CLIENT ALERTS & INSIGHTS

Influencer Marketing Under Fire: Gymshark Sued in New Class Action as Plaintiffs Target Undisclosed Paid Endorsements

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Featured Practices: Litigation, False Advertising & Unfair Competition, Consumer Protection & Class Actions

Featured Industries: Retail & E-Commerce

Key Takeaways

- A growing wave of class actions-like the new suit against Gymshark-targets brands that use influencers without clearly disclosing paid relationships, alleging that "authentic" posts were actually sponsored ads that misled consumers.
- Plaintiffs are increasingly using state consumer protection laws to turn FTC disclosure guidance into private class actions-creating significant exposure, including damages and fee-shifting, even where regulators themselves can't be sued under the FTC Act.
- Both brands and influencers can face liability if sponsored posts fall short. Brands should audit influencer content, tighten contracts, and implement monitoring and training programs to ensure "clear and conspicuous" disclosure of any material connection.

Overview

Brands that leverage social-media influencers to promote products face a rapidly growing litigation threat. Over the past several months, plaintiffs' attorneys have filed a series of consumer class actions alleging that major brands-and, in some cases, their influencer partners-violated state consumer-protection laws by failing to disclose material connections between the brand and the influencers who endorse their products.

Because the FTC Act does not provide a private right of action, plaintiffs are bringing these claims under state "little FTC Act" statutes and analogous unfair and deceptive acts and practices ("UDAP") laws. Those laws typically permit class-action litigation and provide for statutory damages, restitution, and attorneys' fees. The result is a new private-enforcement mechanism that supplements-and in some respects exceeds-regulatory action by the FTC itself.

The most recent filing-a class-action complaint against Gymshark USA, Inc. filed on June 16, 2026, in the U.S. District Court for the Southern District of New York-exemplifies the theory of liability and the scope of relief that plaintiffs are pursuing.

The Gymshark Class Action

On June 16, 2026, Mihaela Lupea filed a class action against Gymshark USA, Inc. in the U.S. District Court for the Southern District of New York alleging that the brand systematically disguised paid influencer promotion as authentic, organic endorsement.

Lupea alleges that she purchased Gymshark leggings after viewing posts by influencers Whitney Simmons (~4 million followers) and Annabel Lucinda (~3.4 million followers). She alleges that Gymshark paid hundreds of fitness influencers like Simmons and Lucinda to promote its products but instructed-or at a minimum, encouraged-them to do so without the disclosures required by the FTC through either its Endorsement Guides (16 C.F.R. § 255.5) or "Disclosures 101 for Social Media Influencers."

Lupea does not indicate dissatisfaction with the leggings she purchased but instead claims that she would not have bought the products-or would have paid less-had she known that Gymshark paid the named influencers for their endorsement.

Lupea asserts three claims. Her principal claim stems from alleged violations of New York General Business Law § 349, which prohibits "deceptive acts or practices" in the conduct of business, trade, or commerce. Lupea alleges that Gymshark's systematic perpetration of faux-organic paid advertisements to consumers constitutes deceptive and misleading business practices under the operative statute.

Alternatively, she asserts two claims for unjust enrichment. She alleges that Gymshark was unjustly enriched through deceptive and misleading marketing practices, including encouraging influencers to violate popular social-media platforms' terms of service.

She seeks to pursue those claims on behalf of a nationwide class that encompasses all residents of the United States and Canada that purchased Gymshark products after viewing non-compliant influencer marketing materials.

A Familiar Playbook: Gymshark, ALO Yoga, and Revolve

Gymshark did not emerge in a vacuum. It is the latest entry in what is now a recognizable litigation template-one deployed earlier this year against ALO Yoga and Revolve. The parallels across these cases are striking and reflect a strategy to weaponize state consumer-protection statutes against brands that market through influencers.

At their core, these lawsuits tell the same story: a brand compensated social-media influencers to promote its products, and those influencers posted endorsements without clear and conspicuous disclosures of the material connection. Much like in *Gymshark*, the plaintiffs in *Sulici v. Color Image Apparel d/b/a Alo Yoga*, allege that ALO enlisted more than a dozen influencers to push product on Instagram without disclosing that they were compensated for doing so. Similarly, in

Negreanu v. Revolve Group, Inc., plaintiffs allege that certain influencers promoted Revolve-branded merchandise without disclosing their paid relationships.

Plaintiffs cannot sue under the FTC Act itself. So, all these cases rely on state "little FTC Act" consumer-protection statutes and analogous UDAP laws to turn regulatory foot-fouls into actionable claims. Ultimately, the plaintiffs' bar seeks to convert FTC Endorsement Guide principles into private class actions threatening statutory damages and fee-shifting.

What Brands Should Do Now

In light of this emerging trend, brands that engage influencers for the purpose of disseminating promotional content should:

- **Audit Existing Influencer Content.** Conduct a comprehensive review of current influencer posts to identify content that lacks clear and conspicuous disclosure of the connection between the brand and the influencer. Add any missing disclosure. Ensure that disclosures are unavoidable-*i.e.* not buried in hashtag strings, bios-and that they use unambiguous language
- **Tighten Influencer Contracts.** Include express contractual obligations requiring FTC-compliant disclosures on every piece of sponsored content. Incorporate monitoring rights, audit provisions, and clear remedies for non-compliances.
- **Implement Reasonable Monitoring Programs.** Develop and maintain reasonable programs to monitor influencer posts for compliance. These programs can demonstrate good faith and help rebut allegations of systematic non-compliance.
- **Train Influencer Partners.** Provide written guidelines, conduct onboarding briefings, and issue periodic updates as FTC guidance and platform policies evolve.
- **Consult with Counsel About Evolving Standards.** Monitor regulatory developments and update internal policies accordingly.

Benesch's Retail & E-Commerce Industry Group is actively monitoring developments in this area. For questions about how these developments may affect your business, please contact Michael D. Meuti or Allyson Cady.