



The Federal Trade Commission (FTC) and self-regulatory bodies such as the Electronic Retailing Self-Regulation Program (ERSP) have their attention focused on social media influencers.

In a [recent decision](#) involving Alo, LLC—the company behind Alo Yoga, a popular purveyor of yoga-related merchandise—ERSP reviewed approximately 60 private Instagram accounts containing endorsements for Alo Yoga's products. ERSP's message to advertisers is a familiar one: influencers and endorsers with a material connection to the advertiser must disclose such connection and brands must institute good training and monitoring processes to encourage such disclosures. ERSP opened its inquiry after reviewing dozens of personal Instagram posts that appeared like paid-for Alo Yoga endorsements (e.g. "Wearing my favorite and most comfortable @aloyoga always!!") but did not have any explicit disclosures. Upon investigation, ERSP found that many of these "brand ambassadors" were compensated for their endorsements. The posts therefore needed to

disclose the authors' connection to Alo Yoga. In its analysis, ERSP reiterated some of the key points from the FTC's [Guides Concerning the Use of Endorsements and Testimonials in Advertising](#) (FTC Guides), [related guidance](#), and [actions](#) in recent years, including (1) to place disclosures above the "more" button; (2) to not bury disclosures in a string of hashtags or at the end of hashtags; (3) to ensure that disclosures are clear, straightforward, and in the same language as the endorsement is written; and (4) to institute the "reasonable programs" contemplated by the FTC Guides to train and monitor influencers. In particular, ERSP emphasized that merely distributing "Ambassador Program Guidelines" created based on the FTC's guidance to influencers does not, by itself, satisfy an advertiser's obligations under the FTC Guides— rather advertisers must actively monitor their influencers and follow up as needed to ensure the proper disclosures are made. **Key Takeaways:**

- Both advertisers and influencers are responsible for complying with disclosure obligations.
- Advertisers must develop good processes that encourage influencers to disclose their relationship to the brand.
- Distribution of compliance program guidelines is not enough. Advertisers must periodically monitor influencer activity to ensure compliance with the FTC Guides and follow up with influencers as needed.

**Summer Associate Adam Abdel-Mageed contributed to this post.*

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