

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**        **Lina M. Khan, Chair**  
                                  **Noah Joshua Phillips**  
                                  **Rohit Chopra**  
                                  **Rebecca Kelly Slaughter**  
                                  **Christine S. Wilson**

	)	
In the Matter of	)	
	)	Docket No.
<b>Board of Dental Examiners of Alabama</b>	)	
	)	

**COMPLAINT**

Pursuant to the provisions of the Federal Trade Commis **NATURE OF THE CASE**

This case challenges actions of the Board of Dental Examiners of Alabama (the "Board") that unreasonably exclude emerging competition from certain new and emerging teledentistry platforms, and the dentists who partner with these platforms. The Dental Board consists of seven members, six of whom are practicing dentists.

In recent years, dentists working with several new firms have started to offer teeth whitening treatment that differs from the traditional treatments offered through dental offices, such as clear aligners prescribed following an in-office appointment with a dentist.

dentists from performing digital scans without on-site dentist supervision. Thereafter, the Dental Board directed the leading provider of clear aligners through a teledentistry model to cease performing digital scans without on-site dentist supervision.

4. The actions of the Dental Board have deprived consumers in Alabama of low-price, convenient options for teeth alignment treatment without any legitimate

## **JURISDICTION**

11. The Dental Board is a “person” within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

12. The acts and practices of the Dental Board, including the acts and practices alleged herein, are in commerce or affect commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44. In particular, dentists and non-dentist providers of dental services in Alabama purchase and receive products and equipment that are shipped across state lines by manufacturers and suppliers located out of state, and transfer money across state lines in payment for these products and equipment.

## **BACKGROUND**

13. “Malocclusion” is a clinical term for the misalignment of or incorrect relation between teeth. Many dentists and orthodontists offer patients treatment for malocclusion. This treatment may include prescribing braces or clear aligners.

14. Braces are the traditional form of treatment for malocclusion. Braces typically employ visible components, including wires or brackets and rubber bands. Braces are installed and adjusted during in-person visits to a dentist’s or orthodontist’s office, and patients, or their insurance providers, pay dentists or orthodontists directly for these services.

15. Clear aligners are custom-made, removable plastic mouthpieces that are molded to fit the patient’s teeth for the treatment of malocclusion. Clear aligners are less conspicuous than braces.

16. Clear aligner therapy consists of supplying the dental patient with a series of mouthpieces sequenced to correct incrementally the malocclusion over a prescribed period. Wearing clear aligners places gentle pressure on the patient’s teeth to reposition them gradually.

17. Clear aligner therapy often begins with an intraoral scan of the patient’s teeth using a scanning device placed inside the patient’s mouth. The intraoral scanning device, also known as an “optical impression device,” is a wand-like tool inserted into the patient’s mouth to create a three-dimensional digital model of the patient’s teeth, bite, gums, and palate. The scanning device enables clinical evaluations without a conventional plaster-cast impression. After the scan is completed, a dentist or orthodontist determines whether the patient is a candidate for clear aligner therapy.

18. Many patients are prescribed clear aligners through a visit to a dentist’s or orthodontist’s office. A patient will schedule an in-person visit with a dentist or orthodontist for assessment of and possible treatment for malocclusion and may receive a prescription for clear aligners from the dentist or orthodontist. As with braces, patients or their insurance providers typically pay dentists or orthodontists directly for these services.

19. In recent years, several new firms, referred to herein as clear aligner platforms,

have launched a new business model utilizing teledentistry. Under this model, the clear aligner platform may send an “impression kit” to the prospective patient’s home, which the patient uses to take impressions of her teeth and then sends to the provider. Alternatively, the prospective patient may visit a storefront location, where a dental hygienist, dental assistant, or other non-dentist professional performs an intraoral scan of the patient’s teeth. For reasons of ease and convenience, many patients prefer to initiate treatment with clear aligner platforms by visiting a physical storefront.

20. The typical patient treatment process employed by clear aligner platforms is as follows. After an impression or digital scan of the prospective patient’s teeth is taken, the clear aligner platform provides the results to a dentist working remotely. The dentist reviews the results and determines whether the patient is a candidate for clear aligner therapy. If so, the dentist may prescribe a set of clear aligners for the patient. A set of custom-made clear aligners is manufactured and sent to the patient’s home. Dental professionals are available for consultations on a remote basis.

21. Several firms employ this teledentistry model to provide clear aligner therapy to patients, including SmileDirectClub, Candid, and Smilelove. These firms typically offer clear aligner therapy at prices substantially below the prices associated with treatment using braces or clear aligners supplied by a dentist or orthodontist in a traditional office setting.

22. Many patients prefer clear aligner therapy supplied through a teledentistry model to treatment through a traditional dentist’s or orthodontist’s office. These patients find this model to be less expensive and more convenient than clear aligners or braces fitted through in-person office visits to a dentist or orthodontist.

### **THE CHALLENGED CONDUCT**

23. Following the rollout and initial success of the first clear aligner platforms, the Dental Board adopted a regulation impeding their operations. Specifically, in September 2017, members of the Board voted to amend Alabama Administrative Code § 270-X-3.10(o)(2). The Board’s interpretation of that amendment, in conjunction with other existing Board regulations, operates to prohibit non-dentist dental personnel, such as dental hygienists and assistants, from taking digital intraoral scans of a patient’s teeth without supervision by a dentist who is physically present in the dental facility. The business model employed by emerging clear aligner platforms is not compatible with the Board’s interpretation of the amended rule, as dental hygienists or assistants who perform digital scans for the platforms are supervised by dentists working remotely.

24. In September 2018, pursuant to a Dental Board vote, the Dental Board sent a cease-and-desist letter to SmileDirectClub. In the letter, the Dental Board instructed SmileDirectClub that the firm and its affiliated personnel were engaged in the unauthorized practice of dentistry.

25. The actions of the Dental Board described above constitute concerted action for purposes of the antitrust laws.

26. As a result of the Dental Board's actions, SmileDirectClub halted a planned expansion of facilities in Alabama. In addition, the Dental Board's actions were widely publicized, including as a result of related litigation between the Dental Board and SmileDirectClub. Other clear aligner platforms are therefore aware of the Board's conduct.

27. The Dental Board's actions have unreasonably restrained competition for the treatment of malocclusion in Alabama. Consumers in Alabama have been deprived of full competition across all channels through which consumers could access treatment for malocclusion.

28. The Dental Board's actions do not yield procompetitive benefits sufficient to justify their harmful effect on competition.

29. The Dental Board's actions have not been reviewed or approved by any neutral state officials with the power to veto or modify the Board's actions.

#### **VIOLATION ALLEGED**

30. The acts and practices described above unreasonably restrain competition and constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. Such acts and practices or the effects thereof are continuing and will likely continue or recur in the absence of appropriate relief.

**WHEREFORE, THE PREMISES CONSIDERED**, the Federal Trade Commission on this \_\_\_\_\_ day of October, 2021, issues its Complaint against Respondent.

By the Commission.

April J. Tabor  
Secretary

SEAL  
ISSUED: