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10 *Attorneys for Plaintiffs*

11 **UNITED STATES DISTRICT COURT**  
 12 **CENTRAL DISTRICT OF CALIFORNIA**

13 AARON JIMENEZ, ROBERT  
 14 PARHAM, BRITTANY HODGES, and  
 15 RALPH MILAN individually and on  
 16 behalf of all others similarly situated,

17 Plaintiffs,

18 vs.

19 HISMILE, INC.,

20 Defendant.

Case No.

**CLASS ACTION COMPLAINT**

1. Violation of Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*)
2. Violation of False Advertising Law (Cal. Bus. & Prof. Code §§ 17500, *et seq.*)
3. Violation of Consumers Legal Remedies Act (Cal. Civ. Code §§ 1750, *et seq.*)
4. Breach of Warranty
5. Unjust Enrichment

**JURY TRIAL DEMANDED**

1 Plaintiffs Aaron Jimenez, Robert Parham, Brittany Hodges, and Ralph Milan  
2 (collectively, “Plaintiffs”), individually and on behalf of all others similarly situated,  
3 as more fully described herein (the “Class”), bring this class action complaint against  
4 Defendant HiSmile, Inc. (“Defendant” or “HiSmile”). Plaintiffs’ allegations are based  
5 upon personal knowledge as to themselves and their own acts, and upon information  
6 and belief as to all other matters based on the investigation conducted by and through  
7 Plaintiffs’ attorneys.

8 **I. SYNOPSIS**

9 1. HiSmile is a self-declared billion-dollar company that has built its entire  
10 brand on the fraudulent marketing of its teeth whitening products, which are promised  
11 to deliver instant and dramatic results.

12 2. HiSmile has engaged in an aggressive, pervasive, and fraudulent social  
13 media marketing scheme, particularly on TikTok, Instagram, and Facebook. HiSmile  
14 drives sales by inundating these social media platforms with a high volume of falsified  
15 before-and-after advertisements, misleading celebrity endorsements, and deceptive  
16 influencer marketing, thereby distorting perceptions and fueling unrealistic  
17 expectations of its products. HiSmile furthers this fraud by posting self-sponsored  
18 “customer reviews” of its products and having its own employees pretend to be  
19 satisfied customers on various social media and shopping platforms.

20 3. In its advertising, HiSmile pushes junk science espousing the “science”  
21 of “color theory,” “color correction technology,” “light interference technology,”  
22 “reflective pigments,” and various other pseudoscientific explanations for its  
23 promised “instant whitening” results. HiSmile even goes as far as to claim certain  
24 products are “clinically proven” when they have not even been clinically *tested*.

25 4. When a product lacks efficacy or quality, the marketing becomes less  
26 about truthfully showcasing its benefits and more about creating a façade of success  
27 through manipulation and deception. The reason for HiSmile’s deceptive marketing  
28 ploys, i.e., the fake reviews, fake customers, fake before-and-after photos/videos,

1 misleading celebrity and influencer endorsements, and fake “clinically proven”  
2 claims, is to mask the inefficacy of its products.

3 5. Yet, HiSmile has sold hundreds of millions of dollars’ worth of its teeth  
4 whitening products to unsuspecting customers based on this fraud campaign.

5 6. The HiSmile products at issue include the following in all varieties and  
6 sizes sold throughout California and the United States: (1) V34 Colour Corrector  
7 Serum; (2) Glostik Tooth Gloss; (3) PAP+ Whitening Strips; (4) PAP+ Whitening  
8 Pen (collectively, the “Products”). Images of the Products, taken from HiSmile’s  
9 official website, <https://us.hismileteeth.com>, are depicted below.

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1           7.     **Primary Dual Objectives.** Plaintiffs bring this action, individually and  
2 in a representative capacity on behalf of those similarly situated consumers who  
3 purchased the Products during the relevant Class Period (Class and/or Subclass  
4 defined *infra*), for dual primary objectives: One, Plaintiffs seek, on their individual  
5 behalf and on behalf of the Class/Subclass, injunctive relief to stop HiSmile’s  
6 unlawful and fraudulent advertising, marketing, and sale of the Products to avoid or  
7 mitigate the risk of deceiving the public into believing that the Products conform to  
8 the fraudulent advertising, by requiring HiSmile to change its business practices,  
9 which may include one or more of the following: cessation of the deceptive  
10 advertising practices; cessation of posting fraudulent customer reviews; cessation of  
11 false claims about the Products’ efficacy; and/or discontinuance of the Products’  
12 manufacture, marketing, and/or sale. Two, Plaintiffs seek, on Plaintiffs’ individual  
13 behalf and on behalf of the Class/Subclass, a monetary recovery of the price premium  
14 and/or full restitution for the amount Plaintiffs and consumers overpaid for Products  
15 that should, but utterly failed to comport with the advertised representations (which  
16 may include, for example, damages, restitution, disgorgement, and/or any applicable  
17 penalties, fines, or punitive/exemplary damages) solely to the extent that the causes  
18 of action pled herein permit such recovery.

## 19     **II.     JURISDICTION**

20           8.     This Court has original jurisdiction over this action pursuant to the Class  
21 Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because the proposed Class  
22 consists of 100 or more members; the amount in controversy exceeds \$5,000,000,  
23 exclusive of costs and interest; and minimal diversity exists. This Court also has  
24 supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

## 25     **III.    VENUE**

26           9.     Venue is proper in this District under 28 U.S.C. § 1391 because a  
27 substantial part of the events giving rise to Plaintiffs’ claims occurred in this District.  
28 In addition, Plaintiffs purchased the unlawful Products in this District, and HiSmile



1 has marketed, advertised, and sold the Products within this District.

2 **IV. PARTIES**

3 10. **Plaintiff Aaron Jimenez.** The following is alleged based upon Plaintiff  
4 Jimenez's personal knowledge:

5 a. **Residence.** Plaintiff is a resident of Bellflower, California.

6 b. **Purchase Details.** Plaintiff purchased the V34 Colour Corrector Serum  
7 from HiSmile's website in or around November 2022, paying  
8 approximately \$30.00.

9 11. **Plaintiff Robert Parham.** The following is alleged based upon Plaintiff  
10 Parham's personal knowledge:

11 a. **Residence.** Plaintiff is a resident of Oakland, California.

12 b. **Purchase Details.** Plaintiff purchased the PAP+ Whitening Strips from a  
13 Walmart store in Los Angeles in or around Summer 2021, paying  
14 approximately \$30.00.

15 12. **Plaintiff Brittany Hodges.** The following is alleged based upon Plaintiff  
16 Hodges' personal knowledge:

17 a. **Residence.** Plaintiff is a resident of Riverside, California.

18 b. **Purchase Details.** Plaintiff purchased the V34 Colour Corrector Serum,  
19 PAP+ Whitening Strips, and PAP+ Whitening Pen from a CVS store in  
20 Riverside, CA in or around December 2023, paying \$30.00 to \$45.00 for  
21 each Product.

22 13. **Plaintiff Ralph Milan.** The following is alleged based upon Plaintiff  
23 Milan's personal knowledge:

24 a. **Residence.** Plaintiff is a resident of Santa Ana, California.

25 b. **Purchase Details.** Plaintiff purchased the PAP+ Whitening Strips and  
26 V34 Colour Corrector Serum from HiSmile's website in or around  
27 December 2023, paying approximately \$29.00 for each Product.  
28

1           14. **Plaintiffs’ Future Harm.** HiSmile continues to fraudulently advertise  
2 and sell the Products with deceptive images, claims, and representations. Plaintiffs  
3 would like to purchase the Products in the future if they lived up to and conformed  
4 with the advertised representations. However, Plaintiffs are average consumers who  
5 are not sophisticated in the chemistry, manufacturing, and formulation of dental care  
6 products, such as the Products. Indeed, Plaintiffs do not have any personal knowledge  
7 regarding the nature of the ingredients, or the methods HiSmile used to make them  
8 (including sourcing and manufacturing processes). Since Plaintiffs want to purchase  
9 the Products again to obtain the benefits of the advertised representations—despite  
10 the fact that the Products were once marred by false advertising or warranties—  
11 Plaintiffs would likely and reasonably, but incorrectly, assume the Products are true  
12 to and conform with the advertised representations on their labels and HiSmile’s  
13 advertisements, including HiSmile’s websites and social media platforms.  
14 Accordingly, Plaintiffs are at risk of reasonably, but incorrectly, assuming  
15 that HiSmile has fixed the Products such that Plaintiffs may buy them again, believing  
16 they are no longer misleadingly advertised and warranted and instead believing that  
17 they comply with the advertised representations. In this regard, Plaintiffs are currently  
18 and in the future deprived of the ability to rely on the advertised representations to  
19 purchase the Products.

20           15. **Defendant HiSmile, Inc.** is a corporation headquartered in Delaware.  
21 HiSmile was doing business in the State of California at all relevant times, including  
22 the Class Period. Directly and through its agents, HiSmile has substantial contacts  
23 with and receives substantial benefits and income from and through the State of  
24 California. HiSmile is the owner, manufacturer, marketer, and/or distributor of the  
25 Products, and created, authorized, and controlled the use of the fraudulent advertising  
26 to market the Products. HiSmile and its agents promoted, marketed, and sold the  
27 Products at issue throughout the United States and, in particular, within this judicial  
28 district. The unfair, unlawful, false, deceptive, and misleading fraudulent advertising

1 of the Products were prepared, authorized, ratified, and/or approved by HiSmile and  
 2 its agents to deceive and mislead consumers in the State of California and the United  
 3 States into purchasing the Products.

#### 4 **V. FACTUAL ALLEGATIONS**

##### 5 **A. Market Background**

###### 6 **16. Consumer Demand for At-Home Teeth Whitening Products.**

7 Consumer demand for at-home teeth whitening products is at an all-time high and  
 8 steadily growing,<sup>1</sup> particularly due to the influence of perfect white smiles portrayed  
 9 in the media.<sup>2</sup>

10 17. There are several different methods for whitening teeth. The efficacy of  
 11 these different methods is dependent upon the particular tooth discoloration being  
 12 treated, and whether the discoloration is at the surface or deeper and is caused by  
 13 exposure to staining foods and beverages, smoking, antibiotic use, etc.<sup>3</sup> The most  
 14 common method to whiten teeth is with bleaching products. Teeth bleaching products  
 15 utilize hydrogen peroxide (H<sub>2</sub>O<sub>2</sub>) or one of its precursors, carbamide peroxide (CP),  
 16 as the active ingredient to oxidize organic chromophores (small molecules from  
 17 coffee, red wine or tea), resulting in a lighter appearance of teeth.<sup>4</sup> Quicker tooth  
 18 whitening can be achieved in-office because professional-grade products deliver a  
 19 higher concentration of peroxide (25-35%)<sup>5</sup> than over-the-counter products (typically  
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21 \_\_\_\_\_  
 22 <sup>1</sup> *Teeth Whitening Market Size, Share & Trends Analysis Report By Product*  
 23 *(Whitening Toothpaste, Whitening Gels & Strips, Light Teeth Whitening Device), By*  
 24 *Distribution Channel, By Region, and Segment Forecasts, 2022-2030*, GRAND VIEW  
 RESEARCH, [https://www.grandviewresearch.com/industry-analysis/teeth-whitening-](https://www.grandviewresearch.com/industry-analysis/teeth-whitening-market-report)  
 market-report (last visited June 5, 2024).

25 <sup>2</sup> Clifton M. Carey, *Tooth Whitening: What We Now Know*, JOURNAL OF EVIDENCE  
 26 BASED DENTAL PRACTICE, 14 Suppl: 70-76, (Feb. 13, 2014),  
<https://doi.org/10.1016%2Fj.jebdp.2014.02.006>.

27 <sup>3</sup> *Id.*

28 <sup>4</sup> Andrew Joiner, *The bleaching of teeth: A review of the literature*, JOURNAL OF  
 DENTISTRY 34:7, 412-419 (August 2006),  
<https://doi.org/10.1016/j.jdent.2006.02.002>.

<sup>5</sup> Carey, *supra* note 2.

1 6-14%).<sup>6</sup> During in-office treatments, gingival tissues are usually protected before the  
 2 whitening agent is applied.<sup>7</sup> At-home bleaching systems include tray-based tooth  
 3 whiteners, whitening strips and gels, whitening toothpastes, and whitening rinses.<sup>8</sup>

4 18. Peroxide-based treatments can cause tooth and gum sensitivity,<sup>9</sup> and the  
 5 desired level of whitening can take dozens of rounds of applications, requiring strips,  
 6 gel, or trays to be on the teeth for up to one hour per application,<sup>10</sup> with treatment  
 7 courses of up to 14 days or longer. Thus, there is a consumer market for over-the-  
 8 counter teeth whitening products that advertise faster results without tooth and gum  
 9 sensitivity.

10 19. **HiSmile Profits from its False and Pervasive Marketing Scheme.**  
 11 HiSmile launched in 2014 with a starting capital of \$20,000.<sup>11</sup> In September 2023,  
 12 HiSmile founder Nik Mirkovic declared that HiSmile was on track to post **one billion**  
 13 **dollars in sales** that financial year.<sup>12</sup> HiSmile credits its explosive success to its  
 14 aggressive social media marketing.<sup>13</sup> HiSmile spends tens of millions of dollars per  
 15 year on social media posts mostly aimed at their target market: women and girls  
 16 between the ages of 15 and 24.<sup>14</sup>

17  
 18 <sup>6</sup> *Basic details about Crest White Strips*, ANIMATED-TEETH.COM,  
 19 [https://www.animated-teeth.com/whitening\\_strips/a1\\_teeth\\_whitening.htm](https://www.animated-teeth.com/whitening_strips/a1_teeth_whitening.htm) (last  
 20 visited June 5, 2024).

21 <sup>7</sup> Carey, *supra* note 2.

22 <sup>8</sup> *Id.*

23 <sup>9</sup> *Id.*

24 <sup>10</sup> *Crest Whitestrips Instructions: Safe & Easy Teeth Whitening*, CREST,  
 25 [https://crest.com/en-us/oral-care-tips/teeth-whitening/crest-whitestrips-instructions-  
 26 safe-easy-teeth-whitening](https://crest.com/en-us/oral-care-tips/teeth-whitening/crest-whitestrips-instructions-safe-easy-teeth-whitening) (last visited June 5, 2024).

27 <sup>11</sup> Sabri Suby, *How HiSmile Grew From a Tiny \$20K Investment to \$40 Million*  
 28 *Ecommerce Powerhouse in 3 Years [Detailed Case Study]*, KING KONG, (Feb. 7,  
 2018), [https://kingkong.co/blog/hismile-grew-tiny-20k-investment-40-million-  
 ecommerce-powerhouse-3-years-detailed-case-study/](https://kingkong.co/blog/hismile-grew-tiny-20k-investment-40-million-ecommerce-powerhouse-3-years-detailed-case-study/).

<sup>12</sup> Julie-anne Sprague, *Being an introvert helped set up this Young Rick Lister to*  
*make \$1b*, THE AUSTRALIAN FINANCIAL REVIEW, (Sep. 25, 2023),  
[https://www.afr.com/wealth/people/being-an-introvert-helped-set-up-this-young-  
 rich-lister-to-make-1b-20230915-p5e52h](https://www.afr.com/wealth/people/being-an-introvert-helped-set-up-this-young-rich-lister-to-make-1b-20230915-p5e52h).

<sup>13</sup> Suby, *supra* note 11.

<sup>14</sup> *Id.*

1           20. HiSmile aggressively markets its Products as instant teeth whiteners on  
2 its social media accounts by publishing a high volume of videos, paying influencers  
3 and celebrities such as Kim Kardashian, Kylie Jenner, and Conor McGregor for  
4 sponsored posts, and paying for ads to appear in users' feeds. For instance, HiSmile's  
5 TikTok account (user @hismile) typically posts fifteen or more videos per day  
6 advertising its various Products. Due to its insistent posting and advertising, HiSmile  
7 has amassed a massive social media following. HiSmile's TikTok account has 5  
8 million followers and 107.3 million cumulative "likes" on its videos. HiSmile's  
9 Instagram account (user @hismile) has 1.6 million followers. HiSmile's Facebook  
10 page has 1.7 million "likes" and 1.7 million followers.

11           21. For context, even multi-billion-dollar and well-established dental care  
12 brands have not attained anywhere near this size of a social media audience. Colgate  
13 has only 186 thousand followers on Instagram (user @colgate), and Crest has only  
14 91.4 thousand followers on Instagram (user @crest).

15           22. HiSmile's social media advertising strategy is highly effective, and its  
16 partnership with celebrities and influencers is a huge driver of its sales. HiSmile  
17 founder Nik Mirkovic explained, "Our five Instagram posts with Kylie [Jenner] have  
18 all had over 1 million views and 100,000 comments and you see the sales uplift  
19 immediately after each one."<sup>15</sup>

20           **B. Fraudulent Misrepresentations**

21           23. To perpetuate its fraudulent marketing scheme, HiSmile uses fake  
22 "before and after" images and videos; deceptive editing and filming techniques; posts  
23 fake positive reviews and removes critical negative reviews; has its employees pose  
24 as fake dental professionals, scientists, and customers in social media advertisements;  
25 utilizes misleading celebrity endorsements; falsely claims that certain Products are  
26 "clinically proven" to instantly whiten teeth; and promotes fake science, as further  
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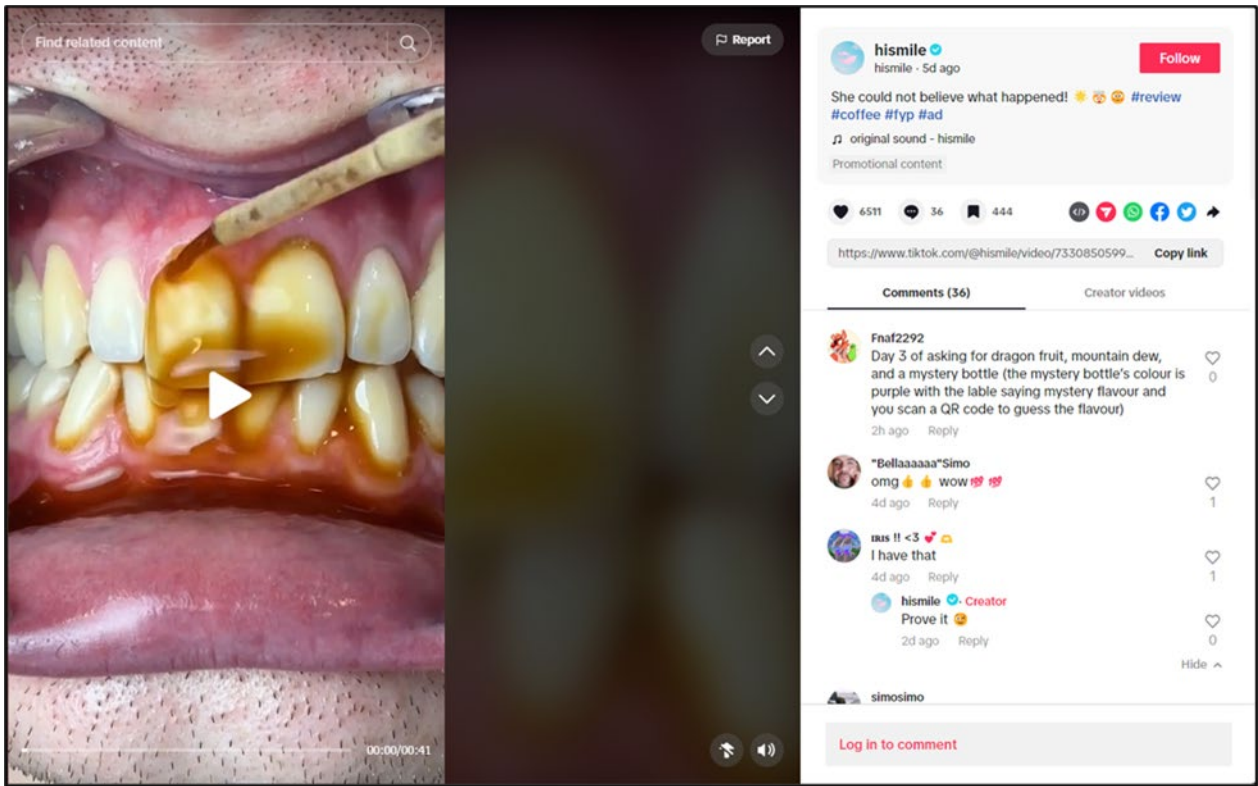
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<sup>15</sup> *Id.*

1 described herein. These actions are collectively referred to as the “**Fraudulent**  
2 **Misrepresentations.**”

3 i. **HiSmile Uses Fake “Before and After” Images and Videos.**

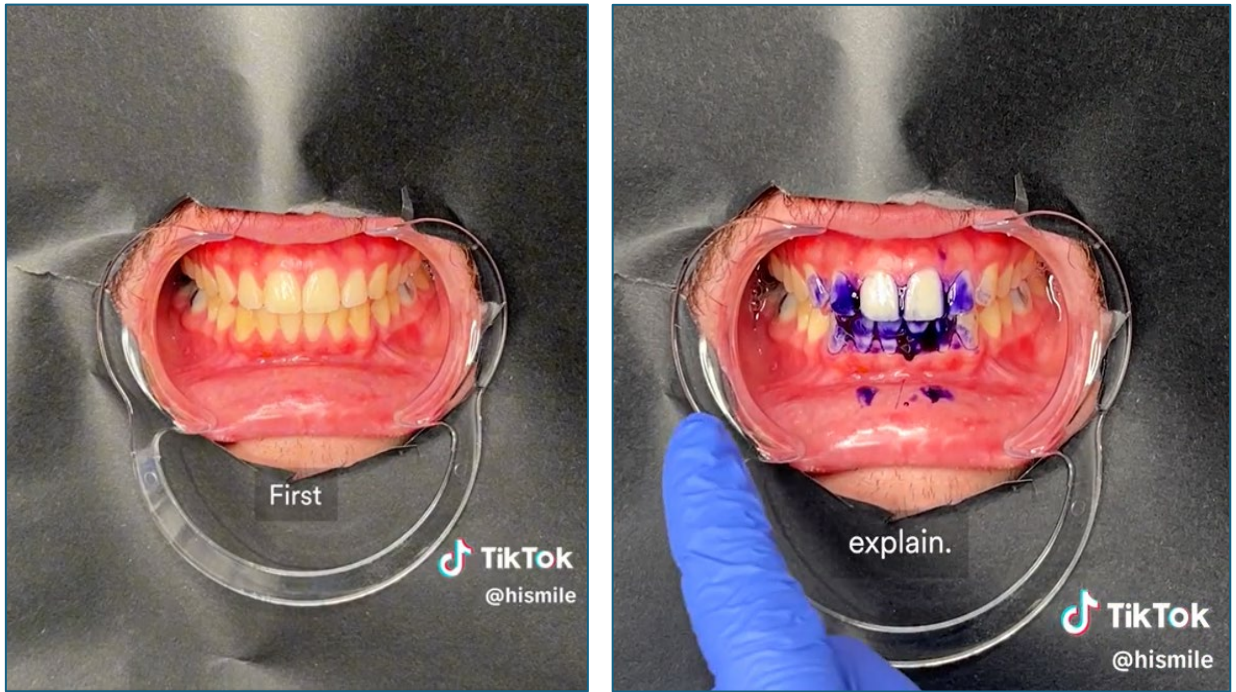
4 24. In its advertisements, HiSmile employs numerous deceptive techniques  
5 to fabricate the whitening effect that users can achieve with its Products.

6 25. HiSmile artificially “stains” some models’ teeth with a brown solution to  
7 create a more dramatic before-and-after effect. Consumers who have real preexisting  
8 staining on their teeth cannot achieve the same results shown by HiSmile’s process  
9 of applying fake staining to teeth and then immediately removing it with the Products.  
10 See the below image, taken from HiSmile’s TikTok account, of brown solution being  
11 applied to a model’s teeth:



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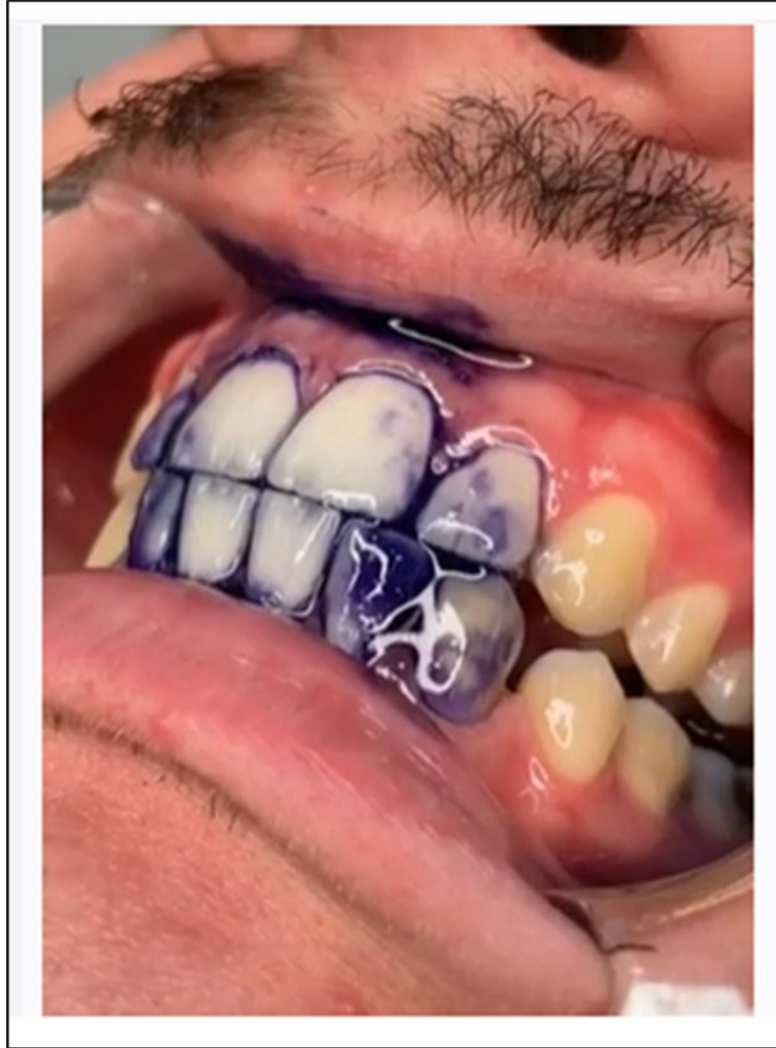
1           26. When the actors in HiSmile’s videos apply the HiSmile Products to these  
2 very yellow teeth, the whitening effect for all the Products is falsely pronounced. See  
3 the following example of the V34 Colour Corrector Serum being applied to artificially  
4 yellow teeth:



17           27. **V34 Colour Corrector Serum.** HiSmile’s before-and-after advertising  
18 for the V34 Colour Corrector Serum is highly deceptive. The vast majority of  
19 HiSmile’s advertising for this Product shows the purple serum while it is still on the  
20 models’ teeth. In the advertisements, models or actors wipe a small amount of the  
21 Product off or rinse a few teeth with a small amount of water so that the Product  
22 mostly remains on the teeth. This gives the illusion that the purple paste cancels out  
23 the yellow tones in teeth to make them look whiter. In reality, when the Product is  
24 fully rinsed away as instructed, the color-correcting effect disappears entirely. These  
25 depictions deceptively exaggerate the performance of the Product. The following  
26 images are taken from HiSmile’s advertisements for the Product on its official website  
27 and TikTok account:

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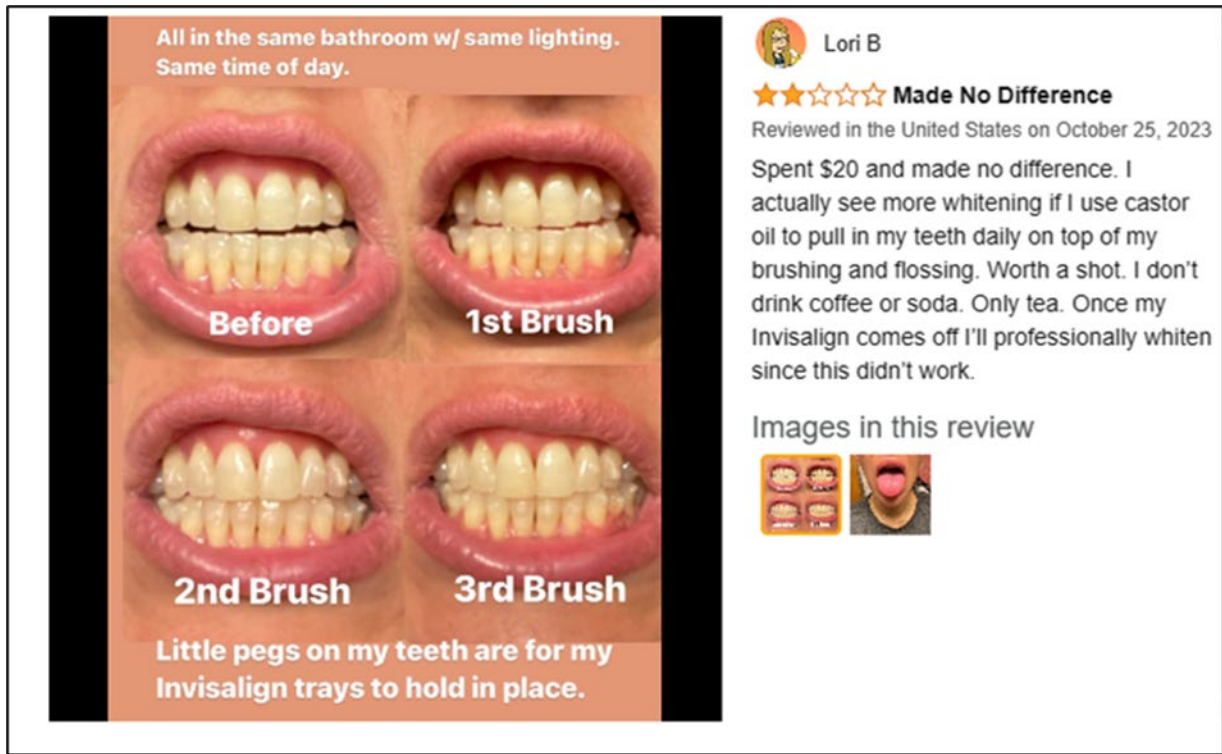


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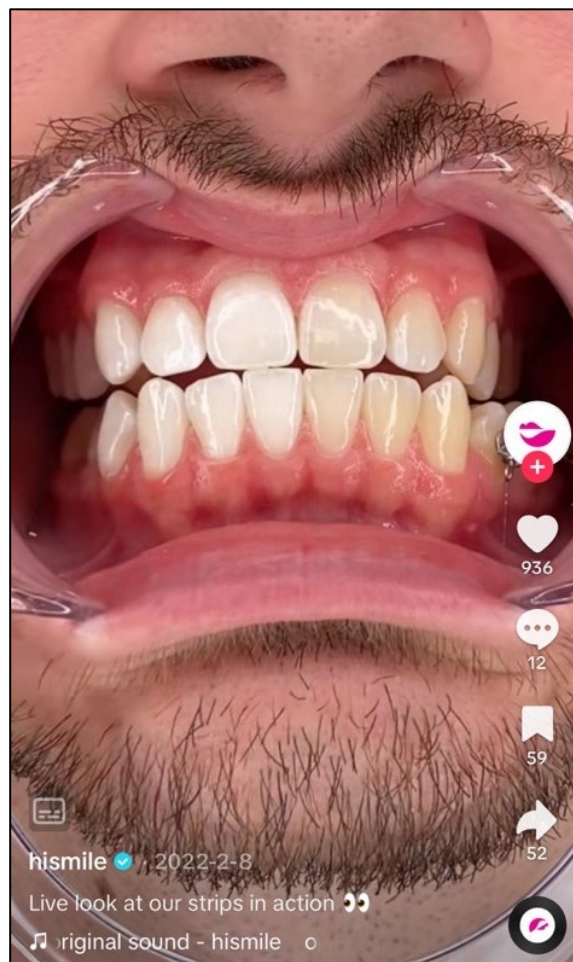
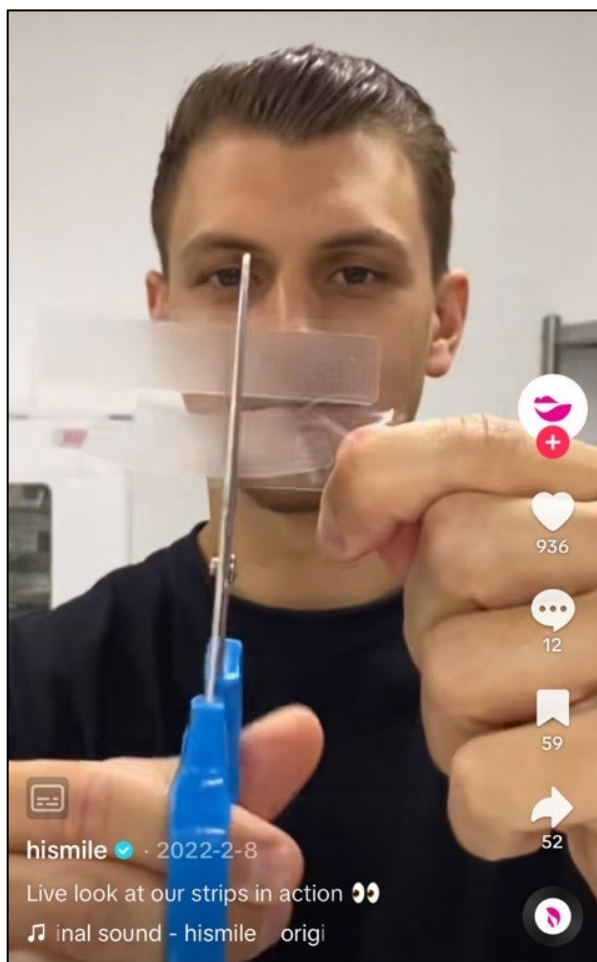
Compare these images with the images from a customer's review on Amazon.com, in which the user fully rinsed away the V34 Product as instructed:



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1           28. **PAP+ Products.** HiSmile uses its artificial staining technique and jump-  
2 cut editing to exaggerate the effects of its PAP+ Whitening Strips and PAP+  
3 Whitening Pen. In the following example, a HiSmile employee purports to  
4 demonstrate the effectiveness of the active ingredient in the PAP+ Products  
5 (Phthalimidoperoxycaproic Acid) by putting only half of the whitening strips on a  
6 model's teeth. The results look dramatic, but they are not attainable. These results are  
7 achieved by falsely "staining" very white teeth and immediately removing this surface  
8 level discoloration.

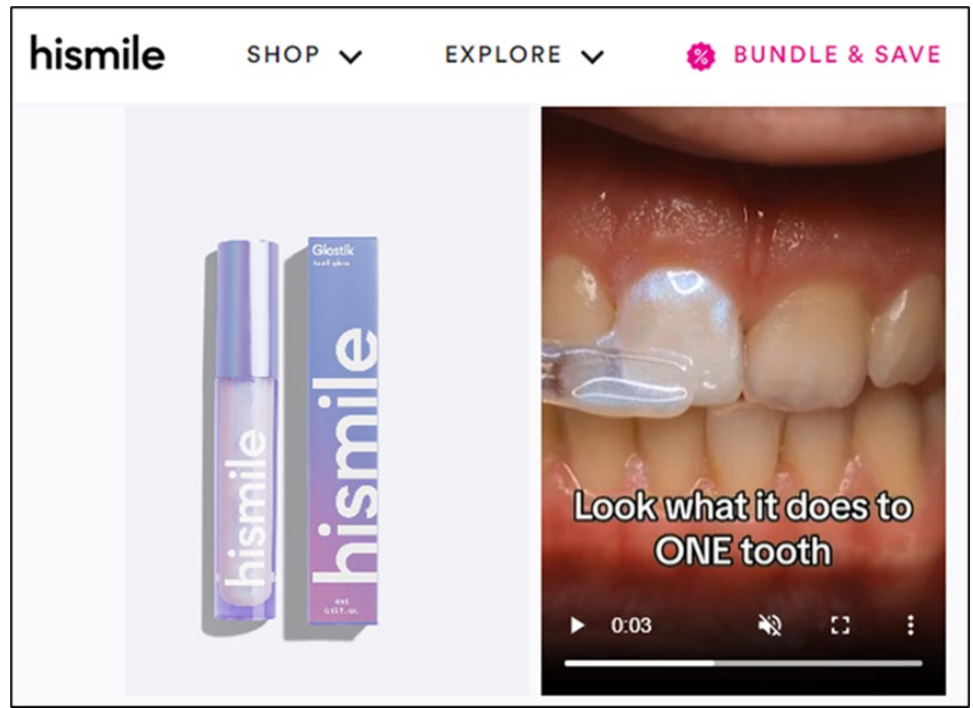
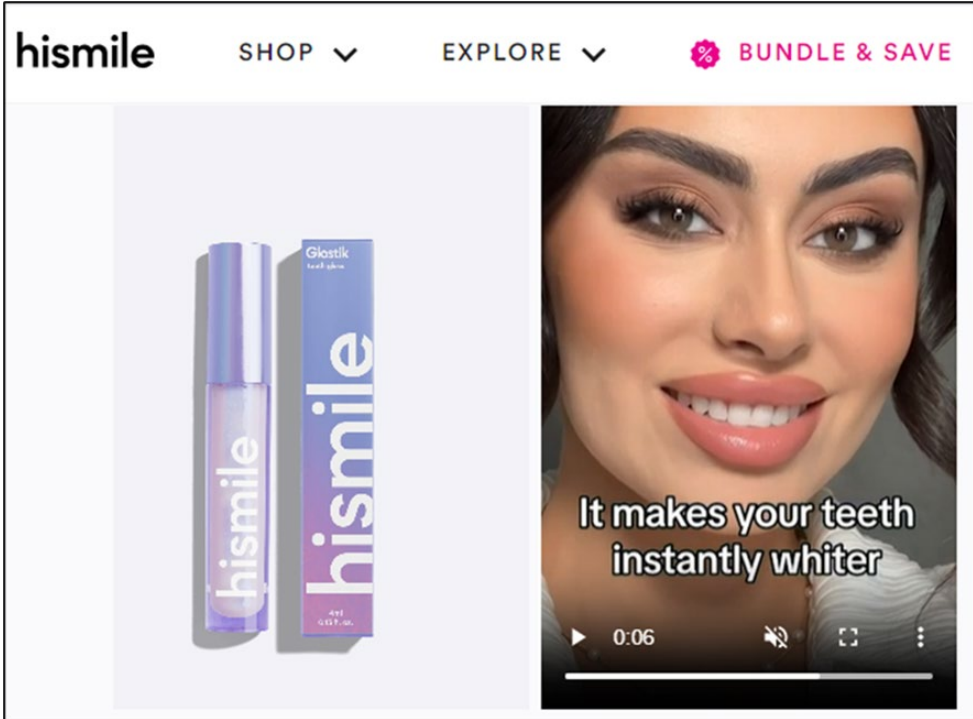


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29. **Glostik Tooth Gloss.** HiSmile uses unnaturally bright lighting, misleading editing, and models who already have very white teeth to deceptively exaggerate the before-and-after effect of the **Glostik Tooth Gloss**. See the following examples of an advertisement for **Glostik Tooth Gloss** taken from HiSmile’s official website (last visited June 5, 2024):



1           30. Consumers are deceived by the fraudulent advertising of the **V34 Colour**  
2 **Corrector**, as indicated by *tens of thousands* of negative reviews on HiSmile’s  
3 official Product listing on Amazon.com, e.g.:

4

5  ROY

6 ★★★★★ **High expectations low results if any!!**

7 Reviewed in the United States on December 27, 2023

8 **Verified Purchase**

9 I porches this last week or so. I was very excited to check it out and see what kind of results I would  
10 get, but as the advertising showed when you applied it on your teeth you should see the difference  
11 right away, but I see for a few seconds when the product is still on it looks like something is going on  
12 but when I wipe it off did not see the results that they bragging about not even close!!  
13 I even try side by side to see one side was natural and the other one with the product and guess what  
14 Nothing !! I think this is a good scam.

15 10 people found this helpful

16  |

13  Heather Claycomb

14 ★★★★★ **This does not work!**


15 Reviewed in the United States on January 28, 2024

16 **Verified Purchase**

17 I got sucked in after seeing all the ads for this product. I dont have the whitest teeth but they aren't  
18 yellow either. There was no change in my teeth after using this product even my daughter tried it and  
19 there was no change either. I even let it sit on my tooth for over a min and then wiped off. This product  
20 is 100% not worth your money

21 3 people found this helpful

22  |

21  Ashley

22 ★★★★★ **Don't waste your money, doesn't work**

23 Reviewed in the United States on January 28, 2024

24 **Verified Purchase**


25 I was so super excited for this. I've seen so many ads where they put it on a tooth and it turns it white. I  
26 tried it had zero results. Not even half a shade. I'm a nonsmoker and I drink tea. I should've known the  
27 hype was just that. Definitely returning.

28 3 people found this helpful


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 Kits+Court  
 ★☆☆☆☆ **This does not work**  
 Reviewed in the United States on January 18, 2024  
**Verified Purchase**  
 I literally hate how TikTok and instagram and a lot of my ads are all blowing up with this product and showing me videos of how your teeth change colors instantly. This literally doesn't work at all and I wish everyone would stop lying about it. Fakest ads I have ever seen tbh  
 2 people found this helpful  
 Helpful | Report

31. Consumers are deceived by the fraudulent advertising of the **Glostik Tooth Gloss**, as indicated by hundreds of negative reviews on HiSmile’s official Product listing on Amazon.com, e.g.:


 Nicole Burns  
 ★☆☆☆☆ **Gimmick**  
 Reviewed in the United States on October 24, 2023  
**Verified Purchase**  
 This is straight up a gimmick! It's like a thick gel that puts a shiny layer over your tooth. First off, you can feel it. Second, it's thick and goopy. Third, zero whiteness added. Only a glossy holographic shade that's not natural at all. All the videos are BS.  
 Helpful | Report

 Benji  
 ★☆☆☆☆ **Straight up scam**  
 Reviewed in the United States on September 18, 2023  
**Verified Purchase**  
 Does nothing to your teeth but make them shiny. I have yellow teeth and was excited that there was a product I could use for an upcoming job interview but after trying it on today it did literally nothing to change the color of my teeth. For the same price I could have bought a whitening pen that actually whitened my teeth, but I fell for this TikTok scam instead. Waste of 20 dollars  
 3 people found this helpful  
 Helpful | Report

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 ck@vhil

★☆☆☆☆ **Awful product**


Reviewed in the United States on February 26, 2024

**Verified Purchase**

In the advertisement for this product, you see this being placed on someone's tooth & it whitens instantly... total bs! It doesn't do anything other than make your teeth feel all sticky & gross.

|

32. Consumers are deceived by the fraudulent advertising of the **PAP+ Whitening Strips**, as indicated by the hundreds of negative reviews on HiSmile's official Product listing on Amazon.com, e.g.:

 Amazon Customer


★☆☆☆☆ **Zero results**

Reviewed in the United States on July 31, 2023

**Verified Purchase**

I saw no results after using the entire pack of whitening strips. I very disappointed. I expected better after all of their advertisements.

|

 FitnessQueen

★☆☆☆☆ **Does not written teeth.**

Reviewed in the United States on January 15, 2023

**Verified Purchase**


Hello everyone, I purchased this product because I saw the hype about it on social media. I did the treatment for 14 days, religiously. I had no results from this product. I would not recommend. Save your money.

6 people found this helpful

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 Tammra

★☆☆☆☆ **Doesn't work**

Reviewed in the United States on February 12, 2023


**Verified Purchase**

I had high hopes for this product, busy sadly after a few uses I see little to no difference. Definitely doesn't work as advertised. I wouldn't wast your money. Only positive is it's not painful for sensitive teeth.

3 people found this helpful

|

33. Consumers are deceived by the fraudulent advertising of the **PAP+ Whitening Pen**, as indicated by hundreds of negative reviews on HiSmile's official Product listing on Amazon.com, e.g.:

 Denecia Gandy


★☆☆☆☆ **Does not work!**

Reviewed in the United States on October 14, 2023

**Verified Purchase**

Complete scam saw no difference at all. Does not work as advertised!!

|

 Amazon Customer

★☆☆☆☆ **Doesn't work**

Reviewed in the United States on June 11, 2023

**Verified Purchase**

Looks better online than in person

One person found this helpful

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ii. **HiSmile Posts Fake Positive Reviews and Removes Critical Negative Reviews**

34. HiSmile posts fake positive reviews and removes negative reviews on the various platforms where its Products are sold, further perpetuating its false advertising scheme.

35. HiSmile previously hosted customer reviews on its own website but only prior to the addition of numerous negative reviews.<sup>16</sup>

36. FakeSpot, a company that grades product reviews based on authenticity, found that less than 80% of the 60,000+ reviews for HiSmile’s V34 Colour Corrector Amazon product listing were reliable, which calls into question the authenticity of over 12,000 reviews.<sup>17</sup>

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<sup>16</sup> See, e.g., an archived web capture of HiSmile’s website from 2022 that has a link for consumer reviews (“Read the reviews”): <https://web.archive.org/web/20221029210638/https://us.hismileteeth.com/products/colour-corrector> (last visited June 5, 2024).

<sup>17</sup> *Hismile v34 Colour Corrector*, FAKESPOT, <https://www.fakespot.com/product/hismile-v34-colour-corrector-purple-teeth-whitening-tooth-stain-removal-teeth-whitening-booster-purple-toothpaste-colour-correcting-hismile-v34-hismile-colour-corrector-tooth-colour-corrector> (last visited June 5, 2024).

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1 37. Tellingly, there are 14,372 one-star ratings and 5,672 two-star ratings on  
2 HiSmile’s V34 Colour Corrector Amazon listing.<sup>18</sup>

3 38. Many reviews utilize the language that HiSmile itself uses to describe its  
4 Products. For example, one review of the Glostik Tooth Gloss on Amazon.com states,  
5 “Instant tooth whitening – This is really clever – it paints on a pearlescent sheen that  
6 makes teeth look whiter by reflecting the light. Really easy to apply and works  
7 instantly!”<sup>19</sup> HiSmile’s own description of this Product says, “The instant brightening  
8 wand...It adds a pearlescent glow to your teeth...Easy on-the-go application...tooth  
9 gloss works by reflecting light.”<sup>20</sup> The similarity in wording across numerous positive  
10 reviews suggests that HiSmile uses a script and bots or employees to post fake positive  
11 reviews.

12 39. Some reviews from purported customers are actually reviews from  
13 HiSmile’s employees. For example, the following five-star review was posted on the  
14 Amazon product page for HiSmile’s Glostik Tooth Gloss, purportedly from a  
15 customer named “Jason,” but this person works for HiSmile, as evidenced by his  
16 presence as an actor in numerous HiSmile social media videos and advertisements:

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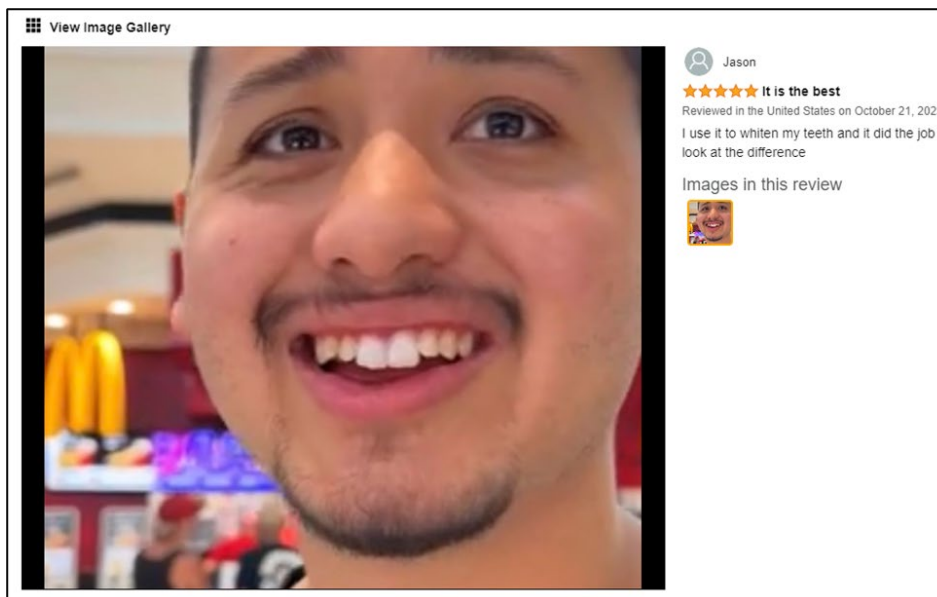
24 <sup>18</sup> See *Hismile v34 Color Corrector, Tooth Stain Removal, Teeth Whitening Booster, Purple Toothpaste, Colour Correcting, HiSmile V34*, AMAZON.COM, <https://www.amazon.com/Hismile-Corrector-Whitening-Toothpaste-Correcting/dp/B09LH36816/> (last visited June 5, 2024).

26 <sup>19</sup> Sofie F, *Instant tooth whitening*, AMAZON.COM, <https://www.amazon.com/gp/customer-reviews/R3TB8K9KP0KRXB/> (last visited June 5, 2024).

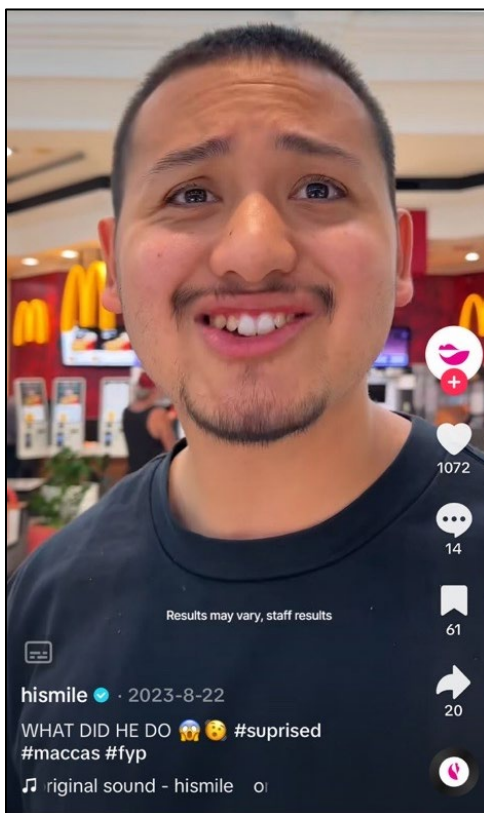
28 <sup>20</sup> *Glostik Tooth Gloss*, HISMILE, <https://us.hismileteeth.com/products/tooth-gloss> (last visited June 5, 2024).

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***Five-star Amazon review by “Jason” for the Glostik Tooth Gloss:<sup>21</sup>***



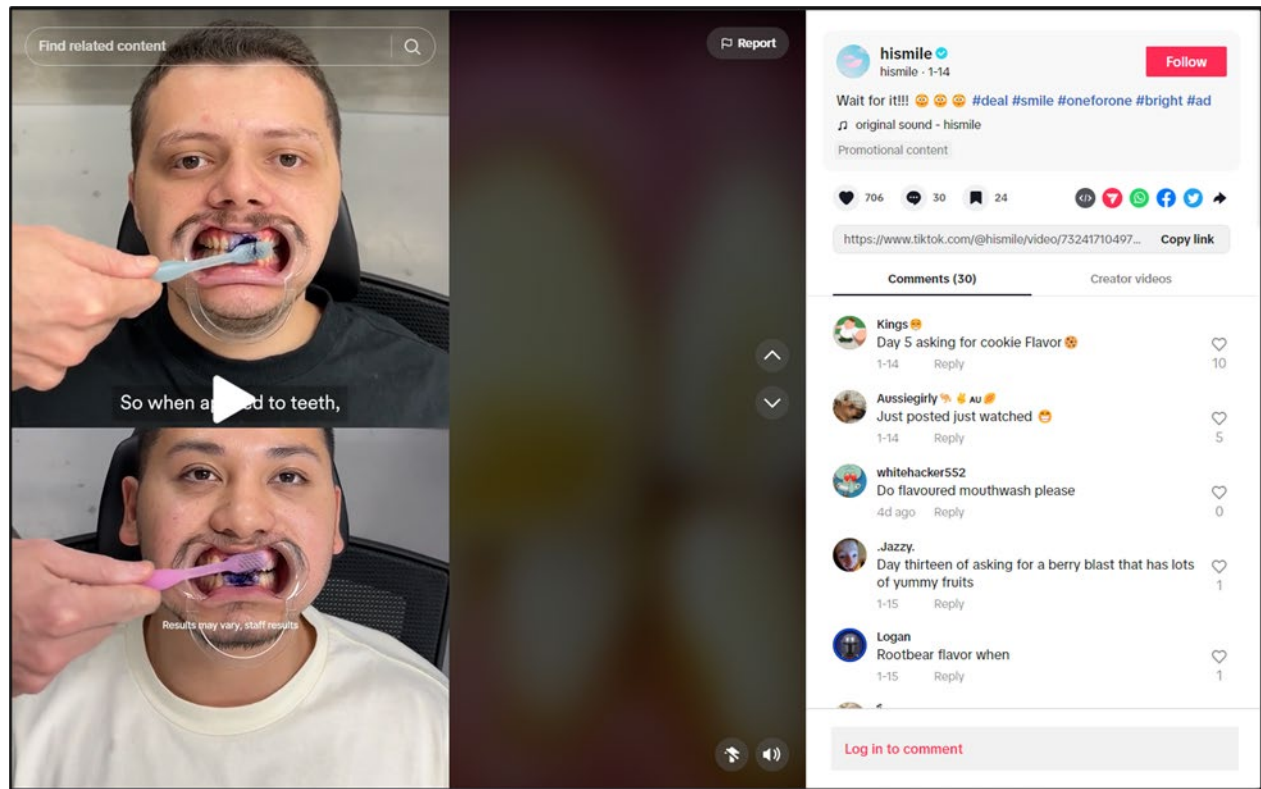
***Screenshots of HiSmile’s TikTok account demonstrating that this person is a HiSmile employee:***



<sup>21</sup> Customer Review by “Jason,” available at <https://www.amazon.com/gp/customer-reviews/R26194Z5IQWCW8/> (last visited June 5, 2024).

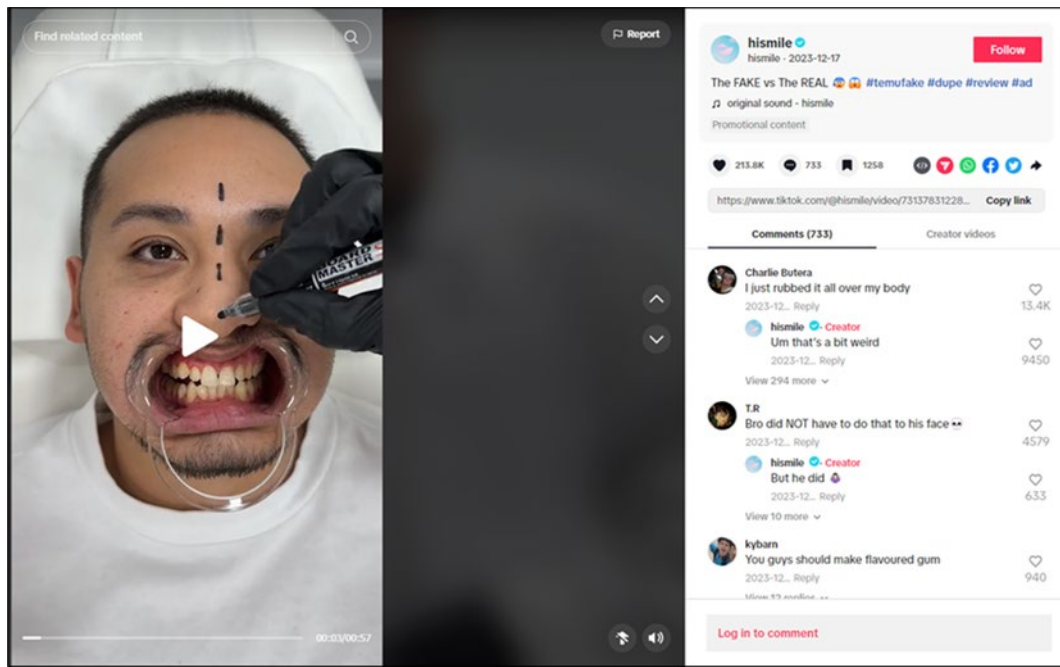
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40. HiSmile previously maintained an Instagram account solely dedicated to showing results of their discontinued LED light teeth whitening products (@hismileresults), which had almost 15,000 followers in 2018.<sup>22</sup> HiSmile wiped the content of this account, which is now set to “private” with two posts and zero followers.<sup>23</sup>

**iii. HiSmile Employees Pose as Fake Customers in Social Media Advertisements**

41. Many of HiSmile’s advertisements involve influencers and actors who pretend to be skeptical of the Products at first, only to be amazed by the results. HiSmile’s videos often start off with a person claiming they are setting out to “debunk” the viral Products, or to see if they “really” work. Invariably, the person applies the Product and is wowed by the results.

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<sup>22</sup> *Id.*

<sup>23</sup> @hismileresults, INSTAGRAM, <https://www.instagram.com/hismileresults/> (last visited June 3, 2024).

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42. When a HiSmile employee pretends to be a normal consumer, HiSmile will flash an inconspicuous “disclaimer” in miniscule font across the bottom half of the screen for 3 to 5 seconds out of a minute-long video when the employee flashes their “results” by smiling. The disclaimer usually says, “Non-permanent. Results may vary. Staff results.”



43. In the above video, the HiSmile employee pretends to be answering a comment from another TikTok user. TikTok has a feature that allows users to “pin” the comment to which they are responding in their video. Viewers can then click the pinned comment to see where the original comment came from. In this video, the

1 “comment” is not clickable, indicating it’s not a real comment from another user. In  
2 this way, HiSmile creates fake comments from other “users” who do not exist, often  
3 commenting on their satisfaction with the Products.

4 44. In addition, the employee in this video declares, “I actually haven’t told a  
5 single soul about this [her use of the V34 Product] until right now.” In reality, this  
6 person is a HiSmile employee and is in dozens, if not hundreds, of HiSmile’s TikTok  
7 videos.

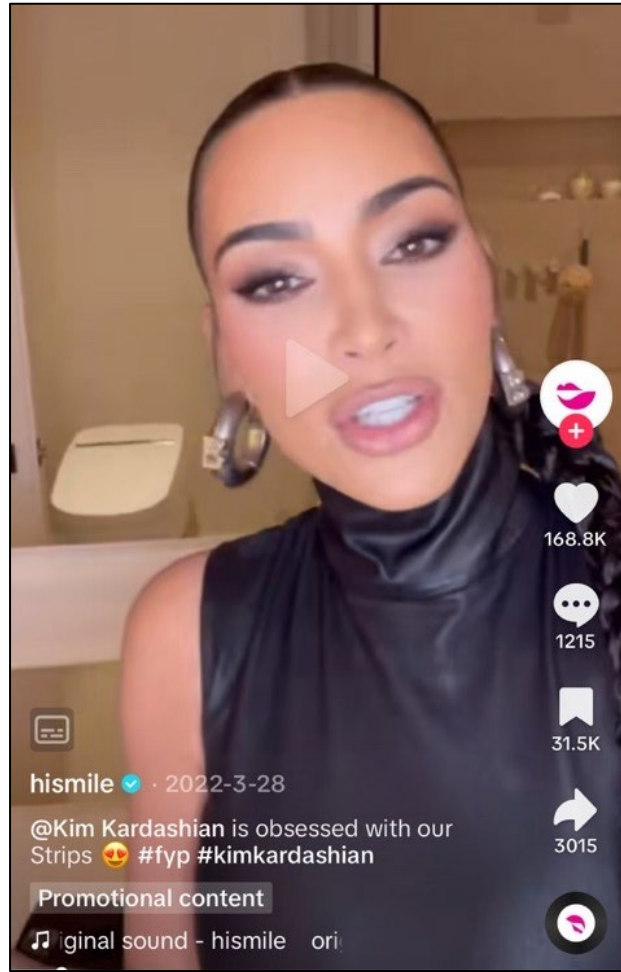
8 45. HiSmile pays influencers to promote its Products without disclosing that  
9 their posts are advertisements. TikTok requires that any branded content must include  
10 a commercial content disclosure that can be toggled on in the post settings. This  
11 disclosure appears below a video’s description and reads, “Promotional content,” or  
12 “Creator earns commission.” Numerous influencers post branded content promoting  
13 HiSmile’s Products without toggling on the required commercial content disclosure  
14 or including an indication that the video is an advertisement, such as a hashtag like  
15 “#ad.” Without the required disclosures, HiSmile dupes consumers into believing that  
16 the influencers’ sponsored posts are genuine reviews of the Products, when in reality  
17 they are being paid to offer positive opinions. See the below examples:

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*A branded post with a proper commercial content disclosure (“Promotional Content”):*



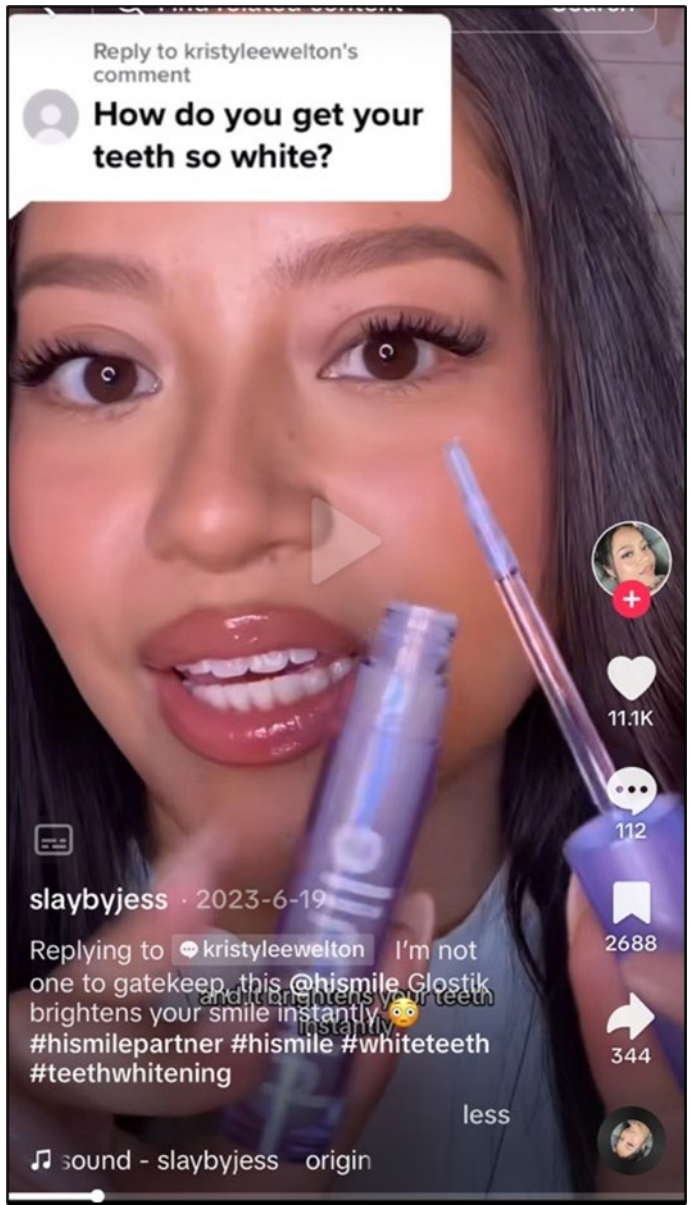
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*A branded post by an influencer, paid for by HiSmile, with a fake user comment and without a proper commercial content disclosure:*



**iv. HiSmile Utilizes Misleading Celebrity Endorsements**

46. HiSmile pays celebrities to endorse the Products on social media without disclosing that these celebrities have attained very white teeth by other means. HiSmile utilizes celebrities who have very white teeth to falsely overstate the Products' effectiveness. HiSmile knows these celebrity endorsers are not bona fide users of the Products yet pays them to advertise that they are.

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1           47. For example, HiSmile’s “pinned” TikTok video, which has over five  
2 million views, features Kim Kardashian using the PAP+ Whitening Strips, advertising  
3 unrealistic and misleading results.  
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1 48. In reality, Kim Kardashian has attained her white smile via expensive  
2 professional whitening treatments, not by using the HiSmile Products. Kim  
3 Kardashian’s dentist, Dr. Kevin Sands, has confirmed that she undergoes professional  
4 whitening twice a year to maintain her impressively bright white teeth.<sup>24</sup>

5 49. HiSmile works with other celebrities and influencers who attain very  
6 white teeth via professional teeth whitening, yet they do not disclose this in their  
7 sponsored posts with HiSmile.

8 v. **HiSmile Falsely Claims its V34 Colour Corrector Serum is**  
9 **“Clinically Proven”**

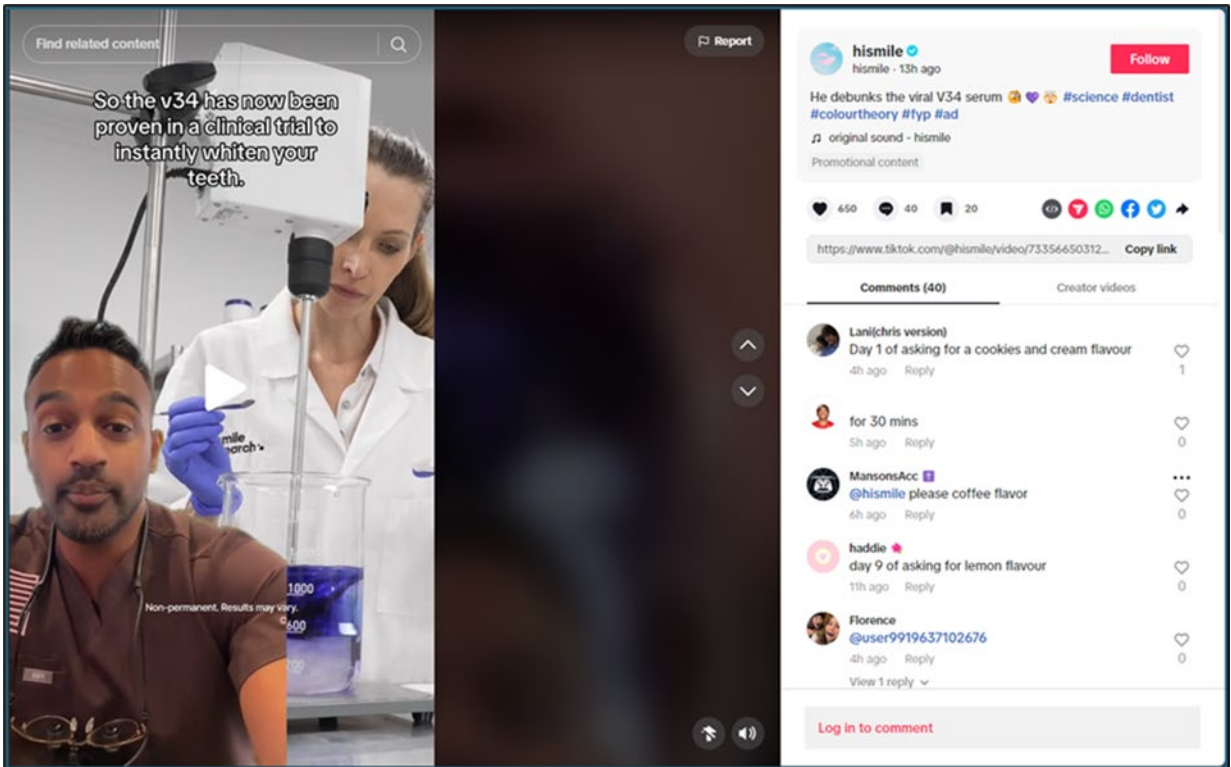
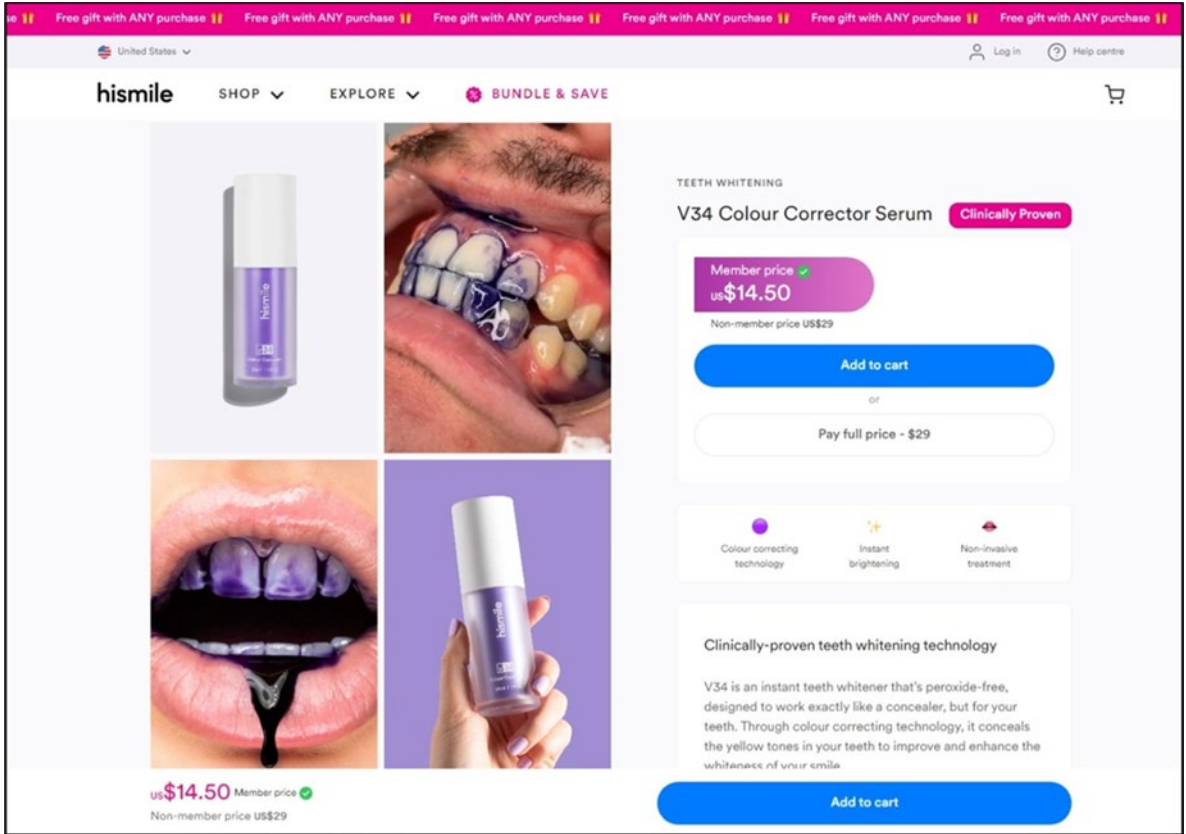
10 50. HiSmile ubiquitously advertises that its V34 Colour Corrector has been  
11 proven in a clinical trial to instantly whiten teeth. HiSmile makes this claim on its  
12 website and on its social media advertising. HiSmile claims on its website that the  
13 V34 Product is “Clinically Proven” and offers “Clinically-proven teeth whitening  
14 technology.” HiSmile claims in numerous videos on its social media accounts that the  
15 “v34 has now been proven in a clinical trial to instantly whiten your teeth.” See the  
16 following examples:

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28 <sup>24</sup> *Kim Kardashian’s dentist reveals all*, PEARL DENTAL CLINIC,  
<https://www.pearldentalclinic.co.uk/cosmetic-dentistry-news/uncategorized/kim-kardashians-dentist-reveals-all.html> (last visited June 5, 2024).

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1           51. By stating the V34 Product has been “Clinically Proven” to instantly  
2 whiten, HiSmile communicates to its consumers that the Product was tested in some  
3 scientific manner, presumably in a laboratory or clinical setting by scientists or dental  
4 health professionals qualified to evaluate its effectiveness. That advertised fact,  
5 regardless of the adequacy of any purported clinical trial, offers assurance and  
6 credibility regarding the other Fraudulent Misrepresentations.

7           52. Contrary to the “Clinically Proven” representations, the V34 Product has  
8 never been clinically *tested* (let alone clinically proven) to instantly whiten teeth.

9           53. HiSmile’s “Clinically Proven” claim is yet another fabrication.

10           **vi. HiSmile Promotes Pseudoscience**

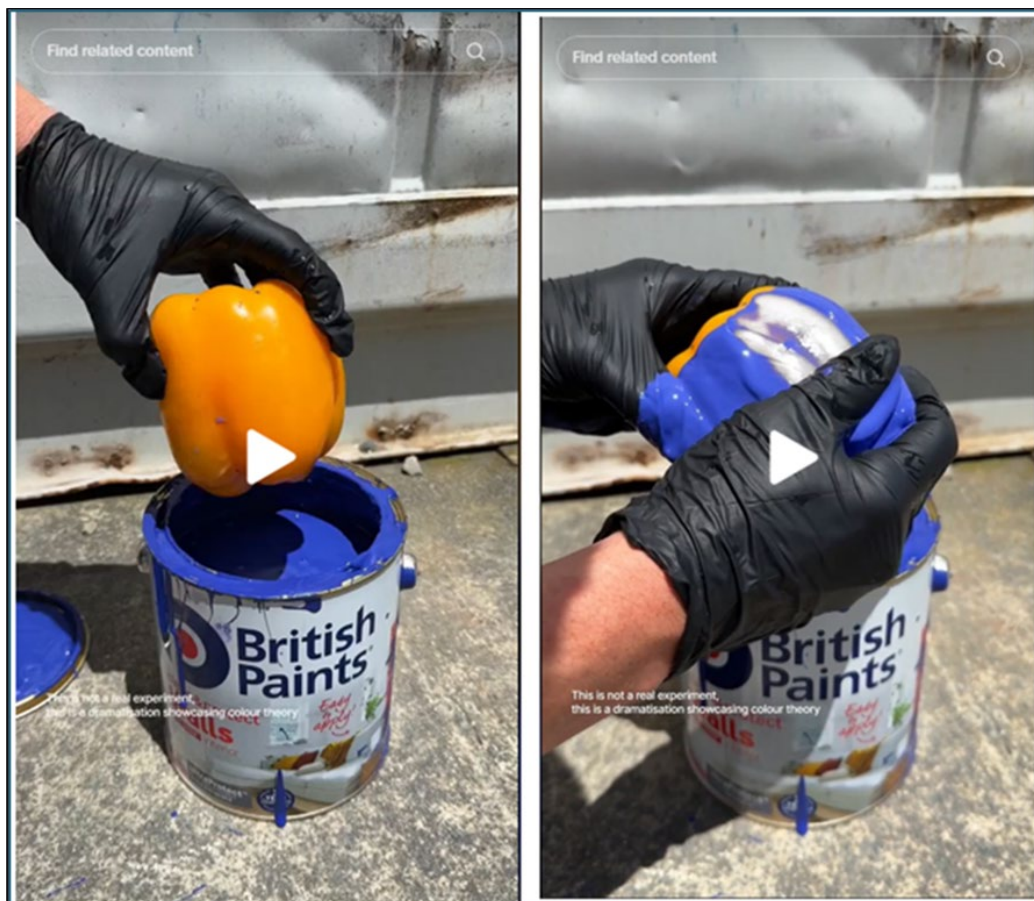
11           54. HiSmile claims that its purple V34 Colour Corrector Serum and purple  
12 Glostik Tooth Gloss Products instantly whiten teeth because of color correction  
13 technology: purple and yellow are complementary colors opposite to each other on  
14 the color wheel, so purple “cancels out yellow undertones” to reveal dramatically  
15 whiter teeth. HiSmile’s advertisements frequently demonstrate the “science” of its  
16 “color correcting technology” by dipping yellow fruits and vegetables in purple paint,  
17 overlaying purple and yellow discs, and making comparisons to purple shampoo  
18 which is known to neutralize brassy tones and yellowing in blonde hair.

19           55. These advertisements inundate viewers with clips espousing the  
20 “science” of “color theory,” “color correction technology,” “light interference  
21 technology,” “reflective pigments,” and various other pseudoscientific explanations  
22 for the promised “instant results.” This is not real science. Science is a  
23 rigorous, systematic endeavor that builds and organizes knowledge in the form  
24 of testable explanations and predictions.<sup>25</sup> Advertising does not amount to science.

25           56. HiSmile’s advertised color theory is entirely inapplicable—the purple  
26 tone of these two Products does not effectively remove yellow stains from teeth.

27  
28 <sup>25</sup> *Science*, WIKIPEDIA, <https://en.wikipedia.org/wiki/Science> (last visited Jun. 5, 2024).

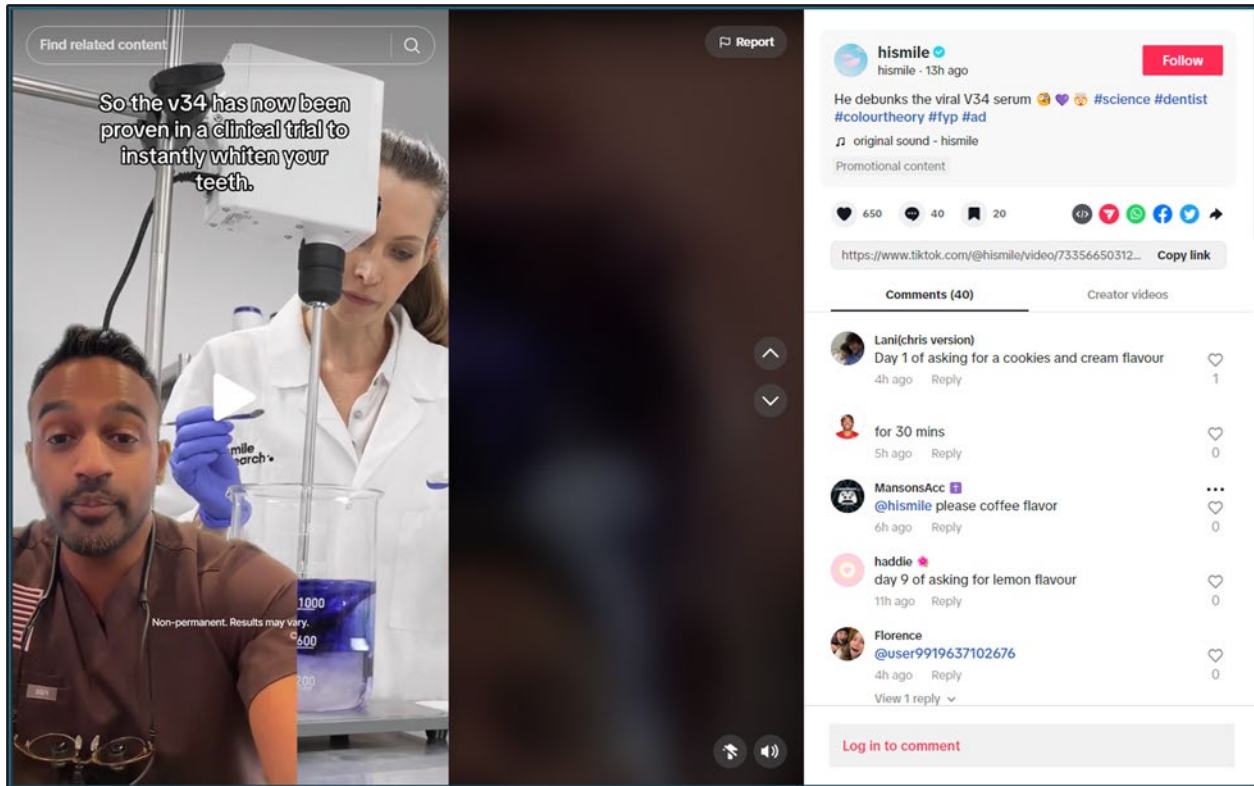
1 57. In videos purporting to demonstrate the “science” of color theory,  
2 HiSmile includes a miniscule and imperceptible “disclosure,” such as, “This is not a  
3 real experiment, this is a dramatization showcasing colour theory.”  
4



21 58. To create the impression of scientific rigor and reliability, HiSmile stages  
22 its videos with scenes of “scientists” and “dental professionals” appearing to study or  
23 test the Products in a “laboratory” or “clinical” setting (such as a dental office). In  
24 reality, these “scientists” and “professionals” are actors employed by HiSmile. The  
25 actors wear white lab coats or dental scrubs. Some videos feature beakers,  
26 microscopes, and other laboratory equipment. Consumers reasonably expect that such  
27 settings are indicative of Product results that have been “clinically proven.” This is  
28 not the case. The reason for this staging is to perpetuate HiSmile’s fraudulent  
advertising scheme.

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59. In the following example, an actor dressed as a scientist in a white lab coat is shown swirling purple pigment in a beaker, and another actor dressed as a dentist explains that the V34 Colour Corrector serum has been “proven in a clinical trial to instantly whiten your teeth.” The caption reads, “He debunks the viral V34 serum #science #dentist #colourtheory” with “skeptical” and “mind-blown” emojis:



**vii. HiSmile Employs Fraudulent Marketing Because Its Products Do Not “Instantly” or Dramatically Whiten Teeth**

60. Contrary to HiSmile’s marketing scheme, the Products cannot *instantly* or *dramatically* whiten teeth, as advertised.

61. Teeth bleaching products contain a peroxide bleaching agent which chemically whitens teeth by penetrating enamel to cause oxidation and lightening of stains.<sup>26</sup> Peroxide-based whitening products use hydrogen peroxide or carbamide peroxide, which have both been proven to effectively bleach teeth in randomized

<sup>26</sup> Joiner, *supra* note 4.

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1 clinical trials using real people.<sup>27</sup> Even though peroxide-based products are effective  
 2 with multiple uses, they do not provide instant teeth whitening. Generally, the higher  
 3 the concentration of peroxide and the longer the product is kept on teeth, the whiter  
 4 teeth become. For instance, to achieve advertised results, directions for whitening  
 5 strips often instruct consumers to apply the product for a set period of time, e.g., 30  
 6 minutes daily for up to 14 days. At-home tray-based peroxide gel systems are likewise  
 7 used over multiple consecutive days for up to 4 weeks.<sup>28</sup>

8 62. While HiSmile’s Products do not contain any peroxide-based whitening  
 9 agents, its PAP+ Whitening Strips and PAP+ Pen contain the active ingredient  
 10 phthalimidoperoxycaproic acid (PAP). HiSmile advertises that the PAP ingredient is  
 11 “just as effective as hydrogen peroxide,” and that PAP+ Products deliver the same  
 12 whitening benefits “instantly.”

13 63. The V34 Colour Corrector and the Glostik Tooth Gloss contain neither a  
 14 peroxide ingredient nor PAP. The following table displays the full list of ingredients  
 15 for each Product (taken from HiSmile’s official Product listings on  
 16 us.hismileteeth.com and official Product listings on CVS.com):

Product	Ingredients
PAP+ Whitening Strips	Glycerin, Aqua/Water, PVP, Ethylcellulose, Alcohol, Sodium Polyacrylate, Phthalimidoperoxycaproic Acid (PAP), Xylitol, Potassium Citrate, Hydroxyapatite, Rebaudioside A, Menthol, Sodium Citrate, Xanthan Gum, PVM/MA Copolymer, C12-15 Pareth-3.

26 <sup>27</sup> Laryssa Barbosa et al., *Over-the-counter products in tooth bleaching: A scoping review*, JOURNAL OF DENTISTRY, 104989, (Apr. 4, 2024), doi:  
 27 10.1016/j.jdent.2024.104989, <https://pubmed.ncbi.nlm.nih.gov/38582435/>.

28 <sup>28</sup> Wendy C. Fries, *Teeth Whitening: How It Works and What to Expect*, WEBMD, (Nov. 15, 2023), <https://www.webmd.com/oral-health/teeth-whitening-and-bleaching>.



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<p>1 PAP+ Whitening Pen</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p>	<p>Glycerin, Water/Aqua, Phthalimidoperoxycaprioc acid (PAP), Ammonium Acryloyldimethyltaurate/VP Copolymer, PVP, Sodium Phosphate, Potassium Citrate, Disodium Phosphate, Hydroxyapatite, Sodium Saccharin, Mentha Piperita (Peppermint) Oil, Sodium Gluconate, Potassium Hydroxide, Monosodium Citrate, t-Butyl Alcohol, PVM/MA Copolymer, Xanthan Gum, C12-15 Pareth-3, Titanium Dioxide (CI 77891), Mica (CI 77019), Tin Oxide (CI 77861).</p>
<p>11 V34 Colour Corrector</p> <p>12 Serum</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p>	<p>Glycerin, Aqua/Water, Sorbitol, Hydrated Silica, Xylitol, Polysorbate 80, Cellulose Gum, Mentha Piperita (Peppermint) Oil, Phenoxyethanol, Sucralose, Tetrasodium Pyrophosphate, CI17200/D&amp;C Red No. 33, CI42090/FD&amp;C Blue No.1, Ethylhexylglycerin.</p>
<p>17 Glostik Tooth Gloss</p> <p>18</p> <p>19</p> <p>20</p>	<p>Hydrogenated Polyisobutene, Methyl Hydrogenated Rosinate, Silica Dimethyl Silylate, PPG-12/SMDI Copolymer, Titanium Dioxide (CI 77891), Mica, Silica, Sodium Acetate.</p>

21

22

23 64. The HiSmile Products do not whiten teeth instantly nor as dramatically as

24 advertised. Indeed, peroxide-free whitening agents (including PAP) are significantly

25 less effective than peroxide, which is itself incapable of delivering any *instant*

26 whitening effect.<sup>29</sup>

27 <sup>29</sup> Studies that have tested the whitening effects of PAP indicate results that are far

28 less than peroxide after 7-10 days. See Lena Katharina Müller-Heupt et al., *Effectiveness and Safety of Over-the-Counter Tooth-Whitening Agents Compared to*

1           65. In a recent decision against HiSmile, the National Advertising Division  
2 (NAD) reached a similar assessment, concluding that there is no evidence to support  
3 that PAP is as effective as peroxide, or that it operates in a comparable manner.<sup>30</sup>

4           66. Despite the fact that peroxide-based products are proven to be more  
5 effective than PAP, and neither can work instantly, HiSmile continues to falsely  
6 represent that the Products do instantly and dramatically whiten teeth.

7           **C. Consumers Are Misled by the Fraudulently Advertised**  
8           **Misrepresentations into Buying Products They Would Not Have**  
9           **Otherwise Purchased**

10          67. HiSmile markets, promotes, advertises, and sells the Products with  
11 Fraudulent Misrepresentations regarding the Products' efficacy, and engages in  
12 fraudulent promotion of its Products by manipulating online consumer reviews.

13          68. **The Fraudulent Misrepresentations.** On the Products' advertisements,  
14 social media posts, and website listings, HiSmile prominently, conspicuously, and  
15 repeatedly affirms the Fraudulent Misrepresentations identified herein. These include  
16 using deceptive before-and-after images, fake customers, misleading celebrity  
17 endorsements, false "clinically proven" claims, fake science, and fake reviews  
18 throughout its Product listings.

19          69. **Reasonable Consumers' Perception.** The Fraudulent  
20 Misrepresentations lead reasonable consumers, like Plaintiffs, to believe that the  
21 Products instantly and dramatically whiten teeth as shown in HiSmile's  
22 advertisements.

23          70. **Materiality.** The Fraudulent Misrepresentations are material to  
24 reasonable consumers, including Plaintiffs, in deciding to buy the Products—meaning

25  
26 \_\_\_\_\_  
27 *Hydrogen Peroxide in Vitro*, INT J MOL SCI. 24(3):1956, (Jan. 19, 2023),  
<https://doi.org/10.3390/ijms24031956>.

28 <sup>30</sup> *HiSmile Appeals National Advertising Division Recommendation to Discontinue  
Certain Claims for its Teeth Whitening Products*, BBB NATIONAL PROGRAMS (Apr.  
11, 2024), <https://bbbprograms.org/media-center/dd/hismile-appeals>.

1 that the Products' advertised ability to instantly and dramatically whiten teeth is  
2 important to consumers and motivates them to buy the Products.

3 71. **Reliance.** The Class, including Plaintiffs, reasonably relied on the  
4 Fraudulent Misrepresentations in deciding to purchase the Products. Plaintiffs relied  
5 on HiSmile's social media advertising and online Product reviews when they decided  
6 to purchase the Products. Based on HiSmile's social media advertising and positive  
7 Product reviews, Plaintiffs expected that they would achieve instant and dramatic  
8 teeth whitening.

9 72. **Falsity.** The Fraudulent Misrepresentations are false and deceptive  
10 because the Products do not instantly or dramatically whiten teeth.

11 73. **Consumers Lack Knowledge of Falsity.** Consumers, including  
12 Plaintiffs, do not know, and have no reason to know, at the time of purchase, that the  
13 Products' Fraudulent Misrepresentations are false, misleading, deceptive, and  
14 unlawful. That is because consumers, including Plaintiffs, do not work for HiSmile  
15 and therefore have no personal knowledge of the exact ingredients and formulation  
16 of the Products, including the methods used to source and manufacture the  
17 ingredients. Additionally, most consumers do not have the specialized knowledge of  
18 a chemist or product-developer, or an encyclopedic knowledge base of every  
19 chemical or ingredient name and the standard methods used to source and  
20 manufacture them. Thus, reasonable consumers, like Plaintiffs, cannot discern from  
21 the Products' ingredient disclosures whether the ingredients instantly and  
22 dramatically whiten teeth.

23 74. **HiSmile's Knowledge.** HiSmile knew, or should have known, that the  
24 Fraudulent Misrepresentations were false, misleading, deceptive, and unlawful, at the  
25 time that HiSmile manufactured, marketed, advertised, labeled, and sold the Products  
26 using the Fraudulent Misrepresentations to Plaintiffs and the Class. HiSmile  
27 intentionally and deliberately used the Fraudulent Misrepresentations on its  
28 advertisements, social media posts, and website listings, to cause Plaintiffs and

1 similarly situated consumers to buy the Products believing that the Fraudulent  
2 Misrepresentations are true.

- 3
- 4 a. **Knowledge of Falsity.** HiSmile marketed the Products with the  
5 Fraudulent Misrepresentations, but HiSmile opted to formulate and  
6 manufacture them in a manner that does not conform to those  
7 Misrepresentations. Specifically, HiSmile advertised that the  
8 Products instantly and dramatically whiten teeth when in reality, the  
9 Products do not instantly or dramatically whiten teeth.
- 10 b. **Knowledge of Reasonable Consumers' Perception.** HiSmile  
11 knew, or should have known, that the Fraudulent Misrepresentations  
12 would lead reasonable consumers into believing that the Products  
13 instantly and dramatically whiten teeth. HiSmile has aggressively  
14 advertised each of the Products with the Fraudulent  
15 Misrepresentations. Thus, HiSmile knew the Fraudulent  
16 Misrepresentations are misleading before they marketed the  
17 Products to the Class, including Plaintiffs.
- 18 c. **Knowledge of Materiality.** HiSmile knew or should have known that  
19 the Fraudulent Misrepresentations are material to consumers. *First*,  
20 the conspicuousness of the Fraudulent Misrepresentations on the  
21 Products' advertisements, social media posts, and website listings  
22 demonstrate HiSmile's awareness of their importance to consumers  
23 and HiSmile's understanding that consumers prefer and are motivated  
24 to buy products that conform to the Fraudulent Misrepresentations.  
25 *Second*, manufacturers and marketers repeat marketing claims to  
26 emphasize and characterize a brand or product line, shaping the  
27 consumers' expectations, because they believe those repeated  
28 messages will drive consumers to buy the Product. Here, the use of  
the Fraudulent Misrepresentations on the Products' advertisements  
and throughout HiSmile's marketing campaigns evidence HiSmile's  
awareness that the falsely advertised Product-attribute is important to  
consumers. It also evidences HiSmile's intent to convince consumers  
that the Products conform to the Fraudulent Misrepresentations and,  
ultimately, drive sales.
- d. **HiSmile's Continued Deception, Despite Its Knowledge.** HiSmile,  
as the manufacturer and marketer of the Products, had exclusive  
control over the Fraudulent Misrepresentations' inclusion on the  
Products' advertisements, social media posts, and website listings —  
i.e., HiSmile readily and easily could have stopped using the

1 Fraudulent Misrepresentations to sell the Products. However, despite  
2 HiSmile’s knowledge of the Fraudulent Misrepresentations’ falsity,  
3 and HiSmile’s knowledge that consumers reasonably rely on the  
4 Fraudulent Misrepresentations in deciding to buy the Products,  
5 HiSmile deliberately chose to market the Products with the  
6 Fraudulent Misrepresentations thereby misleading consumers into  
7 buying or overpaying for the Products. Thus, HiSmile knew, or  
8 should have known, at all relevant times, that the Fraudulent  
9 Misrepresentations mislead reasonable consumers, such as Plaintiffs,  
10 into buying the Products to attain the product-attributes that HiSmile  
11 falsely advertised and warranted.

12 75. **Detriment.** Plaintiffs and similarly situated consumers would not have  
13 purchased the Products if they had known that the Fraudulent Misrepresentations  
14 were false and, therefore, the Products do not have the attribute claimed, promised,  
15 warranted, advertised, and/or represented. Accordingly, based on HiSmile’s material  
16 misrepresentations and omissions, reasonable consumers, including Plaintiffs,  
17 purchased the Products to their detriment.

18 **D. Plaintiffs’ Purchase Experiences**

19 76. **Plaintiff Aaron Jimenez.** The following is alleged based upon Plaintiff  
20 Jimenez’s personal knowledge:

- 21 a. **Reliance on the Fraudulent Misrepresentations.** In making his  
22 purchase of the V34 Colour Corrector Serum, Plaintiff Jimenez relied on  
23 the depictions and promises of instant and dramatic whitening he saw on  
24 HiSmile’s TikTok advertisements and on HiSmile’s official website.  
25 Specifically, he relied on the before-and-after photos and videos in which  
26 he saw “scientists” and “dentists” demonstrate that the V34 Product could  
27 instantly turn teeth white because of the science of color theory. Plaintiff  
28 also relied on the celebrity and influencer endorsements, the customer  
reviews and reactions he saw on HiSmile’s website and in HiSmile’s  
TikTok comments, and the “clinically proven” claim. Based on these  
representations, Plaintiff expected that the Product would instantly and

1 dramatically whiten his teeth after one application as was shown in these  
2 advertisements.

3 **b. Failure of the Product to Deliver the Advertised Benefits.** Plaintiff  
4 used the Product as instructed, brushing the Product on his teeth for 2  
5 minutes and then rinsing the Product out of his mouth. Plaintiff was  
6 extremely disappointed that the Product did not deliver instant and  
7 dramatic teeth whitening as advertised, even after multiple applications.  
8 Plaintiff received no benefit from his use of the Product.

9 **c. No Actual Knowledge of Falsity.** At the time of purchase, Plaintiff did  
10 not know that the Fraudulent Misrepresentations were false in that  
11 Plaintiff did not know that the Product does not instantly or dramatically  
12 whiten teeth as advertised.

13 **d. No Notice of Contradictions.** Plaintiff did not notice any disclaimer,  
14 qualifier, or other explanatory statement or information on the Product's  
15 label or advertising that contradicted the prominently advertised instant  
16 and dramatic whitening results or otherwise suggested that the Product  
17 could not instantly and dramatically whiten teeth.

18 **e. Causation/Damages.** Plaintiff would not have purchased the Product had  
19 Plaintiff known that it does not instantly or dramatically whiten teeth.

20 **f. Desire to Repurchase.** Plaintiff continues to see the Products available  
21 for purchase and desires to purchase them again if the representations in  
22 the advertisements were in fact true.

23 **g. Lack of Personal Knowledge/Expertise to Determine Truth.** Plaintiff  
24 does not personally know what ingredients are actually contained in the  
25 Products or the methods used to make the Products (including sourcing  
26 and manufacturing processes), and Plaintiff does not possess any  
27 specialized knowledge or general familiarity with the Products'  
28 ingredients or the methods typically used to obtain or make such

1 ingredients (including sourcing and manufacturing processes), such that  
2 Plaintiff does not personally know and cannot determine whether the  
3 Products’ ingredients can instantly or dramatically whiten teeth; and,  
4 therefore, Plaintiff has no way of determining whether the advertised  
5 representations are true.

6 h. **Inability to Rely.** Plaintiff is, and continues to be, unable to rely on the  
7 Products’ advertisements, social media posts, and website listings.

8 77. **Plaintiff Robert Parham.** The following is alleged based upon Plaintiff  
9 Parham’s personal knowledge:

10 a. **Reliance on the Fraudulent Misrepresentations.** In making his  
11 purchase of the PAP+ Whitening Strips, Plaintiff Parham relied on the  
12 depictions and promises of instant and dramatic whitening he saw on  
13 HiSmile’s social media advertisements. Specifically, he relied on the  
14 before-and-after photos and videos which demonstrated instant results  
15 after one application, and the customer reviews and reactions. Based on  
16 these representations, Plaintiff expected that the Product would instantly  
17 and dramatically whiten his teeth after one application.

18 b. **Failure of the Product to Deliver the Advertised Benefits.** Plaintiff  
19 used the Product as instructed by applying the whitening strips on his  
20 upper and lower teeth for 30 minutes. After the first application, Plaintiff  
21 was shocked that his teeth did not show any whitening effect. Plaintiff  
22 continued to use the strips for two and a half weeks, using half of the  
23 package of 14 strips, and experienced no whitening whatsoever, let alone  
24 instant or dramatic whitening. Plaintiff received no benefit from his use  
25 of the Product.

26 c. **No Actual Knowledge of Falsity.** At the time of purchase, Plaintiff did  
27 not know that the Fraudulent Misrepresentations were false in that  
28

1 Plaintiff did not know that the Product does not instantly or dramatically  
2 whiten teeth as advertised.

3 d. **No Notice of Contradictions.** Plaintiff did not notice any disclaimer,  
4 qualifier, or other explanatory statement or information on the Product’s  
5 label or advertising that contradicted the prominently advertised instant  
6 and dramatic whitening results or otherwise suggested that the Product  
7 could not instantly and dramatically whiten teeth.

8 e. **Causation/Damages.** Plaintiff would not have purchased the Product had  
9 Plaintiff known that it does not instantly or dramatically whiten teeth.

10 f. **Desire to Repurchase.** Plaintiff continues to see the Products available  
11 for purchase and desires to purchase them again if the representations in  
12 the advertisements were in fact true.

13 g. **Lack of Personal Knowledge/Expertise to Determine Truth.** Plaintiff  
14 does not personally know what ingredients are actually contained in the  
15 Products or the methods used to make the Products (including sourcing  
16 and manufacturing processes), and Plaintiff does not possess any  
17 specialized knowledge or general familiarity with the Products’  
18 ingredients or the methods typically used to obtain or make such  
19 ingredients (including sourcing and manufacturing processes), such that  
20 Plaintiff does not personally know and cannot determine whether the  
21 Products’ ingredients can instantly or dramatically whiten teeth; and,  
22 therefore, Plaintiff has no way of determining whether the advertised  
23 representations are true.

24 h. **Inability to Rely.** Plaintiff is, and continues to be, unable to rely on the  
25 Products’ advertisements, social media posts, and website listings.

26 78. **Plaintiff Brittany Hodges.** The following is alleged based upon Plaintiff  
27 Hodges’ personal knowledge:  
28



- 1 a. **Reliance on the Fraudulent Misrepresentations.** In making her  
2 purchases of the V34 Colour Corrector Serum, PAP+ Whitening Strips,  
3 and PAP+ Whitening Pen, Plaintiff Hodges relied on the depictions and  
4 promises of instant and dramatic whitening she saw on HiSmile’s social  
5 media advertisements. Specifically, she relied on the before-and-after  
6 photos and videos, the customer reviews and reactions, and the advertised  
7 “science” regarding HiSmile’s “colour theory.” Based on these  
8 representations, Plaintiff expected that the Product would instantly and  
9 dramatically whiten her teeth after one application.
- 10 b. **Failure of the Product to Deliver the Advertised Benefits.** Plaintiff  
11 used each Product as instructed *until it was empty* and experienced no  
12 whitening whatsoever, let alone the instant or dramatic whitening she saw  
13 in the HiSmile advertisements. Plaintiff received no benefit from her use  
14 of the Product.
- 15 c. **No Actual Knowledge of Falsity.** At the time of purchase, Plaintiff did  
16 not know that the Fraudulent Misrepresentations were false in that  
17 Plaintiff did not know that the Product does not instantly or dramatically  
18 whiten teeth as advertised.
- 19 d. **No Notice of Contradictions.** Plaintiff did not notice any disclaimer,  
20 qualifier, or other explanatory statement or information on the Products’  
21 labels or advertising that contradicted the prominently advertised instant  
22 and dramatic whitening results or otherwise suggested that the Products  
23 could not instantly and dramatically whiten teeth.
- 24 e. **Causation/Damages.** Plaintiff would not have purchased the Products  
25 had Plaintiff known that they do not instantly or dramatically whiten  
26 teeth.
- 27  
28

1 f. **Desire to Repurchase.** Plaintiff continues to see the Products available  
2 for purchase and desires to purchase them again if the representations in  
3 the advertisements were in fact true.

4 g. **Lack of Personal Knowledge/Expertise to Determine Truth.** Plaintiff  
5 does not personally know what ingredients are actually contained in the  
6 Products or the methods used to make the Products (including sourcing  
7 and manufacturing processes), and Plaintiff does not possess any  
8 specialized knowledge or general familiarity with the Products'  
9 ingredients or the methods typically used to obtain or make such  
10 ingredients (including sourcing and manufacturing processes), such that  
11 Plaintiff does not personally know and cannot determine whether the  
12 Products' ingredients can instantly or dramatically whiten teeth; and,  
13 therefore, Plaintiff has no way of determining whether the advertised  
14 representations are true.

15 h. **Inability to Rely.** Plaintiff is, and continues to be, unable to rely on the  
16 Products' advertisements, social media posts, and website listings.

17 79. **Plaintiff Ralph Milan.** The following is alleged based upon Plaintiff  
18 Milan's personal knowledge:

19 a. **Reliance on the Fraudulent Misrepresentations.** In making his  
20 purchases of the V34 Colour Corrector Serum and PAP+ Whitening  
21 Strips, Plaintiff Milan relied on the depictions and promises of instant and  
22 dramatic whitening he saw on HiSmile's Instagram advertisements and  
23 official website. Plaintiff made his purchase decision after being  
24 bombarded with at least 5 HiSmile advertisements that were pushed to his  
25 Instagram feed in a short amount of time. Specifically, he relied upon the  
26 before-and-after photos and videos, the "clinically proven" claim,  
27 customer reviews and testimonials on HiSmile's website, and the  
28 advertised "science" regarding HiSmile's "colour theory." Based on these

1 representations, Plaintiff expected that the Products would instantly and  
2 dramatically whiten his teeth after one application.

3 **b. Failure of the Product to Deliver the Advertised Benefits.** Plaintiff  
4 used each Product as instructed and experienced *no whitening*  
5 *whatsoever*, let alone the instant or dramatic whitening he saw in  
6 HiSmile’s Instagram advertisements. Plaintiff received no benefit from  
7 his use of the Product.

8 **c. No Actual Knowledge of Falsity.** At the time of purchase, Plaintiff did  
9 not know that the Fraudulent Misrepresentations were false in that  
10 Plaintiff did not know that the Products do not instantly or dramatically  
11 whiten teeth as advertised.

12 **d. No Notice of Contradictions.** Plaintiff did not notice any disclaimer,  
13 qualifier, or other explanatory statement or information on the Products’  
14 labels or advertisements that contradicted the prominently advertised  
15 instant and dramatic whitening results or otherwise suggested that the  
16 Products could not instantly and dramatically whiten teeth.

17 **e. Causation/Damages.** Plaintiff would not have purchased the Products  
18 had Plaintiff known that they do not instantly or dramatically whiten  
19 teeth.

20 **f. Desire to Repurchase.** Plaintiff continues to see the Products available  
21 for purchase and desires to purchase them again if the representations in  
22 the advertisements were in fact true.

23 **g. Lack of Personal Knowledge/Expertise to Determine Truth.** Plaintiff  
24 does not personally know what ingredients are actually contained in the  
25 Products or the methods used to make the Products (including sourcing  
26 and manufacturing processes), and Plaintiff does not possess any  
27 specialized knowledge or general familiarity with the Products’  
28 ingredients or the methods typically used to obtain or make such

1 ingredients (including sourcing and manufacturing processes), such that  
2 Plaintiff does not personally know and cannot determine whether the  
3 Products’ ingredients can instantly or dramatically whiten teeth; and,  
4 therefore, Plaintiff has no way of determining whether the advertised  
5 representations are true.

6 h. **Inability to Rely.** Plaintiff is, and continues to be, unable to rely on the  
7 Products’ advertisements, social media posts, and website listings.

8 **E. The Products are Substantially Similar**

9 80. As described herein, Plaintiffs purchased the V34 Colour Corrector  
10 Serum, PAP+ Whitening Strips, and/or the PAP+ Whitening Pen (the “**Purchased**  
11 **Products**”). The additional Product, the Glostik Tooth Gloss (the “**Unpurchased**  
12 **Product**”), is substantially similar to the Purchased Products.

13 a. **Defendant.** All Products are manufactured, sold, marketed,  
14 advertised, labeled, and packaged by HiSmile.

15 b. **Brand.** All Products are sold under the same brand name: HiSmile.

16 c. **Purpose.** All Products are oral care products intended to be used for  
17 teeth whitening.

18 d. **Marketing Demographics.** All Products are marketed directly to  
19 consumers for at-home use.

20 e. **Fraudulent Misrepresentations.** All Products are advertised with the  
21 same Fraudulent Misrepresentations.

22 f. **Misleading Effect.** The misleading effect of the Fraudulent  
23 Misrepresentations on consumers is the same for all Products—  
24 consumers over-pay a premium for Products that instantly and  
25 dramatically whiten teeth. However, consumers receive Products that  
26 do not instantly or dramatically whiten teeth as advertised.

27 **F. No Adequate Remedy at Law**

28 81. **No Adequate Remedy at Law.** Plaintiffs and members of the Class are

1 entitled to equitable relief as no adequate remedy at law exists.

2  
3 a. **Broader Statutes of Limitations.** The statutes of limitations for the  
4 causes of action pled herein vary. The limitations period is four years  
5 for claims brought under the UCL, which is one year longer than the  
6 statutes of limitations under the FAL and CLRA. In addition, the  
7 statutes of limitations vary for certain states' laws for breach of  
8 warranty and unjust enrichment/restitution, between approximately 2  
9 and 6 years. Thus, California Subclass members who purchased the  
10 Products more than 3 years prior to the filing of the complaint will be  
11 barred from recovery if equitable relief were not permitted under the  
12 UCL. Similarly, Nationwide Class members who purchased the  
13 Products prior to the furthest reach-back under the statute of  
14 limitations for breach of warranty, will be barred from recovery if  
15 equitable relief were not permitted for restitution/unjust enrichment.

16  
17 b. **Broader Scope of Conduct.** In addition, the scope of actionable  
18 misconduct under the unfair prong of the UCL is broader than the other  
19 causes of action asserted herein. It includes, for example, HiSmile's  
20 overall unfair marketing scheme to promote and brand the Products  
21 with the Fraudulent Misrepresentations, across a multitude of media  
22 platforms, including the Products' advertisements, social media posts,  
23 and website listings, over a long period of time, in order to gain an  
24 unfair advantage over competitor products and to take advantage of  
25 consumers' desire for products that comport with the Fraudulent  
26 Misrepresentations. The UCL also creates a cause of action for  
27 violations of law (such as statutory or regulatory requirements and  
28 court orders related to similar representations and omissions made on  
the type of products at issue). Thus, Plaintiffs and Class members may  
be entitled to restitution under the UCL, while not entitled to damages  
under other causes of action asserted herein (e.g., the FAL requires  
actual or constructive knowledge of the falsity; the CLRA is limited  
to certain types of plaintiffs (an individual who seeks or acquires, by  
purchase or lease, any goods or services for personal, family, or  
household purposes) and other statutorily enumerated conduct).  
Similarly, unjust enrichment/restitution is broader than breach of  
warranty. For example, in some states, breach of warranty may require  
privity of contract or pre-lawsuit notice, which are not typically  
required to establish unjust enrichment/restitution. Thus, Plaintiffs and  
Class members may be entitled to recover under unjust  
enrichment/restitution, while not entitled to damages under breach of

1 warranty, because they purchased the products from third-party  
 2 retailers or did not provide adequate notice of a breach prior to the  
 3 commencement of this action.

- 4 **c. Injunctive Relief to Cease Misconduct and Dispel Misperception.**  
 5 Injunctive relief is appropriate on behalf of Plaintiffs and members of  
 6 the Class because HiSmile continues to misrepresent the Products with  
 7 the Fraudulent Misrepresentations. Injunctive relief is necessary to  
 8 prevent HiSmile from continuing to engage in the unfair, fraudulent,  
 9 and/or unlawful conduct described herein and to prevent future  
 10 harm—none of which can be achieved through available legal  
 11 remedies (such as monetary damages to compensate past harm).  
 12 Further, injunctive relief in the form of disclosures and cessation of  
 13 fraudulent activity is necessary to dispel the public misperception  
 14 about the Products that has resulted from years of HiSmile’s unfair,  
 15 fraudulent, and unlawful marketing efforts. Such disclosures would  
 16 include, but are not limited to, publicly disseminated statements that  
 17 the Products’ Fraudulent Misrepresentations are not true and  
 18 providing accurate information about the Products’ true nature; and/or  
 19 requiring prominent qualifications and/or disclaimers on the Products’  
 20 front label concerning the Products’ true nature. An injunction  
 21 requiring affirmative disclosures to dispel the public’s misperception  
 22 and prevent the ongoing deception and repeat purchases based  
 23 thereon, is also not available through a legal remedy (such as monetary  
 24 damages). In addition, Plaintiffs are *currently* unable to accurately  
 25 quantify the damages caused by HiSmile’s future harm, because  
 26 discovery and Plaintiffs’ investigation have not yet completed,  
 27 rendering injunctive relief all the more necessary. For example,  
 28 because the court has not yet certified any class, the following remains  
 unknown: the scope of the class, the identities of its members, their  
 respective purchasing practices, prices of past/future Product sales,  
 and quantities of past/future Product sales.
- d. Public Injunction.** Further, because a “public injunction” is available  
 under the UCL, damages will not adequately “benefit the general  
 public” in a manner equivalent to an injunction.
- e. California vs. Nationwide Class Claims.** Violation of the UCL, FAL,  
 and CLRA are claims asserted on behalf of Plaintiffs and the  
 California Subclass against HiSmile, while breach of warranty and  
 unjust enrichment/restitution are asserted on behalf of Plaintiffs and  
 the Nationwide Class. Dismissal of farther-reaching claims, such as

1 restitution, would bar recovery for non-California members of the  
 2 Class. In other words, legal remedies available or adequate under the  
 3 California-specific causes of action (such as the UCL, FAL, and  
 4 CLRA) have no impact on this Court’s jurisdiction to award equitable  
 relief under the remaining causes of action asserted on behalf of non-  
 California putative class members.

5  
 6 f. **Procedural Posture—Incomplete Discovery & Pre-Certification.**

7 Lastly, this is an initial pleading in this action and discovery has not  
 8 yet commenced and/or is at its initial stages. No class has been  
 9 certified yet. No expert discovery has commenced and/or completed.  
 10 The completion of fact/non-expert and expert discovery, as well as the  
 11 certification of this case as a class action, are necessary to finalize and  
 12 determine the adequacy and availability of all remedies, including  
 13 legal and equitable, for Plaintiffs’ claims and any certified class or  
 14 subclass. Plaintiffs therefore reserve their right to amend this  
 15 complaint and/or assert additional facts that demonstrate this Court’s  
 jurisdiction to order equitable remedies where no adequate legal  
 remedies are available for either Plaintiffs and/or any certified class or  
 subclass. Such proof, to the extent necessary, will be presented prior  
 to the trial of any equitable claims for relief and/or the entry of an order  
 granting equitable relief.

16 **VI. CLASS ACTION ALLEGATIONS**

17 82. **Class Definition.** Plaintiffs bring this action as a class action pursuant to  
 18 Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of themselves and  
 19 all others similarly situated, and as members of the Classes defined as follows:

20 All residents of the United States who, within the applicable statute of  
 21 limitations periods, purchased the Products for purposes other than resale  
 22 (“**Nationwide Class**”); and

23 All residents of California who, within four years prior to the filing of  
 24 this Complaint, purchased the Products for purposes other than resale  
 25 (“**California Subclass**”).

26 (“**Nationwide Class**” and “**California Subclass**,” collectively, “**Class**”).

27 83. **Class Definition Exclusions.** Excluded from the Class are: (i) HiSmile,  
 28 its assigns, successors, and legal representatives; (ii) any entities in which HiSmile

1 has controlling interests; (iii) federal, state, and/or local governments, including, but  
2 not limited to, their departments, agencies, divisions, bureaus, boards, sections,  
3 groups, counsels, and/or subdivisions; and (iv) any judicial officer presiding over this  
4 matter and person within the third degree of consanguinity to such judicial officer.

5       84. **Reservation of Rights to Amend the Class Definition.** Plaintiffs reserve  
6 the right to amend or otherwise alter the class definition presented to the Court at the  
7 appropriate time in response to facts learned through discovery, legal arguments  
8 advanced by HiSmile, or otherwise.

9       85. **Numerosity:** Members of the Class are so numerous that joinder of all  
10 members is impracticable. Upon information and belief, the Nationwide Class  
11 consists of tens of thousands of purchasers (if not more) dispersed throughout the  
12 United States, and the California Subclass likewise consists of thousands of  
13 purchasers (if not more) dispersed throughout the State of California. Accordingly, it  
14 would be impracticable to join all members of the Class before the Court.

15       86. **Common Questions Predominate:** There are numerous and substantial  
16 questions of law or fact common to all members of the Class that predominate over  
17 any individual issues. Included within the common questions of law or fact are:

- 18       a. Whether HiSmile engaged in unlawful, unfair or deceptive business  
19 practices by fraudulently advertising and selling the Products;
- 20       b. Whether HiSmile's conduct of advertising the Products as being able to  
21 instantly and dramatically whiten teeth when they cannot constitutes an  
22 unfair method of competition, or unfair or deceptive act or practice, in  
23 violation of Civil Code section 1750, *et seq.*;
- 24       c. Whether HiSmile used deceptive representations in connection with the  
25 sale of the Products in violation of Civil Code section 1750, *et seq.*;
- 26       d. Whether HiSmile represented that the Products have characteristics or  
27 quantities that they do not have in violation of Civil Code section 1750,  
28 *et seq.*;



- 1 e. Whether HiSmile advertised the Products with intent not to sell them as  
2 advertised in violation of Civil Code section 1750, *et seq.*;
- 3 f. Whether HiSmile's advertising of the Products are untrue or misleading  
4 in violation of Business and Professions Code section 17500, *et seq.*;
- 5 g. Whether HiSmile knew or by the exercise of reasonable care should have  
6 known its advertising was and is untrue or misleading in violation of  
7 Business and Professions Code section 17500, *et seq.*;
- 8 h. Whether HiSmile's conduct is an unfair business practice within the  
9 meaning of Business and Professions Code section 17200, *et seq.*;
- 10 i. Whether HiSmile's conduct is a fraudulent business practice within the  
11 meaning of Business and Professions Code section 17200, *et seq.*;
- 12 j. Whether HiSmile's conduct is an unlawful business practice within the  
13 meaning of Business and Professions Code section 17200, *et seq.*;
- 14 k. Whether Plaintiffs and the Class paid more money for the Products than  
15 they actually received;
- 16 l. How much more money Plaintiffs and the Class paid for the Products than  
17 they actually received;
- 18 m. Whether HiSmile's conduct constitutes breach of warranty;
- 19 n. Whether Plaintiffs and the Class are entitled to injunctive relief; and
- 20 o. Whether HiSmile was unjustly enriched by their unlawful conduct.

21 87. **Typicality:** Plaintiffs' claims are typical of the claims of the Class  
22 Members they seek to represent because Plaintiffs, like the Class Members, purchased  
23 HiSmile's misleading and deceptive Products. HiSmile's unlawful, unfair and/or  
24 fraudulent actions concern the same business practices described herein irrespective  
25 of where they occurred or were experienced. Plaintiffs and the Class sustained similar  
26 injuries arising out of HiSmile's conduct. Plaintiffs' and Class Members' claims arise  
27 from the same practices and course of conduct and are based on the same legal  
28 theories.

1           88. **Adequacy:** Plaintiffs are adequate representatives of the Class they seek  
2 to represent because their interests do not conflict with the interests of the Class  
3 Members Plaintiffs seek to represent. Plaintiffs will fairly and adequately protect  
4 Class Members' interests and have retained counsel experienced and competent in the  
5 prosecution of complex class actions, including complex questions that arise in  
6 consumer protection litigation.

7           89. **Superiority and Substantial Benefit:** A class action is superior to other  
8 methods for the fair and efficient adjudication of this controversy, since individual  
9 joinder of all members of the Class is impracticable and no other group method of  
10 adjudication of all claims asserted herein is more efficient and manageable for at least  
11 the following reasons:

- 12           a. The claims presented in this case predominate over any questions of law  
13 or fact, if any exist at all, affecting any individual member of the Class;
- 14           b. Absent a Class, the members of the Class will continue to suffer damage  
15 and HiSmile's unlawful conduct will continue without remedy while  
16 HiSmile profits from and enjoy its ill-gotten gains;
- 17           c. Given the size of individual Class Members' claims, few, if any, Class  
18 Members could afford to or would seek legal redress individually for the  
19 wrongs HiSmile committed against them, and absent Class Members  
20 have no substantial interest in individually controlling the prosecution of  
21 individual actions;
- 22           d. When the liability of HiSmile has been adjudicated, claims of all members  
23 of the Class can be administered efficiently and/or determined uniformly  
24 by the Court; and
- 25           e. This action presents no difficulty that would impede its management by  
26 the Court as a class action, which is the best available means by which  
27 Plaintiffs and Class Members can seek redress for the harm caused to  
28 them by HiSmile.



1 despite the fact that the Products do not instantly or dramatically whiten teeth. The  
2 claims appear on the Products’ advertisements, social media posts, and website  
3 listings, which are sold at online and at retail stores.

4 **97. HiSmile’s Deliberately Fraudulent Marketing Scheme.** HiSmile does  
5 not have any reasonable basis for the claims about the Products made in HiSmile’s  
6 advertising and on HiSmile’s advertisements, social media posts, and website listings  
7 because the Products do not instantly or dramatically whiten teeth. HiSmile knew and  
8 knows that the Products do not instantly or dramatically whiten teeth, though HiSmile  
9 intentionally advertised and marketed the Products to deceive reasonable consumers  
10 into believing that Products instantly and dramatically whiten teeth.

11 **98. Misleading Advertising Claims Cause Purchase of Products.**  
12 HiSmile’s deceptive advertisements, social media posts, and website listings of the  
13 Products led to, and continues to lead to, reasonable consumers, including Plaintiffs,  
14 believing that the Products can instantly and dramatically whiten teeth.

15 **99. Injury in Fact.** Plaintiffs and the California Subclass have suffered injury  
16 in fact and have lost money or property as a result of and in reliance upon HiSmile’s  
17 misleading advertising claims—namely, Plaintiffs and the California Subclass lost  
18 the purchase price for the Products they bought from the HiSmile.

19 **100. Conduct Violates the UCL.** HiSmile’s conduct, as alleged herein,  
20 constitutes unfair, unlawful, and fraudulent business practices pursuant to the UCL.  
21 The UCL prohibits unfair competition and provides, in pertinent part, that “unfair  
22 competition shall mean and include unlawful, unfair or fraudulent business practices  
23 and unfair, deceptive, untrue or misleading advertising.” Cal. Bus & Prof. Code §  
24 17200. In addition, HiSmile’s use of various forms of advertising media to advertise,  
25 call attention to, or give publicity to the sale of goods or merchandise that are not as  
26 represented constitutes unfair competition, unfair, deceptive, untrue or misleading  
27 advertising, and an unlawful business practice within the meaning of Business and  
28 Professions Code Sections 17200 and 17531, which advertisements have deceived

1 and are likely to deceive the consuming public, in violation of Business and  
2 Professions Code Section 17200.

3 **101. No Reasonably Available Alternatives/Legitimate Business Interests.**  
4 HiSmile failed to avail itself of reasonably available, lawful alternatives to further its  
5 legitimate business interests.

6 **102. Business Practice.** All of the conduct alleged herein occurred and  
7 continues to occur in HiSmile’s business. HiSmile’s wrongful conduct is part of a  
8 pattern, practice and/or generalized course of conduct, which will continue on a daily  
9 basis until HiSmile voluntarily alters its conduct or HiSmile is otherwise ordered to  
10 do so.

11 **103. Injunction.** Pursuant to Business and Professions Code Sections 17203  
12 and 17535, Plaintiffs and the members of the California Subclass seek an order of this  
13 Court enjoining HiSmile from continuing to engage, use, or employ its practice of  
14 marketing and advertising the Products as capable of instantly and dramatically  
15 whitening teeth. Likewise, Plaintiffs and the members of the California Subclass seek  
16 an order requiring HiSmile to disclose such misrepresentations, and to preclude  
17 HiSmile’s failure to disclose the existence and significance of said  
18 misrepresentations.

19 **104. Causation/Damages.** As a direct and proximate result of HiSmile’s  
20 misconduct in violation of the UCL, Plaintiffs and members of the California Subclass  
21 were harmed in the amount of the purchase price they paid for the Products. Further,  
22 Plaintiffs and members of the California Subclass have suffered and continue to suffer  
23 economic losses and other damages including, but not limited to, the amounts paid  
24 for the Products, and any interest that would have accrued on those monies, in an  
25 amount to be proven at trial. Accordingly, Plaintiffs seek a monetary award for  
26 violation of the UCL in damages, restitution, and/or disgorgement of ill-gotten gains  
27 to compensate Plaintiffs and the California Subclass for said monies, as well as  
28



1 any of the injuries caused by HiSmile’s deceptive advertising of the Products.  
2 Accordingly, the injuries caused by HiSmile’s deceptive advertising outweigh any  
3 benefits.

4 108. **Balancing Test.** Some courts conduct a balancing test to decide if a  
5 challenged activity amounts to unfair conduct under California Business and  
6 Professions Code Section 17200. They “weigh the utility of the HiSmile’s conduct  
7 against the gravity of the harm to the alleged victim.” *Davis v. HSBC Bank Nevada,*  
8 *N.A.*, 691 F.3d 1152, 1169 (9th Cir. 2012).

9 109. **No Utility.** Here, HiSmile’s conduct of advertising the Products with the  
10 Fraudulent Misrepresentations when the Products do not instantly or dramatically  
11 whiten teeth has no utility and financially harms purchasers. Thus, the utility of  
12 HiSmile’s conduct is vastly outweighed by the gravity of harm.

13 110. **Legislative Declared Policy.** Some courts require that “unfairness must  
14 be tethered to some legislative declared policy or proof of some actual or threatened  
15 impact on competition.” *Lozano v. AT&T Wireless Servs. Inc.*, 504 F. 3d 718, 735  
16 (9th Cir. 2007).

17 111. **Unfair Conduct.** HiSmile’s Products labels, advertisements, social  
18 media posts, and website listings, as alleged herein, are deceptive, misleading, and  
19 unreasonable, and constitute unfair conduct. HiSmile knew or should have known of  
20 its unfair conduct. HiSmile’s misrepresentations constitute an unfair business practice  
21 within the meaning of California Business and Professions Code Section 17200.

22 112. **Reasonably Available Alternatives.** There existed reasonably available  
23 alternatives to further HiSmile’s legitimate business interests, other than the conduct  
24 described herein. HiSmile could have refrained from labeling and advertising the  
25 Products with the Fraudulent Misrepresentations.

26 //  
27 //  
28 //





1 118. **Fraudulent Business Practice.** As alleged herein, the misrepresentations  
2 by HiSmile constitute a fraudulent business practice in violation of California  
3 Business & Professions Code Section 17200.

4 119. **Reasonable and Detrimental Reliance.** Plaintiffs and the California  
5 Subclass reasonably and detrimentally relied on the Fraudulent Misrepresentations to  
6 their detriment in that they purchased the Products.

7 120. **Reasonably Available Alternatives.** HiSmile had reasonably available  
8 alternatives to further its legitimate business interests, other than the conduct  
9 described herein. HiSmile could have refrained from labeling and advertising the  
10 Products with the Fraudulent Misrepresentations.

11 121. **Business Practice.** All of the conduct alleged herein occurs and continues  
12 to occur in HiSmile’s business. HiSmile’s wrongful conduct is part of a pattern or  
13 generalized course of conduct.

14 122. **Injunction.** Pursuant to Business and Professions Code Sections 17203,  
15 Plaintiffs and the California Subclass seek an order of this Court enjoining HiSmile  
16 from continuing to engage, use, or employ its practice of labeling and advertising the  
17 Products with the Fraudulent Misrepresentations.

18 123. **Causation/Damages.** Plaintiffs and the California Subclass have suffered  
19 injury in fact and have lost money as a result of HiSmile’s fraudulent conduct.  
20 Plaintiffs paid an unwarranted premium for the Products. Specifically, Plaintiffs and  
21 the California Subclass paid for products that they believed instantly whiten teeth,  
22 when, in fact, the Products do not. Plaintiffs and the California Subclass would not  
23 have purchased the Products if they had known the truth. Accordingly, Plaintiffs seek  
24 damages, restitution, and/or disgorgement of ill-gotten gains pursuant to the UCL.

25 **“Unlawful” Prong**

26 124. **Unlawful Standard.** The UCL identifies violations of other laws as  
27 “unlawful practices that the unfair competition law makes independently actionable.”  
28 *Velazquez v. GMAC Mortg. Corp.*, 605 F. Supp. 2d 1049, 1068 (C.D. Cal. 2008).

1           **125. Violations of CLRA and FAL.** HiSmile’s labeling and advertising of  
2 the Products, as alleged herein, violate California Civil Code sections 1750, *et*  
3 *seq.* (the “**CLRA**”) and California Business and Professions Code sections 17500, *et*  
4 *seq.* (the “**FAL**”) as set forth below in the sections regarding those causes of action.

5           **126. Additional Violations.** HiSmile’s conduct in making the misleading  
6 representations described herein constitutes a knowing failure to adopt policies in  
7 accordance with and/or adherence to applicable laws, as set forth herein, all of which  
8 are binding upon and burdensome to their competitors. This conduct engenders an  
9 unfair competitive advantage for HiSmile, thereby constituting an unfair, fraudulent  
10 and/or unlawful business practice under California Business & Professions Code  
11 sections 17200-17208. Additionally, HiSmile’s misrepresentations of material facts,  
12 as set forth herein, violate California Civil Code sections 1572, 1573, 1709, 1710,  
13 1711, and 1770, as well as the common law.

14           **127. Unlawful Conduct.** HiSmile’s marketing and advertising of the  
15 Products, as alleged herein, are deceptive, misleading, and unreasonable, and  
16 constitute unlawful conduct. HiSmile knew or should have known of its unlawful  
17 conduct.

18           **128. Reasonably Available Alternatives.** HiSmile had reasonably available  
19 alternatives to further its legitimate business interests, other than the conduct  
20 described herein. HiSmile could have refrained from labeling and advertising the  
21 Products with the Fraudulent Misrepresentations.

22           **129. Business Practice.** All of the conduct alleged herein occurs and continues  
23 to occur in HiSmile’s business. HiSmile’s wrongful conduct is part of a pattern or  
24 generalized course of conduct.

25           **130. Injunction.** Pursuant to Business and Professions Code Section 17203,  
26 Plaintiffs and the California Subclass seek an order of this Court enjoining HiSmile  
27 from continuing to engage, use, or employ its practice of deceptive advertising of the  
28 Products.

1           131. **Causation/Damages.** Plaintiffs and the California Subclass have suffered  
2 injury in fact and have lost money as a result of HiSmile’s unlawful conduct. Plaintiffs  
3 and the California Subclass paid an unwarranted premium for the Products. Plaintiffs  
4 and the California Subclass would not have purchased the Products if they had known  
5 that HiSmile purposely deceived consumers into believing that the Products instantly  
6 and dramatically whiten teeth. Accordingly, Plaintiffs seek damages, restitution  
7 and/or disgorgement of ill-gotten gains pursuant to the UCL.

8   **COUNT TWO**

9   **Violation of California False Advertising Law**

10    **(Cal. Bus. & Prof. Code §§ 17500, et seq.)**

11    ***(On Behalf of the California Subclass)***

12           132. **Incorporation by reference.** Plaintiffs re-allege and incorporate by  
13 reference all allegations contained in this complaint, as though fully set forth herein.

14           133. **California Subclass.** Plaintiffs bring this claim individually and on  
15 behalf of the California Subclass who purchased the Products within the applicable  
16 statute of limitations.

17           134. **FAL Standard.** The False Advertising Law, codified at Cal. Bus. & Prof.  
18 Code section 17500, *et seq.*, prohibits “unfair, deceptive, untrue or misleading  
19 advertising[.]”

20           135. **False & Material Fraudulent Misrepresentations Disseminated to the**  
21 **Public.** HiSmile violated section 17500 when it advertised and marketed the Products  
22 through the unfair, deceptive, untrue, and misleading Fraudulent Misrepresentations,  
23 disseminated to the public through the Products’ advertisements, social media posts,  
24 and website listings. These representations were misleading because the Products do  
25 not conform to them. The representations were material because they are likely to  
26 mislead a reasonable consumer into purchasing the Products.

27 //

28 //

1           136. **Knowledge.** In making and disseminating the representations alleged  
2 herein, HiSmile knew or should have known that the representations were untrue or  
3 misleading, and acted in violation of § 17500.

4           137. **Intent to sell.** HiSmile’s Fraudulent Misrepresentations were specifically  
5 designed to induce reasonable consumers, like Plaintiffs and the California Subclass,  
6 to purchase the Products.

7           138. **Causation/Damages.** As a direct and proximate result of HiSmile’s  
8 misconduct in violation of the FAL, Plaintiffs and members of the California Subclass  
9 were harmed in the amount of the purchase price they paid for the Products. Further,  
10 Plaintiffs and members of the Class have suffered and continue to suffer economic  
11 losses and other damages including, but not limited to, the amounts paid for the  
12 Products, and any interest that would have accrued on those monies, in an amount to  
13 be proven at trial. Accordingly, Plaintiffs seek a monetary award for violation of the  
14 FAL in damages, restitution, and/or disgorgement of ill-gotten gains to compensate  
15 Plaintiffs and the California Subclass for said monies, as well as injunctive relief to  
16 enjoin HiSmile’s misconduct to prevent ongoing and future harm that will result.

17           139. **Punitive Damages.** HiSmile’s unfair, fraudulent, and unlawful conduct  
18 described herein constitutes malicious, oppressive, and/or fraudulent conduct  
19 warranting an award of punitive damages as permitted by law. HiSmile’s misconduct  
20 is malicious as HiSmile acted with the intent to cause Plaintiffs and consumers to pay  
21 for Products that they were not, in fact, receiving. HiSmile willfully and knowingly  
22 disregarded the rights of Plaintiffs and consumers as HiSmile was aware of the  
23 probable dangerous consequences of its conduct and deliberately failed to avoid  
24 misleading consumers, including Plaintiffs. HiSmile’s misconduct is oppressive as,  
25 at all relevant times, said conduct was so vile, base, and/or contemptible that  
26 reasonable people would look down upon it and/or otherwise would despise such  
27 corporate misconduct. Said misconduct subjected Plaintiffs and consumers to cruel  
28 and unjust hardship in knowing disregard of their rights. HiSmile’s misconduct is

1 fraudulent as HiSmile, at all relevant times, intentionally misrepresented and/or  
2 concealed material facts with the intent to deceive Plaintiffs and consumers. The  
3 wrongful conduct constituting malice, oppression, and/or fraud was committed,  
4 authorized, adopted, approved, and/or ratified by officers, directors, and/or managing  
5 agents of HiSmile.

### 6 **COUNT THREE**

#### 7 **Violation of California Consumers Legal Remedies Act**

8 **(Cal. Civ. Code §§ 1750, *et seq.*)**

9 **(*On Behalf of the California Subclass*)**

10 140. **Incorporation by Reference.** Plaintiffs re-allege and incorporate by  
11 reference all allegations contained in this complaint, as though fully set forth herein.

12 141. **California Subclass.** Plaintiffs bring this claim individually and on  
13 behalf of the California Subclass who purchased the Products within the applicable  
14 statute of limitations.

15 142. **CLRA Standard.** The CLRA provides that “unfair methods of  
16 competition and unfair or deceptive acts or practices undertaken by any person in a  
17 transaction intended to result or which results in the sale or lease of goods or services  
18 to any consumer are unlawful.”

19 143. **Goods/Services.** The Products are “good[s,]” as defined by the CLRA in  
20 California Civil Code §1761(a).

21 144. **HiSmile.** HiSmile is a “person,” as defined by the CLRA in California  
22 Civil Code §1761(c).

23 145. **Consumers.** Plaintiffs and members of the California Subclass are  
24 “consumers,” as defined by the CLRA in California Civil Code §1761(d).

25 146. **Transactions.** The purchase of the Products by Plaintiffs and members  
26 of the California Subclass are “transactions” as defined by the CLRA under California  
27 Civil Code section 1761(e).

28 //

1           **147. Violations of the CLRA.** HiSmile violated the following sections of the  
2 CLRA by selling the Products to Plaintiffs and the California Subclass through the  
3 misleading, deceptive, and Fraudulent Misrepresentations and actions:

- 4           a. Section 1770(a)(5) by representing that the Products have  
5           “characteristics, . . . uses [or] benefits . . . which [they do] not have.”  
6           b. Section 1770(a)(7) by representing that the Products “[are] of a particular  
7           standard, quality, or grade . . . [when they are] of another.”  
8           c. Section 1770(a)(9) by advertising the Products “with [the] intent not to  
9           sell [them] as advertised.”

10           **148. Knowledge.** HiSmile’s uniform and material representations regarding  
11 the Products was likely to deceive, and HiSmile knew or should have known that its  
12 representations were misleading.

13           **149. Malicious.** HiSmile’s conduct is malicious, fraudulent, and wanton in  
14 that HiSmile intentionally misled and withheld material information from consumers,  
15 including Plaintiffs, to increase the sale of the Products.

16           **150. Plaintiffs Could Not Have Avoided Injury.** Plaintiffs and members of  
17 the California Subclass could not have reasonably avoided such injury. Plaintiffs and  
18 members of the California Subclass were unaware of the existence of the facts that  
19 HiSmile suppressed and failed to disclose, and Plaintiffs and members of the  
20 California Subclass would not have purchased the Products and/or would have  
21 purchased it on different terms had they known the truth.

22           **151. Causation/Reliance/Materiality.** Plaintiffs and the California Subclass  
23 suffered harm as a result of HiSmile’s violations of the CLRA because they relied on  
24 the Fraudulent Misrepresentations in deciding to purchase the Products. The  
25 Fraudulent Misrepresentations were substantial factors. The Fraudulent  
26 Misrepresentations were material because a reasonable consumer would consider  
27 them important in deciding whether to purchase the Products.

28 //

1           **152. Section 1782 – Prelitigation Demand/Notice.** Pursuant to California  
2 Civil Code section 1782, more than thirty days prior to the filing of this complaint,  
3 on or about February 16, 2024, Plaintiffs’ counsel, acting on behalf of Plaintiffs and  
4 members of the Class, deposited with the U.S. Postal Service a notice for mailing via  
5 certified mail, return receipt requested, addressed to HiSmile’s registered agent, FLP  
6 Services, LLC at 1201 N. Orange St., Suite 7419, Wilmington, DE 19801, which was  
7 delivered on February 26, 2024. Said notice described HiSmile’s particular violations  
8 of the California Consumers Legal Remedies Act, as set forth above, and demanded  
9 that HiSmile correct and otherwise rectify those violations with respect to Plaintiffs  
10 and all members of the Class. The form, content, and delivery of the notice satisfy  
11 subsections (1) and (2) of section 1782(a). The notice of violations and demand for  
12 remedial action, as of the filing of this complaint, did not result in adequate correction,  
13 repair, replacement, and/or other remedy by HiSmile, including all remedial action  
14 set forth in the notice letter and as set forth under section 1782(c).

15           **153. Causation/Damages.** As a direct and proximate result of HiSmile’s  
16 misconduct in violation of the CLRA, Plaintiffs and members of the California  
17 Subclass were harmed in the amount of the purchase price they paid for the Products.  
18 Further, Plaintiffs and members of the Class have suffered and continue to suffer  
19 economic losses and other damages including, but not limited to, the amounts paid  
20 for the Products, and any interest that would have accrued on those monies, in an  
21 amount to be proven at trial. Accordingly, Plaintiffs seek a monetary award for  
22 violation of this Act in the form of damages, restitution, disgorgement of ill-gotten  
23 gains to compensate Plaintiffs and the California Subclass for said monies.

24           **154. Injunction.** Given that HiSmile’s conduct violated California Civil Code  
25 section 1780, Plaintiffs and members of the California Subclass are entitled to seek,  
26 and do hereby seek, injunctive relief to put an end to HiSmile’s violations of the  
27 CLRA. Plaintiffs have no adequate remedy at law. Without equitable relief, HiSmile’s  
28

1 unfair and deceptive practices will continue to harm Plaintiffs and the California  
2 Subclass.

3         **155. Punitive Damages.** HiSmile’s unfair, fraudulent, and unlawful conduct  
4 described herein constitutes malicious, oppressive, and/or fraudulent conduct  
5 warranting an award of punitive damages as permitted by law. HiSmile’s misconduct  
6 is malicious as HiSmile acted with the intent to cause Plaintiffs and consumers to pay  
7 for Products that they were not, in fact, receiving. HiSmile willfully and knowingly  
8 disregarded the rights of Plaintiffs and consumers as HiSmile was, at all times, aware  
9 of the probable dangerous consequences of its conduct and deliberately failed to avoid  
10 misleading consumers, including Plaintiffs. HiSmile’s misconduct is oppressive as,  
11 at all relevant times, said conduct was so vile, base, and/or contemptible that  
12 reasonable people would look down upon it and/or otherwise would despise such  
13 corporate misconduct. Said misconduct subjected Plaintiffs and consumers to cruel  
14 and unjust hardship in knowing disregard of their rights. HiSmile’s misconduct is  
15 fraudulent as HiSmile, at all relevant times, intentionally misrepresented and/or  
16 concealed material facts with the intent to deceive Plaintiffs and consumers. The  
17 wrongful conduct constituting malice, oppression, and/or fraud was committed,  
18 authorized, adopted, approved, and/or ratified by officers, directors, and/or managing  
19 agents of HiSmile.

#### 20                                   COUNT FOUR

#### 21                                   Breach of Warranty

#### 22                                   *(On Behalf of the Nationwide Class and California Subclass)*

23         **156. Incorporation by Reference.** Plaintiffs re-allege and incorporate by  
24 reference all allegations contained in this complaint, as though fully set forth herein.

25         **157. Nationwide Class & California Subclass.** Plaintiffs bring this claim  
26 individually and on behalf of the Nationwide Class and California Subclass (the  
27 “Class”) who purchased the Products within the applicable statute of limitations.

28 //



1           158. **Express Warranty.** By advertising and selling the Products at issue,  
2 HiSmile made promises and affirmations of fact through the Products’ marketing and  
3 advertising, as described herein. This marketing and advertising constitute express  
4 warranties and became part of the basis of the bargain between Plaintiffs and members  
5 of the Class and HiSmile. HiSmile purports, through the Products’ marketing and  
6 advertising, to create express warranties that the Products, among other things,  
7 conform to the Fraudulent Misrepresentations.

8           159. **Implied Warranty of Merchantability.** By advertising and selling the  
9 Products at issue, HiSmile, a merchant of goods, made promises and affirmations of  
10 fact that the Products are merchantable and conform to the promises or affirmations  
11 of fact made through its marketing and advertising, as described herein. This labeling  
12 and advertising, combined with the implied warranty of merchantability, constitute  
13 warranties that became part of the basis of the bargain between Plaintiffs and  
14 members of the Class and HiSmile—to wit, that the Products, among other things,  
15 conform to the Fraudulent Misrepresentations.

16           160. **Breach of Warranty.** Contrary to HiSmile’s warranties, the Products do  
17 not conform to the Fraudulent Misrepresentations and, therefore, HiSmile breached  
18 its warranties about the Products and their qualities.

19           161. **Causation/Remedies.** As a direct and proximate result of HiSmile’s  
20 breach of warranty, Plaintiffs and members of the Class were harmed in the amount  
21 of the purchase price they paid for the Products. Further, Plaintiffs and members of  
22 the Class have suffered and continue to suffer economic losses and other damages  
23 including, but not limited to, the amounts paid for the Products, and any interest that  
24 would have accrued on those monies, in an amount to be proven at trial. Accordingly,  
25 Plaintiffs seek a monetary award for breach of warranty in the form of damages,  
26 restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiffs and the  
27 Class for said monies, as well as injunctive relief to enjoin HiSmile’s misconduct to  
28 prevent ongoing and future harm that will result.

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1           **162. Punitive Damages.** Plaintiffs seek punitive damages pursuant to this  
2 cause of action for breach of warranty on behalf of Plaintiffs and the Class.  
3 HiSmile’s unfair, fraudulent, and unlawful conduct described herein constitutes  
4 malicious, oppressive, and/or fraudulent conduct warranting an award of punitive  
5 damages as permitted by law. HiSmile’s misconduct is malicious as HiSmile acted  
6 with the intent to cause Plaintiffs and consumers to pay for Products that they were  
7 not, in fact, receiving. HiSmile willfully and knowingly disregarded the rights of  
8 Plaintiffs and consumers as HiSmile was aware of the probable consequences  
9 of its conduct and deliberately failed to avoid misleading consumers, including  
10 Plaintiffs. HiSmile’s misconduct is oppressive as, at all relevant times, said conduct  
11 was so vile, base, and/or contemptible that reasonable people would look down upon  
12 it and/or otherwise would despise such misconduct. Said misconduct subjected  
13 Plaintiffs and consumers to cruel and unjust hardship in knowing disregard of their  
14 rights. HiSmile’s misconduct is fraudulent as HiSmile, at all relevant times,  
15 intentionally misrepresented and/or concealed material facts with the intent to deceive  
16 Plaintiffs and consumers. The wrongful conduct constituting malice, oppression,  
17 and/or fraud was committed, authorized, adopted, approved, and/or ratified by  
18 officers, directors, and/or managing agents of HiSmile.

**COUNT FIVE**

**Unjust Enrichment/Restitution**

*(On Behalf of the Nationwide Class and California Subclass)*

22           **163. Incorporation by Reference.** Plaintiffs re-allege and incorporate by  
23 reference all allegations contained in this complaint, as though fully set forth herein.

24           **164. Nationwide Class & California Subclass.** Plaintiffs bring this claim  
25 individually and on behalf of the Nationwide Class and California Subclass (the  
26 “**Class**”) who purchased the Products within the applicable statute of limitations.

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1           **165. Plaintiff/Class Conferred a Benefit.** By purchasing the Products,  
2 Plaintiffs and members of the Class conferred a benefit on HiSmile in the form of the  
3 purchase price of the Products.

4           **166. HiSmile's Knowledge of Conferred Benefit.** HiSmile had knowledge of  
5 such benefit and HiSmile appreciated the benefit because, were consumers not to  
6 purchase the Products, HiSmile would not generate revenue from the sales of the  
7 Products.

8           **167. HiSmile's Unjust Receipt Through Deception.** HiSmile's knowing  
9 acceptance and retention of the benefit is inequitable and unjust because the benefit  
10 was obtained by HiSmile's fraudulent, misleading, and deceptive representations.

11           **168. Causation/Damages.** As a direct and proximate result of HiSmile's  
12 unjust enrichment, Plaintiffs and members of the Class were harmed in the amount of  
13 the purchase price they paid for the Products. Further, Plaintiffs and members of the  
14 Class have suffered and continue to suffer economic losses and other damages  
15 including, but not limited to, the amounts paid for the Products, and any interest that  
16 would have accrued on those monies, in an amount to be proven at trial. Accordingly,  
17 Plaintiffs seek a monetary award for unjust enrichment in damages, restitution, and/or  
18 disgorgement of ill-gotten gains to compensate Plaintiffs and the Class for said  
19 monies, as well as injunctive relief to enjoin HiSmile's misconduct to prevent ongoing  
20 and future harm that will result.

21           **169. Punitive Damages.** Plaintiffs seek punitive damages pursuant to this  
22 cause of action for unjust enrichment on behalf of Plaintiffs and the Class. HiSmile's  
23 unfair, fraudulent, and unlawful conduct described herein constitutes malicious,  
24 oppressive, and/or fraudulent conduct warranting an award of punitive damages as  
25 permitted by law. HiSmile's misconduct is malicious as HiSmile acted with the intent  
26 to cause Plaintiffs and consumers to pay for Products that they were not, in fact,  
27 receiving. HiSmile willfully and knowingly disregarded the rights of Plaintiffs and  
28 consumers as HiSmile was aware of the probable dangerous consequences of its

1 conduct and deliberately failed to avoid misleading consumers, including Plaintiffs.  
 2 HiSmile's misconduct is oppressive as, at all relevant times, said conduct was so vile,  
 3 base, and/or contemptible that reasonable people would look down upon it and/or  
 4 otherwise would despise such corporate misconduct. Said misconduct subjected  
 5 Plaintiffs and consumers to cruel and unjust hardship in knowing disregard of their  
 6 rights. HiSmile's misconduct is fraudulent as HiSmile, at all relevant times,  
 7 intentionally misrepresented and/or concealed material facts with the intent to deceive  
 8 Plaintiffs and consumers. The wrongful conduct constituting malice, oppression,  
 9 and/or fraud was committed, authorized, adopted, approved, and/or ratified by  
 10 officers, directors, and/or managing agents of HiSmile.

11 **PRAYER FOR RELIEF**

12 170. WHEREFORE, Plaintiffs, individually and on behalf of all others  
 13 similarly situated, pray for judgment against HiSmile as follows:

- 14 a. **Certification:** For an order certifying this action as a class action,  
 15 appointing Plaintiffs as the Class Representatives, and appointing  
 16 Plaintiffs' Counsel as Class Counsel;
- 17 b. **Declaratory Relief:** For an order declaring that HiSmile's conduct  
 18 violates the statutes and laws referenced herein;
- 19 c. **Injunction:** For an order requiring HiSmile to immediately cease and  
 20 desist from selling the unlawful Products in violation of law; enjoining  
 21 HiSmile from continuing to market, advertise, distribute, and sell the  
 22 Products in the unlawful manner described herein; requiring HiSmile to  
 23 engage in an affirmative advertising campaign to dispel the public  
 24 misperception of the Products resulting from HiSmile's unlawful  
 25 conduct; and requiring all further and just corrective action, consistent  
 26 with permissible law and pursuant to only those causes of action so  
 27 permitted;
- 28 d. **Damages/Restitution/Disgorgement:** For an order awarding monetary

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compensation in the form of damages, restitution, and/or disgorgement to Plaintiffs and the Class, consistent with permissible law and pursuant to only those causes of action so permitted;

e. **Punitive Damages/Penalties:** For an order awarding punitive damages, statutory penalties, and/or monetary fines, consistent with permissible law and pursuant to only those causes of action so permitted;

f. **Attorneys’ Fees & Costs:** For an order awarding attorneys’ fees and costs, consistent with permissible law and pursuant to only those causes of action so permitted;

g. **Pre/Post-Judgment Interest:** For an order awarding pre-judgment and post-judgment interest, consistent with permissible law and pursuant to only those causes of action so permitted; and

h. **All Just & Proper Relief:** For such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury on all issues and causes of action so triable.

Dated: June 6, 2024

**CLARKSON LAW FIRM, P.C.**

By: /s/ Shireen M. Clarkson  
Shireen M. Clarkson, Esq.  
Bahar Sodaify, Esq.

*Attorneys for Plaintiffs*

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Lawsuit Claims Efficacy of HiSmile Teeth-Whitening Products Based on Junk Science, Widespread Fraud Marketing](#)

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