

**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)	
)	<u>DECISION AND ORDER</u>
)	Docket No.
Board of Dental Examiners of Alabama,)	
 a State Agency)	
)	

DECISION

The Federal Trade Commission initiated an investigate C8067 from its prob by the Commission. The Commission Draft Complaint would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

Respondent and the Bureau of Competition executed an Agreement Containing Consent Order (“Consent Agreement”) containing (1) an admission by Respondent of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as

its executive offices and principal place of business located at 2229 Rocky Ridge Road, Birmingham, Alabama 35216.

2. The Commission has jurisdiction of the subject matter of this proceeding and over Respondent, and the proceeding is in the public interest.

ORDER

I. Definitions

IT IS HEREBY ORDERED

II. Injunction

IT IS FURTHER ORDERED that Respondent, in connection with its activities in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, shall cease and desist from, directly or indirectly:

- A. Requiring any Non-Dentist Provider affiliated with any Clear Aligner Platform to have on-site supervision by a Dentist when performing Intraoral Scanning; and
- B. Prohibiting, restricting, impeding, or discouraging any (i) Clear Aligner Platform or (ii) Dentist or Non-Dentist Provider affiliated with any Clear Aligner Platform from providing or facilitating the provision of Clear Aligner Therapy through remote treatment;

Provided, however, nothing in this Order shall prohibit Respondent from filing, or causing to be filed, a court action against a Non-Dentist Provider, Dentist, or Clear Aligner Platform for an alleged violation of the Alabama Dental Practice Act;

For the avoidance of doubt, and other than as set out above in Paragraphs II.A. and II.B., this Order shall not be construed as preventing Respondent from pursuing any administrative remedies against a Dentist or Non-Dentist Provider pursuant to and in accordance with the Alabama Dental Practice Act and Chapter 270 of the Alabama
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did not previously receive a copy of this Order and the Complaint from Respondent, no later than 30 days from the date that such Person assumes his or her position.

IV. Notice to the Commission

IT IS FURTHER ORDERED that, from the date this Order is issued, Respondent shall notify the Commission no later than 60 days after any publication of advance notice of any proposed change to Chapter 270 of the Alabama Administrative Code that relates to Intraoral Scanning or Clear Aligner Platforms, including modifications to the existing rules or proposals for new rules.

V. Compliance Reports

IT IS FURTHER ORDERED that Respondent shall file verified written reports (“compliance reports”) in accordance with the following:

- A. Respondent shall submit interim compliance reports 30 days after the Order is issued, and every 60 days thereafter until Respondent has fully complied with Paragraph III.A.; annual compliance reports one year after the date this Order is issued, and annually for the next 5 years on the anniversary of that date; and additional compliance reports as the Commission or its staff may request.
- B. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondent is in compliance with the Order. Conclusory statements that Respondent has complied with its obligations under the Order are insufficient. Respondent shall include in its report, among other information or documentation that may be necessary to demonstrate compliance:
 1. A full description of the measures Respondent has implemented or plans to implement to ensure that it has complied or will comply with each paragraph of the Order;
 2. A full description of any enforcement action and the circumstances leading to such enforcement action, including the sending of any cease and desist letter, against any Clear Aligner Platform. Each description should include copies of any cease and desist letter or compliant filed by the Board, as applicable;
 3. A full description of any enforcement action and the circumstances leading to such enforcement action, including the sending of any cease and desist letter, against any Dentist or Non-Dentist Provider related to Intraoral Scanning. Each description should include copies of any cease and desist letter or compliant filed by the Board, as applicable; and
 4. Copies of notices sent pursuant to Paragraph III of the Order.

Provided, however, that the Board need not provide any information under Paragraphs V.B.2 or V.B.3 the disclosure of which would violate Ala. Admin. Code r. 270-x-1.08(3).

- C. Respondent shall retain all material written communications with each party identified in the compliance report and all non-privileged internal memoranda, reports, and

VIII. Purpose

IT IS FURTHER ORDERED that the purpose of this Order is to remedy the harm to competition in the provision of Clear Aligner Therapy as the Commission alleged in its Complaint.

IX. Term

IT IS FURTHER ORDERED that this Order shall terminate 10 years from the date it is issued.

By the Commission.

April J. Tabor
Secretary

SEAL
ISSUED:

Appendix A

1. SmileDirect Club, LLC
2. Candid Care Co.
3. Smilelove LLC