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AI-Washing Enforcement in the Final Days of the Gensler Administration

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As former Securities and Exchange Commission (“SEC”) Chair Gary Gensler's term came to a close following his resignation [announcement](#) in November 2024, the SEC issued another order targeting what has proved to be one of Gensler's top priorities: misrepresentations of artificial intelligence (“AI”), or “AI-washing.” On January 14, 2025, the SEC [settled charges](#) with technology company Presto Automation Inc. (“Presto”) after allegations that it overstated the capabilities of its voice recognition technology in its public filings. Presto was charged with violations of Section 17(a)(2) of the Securities Act and Section 13(a) of the Securities Exchange Act (and Rules 13a-11 and 13a-15(a) thereunder), for, respectively, making material misstatements in the offering or sale of its securities, and failing to file timely periodic reports with the SEC. This order—which represents the agency's first AI-washing enforcement action against a company created from a “[de-SPAC](#)” transaction—the SEC imposed a cease-and-desist order but refrained from any civil penalty citing Presto's “current financial condition” and helpful cooperation.

The Presto action stemmed from statements made in SEC filings while the company was publicly listed. As explained in the order, Presto Voice is the company's touted AI product which uses “speech recognition technology to automate aspects of drive-thru order-taking at quick-service restaurants.” In Presto's Forms 8-K, 10-K, and S-4 filed between 2021-2023, the company referred to Presto Voice as if it were homegrown, internally created technology and claimed that Presto Voice “eliminat[es] human order taking.” However, the SEC found that Presto Voice's technology was owned and operated by a third party, and that Presto in fact “relied heavily” on human employees in foreign countries to complete drive-thru orders. The SEC also found that the company relatedly reported metrics for Presto Voice's ability to complete orders “without restaurant staff intervention,” creating a false impression that the technology operated with little to no human input or oversight. And, between 2022-2024, Presto appeared to lack internal controls to ensure accurate reporting and prior review by company management.

Although this order represents the final efforts by former Chair Gensler's critical eye toward AI-washing, there is no evidence suggesting that new SEC leadership will change course. Through this order, the SEC has made clear that public and de-SPAC companies are not immune from enforcement related to misrepresentations about AI technology. Companies should coordinate internally to ensure that accurate disclosures are made about the description of any AI offerings or capabilities and ensure they utilize appropriate supervision and controls for such products.