021)	Vacated the FTC's order that settlements restricting keyword bidding were anticompetitive
Lerner & Rowe v. Brown Engstrom & Hughes (9th Cir. 2024)	Affirmed no likelihood of confusion from bidding on a rival law firm's name

VENABLE LLP

1-800 Contacts (10th Cir. 2013)

- **Sponsored vs. organic results:** Sponsored results are ads, typically labeled "Ad" or "Sponsored"; organic results are ranked by the search engine's algorithm
- **Keyword auctions:** Advertisers bid on keywords that trigger their ads. Search engines generally do not limit which keywords can be bought, so "competitors often bid on each other's brand names"
- **Match types and negative keywords:** Advertisers choose broad, phrase, or exact match, and can use "negative keywords" to keep ads from appearing for particular searches
- **1-800 Contacts' enforcement:** Because it charged more than other online retailers, rival ads on searches for its name cut into its sales. Beginning in 2002 it sent cease-and-desist letters and filed suits
- **The settlements:** Between 2004 and 2013 it entered 13 settlements barring both sides from bidding on each other's marks and requiring negative keywords. Generic terms like "contacts" remained open

VENABLE LLP

1-800 Contacts (10th Cir. 2013)

- 1-800 Contacts alleged that a competitor and its affiliates bought keywords resembling its mark to divert customers through "initial-interest confusion"
- Competitor itself bid on nine variations such as "1-800 contact lenses," not on the 1800CONTACTS mark itself. Two affiliates bid on "1800Contacts" and close variants, and one affiliate ran an ad that used the phrase "1800 Contacts"
- **Direct infringement:** "For the most part, we hold that there was no violation." The court upheld judgment for competitor on ads that did not use the mark in their text
- **Contributory liability survived:** "A rational juror could find that the competitor knew that at least one of its affiliates was using 1-800's service mark in its ads yet did not make reasonable efforts to halt the affiliate's practice"
- **Click-through rates:** Later courts cite this case for the point that a click-through rate "represents the upper limit of initial interest confusion"

Lesson for GEO

Keyword purchases alone rarely infringe, but brands can be liable for affiliates and agencies they know are using a rival's mark and fail to stop. Monitor and police third parties.

VENABLE LLP

The Aftermath of *1-800 Contacts*

1-800 Contacts v. JAND (Warby Parker) (2d Cir. October 2024): The court joined "the consensus view" that "the mere act of purchasing a competitor's trademarks in the context of keyword search advertising does not constitute trademark infringement."

Warby Parker's facts: 1-800 alleged ambiguous ads and a deep-linked landing page in "nearly the same shade of light blue" as its own site. Because the ad and page displayed Warby Parker's name, confusion was not plausible; a look-and-feel theory would be a trade dress claim, which 1-800 did not plead.

Lerner & Rowe v. Brown Engstrand & Shely (9th Cir. October 2024): A rival firm bought "Lerner & Rowe" as a keyword from 2015 to 2021, but its ads never used the name. Its ads appeared 109,322 times on those searches; 236 calls in which callers mentioned Lerner & Rowe were de minimis evidence of confusion. In keyword cases, "the owner of the mark must demonstrate likely confusion, not mere diversion."

Still moving: A concurrence in *Lerner & Rowe* urged the Ninth Circuit to reconsider whether keyword bidding is a "use in commerce" at all, and the plaintiff petitioned the Supreme Court.

VENABLE LLP

SEO: A Potential Legal Framework for GEO

Labeling

Paid-placement disclosure standards in sponsored search ads (sponsored AI answers/content).

Trademarks

Keyword-bidding confusion analysis may extend to prompts, AI shopping agents, and AI-generated brand comparisons.

Platform Discretion

Search engines' ranking choices have been given deference; similar arguments may protect AI platforms, shifting the focus and risk to advertisers.

Competitor Suits

Lanham Act and National Advertising Division (NAD) challenges that followed SEO methods are likely to follow GEO methods.

VENABLE LLP

Boosting and Burying Content on Community Platforms

Upvoting Favorable Posts

Employee, agency, or paid upvotes may create a false impression of organic consumer sentiment and may require material-connection disclosures.

Downvoting Negative Content

Coordinated efforts to bury criticism resemble review suppression and may misrepresent the balance of consumer opinion.

Bots and Purchased Engagement

Fake accounts or purchased metrics implicate the FTC's Consumer Review Rule's fake-indicator provisions and platform terms of service (if the Rule applies).

Undisclosed Brand Posts

Brand-affiliated users posting as "just a customer" raise classic astroturfing and endorsement concerns.

VENABLE LLP

Deindexing vs. Retrieval Suppression: Traditional SEO vs. AI/GEO

Traditional SEO	AI / GEO Equivalent	Summary
Deindexing	**Retrieval exclusion**	Content is removed from, or excluded from, sources an AI search engine can retrieve when generating answers.
Ranking suppression	**Retrieval demotion**	Content remains available but is less likely to be selected, cited, or used in an AI-generated answer.
Removal from search results	**Citation or source exclusion**	A source is no longer displayed or cited, although its information might still influence an AI-generated response.
Removal from an index	**Training-data removal / model unlearning**	Information is removed from training data or its influence on a model is reduced; technically more difficult than deindexing.

VENABLE LLP

Advertisers' Responsibility for Content Created by Third Parties

VENABLE LLP

Section 230 of the Communications Decency Act: A Potential Defense?

- **47 U.S.C. § 230(c)(1):** "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider"
- Platforms and sites that merely host third-party reviews, posts, or comments generally are not liable for that content
  - The FTC's Reviews Rule similarly exempts mere review hosting
- Immunity is lost if a defendant is "responsible, in whole or in part, for the creation or development of" the content (§ 230(f)(3))
  - Courts apply a "material contribution" test
- **Generative AI is unsettled:** Courts have not yet decided whether Section 230 protects AI outputs. Because AI tools generate new content, many commentators expect immunity to be limited

Why It Rarely Shields Brands

Section 230 protects intermediaries from liability for others' content. A brand that writes, pays for, seeds, or edits content to influence search or AI results might be a content "developer" and could be sued for its own advertising, making it unclear whether the defense would apply.

§ 230 does not limit intellectual property claims, such as trademark claims.

VENABLE LLP

FTC v. LeadClick Media (2d Cir. 2016): Affiliate News Sites as Advertising

- LeadClick ran an affiliate network marketing LeanSpa weight-loss products. Affiliates drove search and web traffic to fake news sites that posed as independent journalism, with fabricated reporters, “test results,” and consumer comments
- The FTC alleged that the sites were deceptive advertising under Section 5, and the network that solicited and shaped them was responsible, not just the affiliates who published them
- The court held that LeadClick was directly liable because it knew of the fake news sites, recommended them, suggested edits to their content, and bought ad space to send traffic to them
- **No Section 230 shield:** Because LeadClick helped develop the deceptive content, it could not claim immunity as a mere host of third-party material

Why It Matters for GEO

Content built to look independent and rank or be cited can be advertising. A company that funds, directs, or edits that content can be held responsible for the sites that result, even if a third party published them.

VENABLE LLP

Advertiser Liability for Content the Advertiser Pays for or Controls

- **Federal Trade Commission Endorsement Guides (16 C.F.R. § 255.1):** Advertisers are subject to liability for misleading statements made by endorsers and affiliates they compensate, and for failing to disclose material connections
- **FTC's Enforcement Policy on Deceptively Formatted Ads (2015):** Content that appears independent but is created or paid for by an advertiser is advertising, and its commercial nature must be clear to consumers
- **Competitor challenges at the NAD:** The National Advertising Division has generally treated affiliate and influencer content that an advertiser compensates or controls as the advertiser's own advertising, requiring substantiation and disclosure



Fair Housing Council v. Roommates.com (9th Cir. 2008)

- Roommates.com required subscribers to disclose their gender, sexual orientation, and whether they would bring children, and to state roommate preferences on those criteria through drop-down menus. It displayed the answers on profile pages and used them to filter searches and email alerts. Fair housing groups sued under the Fair Housing Act
- **The court held that the defendant did not receive** immunity for the questionnaire, profiles, or search and email systems. By requiring answers and supplying a limited set of pre-populated choices, the site became "much more than a passive transmitter" and was "the developer, at least in part, of that information"
- A website "helps to develop unlawful content, and thus falls within the exception to section 230, if it contributes materially to the alleged illegality of the conduct"
- However, the open-ended "Additional Comments" box remained immune. Providing "neutral tools" is not development, and edits unrelated to the illegality, such as fixing spelling, do not forfeit immunity

Lesson for GEO

Designing prompts, templates, or required fields that steer what users or affiliates say can make a company a co-developer of the content. As the court put it, the CDA "was not meant to create a lawless no-man's-land on the Internet."

VENABLE LLP

FTC v. Accusearch Inc. (10th Cir. 2009)

- Accusearch's website, Abika.com, sold personal telephone records obtained by third-party "researchers." Customers ordered and paid through the site, and Accusearch forwarded requests to researchers, paid them, and delivered the results
- The FTC alleged that trading in confidential phone records was an unfair practice under Section 5
- Accusearch argued Section 230 immunized it because the records came from others
- The court rejected the claims for immunity. Accusearch was an information content provider because it was "responsible" for developing the offending content: it "solicited requests for such confidential information and then paid researchers to obtain it"
  - A service provider is responsible for developing offensive content "only if it in some way specifically encourages development of what is offensive about the content." A "neutral conduit," like a typical bulletin board, is not
- The court affirmed an injunction and disgorgement of $199,692.71 in profits

Lesson for GEO

Paying third parties to produce content, then publishing or distributing it, is not "neutral." A brand that commissions reviews, posts, or engagement it knows are deceptive is likely the developer and cannot rely on Section 230.

VENABLE LLP

When Could a Brand Answer for an AI Platform's Claims?

- **Substantiation:** objective claims a brand seeds into the ecosystem need a reasonable basis before dissemination
- **Repetition and amplification:** if an AI tool repeats a brand's unsubstantiated claim, the brand's own source content may be the enforcement target
- **Brand-controlled AI tools:** chatbots and AI shopping assistants deployed by the brand are likely to be treated as the brand's own advertising
- **"Means and instrumentalities":** the FTC has signaled that providing tools that enable deception (e.g., AI-generated fake reviews) can create liability
- **Lanham Act:** competitors may argue that content a brand engineered for AI output is commercial advertising or promotion



VENABLE LLP

AI Hallucinations

False product claims	AI invents a product attribute, performance result, certification, or safety claim.
Fabricated endorsements	AI attributes a favorable review, expert opinion, or ranking to a source that never made it.
Misleading comparisons	AI presents unsupported “best product” recommendations or inaccurate competitor comparisons.

A hallucination alone does not establish advertiser liability
Fact-specific determination, including what the advertiser knew about the algorithm and the steps the advertiser took to manipulate the algorithm.

VENABLE LLP

The FTC's Position on Engagement Manipulation

VENABLE LLP

The FTC's Position: Consumer Reviews and Testimonials Rule (16 C.F.R. Part 465)

- **Fake reviews and testimonials:** bans creating, buying, or disseminating reviews that misrepresent the reviewer or the reviewer's experience
- **Review suppression:** bars unfounded legal threats, intimidation, or false accusations to prevent or remove negative reviews, and misrepresenting that displayed reviews are all or most reviews
- **Fake indicators of social media influence:** prohibits buying or selling fake followers, views, or similar metrics the buyer knows or should know are fake, to misrepresent influence for a commercial purpose
- **Insider reviews:** requires disclosure of material connections for reviews by officers, managers, employees, and agents

Why It Matters for GEO

The Rule took effect October 21, 2024. Knowing violations can expose companies to civil penalties per violation (adjusted annually for inflation), plus consumer redress.

Coordinated upvoting, downvoting, or fake engagement that feeds AI recommendations may draw scrutiny under the Rule and Section 5.

VENABLE LLP

What is a Consumer Review / Testimonial Subject to the Rule?

- The Rule applies to "consumer reviews": a consumer's evaluation, or a purported consumer's evaluation, of a product, service, or business that is submitted by the consumer or purported consumer and that is published to a website or platform dedicated in whole or in part to receiving and displaying such evaluations

- ***But note***: *The definition would not, however, cover consumer statements about products or services on a website or portion of a website, such as Reddit, that is not dedicated to receiving and displaying reviews. Such free-floating consumer statements are outside of the generally understood context in which content is submitted and published as reviews. Under some circumstances, such statements might be considered "consumer testimonials," such as when an advertiser has paid for them.* 89 Fed. Reg. 68034, 68044

VENABLE LLP

Consumer Reviews Rule: AI-Generated Fake Reviews

- **§ 465.2:** A business may not write, create, or sell a review or testimonial that materially misrepresents "that the reviewer or testimonialist exists" or used the product
- The FTC's 2024 statement of basis and purpose says "AI-generated reviews are covered by the final rule," and the press release cites "AI-generated fake reviews" as an example of reviews by someone who does not exist
- The FTC stated: "AI tools make it easier for bad actors to pollute the review ecosystem by generating, quickly and cheaply, large numbers of realistic but fake reviews"
- **Bots and fake influence (§ 465.1(h), § 465.8):** Fake indicators of social media influence include those "generated by bots" or accounts "not associated with a real individual." Buying them is a violation if the buyer knew or should have known they were fake

GEO Takeaway

AI-written reviews, comments, or engagement deployed to shape what AI platforms see are treated like any other fake review, and knowing violations can draw civil penalties.

VENABLE LLP

Consumer Reviews Rule: AI-Generated Fake Reviews

How does Section 465.2 apply to marketing that uses AI stock avatars (like TikTok's Symphony Avatars)?

The rule has no blanket prohibition on the use of AI-generated avatars in marketing. As discussed in our Federal Register notice, Section 465.2 of the rule is drafted specifically so as to not prohibit companies from using virtual influencers.

Further, AI-generated "stock avatars" would not be giving "consumer reviews" as that term is defined in the rule. It's possible that a company's use of such an avatar might be considered a "testimonial" under the rule. That would be prohibited under the rule only if the underlying testimonials were fake or false. The use of avatars could also be deceptive in violation of the FTC Act. See, e.g., Endorsement Guides 16 C.F.R 255.1(g) and 255.2(c). It would also violate the rule for someone to use a celebrity avatar without the celebrity's permission to speak favorably about a product, if reasonable consumers would think that the celebrity actually gave a testimonial for the product.

VENABLE LLP

What the FTC Says About AI: Overview

AI-Generated Fake Reviews

The Consumer Reviews and Testimonials Rule covers reviews by reviewers who do not exist, and the FTC says AI-generated reviews are covered.

AI Avatars

FTC staff says the Rule has no blanket ban on AI-generated avatars, but avatar testimonials cannot be fake or false and can still be deceptive under Section 5.

"Appear to Be" Endorsers

The 2023 Endorsement Guides define an endorser as one who "could be or appear to be an individual, group, or institution," reaching virtual influencers and fabricated endorsers.

The Rytr Reversal

In December 2025 the FTC set aside its order against an AI review-writing tool, citing the AI Action Plan, while promising to pursue those who use AI to deceive.

VENABLE LLP

Boosting and Burying Content on Community Platforms

Upvoting Favorable Posts

Employee, agency, or paid upvotes may create a false impression of organic consumer sentiment and may require material-connection disclosures.

Downvoting Negative Content

Coordinated efforts to bury criticism resemble review suppression and may misrepresent the balance of consumer opinion.

Bots and Purchased Engagement

Fake accounts or purchased metrics implicate the Rule's fake-indicator provisions and platform terms of service.

Undisclosed Brand Posts

Brand-affiliated users posting as "just a customer" raise classic astroturfing and endorsement concerns.

VENABLE LLP

AI Avatars and Virtual Influencers

- **No blanket ban:** FTC staff Q&A (November 2024): the Rule "has no blanket prohibition on the use of AI-generated avatars in marketing," and § 465.2 was drafted "to not prohibit companies from using virtual influencers"
- **Truthful testimonials:** AI stock avatars do not give "consumer reviews," but an avatar's statements "might be considered a 'testimonial'" and would violate the Rule if "the underlying testimonials were fake or false"
- **Celebrity avatars:** Using a celebrity avatar without permission to praise a product violates the Rule if reasonable consumers would think the celebrity actually gave a testimonial
- **Endorsement Guides (2023):** An endorser "could be or appear to be an individual, group, or institution." The FTC said this reaches virtual influencers, fake review writers, and "non-existent entities that purport to give endorsements"
- **Likeness rule (§ 255.1(g)):** Using an image or likeness of someone other than the actual endorser is deceptive if it misrepresents a material attribute of the endorser

VENABLE LLP

The Rytr Reversal: A Shift in FTC Posture on AI Tools

September 2024

FTC complaint alleges Rytr's AI "Testimonial & Review" tool gave subscribers the means to generate false reviews

December 2024

Final consent order bars Rytr from selling any service that generates consumer reviews or testimonials

December 22, 2025

FTC reopens and sets aside the order: the facts "do not support a finding that Rytr violated Section 5" and the order "unduly burdens AI innovation"

- The FTC says it will continue to hold accountable "actors that use AI to violate the law or deceive consumers about the capabilities of their generative AI."
- Tool providers face less risk of "means and instrumentalities" theories, but brands that publish AI-generated fake reviews or deceptive AI content remain squarely exposed under the Rule and Section 5.

VENABLE LLP

Engagement Practices and Potential Implications

Practice	Potential Legal Implications
Employees or agencies recommend products without identifying affiliations	Undisclosed material connections; FTC Endorsement Guides; Section 5
Advertisers pay individuals to upvote favorable posts	Potentially deceptive amplification of apparent independent consumer approval
Agencies create fictitious consumers to recommend products	FTC Act Section 5; Consumer Reviews and Testimonials Rule where applicable
Brands incentivize favorable reviews	Restrictions on conditioned sentiment; material-connection disclosures; review suppression concerns
Advertisers coordinate accounts to create apparent consensus	Deceptive impression of independent consumer sentiment; potentially fake social influence indicators
Brands sponsor seemingly independent product comparisons	Disclosure of native advertising and material connections

VENABLE LLP

Upvote Campaigns	Paid or coordinated boosting	**Artificial appearance of consensus**
Seeded Discussions	Undisclosed brand recommendations	**Material connections / deception**
Review Generation	Incentives, solicitation, ratings	**FTC reviews rule and Section 5**
Creator Amplification	Sponsored videos and comparisons	**Endorsement disclosures**
AI-Answer Testing	Prompt monitoring and content strategy	**Generally lower risk if truthful**

VENABLE LLP

The Legal Question: Who Is Speaking—and for Whom?

Lower Risk

Authentic customer experiences
Disclosed sponsorships
Truthful, substantiated claims
Transparent employee participation

Higher Risk

Fake consumer personas
Undisclosed paid recommendations
Purchased or coordinated fake engagement
Fabricated reviews or consensus

VENABLE LLP

Manufacturing Consensus in AI Search

Advertisers may seek to influence AI answers by shaping the third-party signals those systems encounter.

Seed the narrative

Brand-friendly Reddit posts, Q&A threads, rankings, or purportedly independent recommendations.

Amplify the signal

Coordinated upvotes, comments, accounts, or paid engagement that make content appear popular or credible.

Influence the answer

AI search may retrieve or summarize the content, potentially reproducing a manufactured consensus.

VENABLE LLP

Advertiser Engagement Toward AI Answers

1

Advertiser / GEO agency

Seeds favorable posts or pays for coordinated activity

→

2

Third-party discussion

Apparent support, popularity, or credibility is inflated

→

3

Retrieval / synthesis

AI tool may encounter, retrieve, and summarize that content

→

4

Consumer-facing answer

Brand recommendation may reflect distorted source material

VENABLE LLP

Risk Spectrum

Lower risk

- Authentic participation
- Transparent brand affiliation
- Independent, voluntary engagement
- Accurate, substantiated claims

Heightened risk

- Employee or agency amplification
- Incentivized endorsements
- Undisclosed commercial connections
- Selective boosting of reviews

High risk

- Purchased or bot-generated votes
- Fake independent personas
- Fabricated customer experiences
- Coordinated suppression of criticism

VENABLE LLP

Practical Steps to Reduce Risk

VENABLE LLP

Potential Enforcers and Challengers

FTC	State Attorneys General	Competitors	Private Plaintiffs
Section 5, the Consumer Reviews and Testimonials Rule, the Endorsement Guides, and its native advertising policy.	State unfair and deceptive acts and practices (UDAP) statutes, often with their own civil penalties and investigative demands.	Lanham Act false advertising and trademark claims (including keyword-bidding disputes) and National Advertising Division (NAD) challenges.	Consumer class actions under state consumer protection laws alleging deceptive marketing.

VENABLE LLP

Existing law

FTC Act § 5

False impressions of independent support can constitute deceptive advertising.

Endorsement Guides—§ 255.2(d)

Addresses review boosting, upvoting, downvoting, and suppression that distort consumer perceptions.

Consumer Reviews Rule—Part 465

Applies to consumer's evaluation, or a purported consumer's evaluation, of a product, service, or business that is submitted by the consumer or purported consumer and that is published to a website or platform dedicated in whole or in part to receiving and displaying such evaluations

Other exposure

State UDAP statutes, potentially Lanham Act § 43(a), agency liability, and platform enforcement.

VENABLE LLP

Practical Steps to Reduce Risk

- Review SEO and paid search practices, including keyword bids and ad copy that reference competitors' marks
- Inventory GEO, social, and community engagement tactics, including those run by agencies and affiliates
- Disclose material connections in any brand-influenced content that AI tools may ingest
- Prohibit fake, purchased, or coordinated engagement, including employee upvote and downvote campaigns
- Substantiate objective claims before seeding them anywhere they may be repeated by AI
- Review and test brand-deployed chatbots and AI assistants for accuracy and required disclosures
- Update agency and influencer contracts with compliance, monitoring, and audit provisions
- Monitor how AI platforms describe your brand and correct inaccuracies through legitimate channels

VENABLE LLP

Questions?



Shahin O. Rothermel
Partner
+1 202.344.4550
sorothermel@Venable.com



Ari N. Rothman
Partner
+1 310.229.9909
anrothman@Venable.com



Ellen Berge
Partner
+1 202.344.4704
etberge@Venable.com

Venable.com/VAST

VENABLE LLP

© 2026 Venable LLP. This document is published by the law firm Venable LLP. It is not intended to provide legal advice or opinion. Such advice may only be given when related to specific fact situations that Venable has accepted an engagement as counsel to address.

VENABLE LLP