FLOOR ALERT: SB 1050 (Ashby) – OPPOSE UNLESS AMENDED

Synthetic Performers in Advertising

On behalf of the listed organizations, we must respectfully oppose SB 1050 unless it is amended. We collectively represent the businesses that create, place, and distribute advertising in California, and we support the author's goal of addressing genuinely deceptive advertising. We also appreciate the amendments that appropriately limited liability for distribution channels. As written, however, the bill still imposes a broad labeling mandate on advertisements that deceive no one, and pairs it with a private right of action and no opportunity to cure. We have submitted specific amendments that would resolve our concerns.

<u>The labeling mandate is triggered without regard to whether consumers are actually misled.</u>

The bill requires a disclosure whenever a synthetic performer appears "prominently" in an advertisement, even where the use is purely illustrative or thematic and makes no claim about the product. "Prominently" is given an overbroad definition, applying to any appearance that "illustrat[es]" or "react[s]" to a "commercial message," which provides no meaningful clarity and is contrary to an ordinary understanding of "prominently." The result is a warning label attached to ordinary creative content, which dilutes the disclosure where it actually matters.

Recommended Fix: Limit the obligation to uses likely to deceive a reasonable consumer regarding a material claim or characteristic of the goods or services, and fix the definition of "prominently" so that illustrative or thematic uses that make no material representation are not covered.

<u>The bill drops the audio-only exemption that appears in the New York law it is modeled on.</u>

An earlier version of SB 1050 excluded audio-only advertisements, consistent with the New York statute on which this bill is based. Removing it sweeps in radio, podcast, and streaming audio spots, where a spoken disclosure consumes scarce airtime and where the synthetic-performer concern is at its weakest.

Recommended Fix: Restore the exemption for audio-only advertisements.

<u>The private right of action invites frivolous litigation over technical labeling disputes.</u>

Enforcement through Section 17200 exposes advertisers and media to suits over judgment calls about whether a disclosure was sufficiently "clear and conspicuous" — with no chance to correct the ad first. That is a litigation regime, not a compliance regime, and it will fall hardest on small advertisers and local broadcasters.

Recommended Fix: Remove the private right of action, vest enforcement exclusively in the Attorney General, and provide a 30-day notice-and-cure period before any enforcement action.

We respectfully urge a NO vote on SB 1050 unless amended to address these critical issues.