

# Yoga Influencers' Disclosures Show Limits of Flexibility

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The Electronic Retailing Self-Regulation Program (or “ERSP”) recently announced a decision involving Alo Yoga’s influencer campaign. The decision centers around how the company’s influencers disclosed – or, in some cases, failed to disclose – their connection to the company, and it includes helpful reminders about how to conduct an influencer campaign.

At the outset, the ERSP reminded Alo that an “individual does not have to say something positive about a product for a social media post to be considered an endorsement covered by the FTC Act. Simply posting a picture or video of a product, or, similarly, tagging a brand in the post, could convey the message that a person likes and approves of a product, and, therefore, may be an endorsement.” That endorsement triggers a disclosure requirement.

Although some influencers did disclose their connection to the company, ERSP took issue with the way some disclosures were made. For example, one influencer used the hashtag #ad – which is generally considered to be sufficient – but ERSP worried that it would get lost in the middle of 23 other hashtags. Also, some influencers used foreign words in their disclosures – such as #incollaborazionaloyoga – potentially making them hard for viewers to understand.

ERSP commended Alo for drafting guidelines that were based on the FTC’s Endorsement Guides and sharing them with its influencers, but reminded the company that simply telling influencers what they have to do is not enough. Companies also need to monitor compliance with their guidelines and take steps to address influencers that don’t comply. Moreover, companies should not re-post influencer posts that don’t include the appropriate disclosures.

Influencers and companies have some flexibility in how they make disclosures and structure their campaigns, but this case demonstrates that there is a limit to that flexibility. Disclosures have to be made in a way that viewers are likely to see and understand them. And companies can’t just give their influencers guidelines, and hope for the best. Instead, they need to take an active role in the campaigns to ensure they comply with the law.