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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ALEXANDER LEDESMA, HELEN
TANAKA, LARRY JONES, CHRISTOPHER
DEUEL, ANNE LYNN ELKIND, and ANNA
IOFFE, individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

HISMILE, INC. and HISMILE PTY LTD.,
Defendants.

Case No. 4:24-cv-03626-KAW

**SECOND AMENDED 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. Violation of New York Consumer
Fraud Act (N.Y. GBL §§ 349, *et seq.*)
5. Violation of New York Consumer
Fraud Act (N.Y. GBL §§ 350, *et seq.*)
6. Breach of Warranty
7. Unjust Enrichment

JURY TRIAL DEMANDED

1 Plaintiffs Alexander Ledesma, Helen Tanaka, Larry Jones, Christopher Deuel, Anne Lynn
2 Elkind, and Anna Ioffe (collectively, “Plaintiffs”), individually and on behalf of all others similarly
3 situated, as more fully described herein (the “Class”), bring this class action complaint against
4 Defendants Hismile, Inc. and Hismile Pty Ltd. (collectively, “Defendants” or “Hismile”). Plaintiffs’
5 allegations are based upon personal knowledge as to themselves and their own acts, and upon
6 information and belief as to all other matters based on the investigation conducted by and through
7 Plaintiffs’ attorneys.

8 **I. SYNOPSIS**

9 1. Hismile, a self-proclaimed billion-dollar company, has built its brand on a pervasive
10 fraudulent marketing campaign claiming that its teeth-whitening products can deliver “instant
11 whitening” results. Hismile has aggressively promoted this false promise through coordinated social
12 media advertising, particularly on TikTok, Instagram, Facebook, and YouTube. The company has
13 flooded these platforms with falsified before-and-after images and videos, misleading celebrity
14 endorsements, and deceptive influencer content, all designed to manipulate consumer perception of
15 its products. Hismile further perpetuates this deception by publishing self-sponsored “customer
16 reviews” and directing its own employees to pose as satisfied consumers across social media.
17 Regardless of the specific marketing tactic used, Hismile’s advertisements all convey the same false
18 core message—that its products deliver instant teeth whitening.

19 2. In further perpetuating this false narrative, Hismile pushes junk science in its
20 advertising, espousing the “science” of “color theory,” “color correction technology,” “light
21 interference technology,” “reflective pigments,” and various other pseudoscientific explanations for
22 its promised “instant whitening” results.

23 3. Hismile doubles down on its false “instant whitening” claims by advertising that its
24 bellwether product, the V34 Colour Corrector Serum, is “clinically proven” when it has not even
25 been clinically *tested*.

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

1 customers, fake before-and-after photos/videos, misleading celebrity and influencer endorsements,
2 and fake “clinically proven” claims, is to mask the inefficacy of its products.

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

5 6. The Hismile products at issue include the following in all varieties and sizes sold
6 throughout California, New York, and the United States: (1) V34 Colour Corrector Serum; (2)
7 Glostik Tooth Gloss; (3) PAP+ Whitening Strips; (4) PAP+ Whitening Pen (collectively, the
8 “Products”). Images of the Products, taken from Hismile’s official website,
9 <https://us.hismileteeth.com> on September 3, 2024, are depicted below.

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

II. JURISDICTION

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

III. VENUE

9. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events giving rise to Plaintiffs' claims occurred in this District. In addition, Plaintiffs purchased the unlawful Products in this District, and Hismile has marketed, advertised, and sold the Products within this District.

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1 **IV. PARTIES**

2 10. **Plaintiff Alexander Ledesma** The following is alleged based upon Plaintiff
3 Ledesma's personal knowledge:

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

5 b. **Purchase Details.** Plaintiff purchased the V34 Colour Corrector Serum and PAP+
6 Whitening Pen from Hismile's website in or around September 2023, paying
7 approximately \$35.00 for both Products.

8 11. **Plaintiff Helen Tanaka.** The following is alleged based upon Plaintiff Tanaka's
9 personal knowledge:

10 a. **Residence.** Plaintiff is a resident of Hayward, California.

11 b. **Purchase Details.** Plaintiff purchased the Glostik Tooth Gloss from Hismile's
12 website in or around June 2023 and the V34 Colour Corrector Serum from a Walmart
13 store in Union City, California in or around January 2024, paying approximately
14 \$27.00 for the Glostik Tooth Gloss and \$30.00 for the V34 Colour Corrector Serum.

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

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

18 b. **Purchase Details.** Plaintiff purchased the PAP+ Whitening Strips from a Walmart
19 store in Chino Hills, CA in or around January 2024, paying approximately \$25.00 for
20 the Product.

21 13. **Plaintiff Christopher Deuel.** The following is alleged based upon Plaintiff Deuel's
22 personal knowledge:

23 a. **Residence.** Plaintiff is a resident of Long Beach, California.

24 b. **Purchase Details.** Plaintiff purchased the V34 Colour Corrector Serum from
25 Amazon.com in or around April 2024, paying approximately \$20.00 for the Product.

26 14. **Plaintiff Anne Lynn Elkind.** The following is alleged based upon Plaintiff Elkind's
27 personal knowledge:

28 a. **Residence.** Plaintiff is a resident of Roslyn Heights, New York.

b. **Purchase Details.** Plaintiff purchased Hismile V34 Colour Corrector Serum and Hismile PAP + Whitening Pen from a Walmart store in Westbury, New York in or around April 2025, paying approximately \$25.00 for each Product.

15. **Plaintiff Anna Ioffe.** The following is alleged based upon Plaintiff Ioffe's personal knowledge:

a. **Residence.** Plaintiff is a resident of Brooklyn, New York.

b. **Purchase Details.** Plaintiff purchased the Hismile V34 Colour Corrector Serum from Hismile's official online store in or around January 2023, paying approximately \$29.00 for the Product.

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

17. **Defendant Hismile, Inc.** is an American corporation headquartered in Delaware. Hismile, Inc. was incorporated in Delaware on June 28, 2019 and remains in good standing. Hismile, Inc. was doing business in the State of California at all relevant times, including the Class Period.

1 Directly and through its agents, Hismile, Inc. has substantial contacts with and receives substantial
 2 benefits and income from and through the State of California. Hismile, Inc. currently operates the
 3 website www.us.hismileteeth.com. Hismile, Inc. targets American consumers and substantially
 4 profits from sales of the Products that were induced by fraudulent advertising.

5 18. **Defendant Hismile Pty Ltd.** is an Australian private company headquartered in
 6 Queensland. Hismile Pty Ltd. is the owner, manufacturer, marketer, and/or distributor of the
 7 Products, and created, authorized, and controlled the use of the fraudulent advertising to market the
 8 Products in California and the United States. Hismile Pty Ltd. and its agents promoted, marketed,
 9 and sold the Products at issue throughout the United States and, in particular, within this judicial
 10 district. The unfair, unlawful, false, deceptive, and misleading fraudulent advertising of the Products
 11 was prepared, authorized, ratified, and/or approved by Hismile Pty Ltd. and its agents to deceive
 12 and mislead consumers in the California and the United States into purchasing the Products. Directly
 13 and through its agents, Hismile Pty Ltd. has substantial contacts with and receives substantial
 14 benefits and income from and through the State of California and the United States. Hismile Pty
 15 Ltd. previously operated the website www.us.hismileteeth.com. Hismile Pty Ltd. targets American
 16 consumers with location-specific social media advertisements and uses highly misleading
 17 endorsements from American celebrities to entice American consumers to buy its Products. For
 18 example, Hismile Pty Ltd. boasts celebrity endorsements from American celebrities Kim
 19 Kardashian, Kylie Jenner, and Pia Mia. Hismile Pty Ltd. also utilizes American influencers like
 20 Timonthy Sanchez-Vega, also known as “Legit Tim,” an influencer who posts product review
 21 videos. Legit Tim, who resides in California, has 2.82 million followers on YouTube and 2.3 million
 22 followers on TikTok. Hismile Pty Ltd. substantially profits from sales of the Products sold in
 23 California and the United States.

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V. FACTUAL ALLEGATIONS

A. **Hismile Exploits Consumer Demand for Instant Teeth Whitening Products**

19. Consumer demand for at-home teeth whitening products is at an all-time high and steadily growing,¹ particularly due to the influence of perfect white smiles portrayed in the media.² Independent market trackers estimated the global teeth-whitening category to be at \$8.52 billion in 2024, and it is projected to grow from \$8.93 billion in 2025 to \$12.77 billion by 2032; in the U.S. alone, the teeth whitening market is expected to reach USD 2.62 billion by 2032.³ Increasing growth is observed in at-home product category,⁴ indicating that consumers increasingly prefer at-home, instant whitening, which Hismile brand exploits with its fraudulent marketing campaign.

20. There are several different methods for whitening teeth. The efficacy of these different methods is dependent upon the particular tooth discoloration being treated, whether the discoloration is at the surface or deeper, and whether it is caused by exposure to staining foods and beverages, smoking, antibiotic use, etc.⁵ The most common method to whiten teeth is with bleaching products. Teeth bleaching products utilize hydrogen peroxide (H₂O₂) or one of its precursors, carbamide peroxide (CP), as the active ingredient to oxidize organic chromophores (small molecules from coffee, red wine, or tea), resulting in a lighter appearance of teeth.⁶ Quicker teeth whitening can be achieved in-office because professional-grade products deliver a higher concentration of peroxide (25-35%)⁷ than over-the-counter products (typically 6-14%).⁸ During in-

¹ *Teeth Whitening Market Size, Share & Trends Analysis Report By Product (Whitening Toothpaste, Whitening Gels & Strips, Light Teeth Whitening Device), By Distribution Channel, By Region, and Segment Forecasts, 2022-2030*, GRAND VIEW RESEARCH, <https://www.grandviewresearch.com/industry-analysis/teeth-whitening-market-report> (last visited Sep. 3, 2024).

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

³ *Teeth Whitening Market Size, Share & Industry Analysis, By Product (Whitening Toothpaste, Whitening Gels & Strips, and Light Teeth Whitening Devices)*, BUSINESS INSIGHTS (Oct. 6, 2025), <https://www.fortunebusinessinsights.com/teeth-whitening-market-110349>.

⁴ *Teeth Whitening Market Overview – Growth & Trends 2024-2034*, FUTURE MARKET INSIGHTS, INC. (Mar. 13, 2024), <https://www.futuremarketinsights.com/reports/teeth-whitening-market>.

⁵ Carey, *supra* note 2.

⁶ 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>.

⁷ Carey, *supra* note 2.

⁸ *Basic details about Crest White Strips*, ANIMATED-TEETH.COM, https://www.animated-teeth.com/whitening_strips/a1_teeth_whitening.htm (last visited Sep. 3, 2024).

office treatments, gingival tissues are usually protected before the whitening agent is applied.⁹ At-home bleaching systems include tray-based tooth whiteners, whitening strips and gels, whitening toothpastes, and whitening rinses.¹⁰

21. Peroxide-based treatments can cause tooth and gum sensitivity,¹¹ and the desired level of whitening can take dozens of rounds of applications, requiring strips, gel, or trays to be on the teeth for up to one hour per application,¹² with treatment courses of up to 14 days or longer. Thus, there is a consumer market for over-the-counter teeth whitening products that advertise instant results without tooth and gum sensitivity.

22. Hismile is well aware of the increasing consumer demand for convenient, instant teeth whitening products and has aggressively exploited this trend through pervasive and deceptive marketing, falsely representing that its Products deliver *instant* whitening results. The company has mastered the art of harnessing the power of social media, flooding platforms like Instagram, TikTok, and YouTube with influencer-driven content that promises instant whitening results. To lend credibility to these claims, Hismile relies on celebrity endorsements, thousands of curated “customer reviews,” and videos or photos depicting supposed dental professionals applying the products on “real” consumers. These campaigns are designed to create the illusion of authenticity and professional validation while concealing the Products are scientifically incapable of delivering the advertised benefits. By leveraging the reach and persuasive force of social media, Hismile has built a powerful digital campaign that amplifies its deceptive messaging, preys on consumers’ insecurities, and allows the company to profit from false promises of instant results.

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⁹ Carey, *supra* note 2.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Crest Whitestrips Instructions: Safe & Easy Teeth Whitening*, CREST, <https://crest.com/en-us/oral-care-tips/teeth-whitening/crest-whitestrips-instructions-safe-easy-teeth-whitening> (last visited Sep. 3, 2024).

B. Hismile Utilizes Social Media to Perpetuate and Profit From Its False Promise of Instant Teeth Whitening

23. Hismile launched in 2014 with a starting capital of \$20,000.¹³ In September 2023, Hismile founder Nik Mirkovic declared that Hismile was on track to post **one billion dollars in sales** that financial year.¹⁴ Hismile credits its explosive success to its aggressive social media marketing.¹⁵ Hismile spends tens of millions of dollars per year on social media posts mostly aimed at their target market: women and girls between the ages of 15 and 24.¹⁶ Hismile aggressively markets its Products as instant teeth whiteners on its social media accounts by publishing a high volume of videos, paying influencers and celebrities such as Kim Kardashian, Kylie Jenner, and Conor McGregor for sponsored posts, and paying for ads to appear in users' feeds.

24. Hismile's TikTok account (user @hismile) typically posts fifteen or more videos per day advertising its various Products. Due to its insistent posting and advertising, Hismile has amassed a massive social media following. Hismile's TikTok account has 5.2 million followers and 112 million cumulative "likes" on its videos. Hismile's Instagram account (user @hismile) has 1.6 million followers. Hismile's Facebook page has 1.7 million "likes" and 1.7 million followers.

25. For context, even multi-billion-dollar and well-established dental care brands have not attained anywhere near this size of a social media audience. Colgate has only 187 thousand followers on Instagram (user @colgate), and Crest has only 91.9 thousand followers on Instagram (user @crest).

26. Hismile's social media advertising strategy is highly effective, and its partnership with celebrities and influencers is a huge driver of its sales. Hismile founder Nik Mirkovic explained,

¹³ Sabri Suby, *How Hismile Grew From a Tiny \$20K Investment to \$40 Million 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/>.

¹⁴ 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>.

¹⁵ Suby, *supra* note 13.

¹⁶ *Id.*

1 “Our five Instagram posts with Kylie [Jenner] have all had over 1 million views and 100,000
2 comments and you see the sales uplift immediately after each one.”¹⁷

3 27. **Hismile Harnesses the Power of Digital Marketing and Algorithm Technology to**
4 **Reinforce its Deceptive Instant Teeth Whitening Representations.** As part of its social media
5 advertising campaign, Hismile strategically leverages the immense reach and precision of digital
6 marketing—exploiting sophisticated algorithms built into major platforms to maximize profits. By
7 doing so, Hismile ensures its advertisements directly reach and target consumers repeatedly. The
8 rapid expansion of the internet and the near-universal use of mobile devices have created an
9 unprecedented opportunity for companies like Hismile to deliver highly tailored and persuasive
10 promotional content. Indeed, global investment in online advertising is projected to have exceeded
11 \$740 billion in 2024,¹⁸ underscoring both the scale and profitability of digital marketing that
12 Hismile so effectively exploits.

13 28. Digital marketing involves using websites, mobile devices, social media, and search
14 engines to promote products and services, offering an additional approach compared to traditional
15 marketing methods.¹⁹ Since the 1990s, digital marketing channels have evolved dramatically,
16 including key platforms such as social media.²⁰ For example, a 2018 study surveyed the exposure
17 of users to advertisements and advertisers using a dataset from Facebook, which was the second
18 largest advertising platform, only to Google in terms of revenue.²¹ The analysis revealed that
19 Facebook users are exposed (in median) to *seventy* advertisements per week, which represented
20 between 10% and 15% of all the information received in users’ newsfeeds.

21 29. The access that companies like Hismile have to consumers has also expanded
22 dramatically in the digital age. Before smartphones, advertising was largely confined to traditional
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24 ¹⁷ *Id.*

25 ¹⁸ *Digital Ad Spend (2017-2028)*, OBERLO, <https://www.oberlo.com/statistics/digital-ad-spend> (last visited Oct. 21, 2025).

26 ¹⁹ The Investopedia Team, *Understanding Digital Marketing: Key Types, Channels, and*
27 *Examples*, INVESTOPEDIA, <https://www.investopedia.com/terms/d/digital-marketing.asp#:~:text=Digital%20marketing%20utilizes%20online%20platforms,video%20and%20text%20message%20marketing> (last updated Sep. 28, 2025).

28 ²⁰ *Id.*

²¹ Aritz Arrate et al., *Large-Scale Analysis of User Exposure to Online Advertising in Facebook*, CORNELL UNIVERSITY, <https://arxiv.org/abs/1811.10921#> (last revised Dec. 26, 2018).

media such as cable television, radio, billboards, and print publications. With the rise of smartphones and social media, companies now enjoy continuous, direct access to consumers through the devices they use daily. In the United States, 98% of people own smartphones,²² and 68% actively use social media,²³ spending an average of over two hours per day on social media alone.²⁴

30. This unprecedented access allows companies like Hismile to saturate consumers' digital environments with a steady stream of advertisements—often dozens of impressions each time a consumer opens a social media app. Regardless of the format or tactic, these ads convey the same false core message: that Hismile's Products deliver "instant teeth whitening" results. By exploiting the constant connectivity and attention economy of the smartphone era, Hismile is able to perpetuate and amplify its deceptive marketing narrative.

31. In addition to the sheer volume and repetition of Hismile's advertisements, the modern digital landscape has made online advertising increasingly pervasive, targeted, automated, and personalized. A key example of this evolution is retargeted advertising, a practice in which companies deliver customized ads to individuals who have previously visited a retailer's website but left without completing a purchase.²⁵

32. Retargeted advertising has long been recognized as an effective marketing strategy. Retargeting advertisements was found to make it 70% more likely to convert previous visitors into paying customers, and to increase the advertiser's brand search results by at least 500%.²⁶ In 2019, a study conducted a large-scale randomized field experiment to study the effects of retargeted advertising, and found that the experimental retargeting causes 14.6% more users to return to the website within four weeks, as well as evidence of the existence of complementarities in advertising

²² *Mobile Fact Sheet*, PEW RESEARCH CENTER (Nov. 13, 2024), <https://www.pewresearch.org/internet/fact-sheet/mobile/>.

²³ *Americans' Social Media Use*, PEW RESEARCH CENTER (Jan. 31, 2024), <https://www.pewresearch.org/internet/2024/01/31/americans-social-media-use/>.

²⁴ Naveen Kumar, *Average Time Spent On Social Media [2025 Statistics]*, DDEMANDSAGE (Sep. 17, 2025), <https://www.demandsage.com/average-time-spent-on-social-media/>.

²⁵ Ivan De Battista et al., *The Value of Retargeted Advertisements: An Empirical Study on Young People*, 12(1) Cogent Business & Management (2025), <https://www.tandfonline.com/doi/full/10.1080/23311975.2025.2560646>.

²⁶ ReadyCloud, *These 2018 Retargeting Statistics Prove It Works*, READYCLOUD (Apr. 12, 2018), <https://www.readycloud.com/info/these-2018-retargeting-statistics-prove-it-works>.

over time: the effect of advertising in week two of the campaign is higher when the user was assigned advertising in week one.²⁷

33. Retargeting functionally involves pixels, which are pieces of code that advertisers often put on their websites. Such codes quietly tag website visitors so the advertiser can reconnect with them later through highly targeted advertisements.²⁸ For instance, if a consumer visits the advertiser’s website and browses a few different pages, but doesn’t fill out the contact form or make a purchase, retargeting pixels can help the advertiser reach them again by noting that website visit and sending data back to the advertising platform.²⁹ Based on the pixel data, advertisers can run advertisements to retarget people who have exhibited some promising behavior, such as a link click, a landing page visit, etc.—signs of interest in the advertiser’s product or service.³⁰

34. Therefore, it is no surprise that major social media platforms such as Meta (Facebook and Instagram) and TikTok offer sophisticated retargeting tools that dynamically generate customized ad variations for individual users based on engagement data and behavioral predictions. Meta refers to this feature as “Dynamic Creative,” which Hismile actively utilizes. Through this tool, Hismile’s ad components, such as images, videos, and headlines, are automatically mixed and matched to produce countless personalized ad versions. This allows Hismile to continuously test and optimize deceptive messaging, ensuring that its false claims about “instant teeth whitening” reach consumers in the most persuasive form possible.³¹

35. Similarly, TikTok’s “Smart Creative” feature allows companies like Hismile to upload multiple creative assets—such as images, videos, text variations, and calls-to-action—which the platform then mixes and matches algorithmically.³²

²⁷ Navdeep S. Sahni et al., *An Experimental Investigation of the Effects of Retargeted Advertising*, 56(3) J. MARKETING RESEARCH (June 2019), <https://www.jstor.org/stable/26966582>.

²⁸ Farjad Taheer, *How Does a Retargeting Pixel Work? (3 Use Cases)*, OPTINMONSTER, <https://optinmonster.com/how-does-retargeting-pixel-work/> (last updated July 30, 2025).

²⁹ Brian Jackson, *What Is Ad Retargeting – Complete Guide to Get Started*, KINSTA, <https://kinsta.com/blog/ad-retargeting/> (last updated Aug. 28, 2025).

³⁰ *Id.*

³¹ Business Help Center, *About Dynamic Creative*, META, <https://www.facebook.com/business/help/170372403538781?id=244556379685063> (last visited Oct. 21, 2025).

³² *About Smart Creative*, TIKTOK BUSINESS HELP CENTER, <https://ads.tiktok.com/help/article/smart-creative> (last updated July 2025).

With Meta’s “Dynamic Creative” feature and TikTok’s “Smart Creative” feature, if an advertiser provides four variations each of primary text, description, headline, and creative asset, there are 1,820 possible ad combinations. This illustrates the complexity of tracking or analyzing every specific advertisement that one is exposed to, since each user could see a distinct combination generated in real time by the platform’s optimization algorithm.

C. Hismile’s Fraudulent Misrepresentations

36. To perpetuate its false promise of “instant teeth whitening,” Hismile engages in a comprehensive and fraudulent marketing scheme that includes, but is not limited to, the use of fabricated “before and after” images and videos; deceptive editing and filming techniques; the posting of fake positive reviews and the removal of legitimate negative reviews; having its employees pose as fake dental professionals, scientists, and satisfied customers in social media advertisements; employing misleading celebrity and influencer endorsements; falsely claiming that certain Products are “clinically proven” to instantly whiten teeth; and promoting fabricated scientific claims. Collectively, these actions are referred to as the “**Fraudulent Misrepresentations**,” representative examples of which are set forth below.

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

37. In its advertisements, Hismile employs numerous deceptive techniques to fabricate the instant whitening effect that users can purportedly achieve with its Products.

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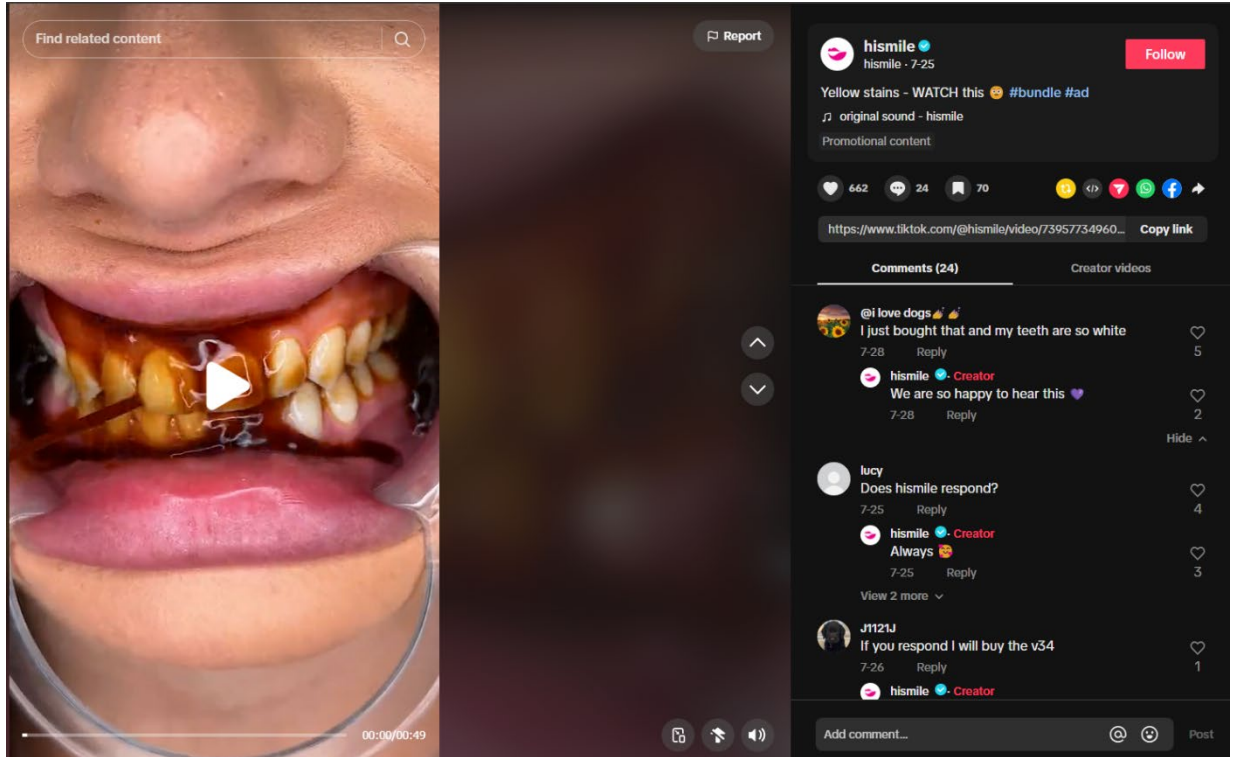
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38. Hismile artificially “stains” some models’ teeth with a brown solution to create a more amplified before-and-after instant whitening effect. Consumers who have real preexisting staining on their teeth cannot achieve the same results shown by Hismile’s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



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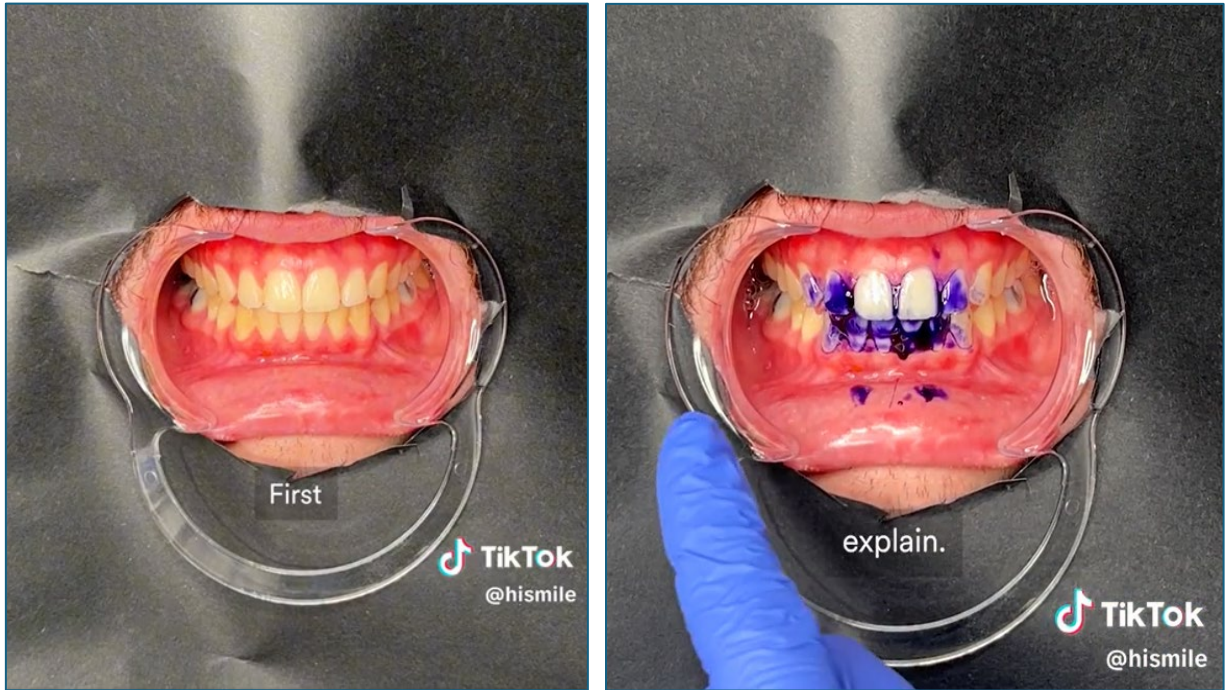
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39. When the actors in Hismile's videos apply the Hismile Products to very yellow teeth, the whitening effect for all the Products is falsely pronounced. See the following example of the V34 Colour Corrector Serum being applied to artificially yellow teeth.³³



40. **V34 Colour Corrector Serum.** Hismile's before-and-after advertising for the V34 Colour Corrector Serum is highly deceptive. The vast majority of Hismile's advertising for this Product shows the purple serum while it is still on the models' teeth. In the advertisements, models or actors wipe a small amount of the Product off or rinse a few teeth with a small amount of water so that the Product mostly remains on the teeth. This gives the illusion that the purple paste cancels out the yellow tones in teeth to make them look whiter instantly. In reality, when the Product is fully rinsed away as instructed, the color-correcting effect disappears entirely. These depictions deceptively exaggerate the performance of the Product. The following images are taken from Hismile's advertisements for the Product on its official website (last visited September 3, 2024) and Hismile's TikTok account:

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³³ Screenshots taken from the following video, posted on Hismile's TikTok account on July 25, 2024: <https://www.tiktok.com/@hismile/video/7395774842827541777?lang=en>.



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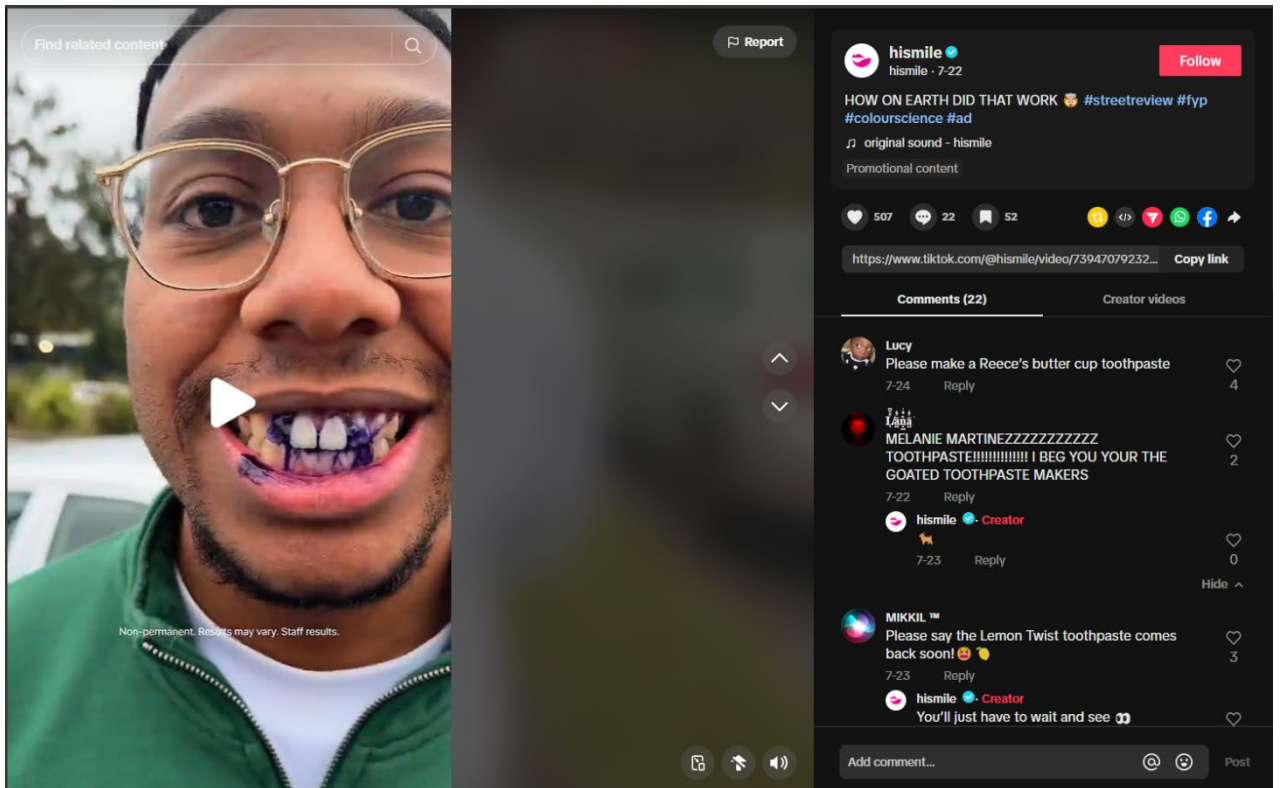
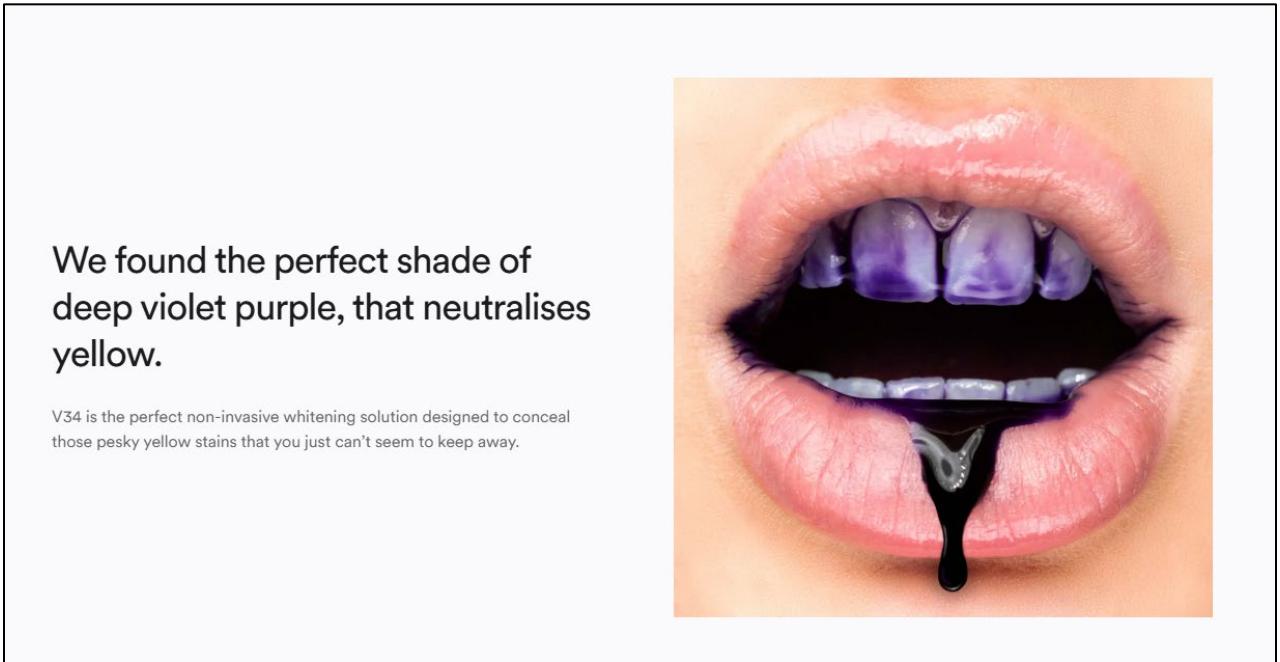
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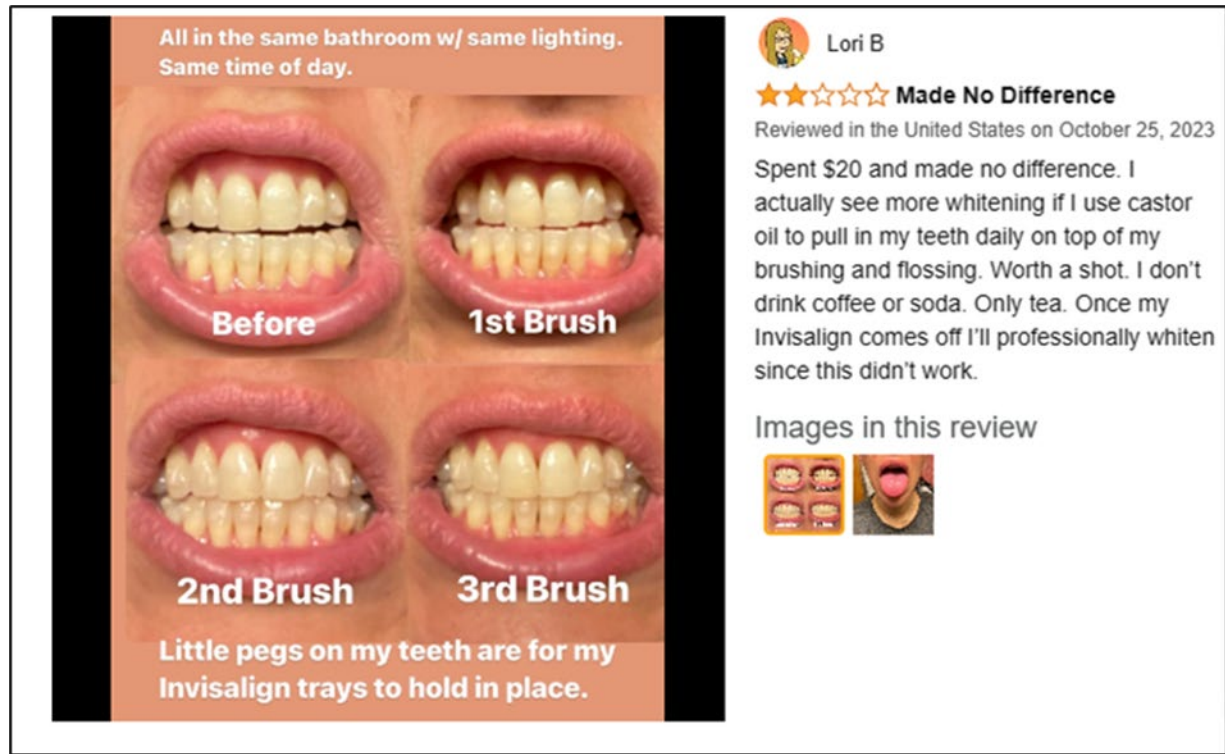
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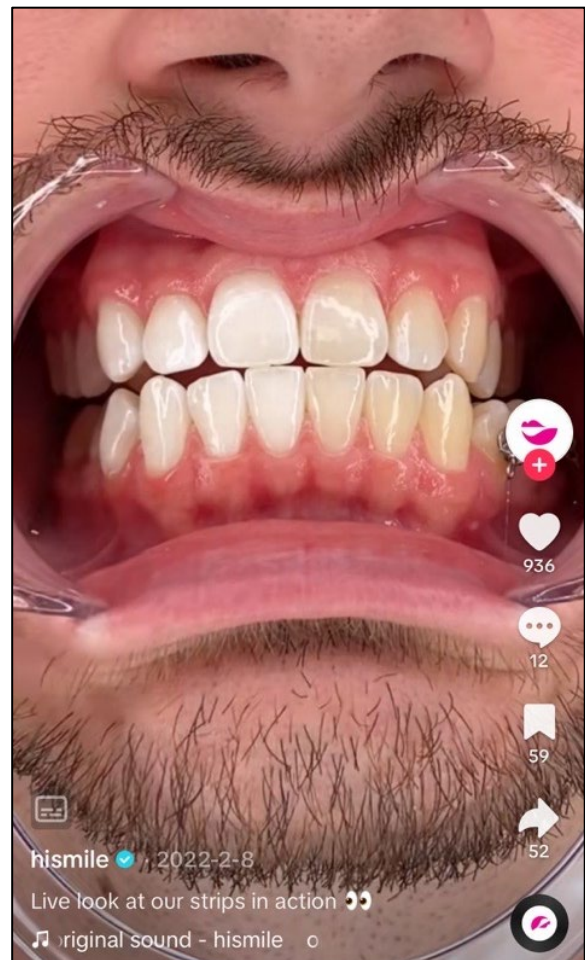
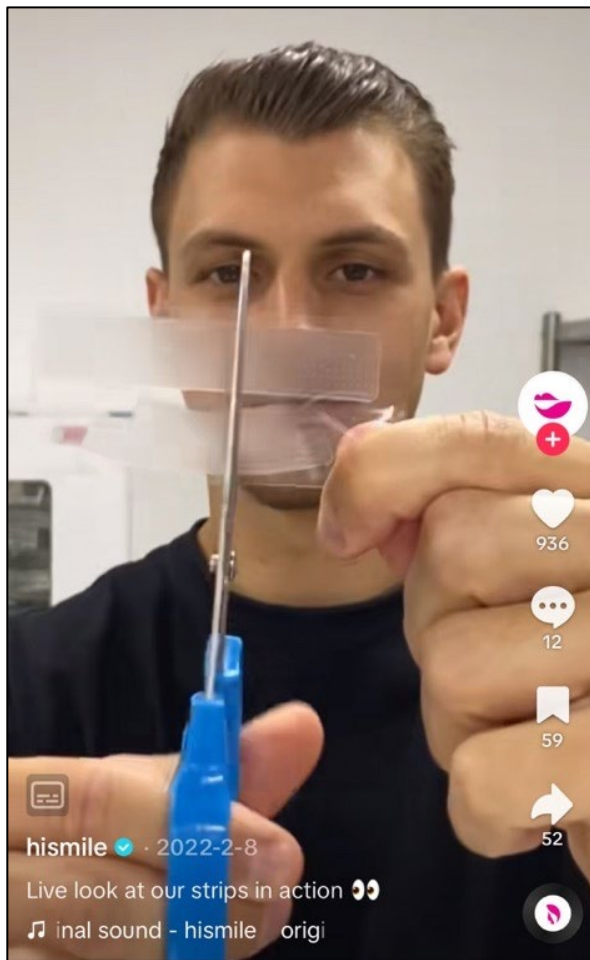
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Compare these images with the images from a customer's review on Amazon.com, in which the user fully rinsed away the V34 Product as instructed and saw absolutely no difference:



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



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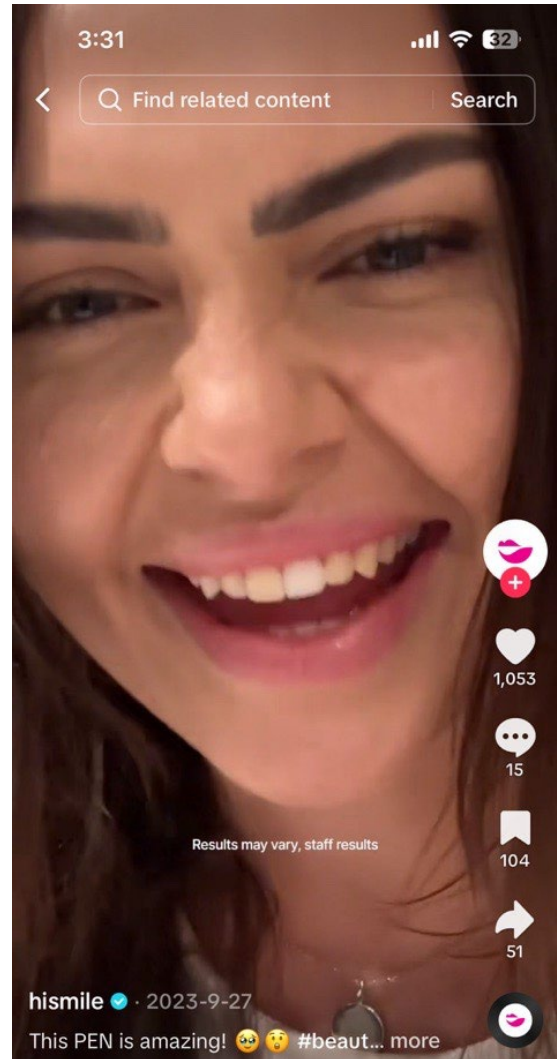
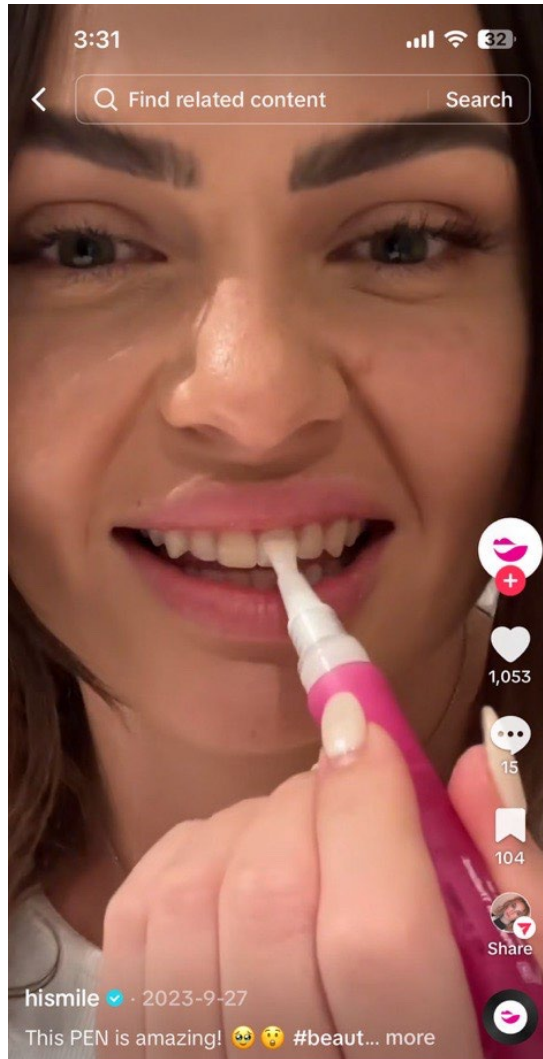
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42. Hismile uses the same artificial staining technique and jump-cut editing in its advertisements for the PAP+ Pen. In the below example, a Hismile employee purports to achieve whitening results from the PAP+ Pen instantly. The results are fake—Hismile artificially stained the employee's teeth before the PAP+ Pen Product was applied.



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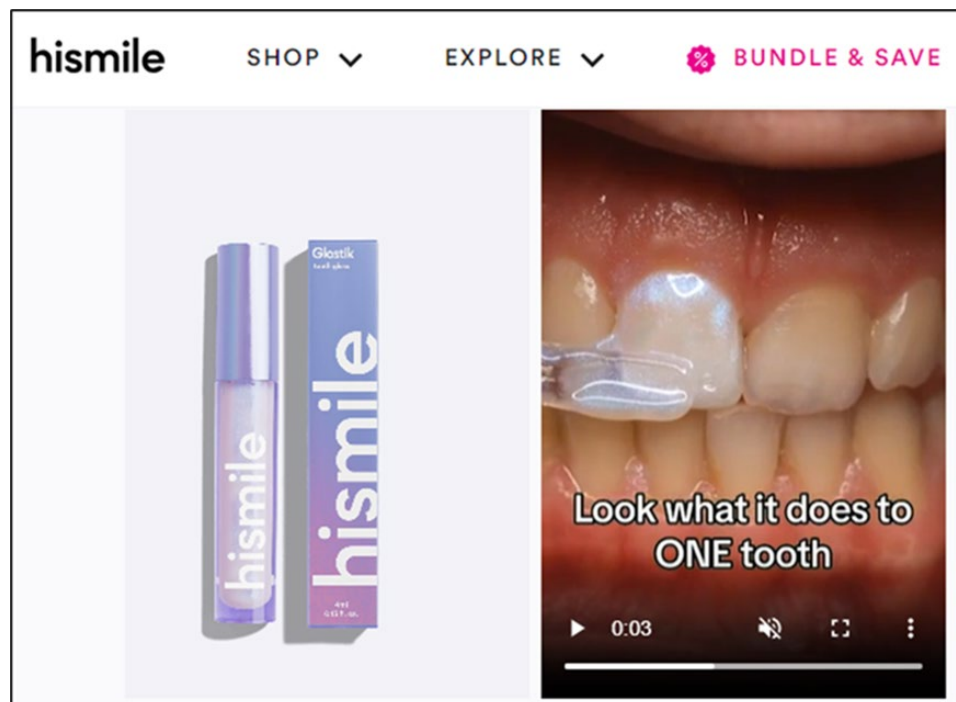
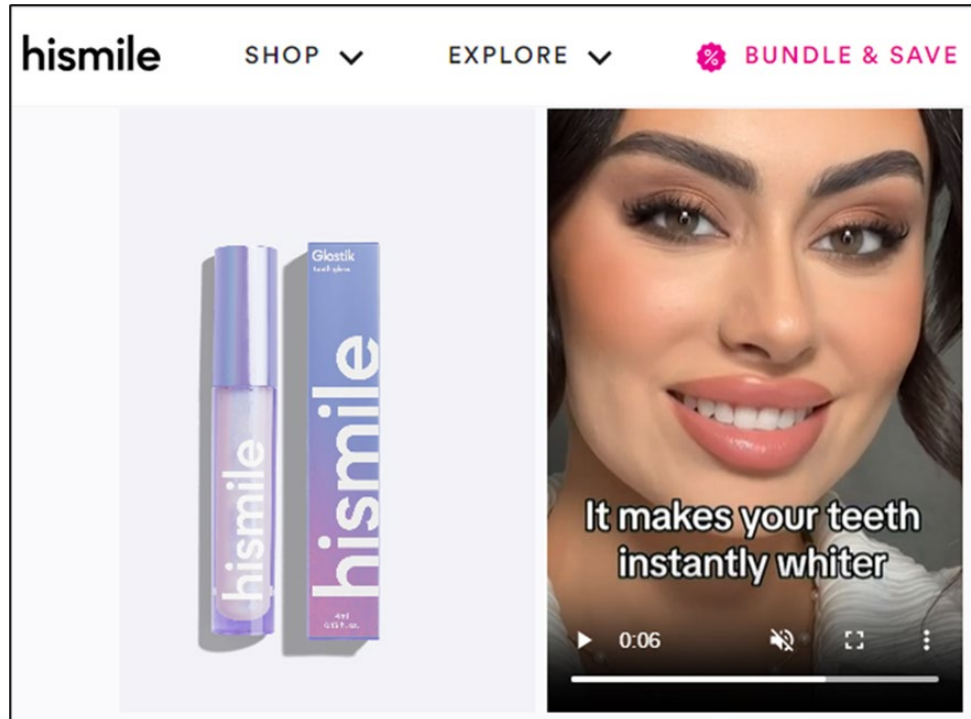
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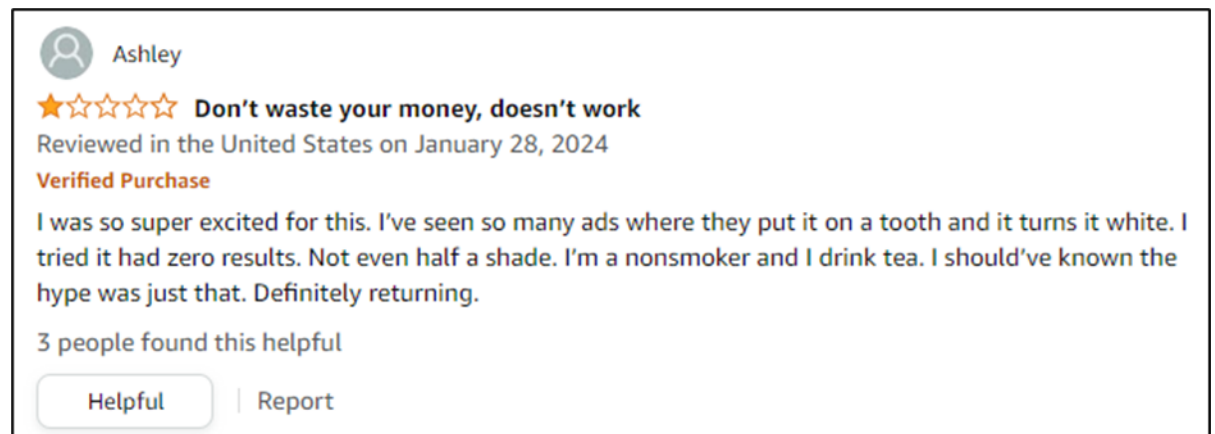
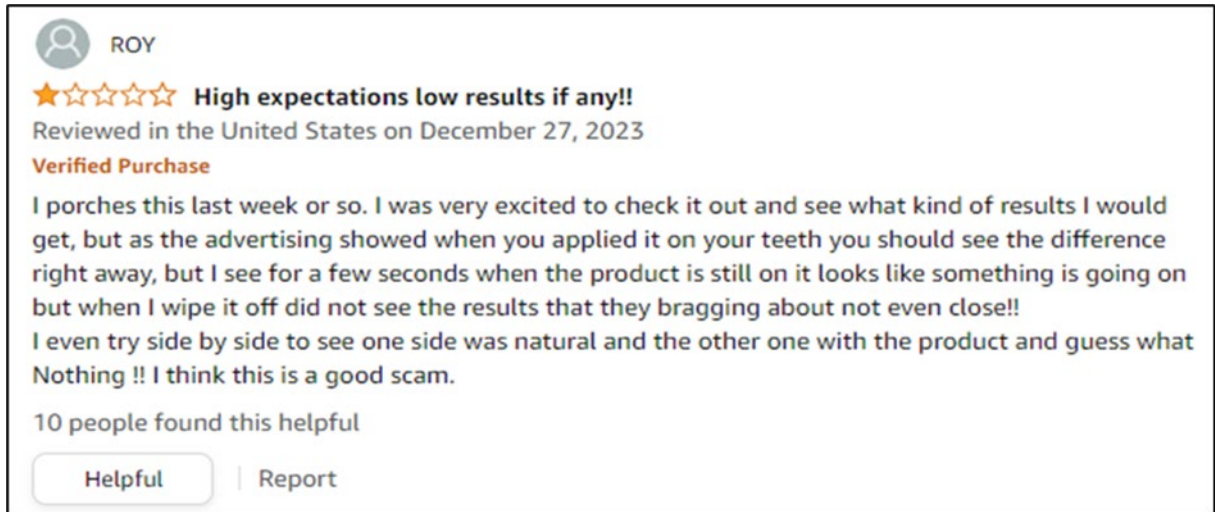
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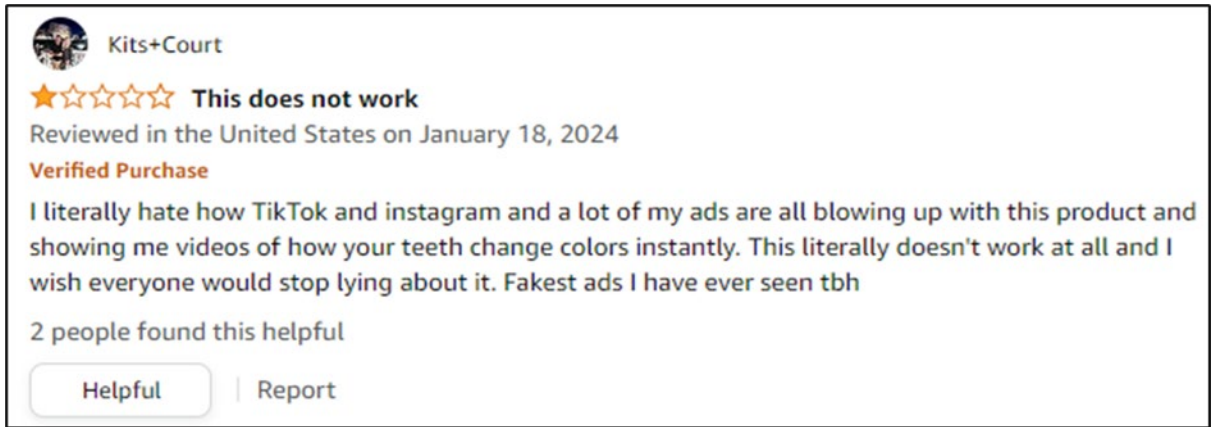
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43. **Glostik Tooth Gloss.** Hismile uses unnaturally bright lighting, misleading editing, and models who already have very white teeth to deceptively exaggerate the before-and-after effect of the Glostik Tooth Gloss. See the following examples of an advertisement for Glostik Tooth Gloss taken from Hismile's official website (last visited September 3, 2024):

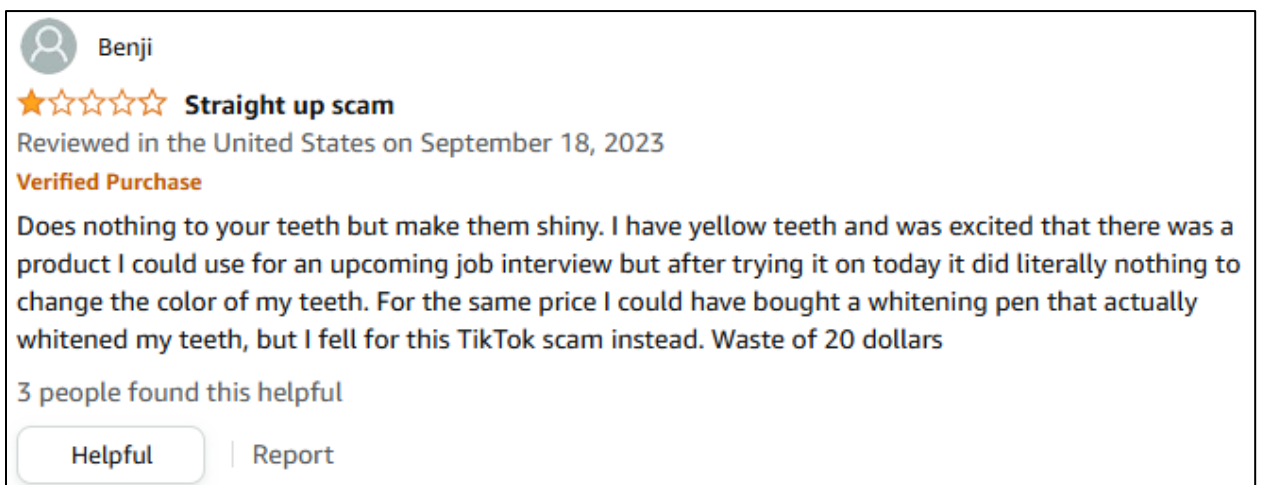
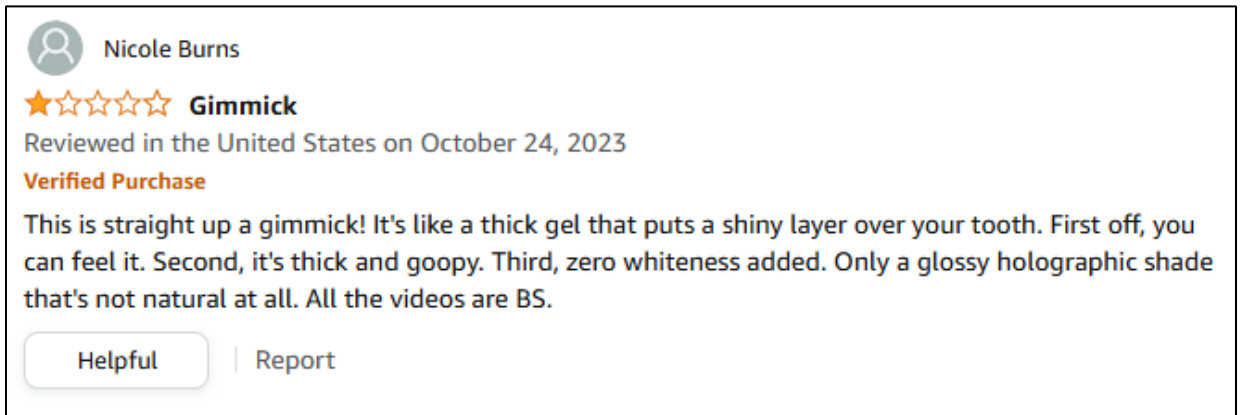


44. Consumers are deceived by the fraudulent advertising of the **V34 Colour Corrector**, as indicated by *tens of thousands* of negative reviews on Hismile's official Product listing on Amazon.com, e.g.:



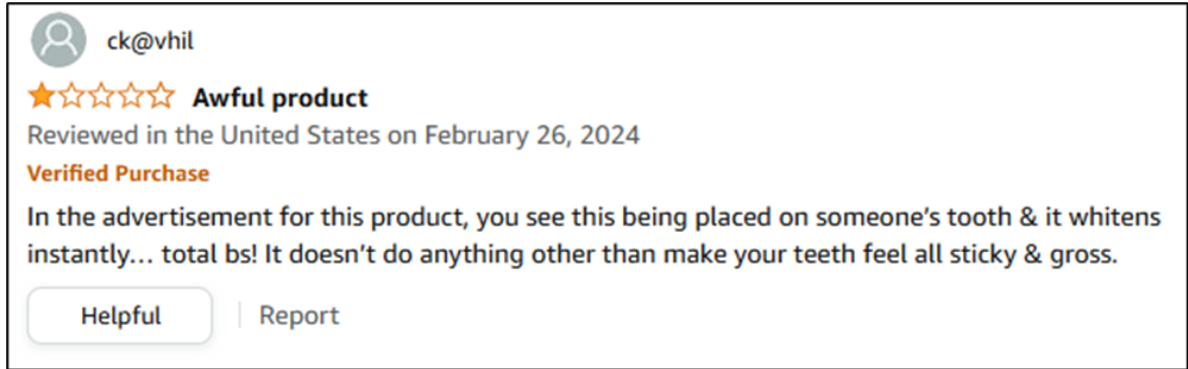


45. Consumers are deceived by the fraudulent advertising of the **Glostik Tooth Gloss**, as indicated by hundreds of negative reviews on Hismile's official Product listing on Amazon.com, e.g.:

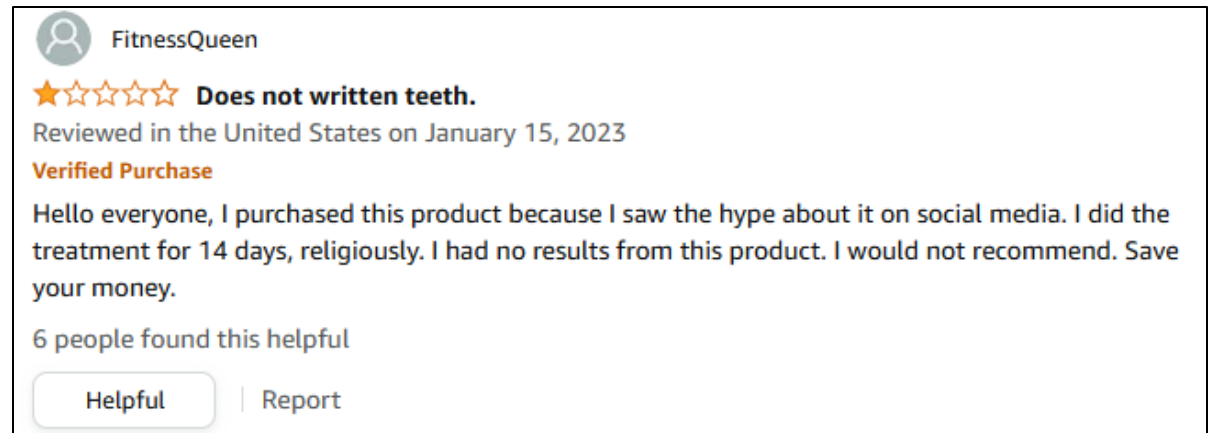
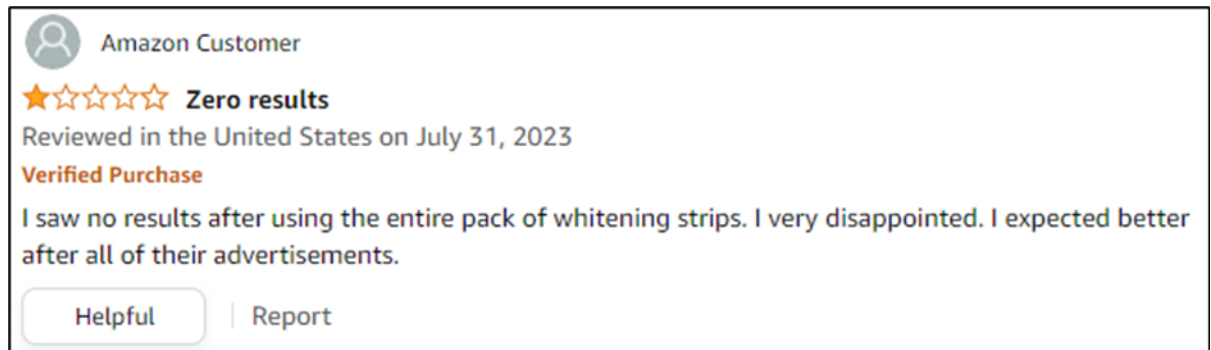


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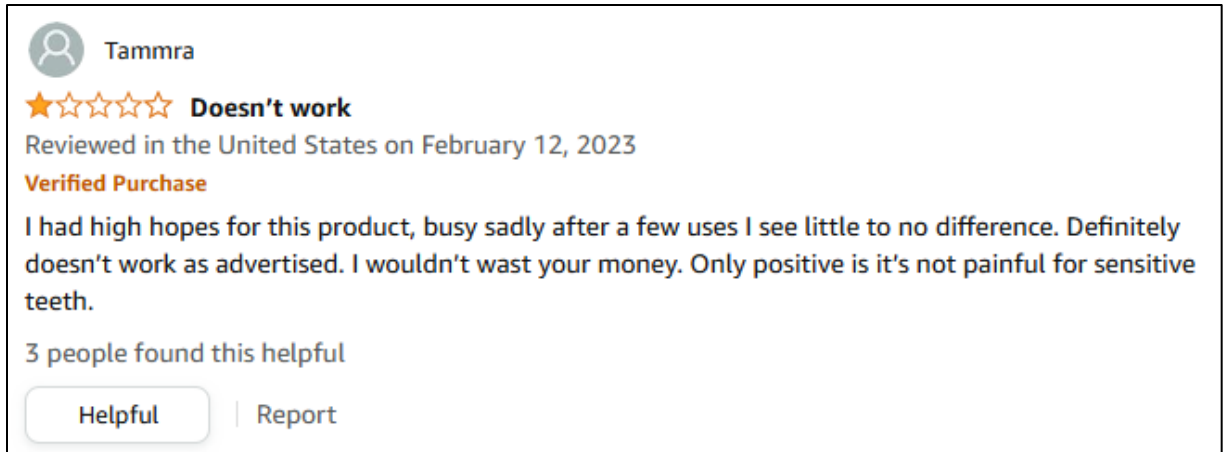
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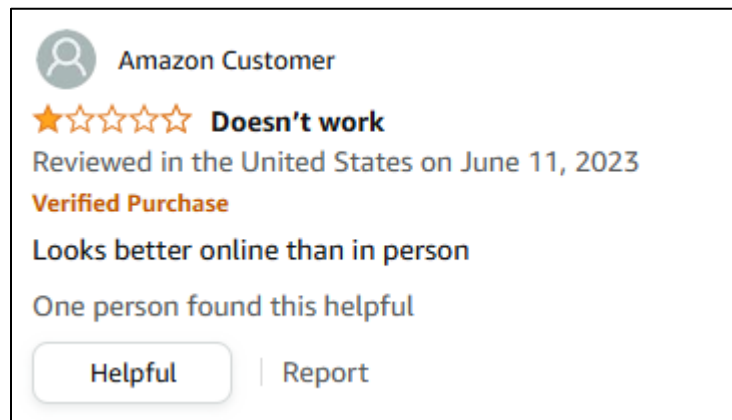
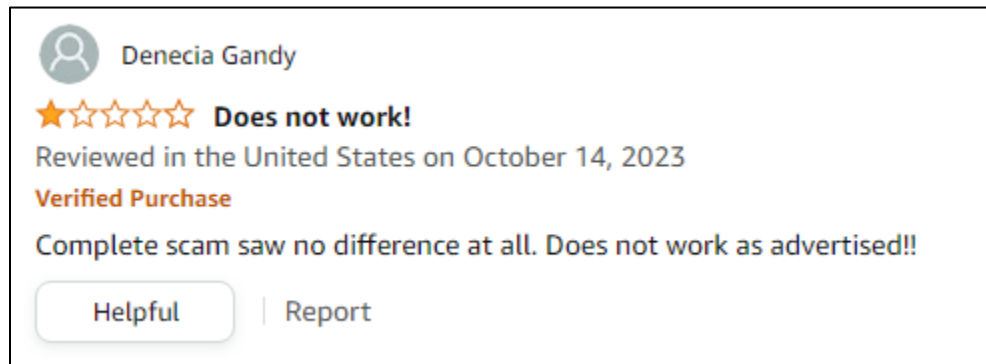
46. Consumers are deceived by the fraudulent advertising of the **PAP+ Whitening Strips**, as indicated by the hundreds of negative reviews on Hismile’s official Product listing on Amazon.com, e.g.:



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47. 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.:



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

48. Consumers often consult and rely on customer reviews when making purchase decisions. However, in the case of Hismile, many of the reviews are not genuine because Hismile posts fabricated positive reviews and removes negative reviews across various platforms where its Products are sold, further perpetuating its false advertising scheme.

49. Hismile previously hosted customer reviews on its own website but only prior to the addition of numerous negative reviews.³⁴

50. FakeSpot, a company that grades product reviews based on authenticity, found that only 80% of the 64,000+ reviews for Hismile's V34 Colour Corrector Amazon product listing were reliable, which calls into question the authenticity of over 12,800 reviews.³⁵

51. Tellingly, there are 15,251 one-star ratings and 5,994 two-star ratings on Hismile's V34 Colour Corrector Amazon listing.³⁶

52. Many reviews utilize the language that Hismile itself uses to describe its Products. For example, one review of the Glostik Tooth Gloss on Amazon.com states, "Instant tooth whitening

³⁴ 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 Sep. 3, 2024).

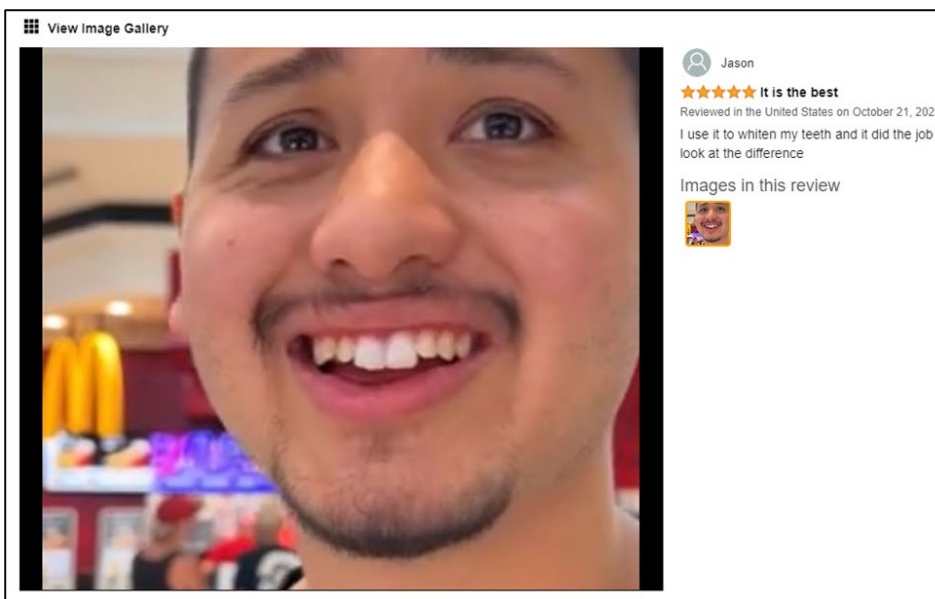
³⁵ *Hismile v34 Colour Corrector*, FAKESPOT, <https://www.fakespot.com/product/hismile-v34-colour-corrector-purple-teeth-whitening-tooth-stain-removal-teeth-whitening-booster-purple-toothpaste-colour-correcting-hismile-v34-hismile-colour-corrector-tooth-colour-corrector> (last visited Sep. 3, 2024).

³⁶ 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 Sep. 3, 2024).

– This is really clever – it paints on a pearlescent sheen that makes teeth look whiter by reflecting the light. Really easy to apply and works instantly!”³⁷ Hismile’s own description of this Product says, “The instant brightening wand...It adds a pearlescent glow to your teeth...Easy on-the-go application...tooth gloss works by reflecting light.”³⁸ The similarity in wording across numerous positive reviews suggests that Hismile uses a script and bots or employees to post fake positive reviews.

53. Some positive reviews from purported customers are actually reviews from Hismile’s employees, making them fraudulent and intended to create a false impression of customer satisfaction. For example, the following five-star review was posted on the Amazon product page for Hismile’s Glostik Tooth Gloss, purportedly from a customer named “Jason,” but this person works for Hismile, as evidenced by his presence as an actor in numerous Hismile social media videos and advertisements:

Five-star Amazon review by “Jason” for the Glostik Tooth Gloss:³⁹



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³⁷ Sofie F, *Instant tooth whitening*, AMAZON.COM, <https://www.amazon.com/gp/customer-reviews/R3TB8K9KP0KRXB/> (last visited Sep. 3, 2024).

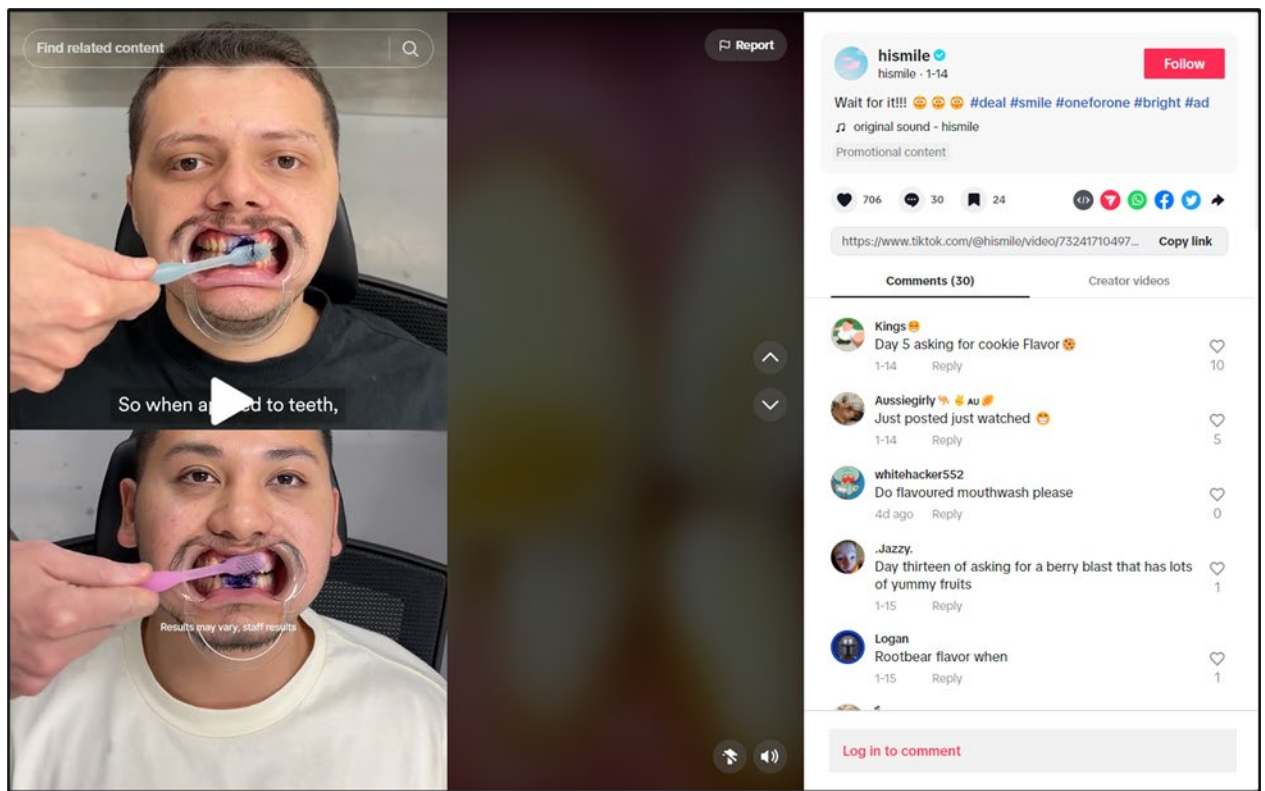
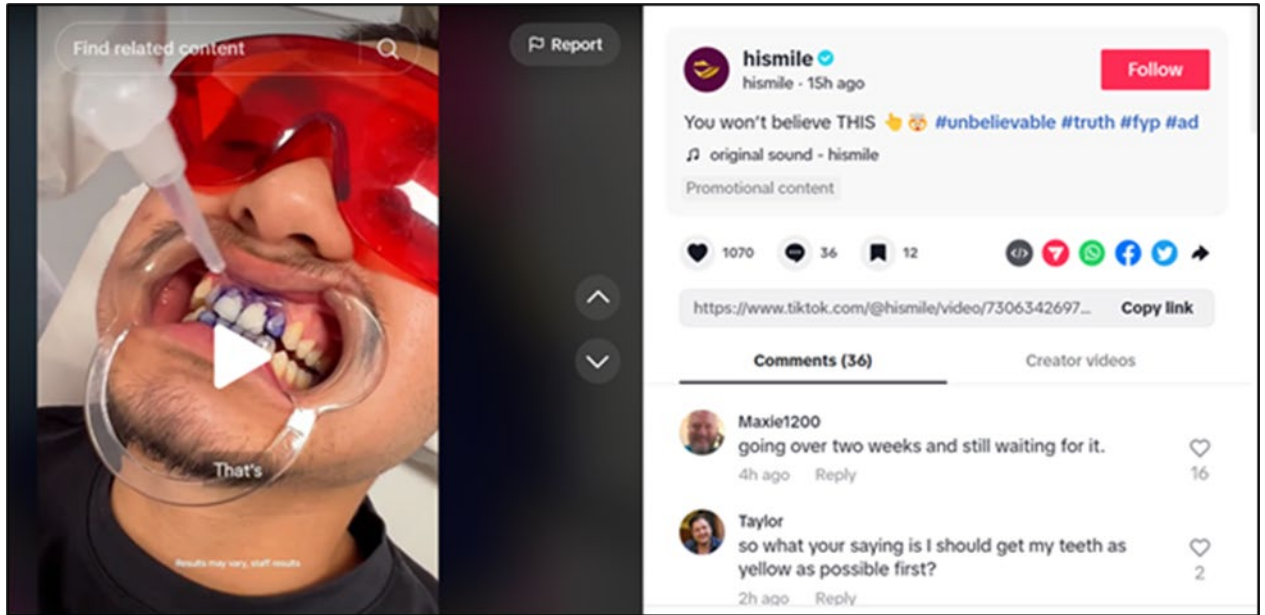
³⁸ *Glostik Tooth Gloss*, HISMILE, <https://us.hismileteeth.com/products/tooth-gloss> (last visited Sep. 3, 2024).

³⁹ Customer Review by “Jason,” available at <https://www.amazon.com/gp/customer-reviews/R26194Z5IQWCW8/> (last visited Sep. 3, 2024).

Screenshots of Hismile's TikTok account demonstrating that this person is a Hismile employee:



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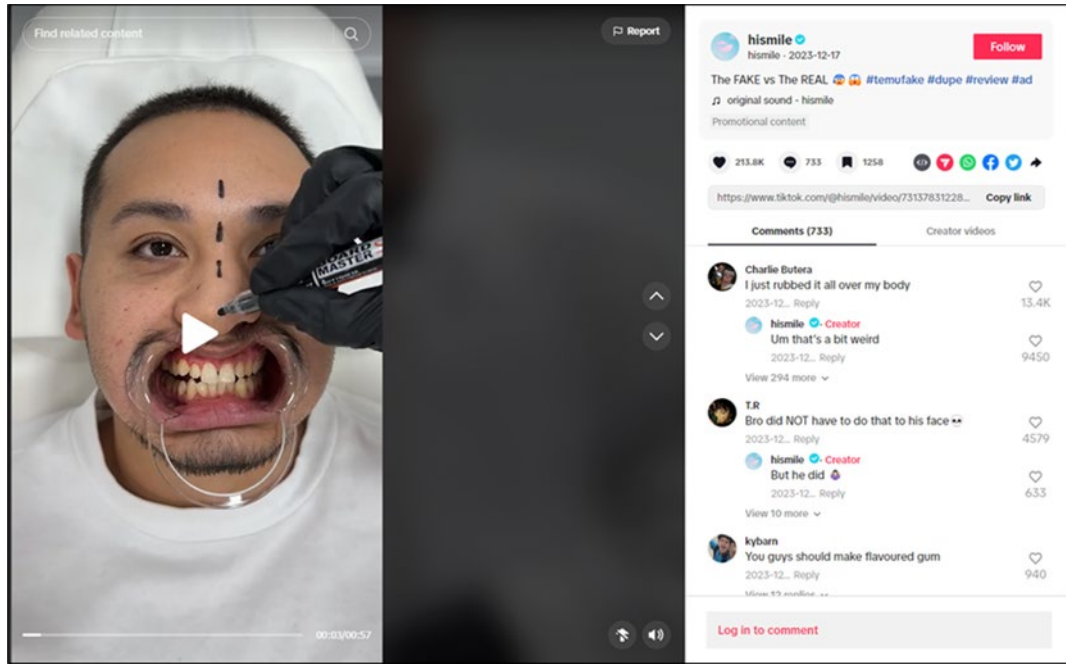


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54. Hismile previously maintained an Instagram account solely dedicated to showing results of their discontinued LED light teeth whitening products (@hismileresults), which had almost 15,000 followers in 2018.⁴⁰ Hismile wiped the content of this account, which is now set to “private” with two posts and zero followers.⁴¹

iii. Hismile Employees Pose as Fake Customers in Social Media Advertisements

55. 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 instant results.

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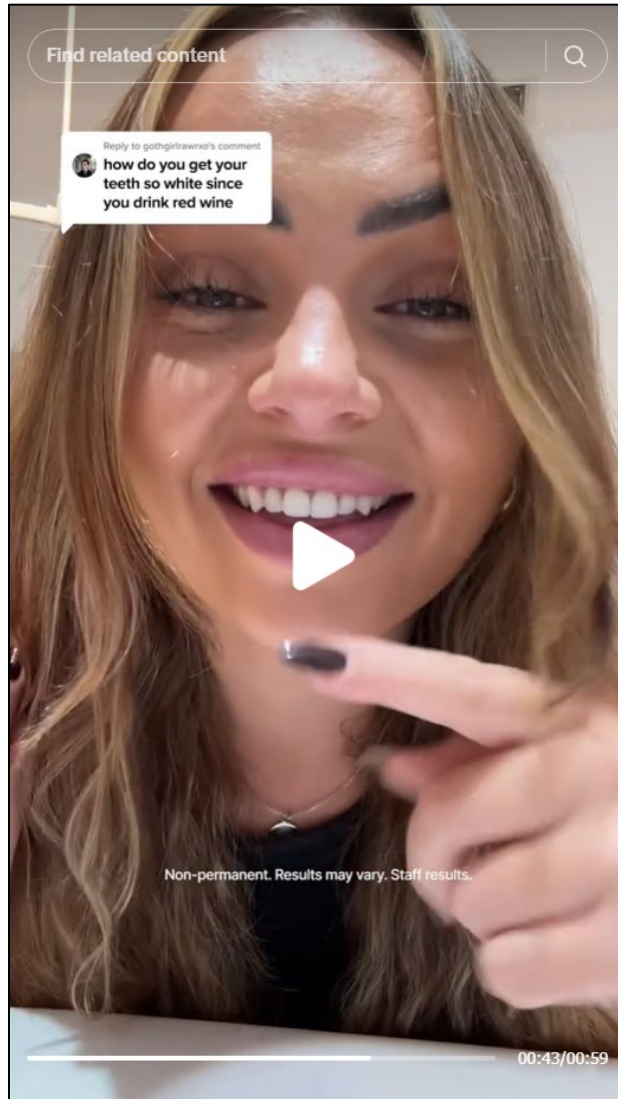
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⁴⁰ *Id.*

⁴¹ @hismileresults, INSTAGRAM, <https://www.instagram.com/hismileresults/> (last visited Sep. 3, 2024).

56. 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 demonstrates their “results” by smiling. The disclaimer usually says, “Non-permanent. Results may vary. Staff results.”⁴²



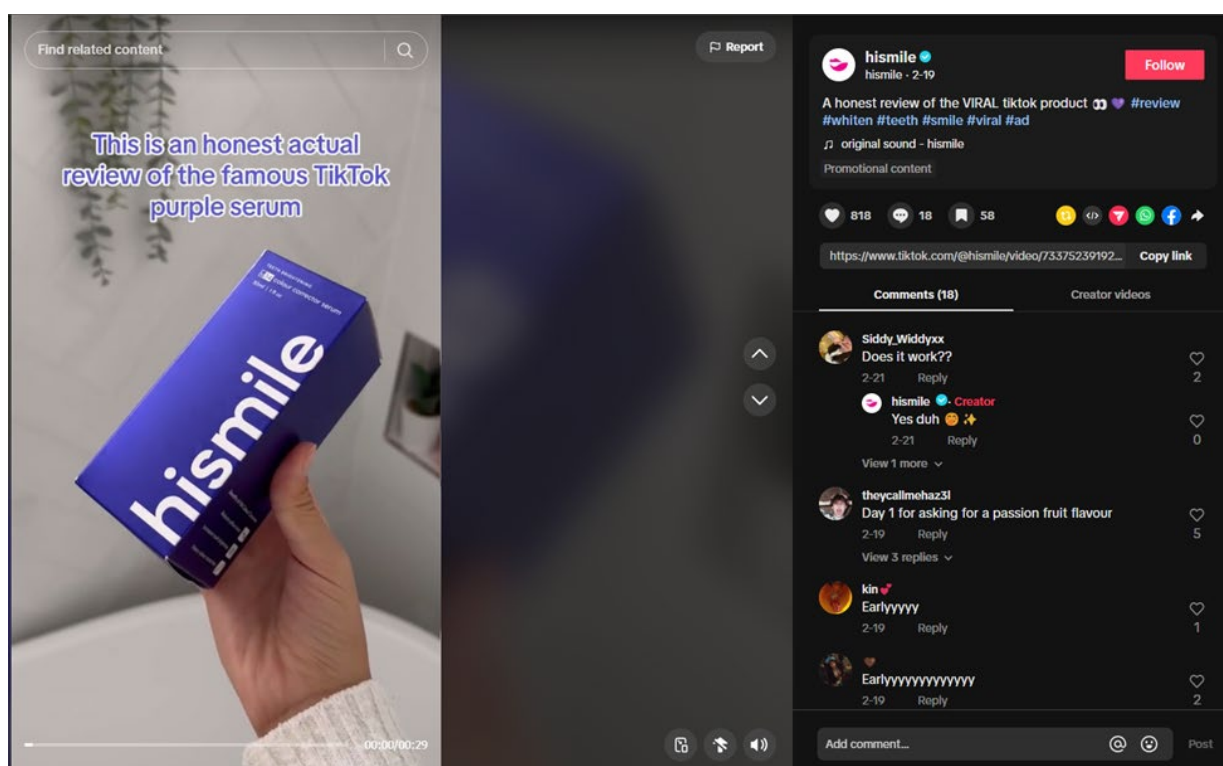
57. In the above video, the Hismile employee pretends to be answering a comment from another TikTok user. TikTok has a feature that allows users to “pin” the comment to which they are responding in their video. Viewers can then click the pinned comment to see where the original comment came from. In this video, the “comment” is not clickable, indicating it is not a real

⁴² Screenshot taken from the following video, posted on Hismile’s TikTok account on May 27, 2024: <https://www.tiktok.com/@hismile/video/7373836732967472401?lang=en>.

comment from another user. In this way, Hismile creates fake comments from other “users” who do not exist, often commenting on their satisfaction with the Products.

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

59. See the following example of a Hismile employee purporting to give “an honest actual review of the famous TikTok purple serum.”⁴³ This is not an “honest, actual review”; it is a paid, dishonest advertisement.

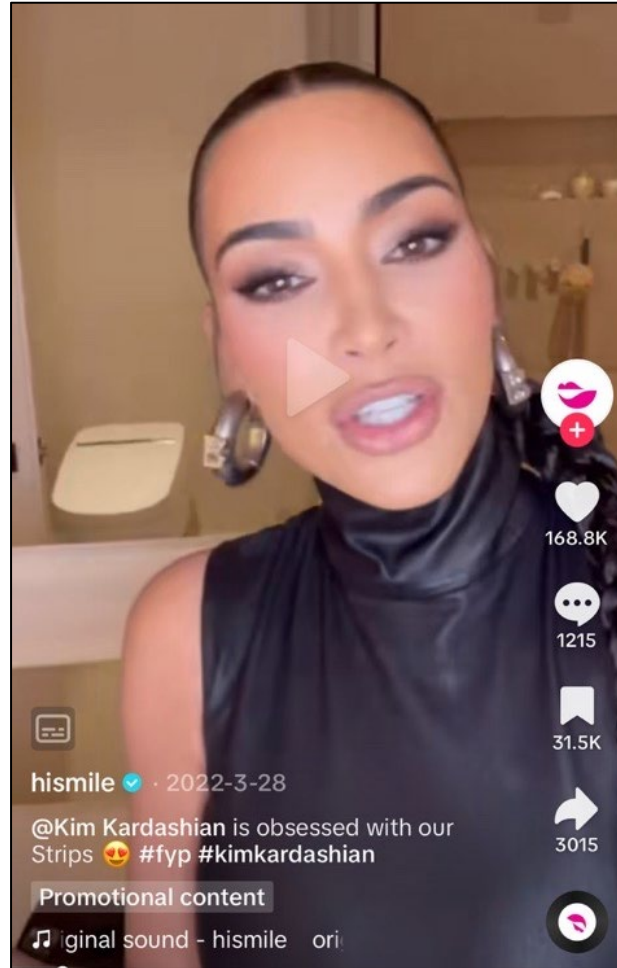


60. Hismile pays influencers to promote its Products without disclosing that their posts are advertisements. TikTok requires that any branded content must include a commercial content disclosure that can be toggled on in the post settings. This disclosure appears below a video’s description and reads, “Promotional content,” or “Creator earns commission.” Numerous influencers post branded content promoting Hismile’s Products without toggling on the required commercial content disclosure or including an indication that the video is an advertisement, such as

⁴³ Screenshot taken from the following video, posted on Hismile’s TikTok account on February 19, 2024: <https://www.tiktok.com/@hismile/video/7337523919278050562>.

a hashtag like “#ad.” Without the required disclosures, Hismile dupes consumers into believing that the influencers’ sponsored posts are genuine reviews of the Products, when in reality they are being paid to offer positive opinions. See the below examples:

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:*⁴⁴



iv. Hismile Utilizes Misleading Celebrity and Influencer Endorsements

61. 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.

⁴⁴ Screenshot taken from the following video, posted by user @slaybyjess on June 19, 2023: https://www.tiktok.com/@slaybyjess/video/7246489188558785838?_r=1&_t=8mcbP0cAOvi.

62. For example, Hismile’s “pinned” TikTok video, which has over five million views, features Kim Kardashian using the PAP+ Whitening Strips, advertising unrealistic and misleading results.⁴⁵



63. In reality, Kim Kardashian has attained her white smile via expensive professional whitening treatments, not by using the Hismile Products. Kim Kardashian’s dentist, Dr. Kevin

⁴⁵ Screenshot taken from the following video, posted on Hismile’s TikTok account on March 28, 2022: <https://www.tiktok.com/@hismile/video/7080317599837375746>.

Sands, has confirmed that she undergoes professional whitening twice a year to maintain her impressively bright white teeth.⁴⁶

64. Hismile works with other celebrities who attain very white teeth via professional teeth whitening, yet they do not disclose this in their sponsored posts with Hismile.

65. For example, Hismile collaborated with Kylie Jenner and received endorsement from her.⁴⁷



66. In addition to widely recognized celebrities, Hismile also promotes its Products through endorsements from influencers on the Internet. For example, when searched with “hismile” on TikTok, six of the top twelve results were paid partnership endorsements from various influencers on the platform.⁴⁸

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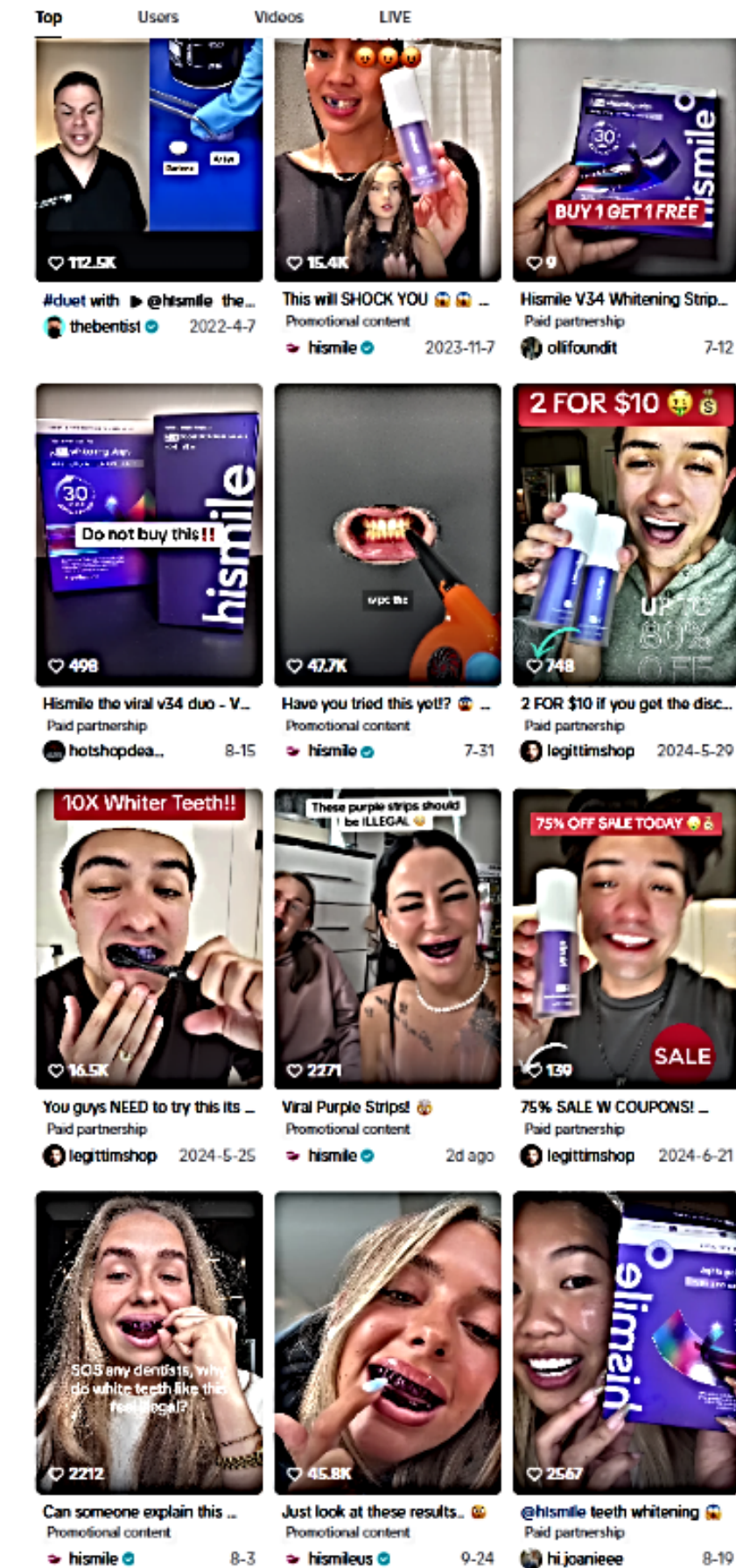
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⁴⁶ *Kim Kardashian’s dentist reveals all*, PEARL DENTAL CLINIC, <https://www.pearldentalclinic.co.uk/cosmetic-dentistry-news/uncategorized/kim-kardashians-dentist-reveals-all.html> (last visited Sep. 3, 2024).

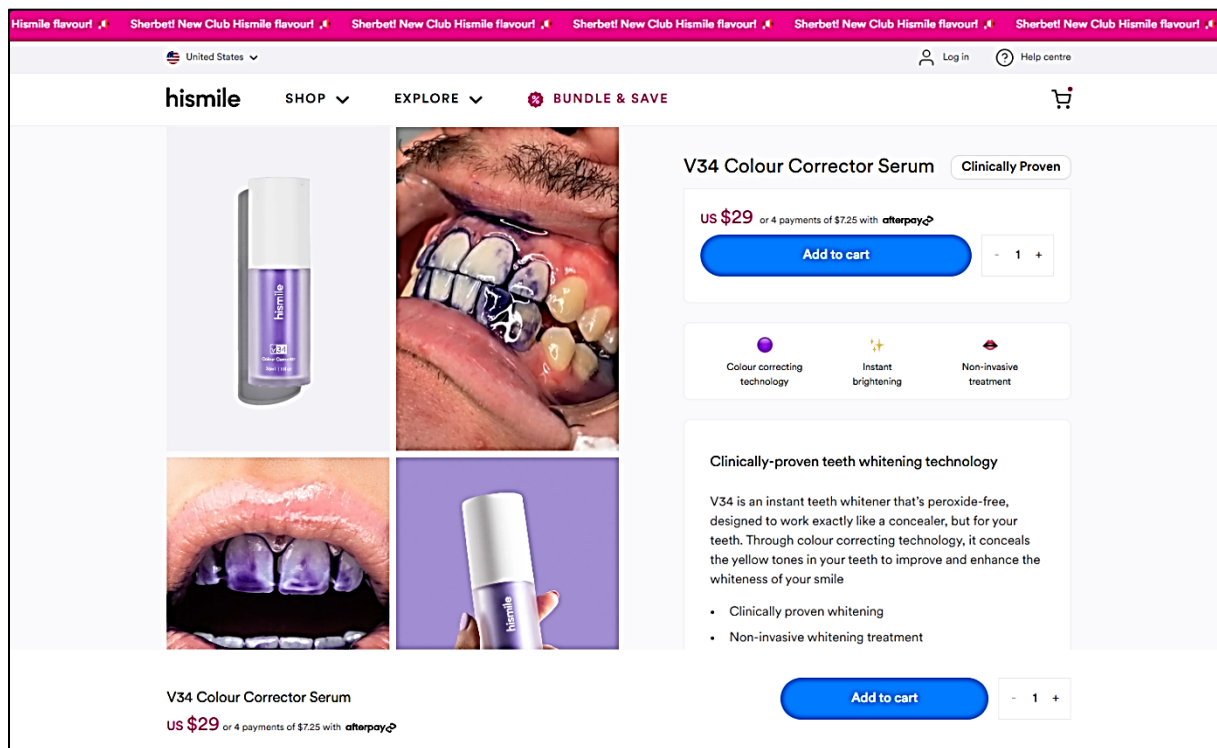
⁴⁷ Kyliejenner, *Smiling with @hismileteeth*, INSTAGRAM (Sep. 21, 2016), <https://www.instagram.com/p/BKomCxB4F/>.

⁴⁸ TIKTOK, <https://www.tiktok.com/search?q=hismile&t=1761153908093> (last visited Oct. 22, 2025).



v. ***Hismile Falsely Claims its V34 Colour Corrector Serum is “Clinically Proven”***

67. In or around February 2024, Hismile began to ubiquitously advertise that its V34 Colour Corrector has been proven in a clinical trial to instantly whiten teeth. Hismile makes this claim on its website and in its social media advertising. Hismile claims on its website that the V34 Product is “Clinically Proven” and offers “Clinically-proven teeth whitening technology.” Hismile claims in numerous videos on its social media accounts that the “V34 has now been proven in a clinical trial to instantly whiten your teeth.” See the following examples taken from Hismile’s website (last visited September 3, 2024) and Hismile’s TikTok account:⁴⁹



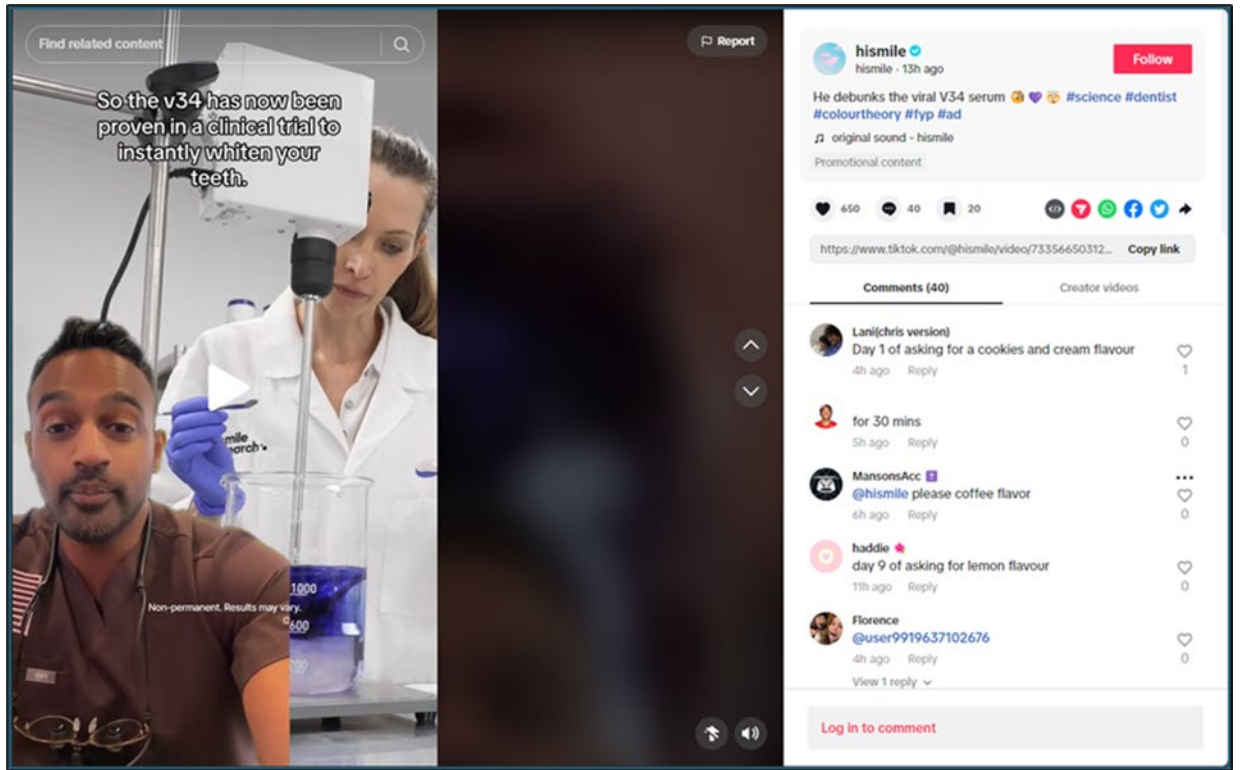
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⁴⁹ Screenshot taken from the following video, posted on Hismile’s TikTok account on February 14, 2024:
https://www.tiktok.com/@hismile/video/7335665031268371714?_r=1&_t=8mckPwUr77e.



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

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

70. Hismile’s “Clinically Proven” claim is yet another fabrication.

vi. Hismile Promotes Pseudoscience

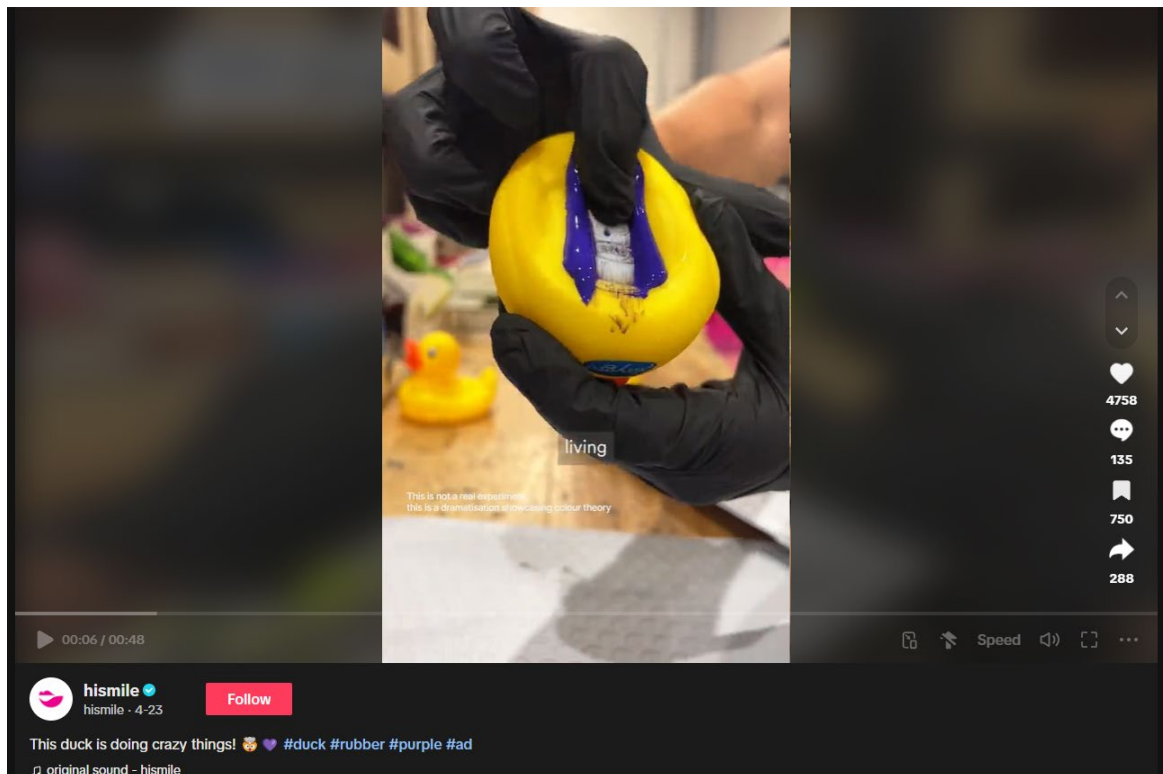
71. Hismile claims that its purple V34 Colour Corrector Serum and purple Glostik Tooth Gloss Products instantly whiten teeth because of color correction technology: purple and yellow are complementary colors opposite to each other on the color wheel, so purple “cancels out yellow undertones” to reveal whiter teeth instantly. Hismile’s advertisements frequently demonstrate the “science” of its “color correcting technology” by dipping yellow objects in purple paint, overlaying

1 purple and yellow discs, and making comparisons to purple shampoo which is known to neutralize
2 brassy tones and yellowing in blonde hair.

3 72. These advertisements inundate viewers with clips espousing the “science” of “color
4 theory,” “color correction technology,” “light interference technology,” “reflective pigments,” and
5 various other pseudoscientific explanations for the promised “instant results.” This is not real
6 science. Science is a rigorous, systematic endeavor that builds and organizes knowledge in the
7 form of testable explanations and predictions.⁵⁰ Advertising does not amount to science.

8 73. Hismile’s advertised color theory is entirely inapplicable—the purple tone of these
9 two Products does not effectively remove yellow stains from teeth.

10 74. In videos purporting to demonstrate the “science” of color theory, Hismile includes a
11 miniscule and imperceptible “disclosure,” such as, “This is not a real experiment, this is a
12 dramatization showcasing colour theory.” See the following example of a “disclosure” at the lower
13 left of the screen:⁵¹

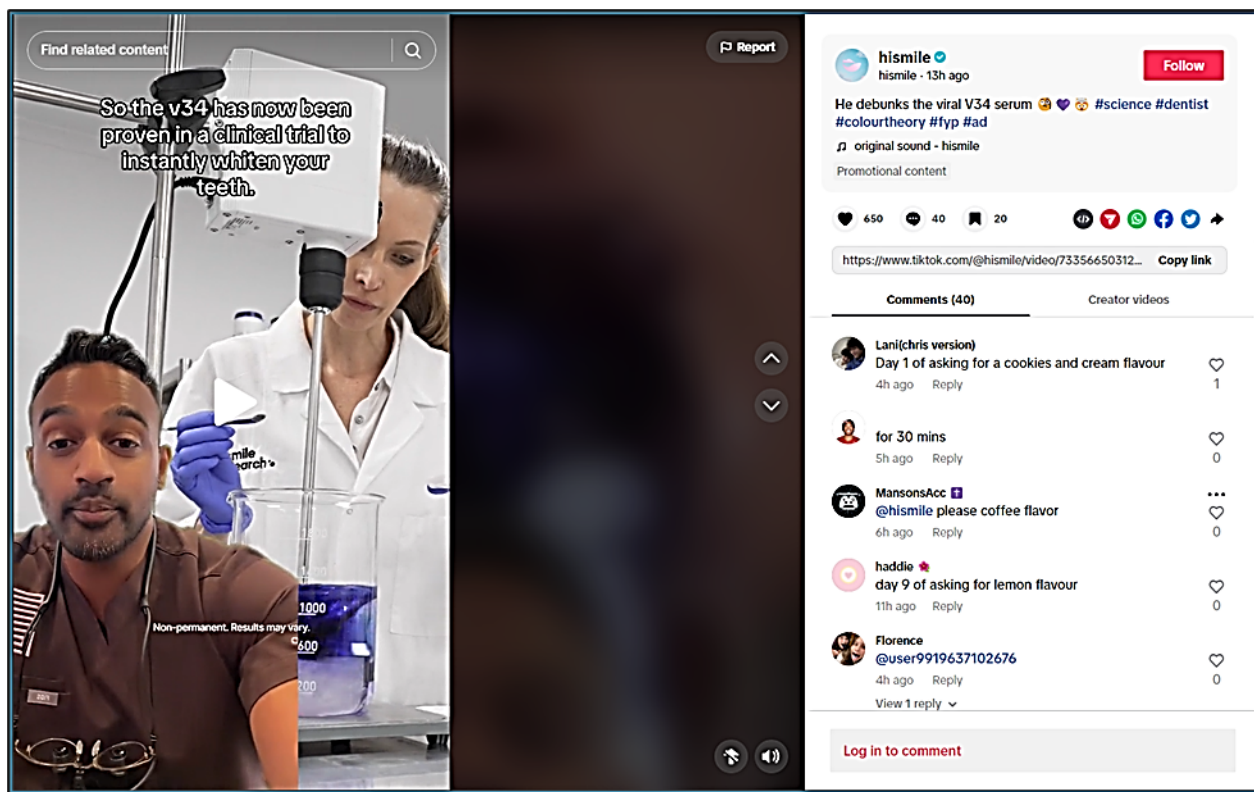


27 ⁵⁰ *Science*, WIKIPEDIA, <https://en.wikipedia.org/wiki/Science> (last visited Sep. 3, 2024).

28 ⁵¹ Screenshot taken from the following video, posted on Hismile’s TikTok account on April 23, 2024:
https://www.tiktok.com/@hismile/video/7361233046269431056?_r=1&_t=8mcg7m5Vq9K.

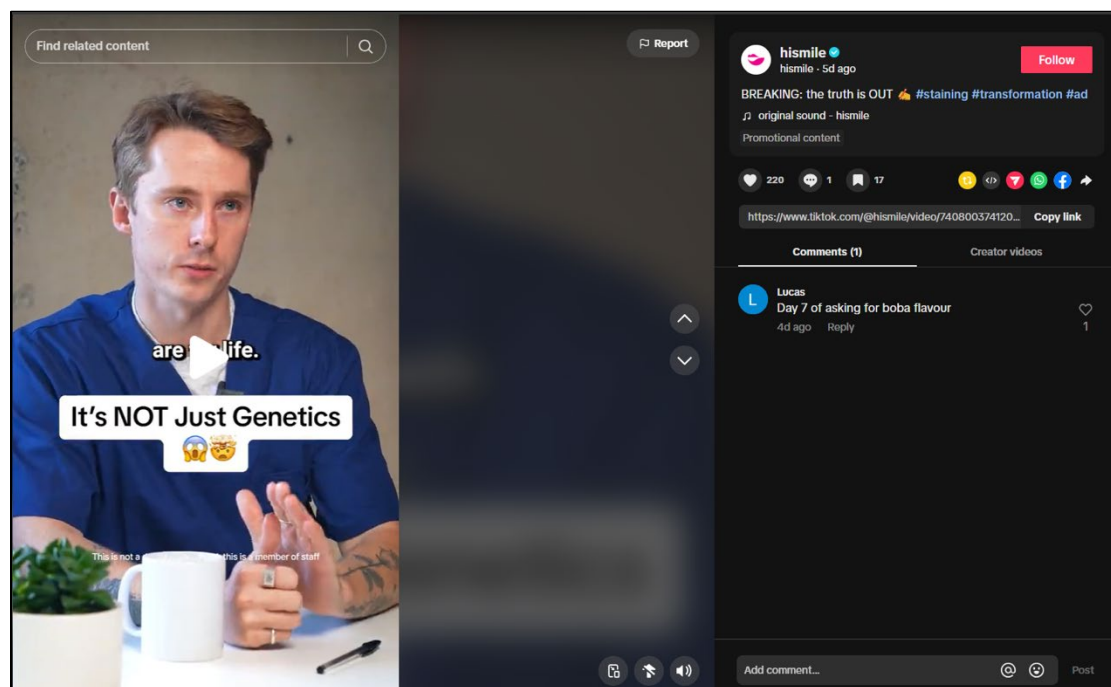
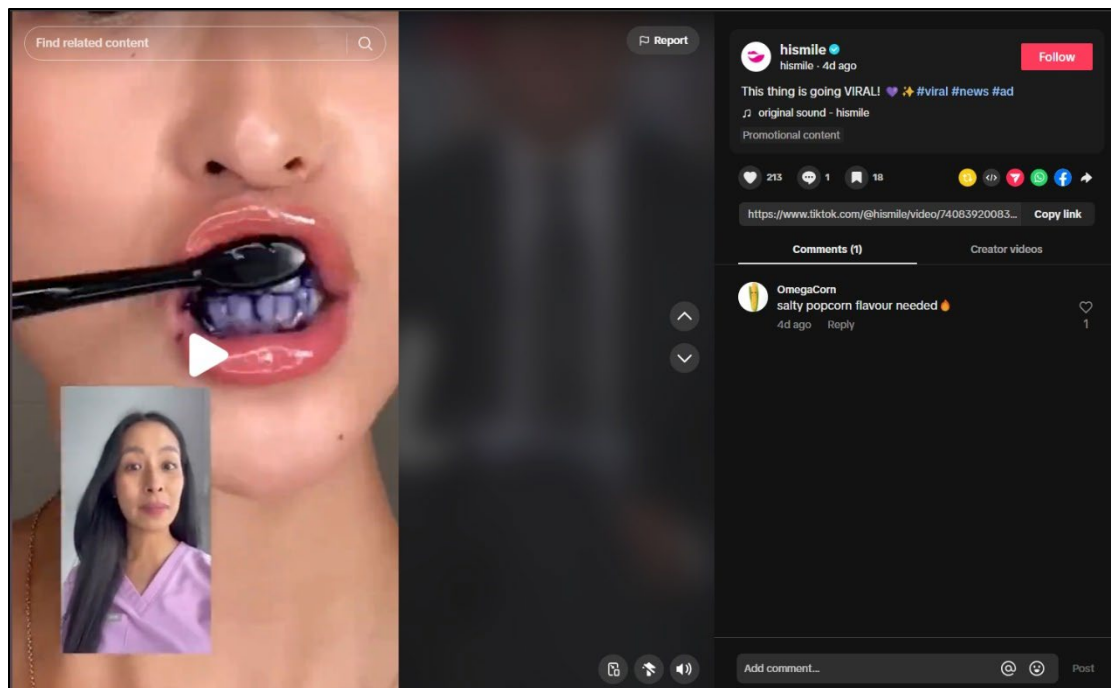
75. To create the impression of scientific rigor and reliability, Hismile stages its videos with scenes of “scientists” and “dental professionals” appearing to study or test the Products in a “laboratory” or “clinical” setting (such as a dental office). In reality, these “scientists” and “professionals”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

76. 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.⁵²



⁵² Screenshot taken from the following video, posted on Hismile’s TikTok account on February 14, 2024:
https://www.tiktok.com/@hismile/video/7335665031268371714?_r=1&_t=8mckPwUr77e.

77. Hismile frequently relies on actors dressed as dentists to lend false credibility to its “clinically proven” claims and espousals of “science.” In the following examples, actors dressed as dentists explain that the Hismile V34 Colour Corrector is a “clinically proven whitening method that uses color science to offset even the yellowest of tooth stains.” These actors claim the V34 Product can “instantly” conceal stains, and that “even the dentists are behind this product.”



vii. ***Hismile Employs Fraudulent Marketing Because Its Products Do Not and Cannot “Instantly” Whiten Teeth***

78. Contrary to Hismile’s fraudulent marketing scheme, the Products do not *instantly* whiten teeth, as advertised.

79. At-home teeth whitening requires peroxide to achieve the impressive results advertised by Hismile. Teeth bleaching products contain a peroxide bleaching agent which chemically whitens teeth by penetrating enamel to cause oxidation and lightening of stains.⁵³ Peroxide-based whitening products use hydrogen peroxide or carbamide peroxide, which have both been proven to effectively bleach teeth in randomized clinical trials using real people.⁵⁴

80. At-home teeth whitening, even with peroxide, requires consistent use over time. Even though peroxide-based products are effective with multiple uses, they do not provide instant teeth whitening. Generally, the higher the concentration of peroxide and the longer the product is kept on teeth, the whiter teeth become. For instance, to achieve advertised results, directions for whitening strips often instruct consumers to apply the product for a set period of time, e.g., 30 minutes daily for up to 14 days. At-home tray-based peroxide gel systems are likewise used over multiple consecutive days for up to 4 weeks.⁵⁵

81. Hismile’s Products do not contain any peroxide-based whitening agents.

82. Hismile’s PAP+ Whitening Strips and PAP+ Pen contain phthalimidoperoxycaproic acid (PAP).

83. The V34 Colour Corrector and the Glostik Tooth Gloss contain neither a peroxide ingredient nor PAP.

84. The following table displays the full list of ingredients for each Product (taken from Hismile’s official Product listings on us.hismileteeth.com and official Product listings on CVS.com):

⁵³ Joiner, *supra* note 6.

⁵⁴ Laryssa Barbosa et al., *Over-the-counter products in tooth bleaching: A scoping review*, JOURNAL OF DENTISTRY, 104989, (Apr. 4, 2024), doi: 10.1016/j.jdent.2024.104989, <https://pubmed.ncbi.nlm.nih.gov/38582435/>.

⁵⁵ 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>.

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.
PAP+ Whitening Pen	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).
V34 Colour Corrector Serum	Glycerin, Aqua/Water, Sorbitol, Hydrated Silica, Xylitol, Polysorbate 80, Cellulose Gum, Mentha Piperita (Peppermint) Oil, Phenoxyethanol, Sucralose, Tetrasodium Pyrophosphate, CI17200/D&C Red No. 33, CI42090/FD&C Blue No.1, Ethylhexylglycerin.
Glostik Tooth Gloss	Hydrogenated Polyisobutene, Methyl Hydrogenated Rosinate, Silica Dimethyl Silylate, PPG-12/SMDI Copolymer, Titanium Dioxide (CI 77891), Mica, Silica, Sodium Acetate.

85. Hismile advertises that the PAP ingredient is “just as effective as hydrogen peroxide,” and that PAP+ Products deliver the same whitening benefits “instantly.”

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86. Peroxide-free whitening agents (including PAP) are significantly less effective than peroxide, which is itself incapable of delivering any *instant* whitening effect.⁵⁶

87. The Products do not whiten teeth instantly as advertised.

D. The ASA and NAD Recommend Hismile Cease Advertising the Products as Providing Instant Whitening

88. In April 2024, the Advertising Standards Authority (“ASA”), the independent regulator of advertising in the United Kingdom, found that Hismile’s advertisements for the V34 Product were misleading, and that Hismile provided no scientific evidence for its advertised claims about the effectiveness of the Product.⁵⁷

89. With respect to advertisements for the V34 Product, the ASA ruled:

[C]onsumers would understand [the] ads to mean that using the product on their teeth would get rid of stains immediately and make teeth appear whiter and brighter. We considered they would not expect the effect to be permanent but that it would have a lasting effect beyond short-term eating and drinking....That impression was reinforced by showing the product being used on a banana and a balloon and revealing white patches where the product had been, and by the voice-over which stated, “The V34 product is so strong that yellow stains melt away upon application. And when it comes in contact with teeth, it immediately brightens them.”⁵⁸

90. In another April 2024 decision against Hismile, the United States’ National Advertising Division (“NAD”) reached a similar assessment, thereby recommending that Hismile discontinue its advertising claims that PAP is “as effective as hydrogen peroxide,” or that it operates in a comparable manner.⁵⁹

91. In yet another NAD decision published on August 29, 2024, the NAD recommended that Hismile discontinue its “instant” claims, including “clinically proven instant whitening results,”

⁵⁶ Studies that have tested the whitening effects of PAP indicate results that are far 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 Hydrogen Peroxide in Vitro*, INT J MOL SCI. 24(3):1956, (Jan. 19, 2023), <https://doi.org/10.3390/ijms24031956>.

⁵⁷ *ASA Ruling on Hismile Pty Ltd*, ASA (Apr. 24, 2024), <https://www.asa.org.uk/rulings/hismile-pty-ltd-g23-1212696-hismile-pty-ltd.html>.

⁵⁸ *Id.*

⁵⁹ *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 “instant brightening,” “immediately brightens,” and “instantly remove yellow teeth stains” for its
2 tooth whitening products “as the evidence was not a good fit to support the claims.”⁶⁰ The NAD
3 further recommended Hismile stop claiming the Glostik Product is an “instant whitening wand.”

4 92. The NAD concluded that Hismile’s product demonstrations, including experiments
5 conducted on various foods such as an egg, a banana, a lemon, or an ear of corn, can be reasonably
6 understood as a visual demonstration of the whitening power of its V34 Product. The NAD noted
7 that when a product demonstration is presented as visual proof of how the product will perform, the
8 demonstration must be presented accurately, and any material conditions or limitations should be
9 clearly disclosed, which Hismile failed to do.

10 93. The NAD further recommended that Hismile modify any video endorsements in
11 which the material connection between the endorser and Hismile was not fully disclosed.

12 94. On August 29, 2024, the NAD referred Hismile’s teeth whitening Product claims to
13 the Federal Trade Commission (“FTC”) and other regulatory authorities because Hismile declined
14 to provide an advertiser statement confirming it will comply with all of NAD’s recommendations.

15 95. Despite the ASA and NAD’s recommendations, and even though peroxide-based
16 products are proven to be more effective than PAP and neither can work *instantly*, Hismile continues
17 to falsely represent that its Products instantly whiten teeth.

18 **E. Hismile Misleads Consumers With False “Instant” Teeth Whitening Promise**

19 96. Hismile does not use the term “instant” in its “instant teeth whitening” promise as a
20 mere marketing term; instead, it presents “instant” as a concrete and factual representation of the
21 Products’ performance. Hismile’s advertising explicitly depicts measurable whitening results
22 occurring immediately after use—within approximately thirty seconds—through before-and-after
23 images, videos, and demonstrations purporting to show real-time transformations. These
24 representations are intended to, and do, convey to consumers that the Products deliver an immediate
25 and objectively verifiable whitening effect.

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28 ⁶⁰ *National Advertising Division Refers HiSmile Teeth Whitening Product Claims to the Federal Trade Commission*, BBB NATIONAL PROGRAMS (Aug. 29, 2024), <https://bbbprograms.org/media-center/dd/hismile-teeth-whitening>.

97. For example, in a paid partnership with Hismile, the influencer video depicted below showcases the application of Hismile’s V34 Colour Corrector Serum, showing the user’s teeth becoming whiter within seconds. Specifically, the Product is applied at approximately the 11-second mark, and by 26 seconds, the video shows the user’s teeth appearing “10X whiter”—an alleged transformation occurring in just *15 seconds* within a video that runs only 31 seconds in total. This video is carefully staged and designed to convey that Hismile’s Product produces an instant, measurable whitening effect in less than 30 seconds. Such visual demonstrations reinforce Hismile’s false “instant whitening” claim and would lead a reasonable consumer to believe that the results shown are genuine and achievable as advertised.⁶¹

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⁶¹ Legittimshop, *You Guys NEED to Try This Its Crazy How Much It Works!*, TIKTOK (May 5, 2024), https://www.tiktok.com/@legittimshop/video/7373102626327743790?is_from_webapp=1&web_id=7563821052759197239.



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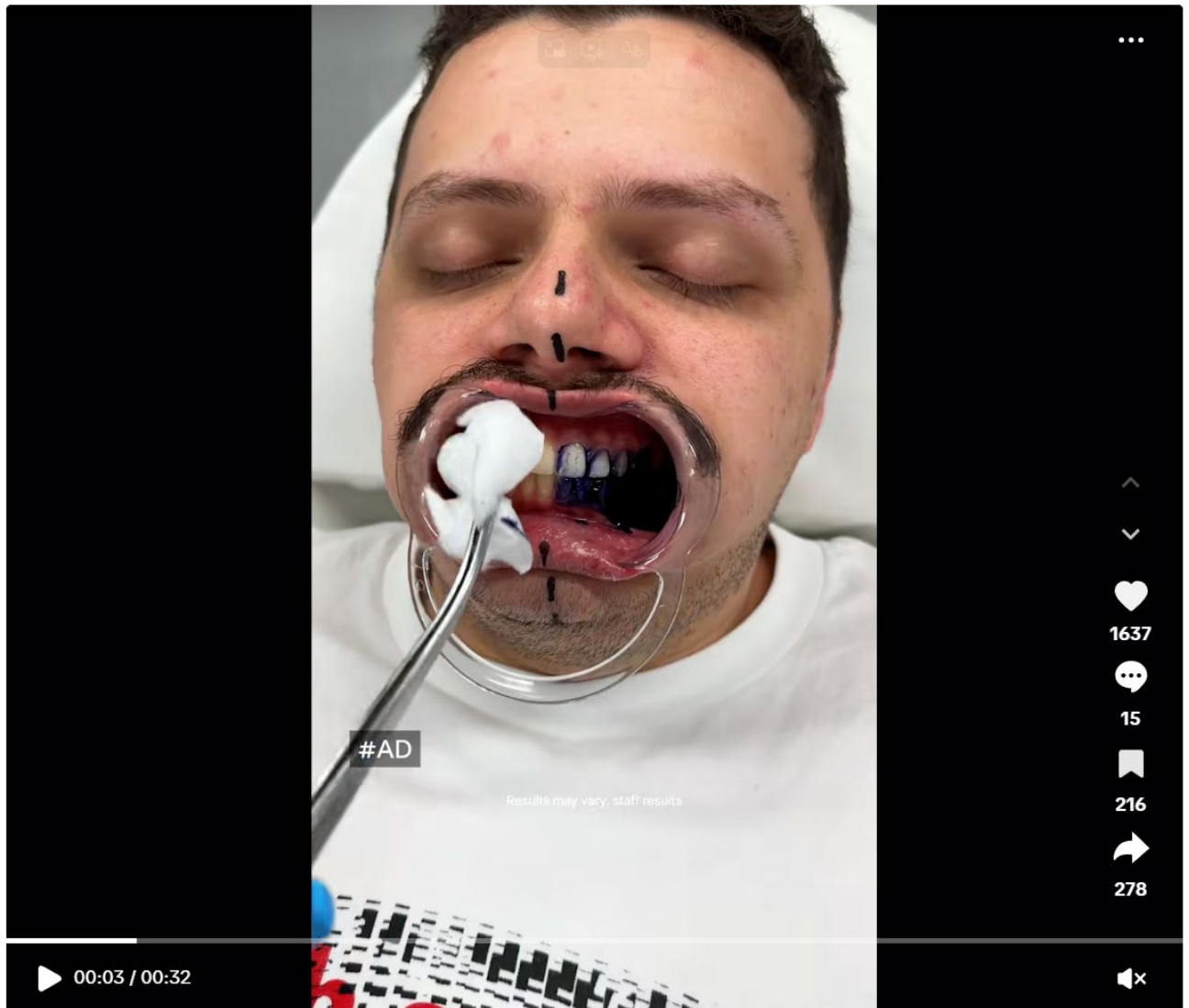


98. In one of Hismile’s own promotional posts, the company showcases a video (depicted below) in which the model’s teeth appear to become noticeably whiter within just 3 *seconds* of applying the V34 Colour Corrector Serum. This depiction further amplifies Hismile’s false “instant whitening” message, visually representing that consumers can achieve a whitening effect within mere seconds of use.⁶²

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⁶² Hismile, *He Explains the VIRAL Serum*, TIKTOK (Sep. 28, 2023), https://www.tiktok.com/@hismile/video/7284122523892010242?is_from_webapp=1&web_id=7563821052759197239.



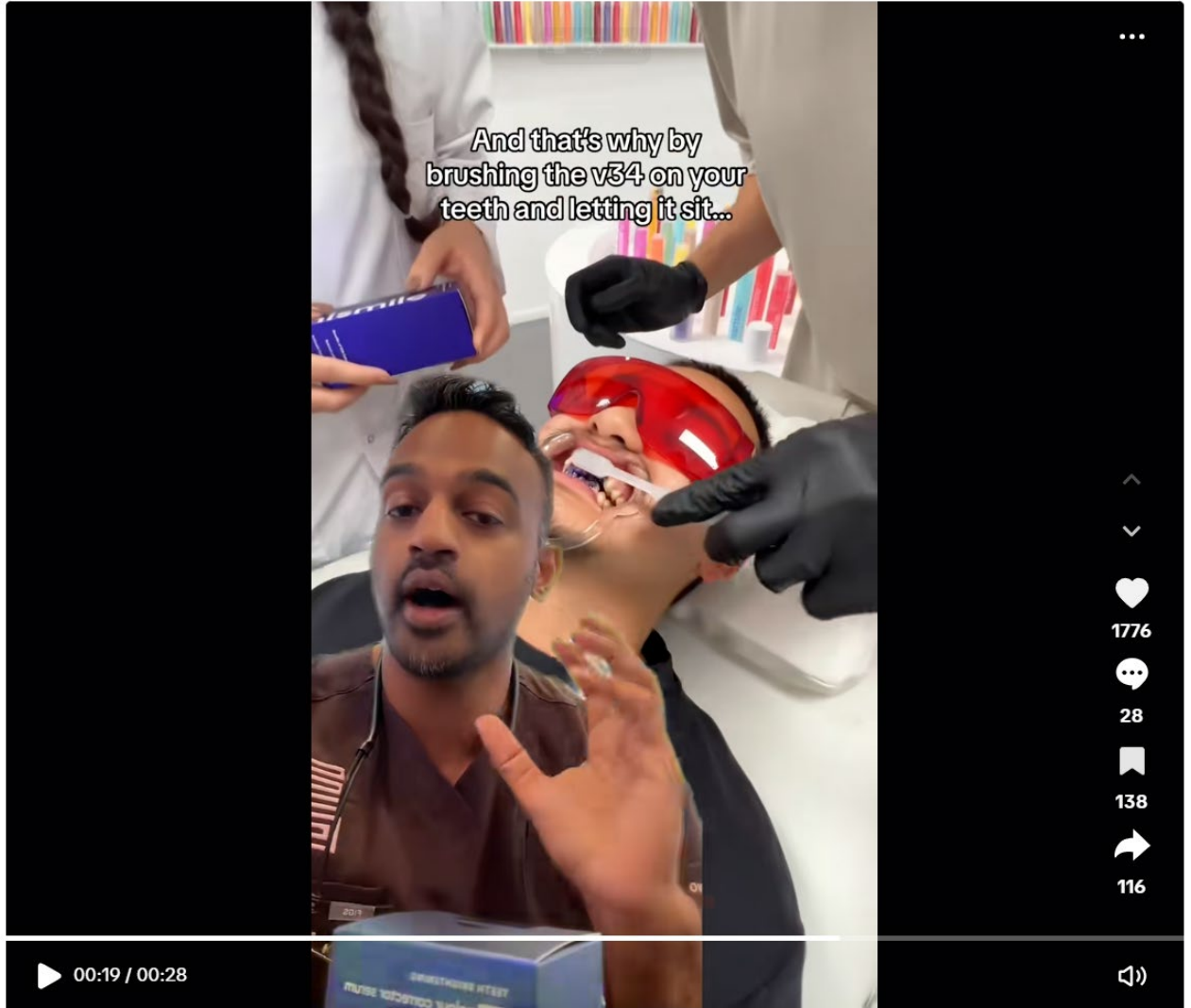
99. Similar depictions appear throughout Hismile's promotional posts for its V34 Whitening Strips, where models' teeth are shown turning noticeably whiter within just *10 seconds* of application. These theatrical portrayals are designed to mislead consumers into believing that the Products deliver instant, visible whitening results, when in reality, no such instant transformation is scientifically possible.⁶³

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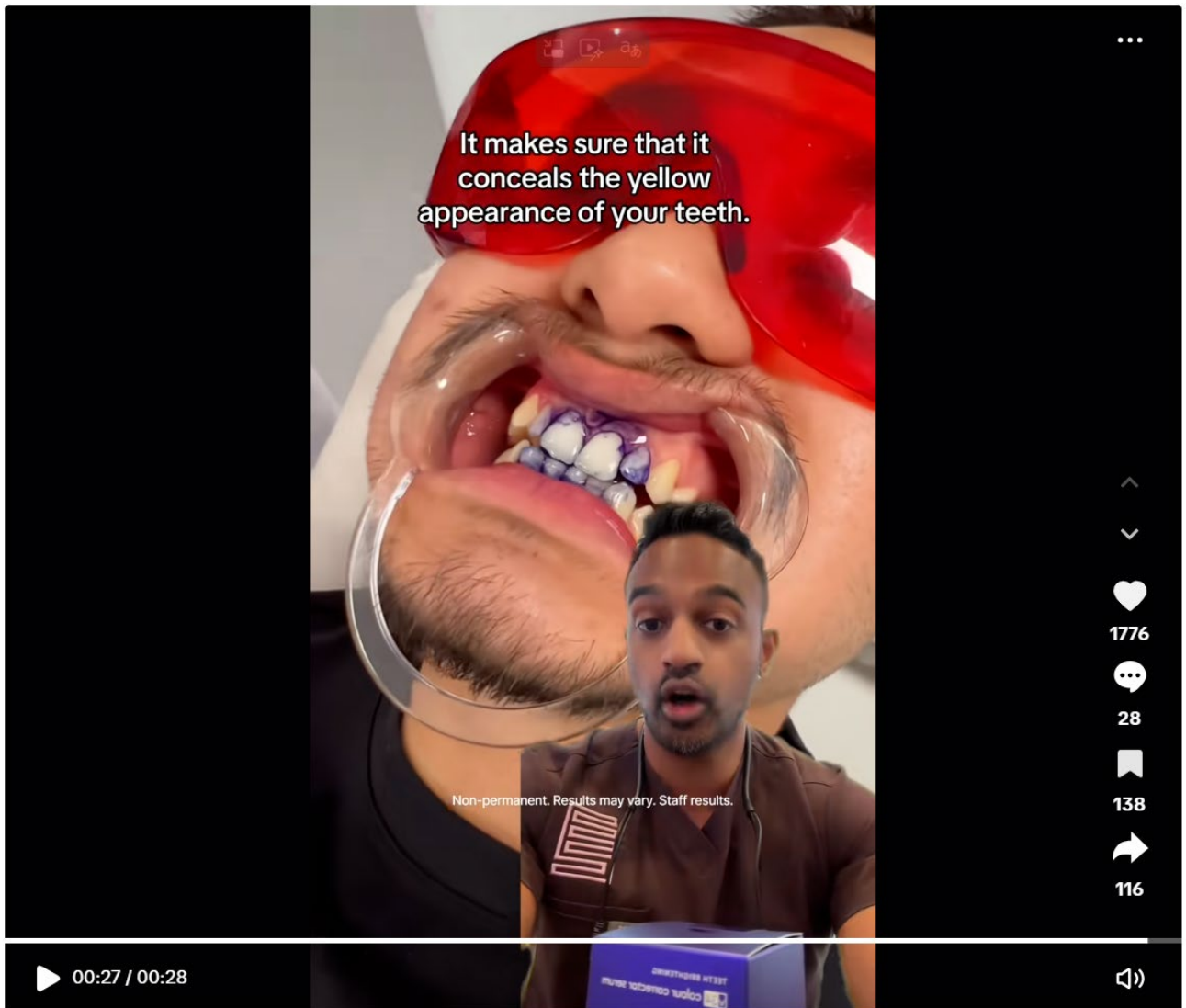
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⁶³ Hismile, *He Debunks the Viral V34 Serum*, TIKTOK (Feb. 14, 2024), https://www.tiktok.com/@hismile/video/7335665031268371714?is_from_webapp=1&web_id=7563821052759197239.

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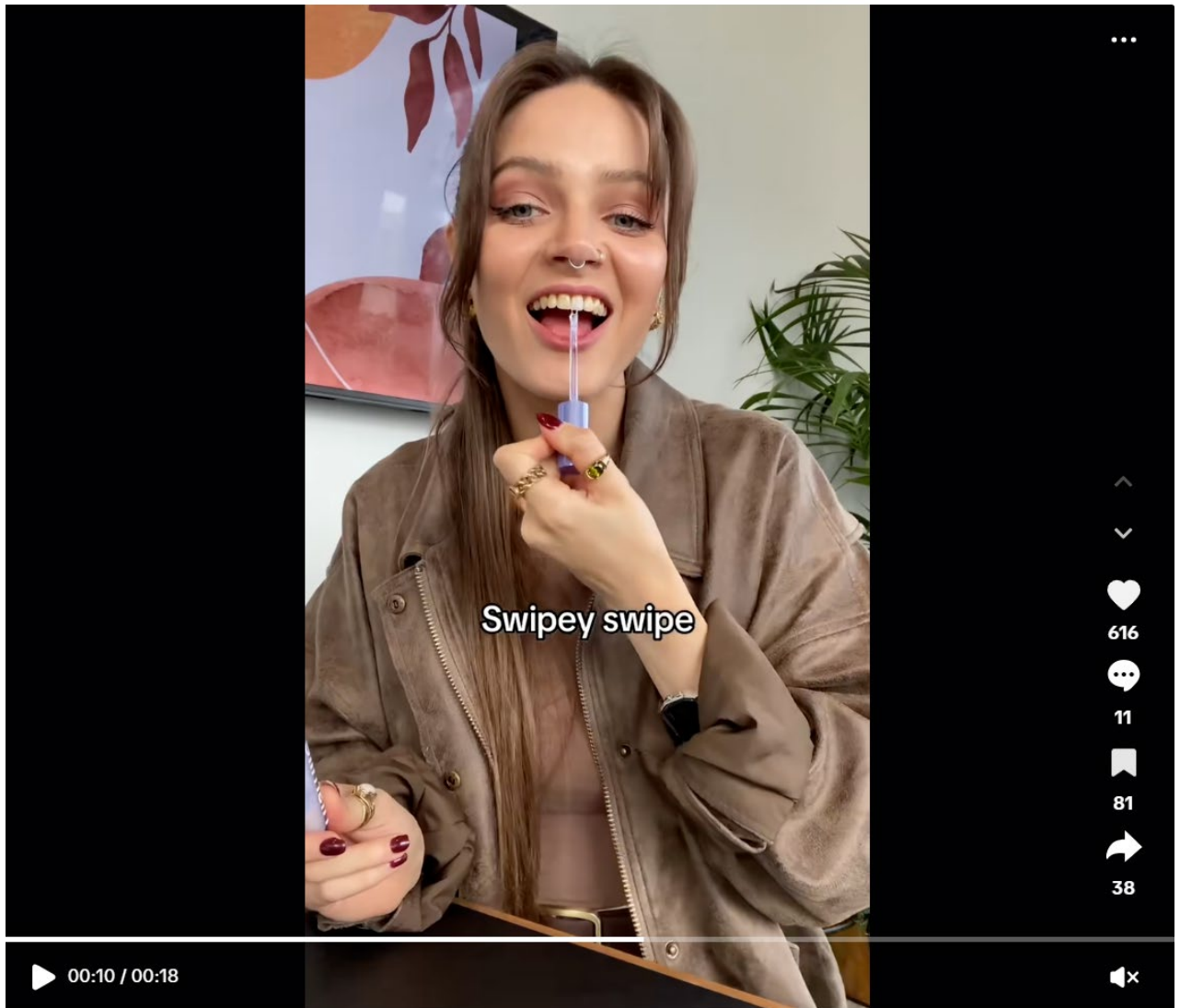


100. In promotional content posted directly by Hismile, the company depicts its Glostik Tooth Gloss product producing a noticeable whitening effect within just 5 *seconds* of application. These portrayals further perpetuate Hismile’s deceptive narrative of “instant whitening,” visually reinforcing the false impression that its Products can deliver instant teeth whitening results.⁶⁴

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⁶⁴ Hismile, *She Was TOTALLY Wrong About This*, TIKTOK (November 7, 2023), https://www.tiktok.com/@hismile/video/7298895758642695426?is_from_webapp=1&web_id=7563821052759197239.



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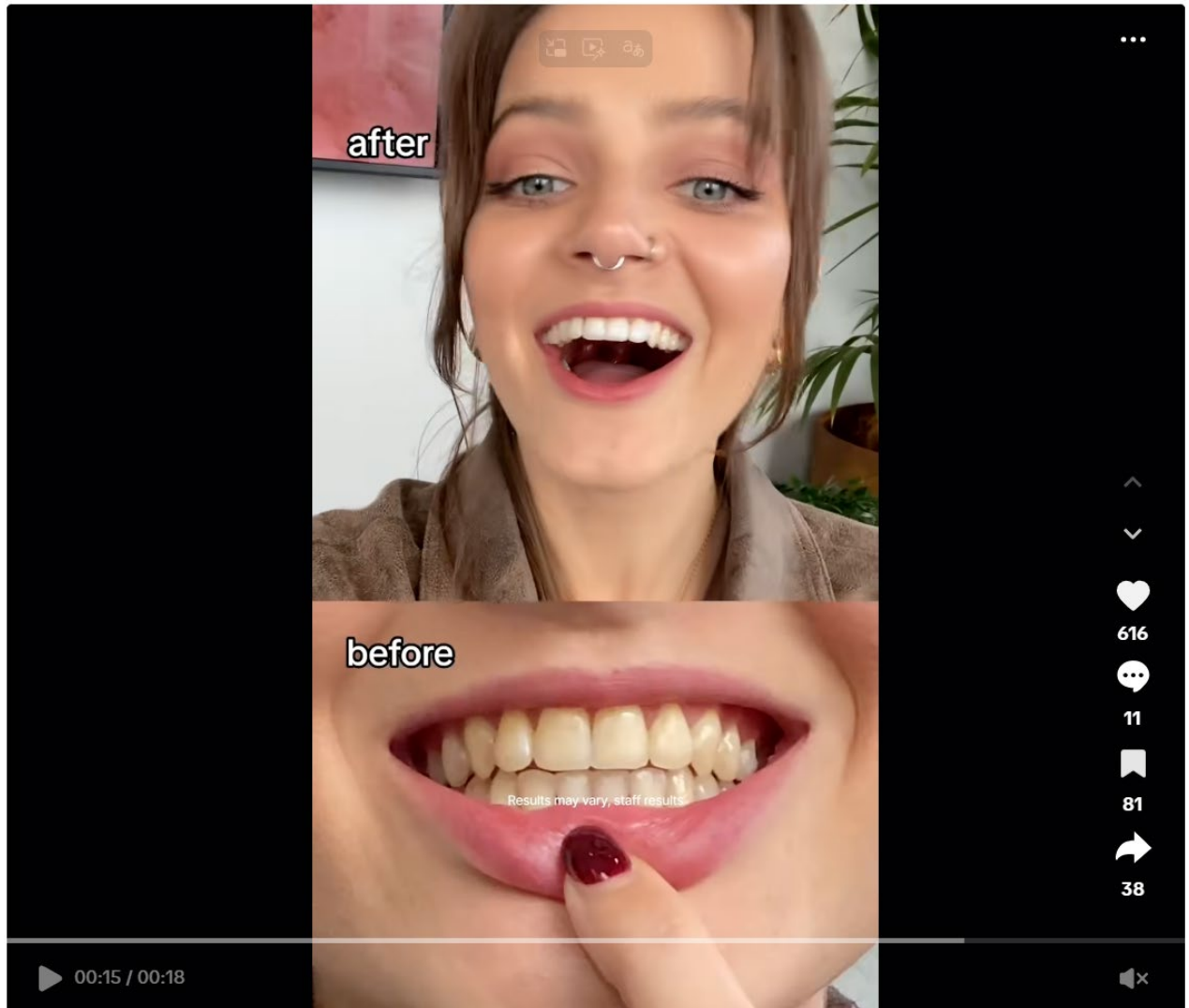
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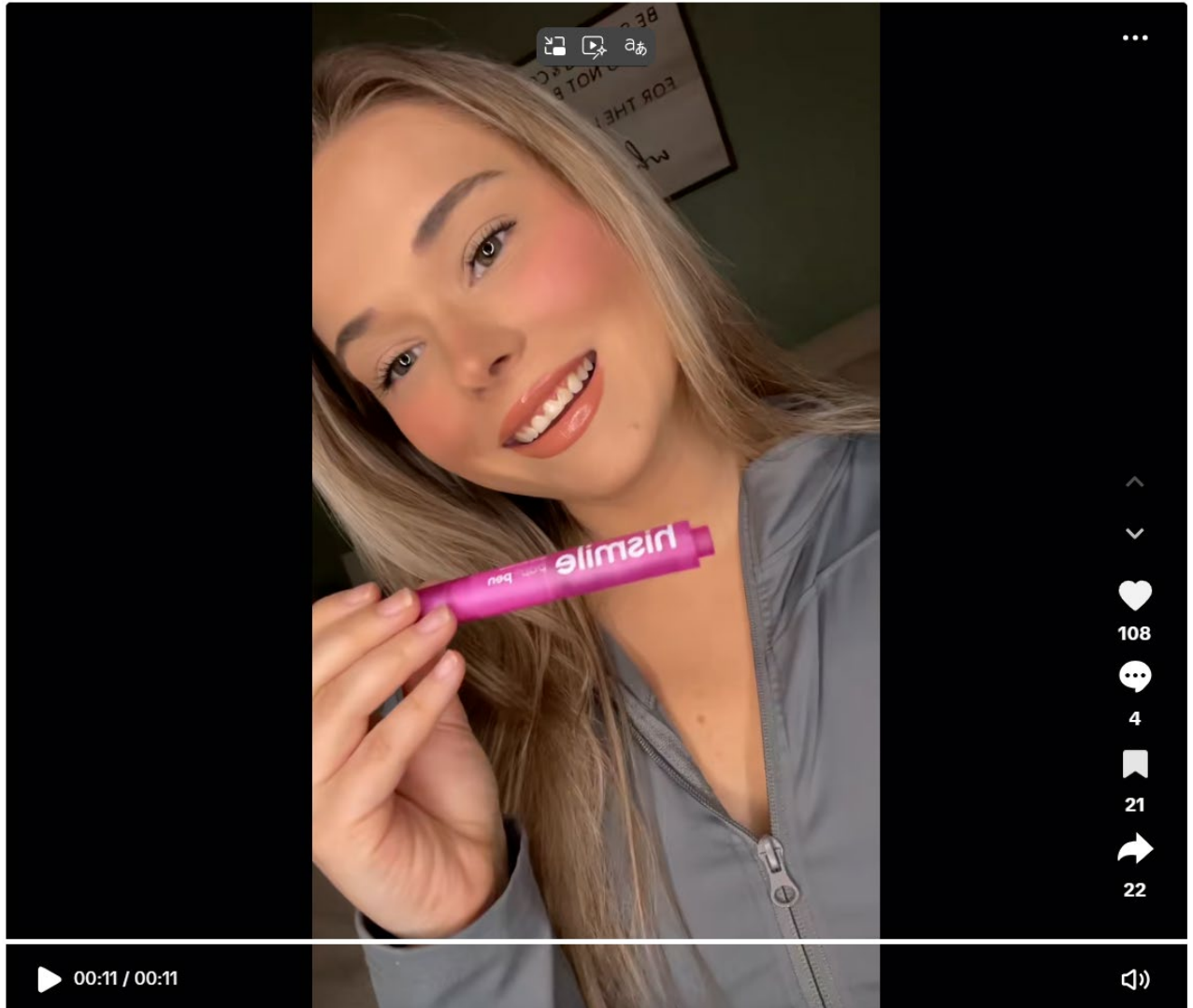


101. With respect to the PAP+ Whitening Pen, a paid partnership post published by Hismile depicts the model's teeth turning perfectly white within just *11 seconds* of application. This promotional content continues Hismile's pattern of deceptive marketing by visually representing that the Product delivers an instant whitening effect.⁶⁵

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⁶⁵ Lexnichol28, *Hismile Teeth Whitening Pap Pen Is Perfect for on the Go*, TIKTOK (Mar. 27, 2024), https://www.tiktok.com/@lexnichol28/video/7350958462798499114?is_from_webapp=1&web_id=7563821052759197239.



102. Unlike legitimate teeth-whitening products on the market that provide realistic time frames for achieving results, Hismile’s Fraudulent Misrepresentations promise an “instant” whitening effect, representing that visible whitening occurs in less than thirty seconds. This representation stands in stark contrast to reputable competitors, such as the Crest 3D Whitestrips Professional White Teeth Whitening Kit, which instructs consumers to use the product over a three-week period and clearly discloses the expected outcome—up to twelve shades whiter teeth. By comparison, HiSmile’s advertising dispenses with any realistic timeline, instead promoting an immediate transformation that is scientifically impossible.⁶⁶

⁶⁶ Crest 3D Whitestrips Professional White Teeth Whitening Kit - 20 Treatments, TARGET, https://www.target.com/p/crest-3d-whitestrips-professional-white-teeth-whitening-kit-20-treatments/-/A-75568289?sid=3231S&afid=google&TCID=OGS&CPNG=Beauty&adgroup=49-9&utm_source=chatgpt.com (last visited Oct. 23, 2025).



103. Similarly, Colgate Optic White Overnight Teeth Whitening Pen promises a stain removal effect after “1 week” of nightly use, during which the product must remain on the teeth overnight.⁶⁷



⁶⁷ Colgate Optic White Overnight Teeth Whitening Pen, COLGATE, https://shop.colgate.com/products/colgate-optic-white-overnight-teeth-whitening-pen?variant=40382127865921&utm_source=chatgpt.com (last visited on Oct. 23, 2025)

104. Hismile’s false promise that its Products deliver an “instant” whitening effect is particularly deceptive when compared with legitimate competitors in the teeth-whitening market, whose products require significantly longer treatment periods and provide realistic expectations of results. Hismile’s representations thus convey a specific, testable assertion of efficacy that is objectively false.

F. Hismile Conducted a Uniform and Coordinated Deceptive Advertising Campaign Centered on the False Promise of “Instant Teeth Whitening”

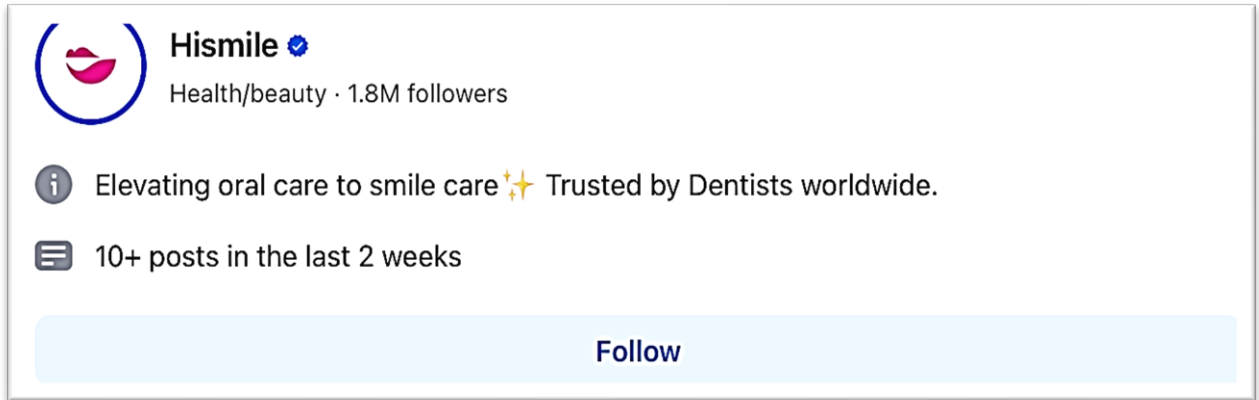
105. Hismile has strategically exploited social media platforms and their algorithms to saturate consumers’ feeds with its Fraudulent Representations that its Products deliver “instant teeth whitening.” Leveraging the reach and influence of platforms like Facebook, Instagram, YouTube, and TikTok, Hismile engages in an aggressive and pervasive marketing campaign designed to maximize consumer’s exposure to the same “instant teeth whitening” claim. As of the most recent data available, on TikTok, the brand’s primary account, @hismile, has amassed over 5.1 million followers and more than 115 million likes, while its @hismileus account, which is controlled by Hismile, Inc., has accumulated over 84,000 followers and approximately 2.7 million likes. On Instagram, Hismile has a following of more than 1.7 million users, and on Facebook, it has attracted over 1.8 million followers. Meanwhile, on YouTube, Hismile’s official channel has over 120,000 subscribers and achieves an average of approximately 750,000 views per short promotional video. Hismile’s activities on social media platforms demonstrates a deliberate and calculated effort to cultivate viral visibility, using sponsored posts, influencer partnerships, and targeted algorithmic amplification to create a cumulative false promise of “instant teeth whitening” benefit.

106. **Hismile’s Fraudulent Advertising Campaign Has Persisted for Over a Decade.** Defendant’s fraudulent advertising campaign began more than ten years ago, in approximately 2015, as evidenced by its earliest Facebook advertisement, which, according to the publicly available webpage, was posted on May 10, 2015.⁶⁸ Since that time, Hismile has maintained a

⁶⁸ Hismile, *Teeth Whitening made Easy*, FACEBOOK (May 10, 2015), https://fb.watch/CQRWue7t_Q/.

consistent and active presence on social media platforms, regularly publishing promotional content to market its Products as providing instant teeth whitening benefits.

107. For example, as shown in the screenshot below, Hismile posted more than ten times on Facebook in just the past two weeks, further demonstrating Hismile's intention to keep its deceptive "instant whitening" message constantly in front of consumers.⁶⁹



108. Hismile made its first promotional post on TikTok with the brand's primary account, @hismile, on May 15, 2016—four years prior to the platform's surge in popularity during the 2020 pandemic—demonstrating the company's strategic foresight in leveraging social media.⁷⁰ As of today, the @hismileus account has amassed over 5.1 million followers and more than 115 million likes.⁷¹ The Hismile brand later launched its @hismileus account on the platform and made its first post on February 4, 2024.⁷² The @hismileus account has accumulated over 84,000 followers and approximately 2.7 million likes as of date.⁷³

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⁶⁹ Search Results, FACEBOOK, <https://www.facebook.com/search/top?q=hismile> (last visited Oct. 22, 2025).

⁷⁰ Hismile, *Jayde Pierce Showing Us How It's Done*, TIKTOK (May 15, 2016), https://www.tiktok.com/@hismile/video/96535482032918528?is_from_webapp=1&sender_device=pc&web_id=7557100966497486350.

⁷¹ Hismile, TIKTOK, <https://www.tiktok.com/@hismile> (last visited Oct. 22, 2025).

⁷² Hismile, *She Had to Try This Viral Tiktok Product!*, TIKTOK (Feb. 4, 2024), https://www.tiktok.com/@hismileus/video/7331898134387330335?is_from_webapp=1&sender_device=pc&web_id=7563821052759197239.

⁷³ Hismileus, TIKTOK, <https://www.tiktok.com/@hismileus?lang=en> (last visited Oct. 22, 2025).

109. On Instagram, Hismile made its first promotional post as early as March 25, 2022.⁷⁴ Since then, the brand has attracted more than 1.7 million followers and made a total of 429 promotional posts on the platform, as currently reflected on the webpage, not including the advertisement Hismile disseminated via the platform's promotion service.⁷⁵

110. Hismile posted its first promotional YouTube video on November 14, 2023, and has posted 172 videos since that time.⁷⁶ Hismile has attracted more than 120,000 subscribers on the platform and achieves an average of approximately 750,000 views per short promotional video.⁷⁷

111. Meta, which owns and operates Facebook and Instagram, provides advertising solution services, known as Meta Ads, to businesses and maintains an Ad Library that archives both active and previously run Meta Ads on these platforms.⁷⁸ As shown by the archive, Hismile ran its first Meta Ad on both Facebook and Instagram from September 18, 2024, to November 2024.⁷⁹ According to the archive, as of October 22, 2025, mere thirteen months after Hismile's first Meta Ad, the brand has run approximately 4,500 Meta Ads across Facebook and Instagram.⁸⁰

112. **Hismile's Fraudulent Marketing Scheme Utilizes Targeted Advertising.** As reflected in the archive entries, nearly all of Hismile's Meta Ads used one of Meta's dynamic services.⁸¹ Under this system, the advertiser provides a set of promotional elements—such as

⁷⁴ Hismile, *Word Search, Find the Clues to What's Coming*, INSTAGRAM (Mar. 25, 2022), https://www.instagram.com/p/CbhNGKhPmO9/?utm_source=ig_web_copy_link&igsh=MzRIODBiNWF1ZA==.

⁷⁵ Hismile, INSTAGRAM, <https://www.instagram.com/hismile/> (last visited Oct. 22, 2025).

⁷⁶ Hismile, *What Are the Hismile Team Getting This BLACK FRIDAY?!*, YOUTUBE (Nov. 14, 2023), https://youtube.com/shorts/rIq79I7hMBM?si=6R78TNMNI1QP_uFM; Hismile, YOUTUBE, <https://www.youtube.com/@HiSmileTV/featured> (last visited Oct. 22, 2025).

⁷⁷ Hismile, YOUTUBE, <https://www.youtube.com/@HiSmileTV/featured> (last visited Oct. 22, 2025).

⁷⁸ *Ad Library*, META, https://www.facebook.com/ads/library/?active_status=active&ad_type=political_and_issue_ads&country=US&is_targeted_country=false&media_type=all (last visited Oct. 22, 2025).

⁷⁹ Hismile, META, <https://www.facebook.com/ads/library/?id=1037060884828546> (last visited Oct. 22, 2025).

⁸⁰ Hismile, META, https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&is_targeted_country=false&media_type=all&search_type=page&view_all_page_id=1573441899601646 (last visited Oct. 22, 2025).

⁸¹ *Id.*

1 images and text—which Meta then automatically creates targeted combinations for specific
2 audiences based on the available information it possesses regarding those users.⁸²

3 113. Hismile employs this dynamic advertising system to promote its Products, allowing it
4 to continually refine, retarget, and bombard consumers with a vast array of tailored ads—even those
5 who have shown only minimal prior interest. This tactic ensures that Hismile’s deceptive “instant
6 whitening” message follows consumers across platforms and reappears repeatedly in their feeds. It
7 also enabled Hismile’s strategy of reusing the same advertising elements, such as video clips, in
8 multiple ad variations that all communicate the same core “instant” teeth whitening message.
9 Archived data further indicates that approximately 4,500 Meta advertisements were run by Hismile,
10 exponentially increasing the volume and reach of its pervasive advertising campaign.⁸³ For every
11 one of the approximately 4,500 ads, Meta’s dynamic advertising service further amplified its reach
12 by automatically generating and disseminating additional retargeted ad variations using creative
13 elements supplied by Hismile.

14 114. Although the sheer volume and persistence of Hismile’s advertising make it
15 impossible for consumers to recall every specific ad, Hismile’s long-running and pervasive
16 marketing campaign has uniformly conveyed the same core message to Plaintiffs and other
17 reasonable consumers—that its Products deliver “instant teeth whitening” benefits. Over nearly a
18 decade, Hismile has continuously disseminated thousands of advertisements across multiple social
19 media platforms, employing algorithmic delivery and retargeting systems to ensure constant
20 consumer exposure. Consumers scrolling through social media are thus repeatedly subjected to a
21 steady stream of Hismile’s content, all reinforcing the same false promise of instant teeth whitening.

22 **G. Both Hismile, Inc. and Hismile Pty Ltd. Perpetuate and Profit from Their**
23 **Fraudulent Marketing Scheme**

24 115. Hismile, Inc. and Hismile Pty Ltd. have entered into and operated as a joint venture
25 for the purpose of marketing, advertising, selling, and profiting from Hismile’s Products, including
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28 ⁸² *Supra* note 31.

⁸³ *See supra* note 80.

1 those falsely promoted as providing “instant teeth whitening.” The relationship between the two
2 entities satisfies all elements of a joint venture under applicable law.

3 116. **Joint Control.** Hismile, Inc. and Hismile Pty Ltd. exercise joint control over the
4 Hismile enterprise. Both entities share responsibility for the development, management, and
5 implementation of Hismile’s marketing and advertising campaigns, including oversight of the
6 company’s websites and coordinated social media accounts. They jointly control and operate the
7 U.S. Hismile website, www.hismileteeth.com, and related domains, through which the Products are
8 marketed and sold to U.S. consumers. Hismile, Inc. further manages the company’s extensive
9 network of official social media accounts—including multiple Instagram and TikTok profiles—to
10 promote the Hismile brand in coordination with Hismile Pty Ltd.’s global marketing strategy.

11 117. Hismile, Inc. manages one of Hismile brand’s official TikTok accounts—@hismileus,
12 which is managed by Hismile, Inc., contain many of Hismile’s fraudulent advertisements of instant
13 teeth whitening, e.g., deceptive tactics such as fake “before and after” images and videos, misleading
14 editing, actors posing as dental professionals or customers, demonstrations of the “science of color
15 theory,” and false claims that Hismile’s V34 Colour Corrector Serum has been “clinically proven”
16 to instantly whiten teeth.

17 118. The @hismileus account is connected to Hismile’s TikTok Shop, an e-commerce
18 store that allows users to shop directly within the TikTok app, integrating e-commerce with the
19 platform’s normal social media content. The video advertisements posted on the @hismileus
20 account can be pushed into users’ feeds just like the video advertisements posted on the main
21 @hismile account. These videos appear in users’ feeds through paid promotions or the TikTok
22 algorithm, which suggests content based on users’ interests. These videos can be made “shoppable”
23 by adding links to products, allowing users to click and purchase instantly. When users click on a
24 video advertisement posted by the Hismile @hismileus account, they are linked to the Hismile
25 TikTok Shop, where they can purchase the Products.

26 119. The Hismile brand social media accounts publish a high volume of video
27 advertisements daily, and there are currently thousands of advertisements posted on each account.
28 Each of these thousands of videos uses the same core advertising methods, with many of them

1 reusing the exact same clips in a different order, or with different actors reading similar scripts and
2 acting out similar scenarios.

3 120. The U.S. website, www.us.hismileteeth.com, explicitly defines the terms “Hismile,”
4 “we,” “our,” and “us” as referring to Hismile Pty Ltd.,⁸⁴ further evidencing the integrated nature of
5 their operations and confirming that both entities act jointly and interchangeably in conducting their
6 marketing and sales activities.

7 121. The Privacy Policy further states:. The Privacy Policy further states:

8 122. Hismile [i.e., Hismile Pty Ltd.] maintains the websites and associated features and
9 mobile applications located at www.hismileteeth.com, ca.hismileteeth.com, eu.hismileteeth.com,
10 us.hismileteeth.com, uk.hismileteeth.com, and int.hismileteeth.com (collectively the “Site”).⁸⁵

11 123. **Shared Profits.** Both entities share in the profits derived from the sale of Hismile
12 Products in the United States and internationally. Revenue generated from sales through the U.S.
13 website, as well as through linked e-commerce platforms such as TikTok Shop, is distributed among
14 the two entities. Their coordinated efforts in product design, branding, and marketing are intended
15 to increase overall sales volume and enhance mutual profitability from their jointly promoted
16 Products.

17 124. **Shared Ownership Interest.** Hismile Pty Ltd. holds ownership of the intellectual
18 property, copyrights, and trademarks associated with the Hismile brand, while Hismile, Inc. holds
19 operational and commercial control within the U.S. market. Both entities have an ownership interest
20 in the success of the Hismile enterprise, jointly exploiting Hismile’s intellectual property assets and
21 digital infrastructure to promote and sell the Products under a unified brand identity.

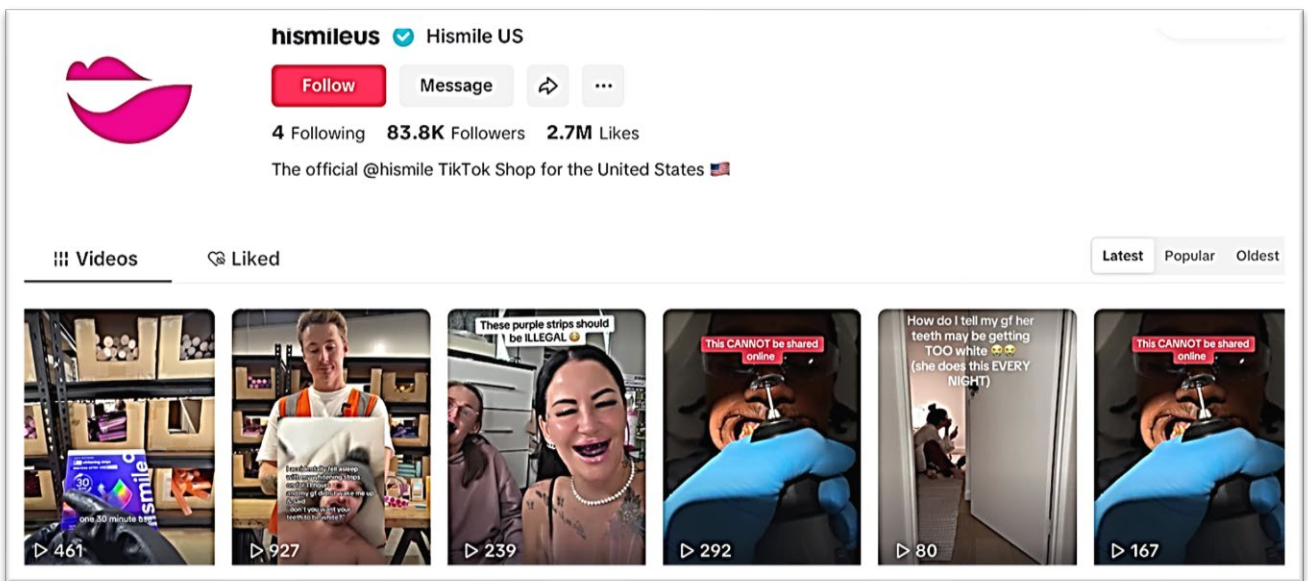
22 125. In addition, Hismile, Inc. actively manages and operates multiple official social media
23 accounts across major platforms, including Instagram and TikTok, to promote and advertise
24 Hismile-branded Products. These accounts form part of an integrated digital marketing strategy
25 designed to amplify Hismile’s false claims of “instant teeth whitening” and to expand the company’s
26 reach among U.S. consumers. The accounts include, but are not limited to, the following: Instagram
27

28 ⁸⁴ *Privacy Policy*, HISMILE, <https://us.hismileteeth.com/pages/privacy> (last updated in June 2024).

⁸⁵ *Id.*

accounts @hismileresults, @hismileprofessional, and @hismileteethme, and TikTok accounts @hismile.insiders, @hismileUK2, @hismileguy, and @hismileus.

126. The official nature of these accounts is confirmed by their direct affiliation with Hismile's primary verified Instagram and TikTok accounts, both under the handle @hismile, which follow and cross-promote the subsidiary accounts on each platform. For instance, the verified @hismileus TikTok account explicitly identifies itself as "The official @hismile TikTok Shop for the United States [American flag emoji]," confirming its connection to Hismile's coordinated social media network. This digital structure demonstrates a deliberate and centralized effort by Hismile, Inc. to use social media as a powerful and deceptive tool to market its Products and to reinforce the company's unified brand presence in the United States.



127. Accordingly, the conduct of Hismile, Inc. and Hismile Pty Ltd. constitutes a joint venture through which the entities act in concert to design, market, and sell Hismile's falsely advertised Products. Their joint control, shared profits, and mutual ownership interests in the Hismile brand demonstrate a unified business enterprise that jointly perpetuates and profits from a deceptive marketing scheme.

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H. Consumers Are Misled by the Fraudulently Advertised Misrepresentations into Buying Products They Would Not Have Otherwise Purchased

128. Hismile markets, promotes, advertises, and sells the Products with Fraudulent Misrepresentations regarding the Products’ efficacy, and engages in fraudulent promotion of its Products by manipulating online consumer reviews.

129. **The Fraudulent Misrepresentations.** On the Products’ advertisements, social media posts, and website listings, Hismile prominently, conspicuously, and repeatedly affirms the Fraudulent Misrepresentations identified herein. These include using deceptive before-and-after images, fake customers, misleading celebrity endorsements, false “clinically proven” claims, fake science, and fake reviews throughout its Product listings.

130. **Reasonable Consumers’ Perception.** The Fraudulent Misrepresentations lead reasonable consumers, like Plaintiffs, to believe that the Products instantly whiten teeth as shown in Hismile’s advertisements.

131. **Materiality.** The Fraudulent Misrepresentations are material to reasonable consumers, including Plaintiffs, in deciding to buy the Products—meaning that the Products’ advertised ability to instantly whiten teeth is important to consumers and motivates them to buy the Products.

132. **Reliance.** The Class, including Plaintiffs, reasonably relied on the Fraudulent Misrepresentations in deciding to purchase the Products. Based on the Fraudulent Misrepresentations, Plaintiffs expected that they would achieve instant teeth whitening.

133. **Falsity.** The Fraudulent Misrepresentations are false and deceptive because the Products do not instantly whiten teeth.

134. **Consumers Lack Knowledge of Falsity.** Consumers, including Plaintiffs, do not know, and have no reason to know, at the time of purchase, that the Products’ Fraudulent Misrepresentations are false, misleading, deceptive, and unlawful. That is because consumers, including Plaintiffs, do not work for Hismile and therefore have no personal knowledge of the exact ingredients and formulation of the Products, including the methods used to source and manufacture the ingredients. Additionally, most consumers do not have the specialized knowledge of a chemist

or product-developer, or an encyclopedic knowledge base of every chemical or ingredient name and the standard methods used to source and manufacture them. Thus, reasonable consumers, like Plaintiffs, cannot discern from the Products' ingredient disclosures whether the ingredients instantly whiten teeth.

135. **Hismile's Knowledge.** Hismile knew, or should have known, that the Fraudulent Misrepresentations were false, misleading, deceptive, and unlawful, at the time that Hismile manufactured, marketed, advertised, labeled, and sold the Products using the Fraudulent Misrepresentations to Plaintiffs and the Class. Hismile intentionally and deliberately used the Fraudulent Misrepresentations on its advertisements, social media posts, and website listings, to cause Plaintiffs and similarly situated consumers to buy the Products believing that the Fraudulent Misrepresentations are true.

a. **Knowledge of Falsity.** Hismile marketed the Products with the Fraudulent Misrepresentations, but Hismile opted to formulate and manufacture them in a manner that does not conform to those Misrepresentations. Specifically, Hismile advertised that the Products instantly whiten teeth when in reality, the Products do not instantly whiten teeth.

b. **Knowledge of Reasonable Consumers' Perception.** Hismile knew, or should have known, that the Fraudulent Misrepresentations would lead reasonable consumers into believing that the Products instantly whiten teeth. Hismile has aggressively advertised each of the Products with the Fraudulent Misrepresentations. Thus, Hismile knew the Fraudulent Misrepresentations are misleading before they marketed the Products to the Class, including Plaintiffs.

c. **Knowledge of Materiality.** Hismile knew or should have known that the Fraudulent Misrepresentations are material to consumers. *First*, the conspicuousness of the Fraudulent Misrepresentations on the Products' advertisements, social media posts, and website listings demonstrate Hismile's awareness of their importance to consumers and Hismile's understanding that consumers prefer and are motivated to buy products that conform to the

1 Fraudulent Misrepresentations. **Second**, manufacturers and marketers repeat
2 marketing claims to emphasize and characterize a brand or product line, shaping
3 the consumers' expectations, because they believe those repeated messages will
4 drive consumers to buy the Product. Here, the use of the Fraudulent
5 Misrepresentations on the Products' advertisements and throughout Hismile's
6 marketing campaigns evidence Hismile's awareness that the falsely advertised
7 Product-attribute is important to consumers. It also evidences Hismile's intent to
8 convince consumers that the Products conform to the Fraudulent
9 Misrepresentations and, ultimately, drive sales.

10 d. **Hismile's Continued Deception, Despite Its Knowledge.** Hismile, as the
11 manufacturer and marketer of the Products, had exclusive control over the
12 Fraudulent Misrepresentations' inclusion on the Products' advertisements, social
13 media posts, and website listings —i.e., Hismile readily and easily could have
14 stopped using the Fraudulent Misrepresentations to sell the Products. However,
15 despite Hismile's knowledge of the Fraudulent Misrepresentations' falsity, and
16 Hismile's knowledge that consumers reasonably rely on the Fraudulent
17 Misrepresentations in deciding to buy the Products, Hismile deliberately chose
18 to market the Products with the Fraudulent Misrepresentations thereby
19 misleading consumers into buying or overpaying for the Products. Thus, Hismile
20 knew, or should have known, at all relevant times, that the Fraudulent
21 Misrepresentations mislead reasonable consumers, such as Plaintiffs, into buying
22 the Products to attain the product-attributes that Hismile falsely advertised and
23 warranted.

24 136. **Detriment.** Plaintiffs and similarly situated consumers would not have purchased the
25 Products if they had known that the Fraudulent Misrepresentations were false and, therefore, the
26 Products do not have the attribute claimed, promised, warranted, advertised, and/or represented.
27 Accordingly, based on Hismile's material misrepresentations, reasonable consumers, including
28 Plaintiffs, purchased the Products to their detriment.

I. Plaintiffs' Purchase Experience and Reliance on Hismile's Fraudulent Misrepresentations

137. **Plaintiff Alexander Ledesma.** The following is alleged based upon Plaintiff Ledesma's personal knowledge:

a. **Exposure to Hismile's Deceptive Marketing Scheme.** Plaintiff first encountered Hismile's advertising in 2023. After clicking on an ad for the Products on social media, he began receiving a barrage of Hismile ads across social media—roughly twelve per day on Instagram and three per day on Facebook. These promotions took the form of click-on advertisements, influencer endorsements, and customer reviews. Plaintiff estimates he saw at least sixty such ads on Facebook alone before purchasing the Products. Two weeks of relentless exposure to these ads, ultimately led him into buying the Products.

b. **Reliance on Hismile's Fraudulent Misrepresentations.** In purchasing the V34 Colour Corrector Serum and PAP+ Whitening Pen, Plaintiff Ledesma relied on Hismile's representations and depictions promising instant whitening results. Plaintiff encountered these representations through Hismile's advertisements on Facebook, Instagram, and Hismile's official website. Although Plaintiff cannot identify all of the advertisements he viewed, given the overwhelming volume of Hismile's marketing, he recalls seeing and relying on the following types of advertisements prior to purchasing the Products:

- i. Before-and-after demonstrations featuring individuals portrayed as “scientists” or “dentists” who claimed that Hismile's Products could instantly whiten teeth by applying “color theory,” as detailed in Sections V.C.i. and V.C.vi. above;
- ii. Endorsements from micro-influencers, which Plaintiff found credible because such lesser-known individuals appeared to be more like “real people,” as described in Section V.C.iv. above;
- iii. Visual demonstrations depicting yellow objects—such as bananas and

1 rubber ducks—turning white after being coated with purple paint, as alleged
 2 in Section V.C.vi. above; and
 3 iv. Customer reviews and comments appearing below Hismile’s
 4 advertisements on Facebook and Instagram, as alleged in Section V.C.ii.
 5 above.

6 Based on the consistent and uniform message conveyed through these representations,
 7 Plaintiff reasonably believed and expected that Hismile’s Products would produce an
 8 instant whitening effect, just as Hismile’s advertisements repeatedly depicted.

- 9 c. **Failure of the Products to Deliver the Advertised Benefits.** Plaintiff used the
 10 Products as instructed. Despite following all instructions, Plaintiff observed no instant
 11 whitening effect whatsoever from either Product. He was extremely disappointed that
 12 the Products failed to deliver the “instant teeth whitening” results as prominently
 13 promised in Hismile’s advertisements, and he derived no benefit from their use.
- 14 d. **No Actual Knowledge of Falsity.** At the time of purchase, Plaintiff did not know that
 15 the Fraudulent Misrepresentations were false in that Plaintiff did not know that the
 16 Products do not instantly whiten teeth as advertised.
- 17 e. **No Notice of Contradictions.** Plaintiff did not notice any disclaimer, qualifier, or
 18 other explanatory statement or information on the Products’ labels or advertising that
 19 contradicted the prominently advertised instant whitening results or otherwise
 20 suggested that the Products could not instantly whiten teeth.
- 21 f. **Causation/Damages.** Plaintiff would not have purchased the Products had Plaintiff
 22 known that they do not instantly whiten teeth.
- 23 g. **Desire to Repurchase.** Plaintiff continues to see the Products available for purchase
 24 and desires to purchase them again if the representations in the advertisements were
 25 in fact true.
- 26 h. **Lack of Personal Knowledge/Expertise to Determine Truth.** Plaintiff does not
 27 personally know what ingredients are actually contained in the Products or the
 28 methods used to make the Products (including sourcing and manufacturing

processes), and Plaintiff does not possess any specialized knowledge or general familiarity with the Products' ingredients or the methods typically used to obtain or make such ingredients (including sourcing and manufacturing processes), such that Plaintiff does not personally know and cannot determine whether the Products' ingredients can instantly whiten teeth; and, therefore, Plaintiff has no way of determining whether the advertised representations are true.

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

138. **Plaintiff Helen Tanaka.** The following is alleged based upon Plaintiff Tanaka's personal knowledge:

- a. **Exposure to Hismile's Deceptive Marketing Scheme.** Before making her purchase, Plaintiff was subjected to a persistent influx of Hismile's marketing materials, encountering approximately seven to nine advertisements per day on Instagram and an additional five to seven per day on TikTok. Plaintiff described the volume of these advertisements on both platforms as "flooding," noting that they appeared repeatedly and in various formats over a period of approximately six weeks, continuing unabated until she made her first purchase.
- b. **Reliance on Hismile's Fraudulent Misrepresentations.** In making her purchases of the Glostik Tooth Gloss and V34 Colour Corrector Serum, Plaintiff Tanaka relied on the depictions and promises of instant whitening she saw on Hismile's Instagram and TikTok advertisements. Although Plaintiff cannot recall all the representations she was exposed to, given the sheer volume of Hismile's marketing, she recalls seeing and relying on the following ones before she decided to purchase the Products:
 - i. The before-and-after photos and videos which demonstrated instant results after one application of the purple gel, as alleged in Section V.C.i. above.
 - ii. Customer reviews and reactions on Hismile's website and in Hismile's social media comment sections, as alleged in Section V.C.iii. above.

Based on the core “instant” teeth whitening message behind these representations, Plaintiff expected that the Products would instantly whiten her teeth as was shown uniformly in these advertisements.

- c. **Failure of the Products to Deliver the Advertised Benefits.** Plaintiff used the Products as directed. After using the Product, Plaintiff was extremely disappointed to observe no instant whitening effect. Plaintiff derived no benefit from her use of the Products.
- d. **No Actual Knowledge of Falsity.** At the time of purchase, Plaintiff did not know that the Fraudulent Misrepresentations were false in that Plaintiff did not know that the Products do not instantly whiten teeth as advertised.
- e. **No Notice of Contradictions.** Plaintiff did not notice any disclaimer, qualifier, or other explanatory statement or information on the Products’ labels or advertising that contradicted the prominently advertised instant whitening results or otherwise suggested that the Products could not instantly whiten teeth.
- f. **Causation/Damages.** Plaintiff would not have purchased the Products had Plaintiff known that they do not instantly whiten teeth.
- g. **Desire to Repurchase.** Plaintiff continues to see the Products available for purchase and desires to purchase them again if the representations in the advertisements were in fact true.
- h. **Lack of Personal Knowledge/Expertise to Determine Truth.** Plaintiff does not personally know what ingredients are actually contained in the Products or the methods used to make the Products (including sourcing and manufacturing processes), and Plaintiff does not possess any specialized knowledge or general familiarity with the Products’ ingredients or the methods typically used to obtain or make such ingredients (including sourcing and manufacturing processes), such that Plaintiff does not personally know and cannot determine whether the Products’ ingredients can instantly whiten teeth; and, therefore, Plaintiff has no way of determining whether the advertised representations are true.

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

139. **Plaintiff Larry Jones.** The following is alleged based upon Plaintiff Jones' personal knowledge:

- a. **Exposure to Hismile's Deceptive Marketing Scheme.** Plaintiff was exposed to a steady stream of Hismile advertisements across TikTok, Facebook, and Instagram for about one to two weeks before making his Product purchase. He estimated seeing approximately ten to twelve advertisements across the platforms, including the endorsement from Kim Kardashian and customer reviews on Instagram. He also noted that the advertisements appeared repeatedly across different social media platforms.
- b. **Reliance on Hismile's Fraudulent Misrepresentations.** In making his purchase of the PAP+ Strips, Plaintiff Jones relied on the depictions and promises of instant whitening that he saw in Hismile's advertisements on TikTok, Facebook, and Instagram. Although Plaintiff cannot recall all representations he was exposed to, given the sheer volume of Hismile's marketing, he recalls seeing and relying on the following ones before he decided to purchase the Product:

- i. The before-and-after photos and videos which demonstrated instant whitening results after one application, as alleged in Section V.C.i. above.
- ii. Celebrity endorsements from two members of the Kardashian-Jenner family, which he believed were credible because of their established reputations and influence in the beauty industry, as alleged in Section V.C.iv. above.
- iii. The top four to five customer reviews in Hismile's Instagram comment sections, which he recalls all conveyed substantially the same positive message about the Products instant teeth whitening benefits, as alleged in Section V.C.ii. above.

Based on the core "instant" teeth whitening message behind these representations, Plaintiff expected that the Products would instantly whiten his teeth as was shown uniformly in these advertisements.

- c. **Failure of the Products to Deliver the Advertised Benefits.** Plaintiff used the Product as instructed. Plaintiff was extremely disappointed that his teeth did not show any whitening whatsoever, let alone the instant whitening promised in Hismile's advertisements. Plaintiff received no benefit from his use of the Product.
- d. **No Actual Knowledge of Falsity.** At the time of purchase, Plaintiff did not know that the Fraudulent Misrepresentations were false in that Plaintiff did not know that the Products do not instantly whiten teeth as advertised.
- e. **No Notice of Contradictions.** Plaintiff did not notice any disclaimer, qualifier, or other explanatory statement or information on the Products' labels or advertising that contradicted the prominently advertised instant whitening results or otherwise suggested that the Products could not instantly whiten teeth.
- f. **Causation/Damages.** Plaintiff would not have purchased the Product had Plaintiff known that it does not instantly whiten teeth.
- g. **Desire to Repurchase.** Plaintiff continues to see the Products available for purchase and desires to purchase them again if the representations in the advertisements were in fact true.
- h. **Lack of Personal Knowledge/Expertise to Determine Truth.** Plaintiff does not personally know what ingredients are actually contained in the Products or the methods used to make the Products (including sourcing and manufacturing processes), and Plaintiff does not possess any specialized knowledge or general familiarity with the Products' ingredients or the methods typically used to obtain or make such ingredients (including sourcing and manufacturing processes), such that Plaintiff does not personally know and cannot determine whether the Products' ingredients can instantly whiten teeth; and, therefore, Plaintiff has no way of determining whether the advertised representations are true.
- i. **Inability to Rely.** Plaintiff is, and continues to be, unable to rely on the Products' advertisements, social media posts, and website listings.

1 140. **Plaintiff Christopher Deuel.** The following is alleged based upon Plaintiff Deuel's
2 personal knowledge:

3 a. **Exposure to Hismile's Deceptive Marketing Scheme.** Plaintiff was exposed to a
4 significant number of Hismile advertisements specifically for the V34 Colour
5 Corrector Serum Product, estimating that he received approximately fifteen to thirty
6 advertisements on Instagram within a single week. He also observed advertisements
7 of the same Product popping up on other platforms when he was browsing the internet
8 for other subjects, such as looking for a new dentist on YouTube. Plaintiff was
9 bombarded with Hismile's marketing materials for approximately three months,
10 including the endorsements from Kim Kardashian and other less famous influencers.
11 Plaintiff estimates that he saw approximately fifteen to twenty social media
12 advertisements before deciding to purchase the Product. Plaintiff also viewed
13 approximately twenty-five customers reviews on Amazon and Hismile's webpage
14 before making his purchase.

15 b. **Reliance on Hismile's Fraudulent Misrepresentations.** In making his purchase of
16 the V34 Colour Corrector Serum, Plaintiff Deuel relied on the depictions and promises
17 of instant whitening he saw in Hismile's advertisements on Instagram and Facebook.
18 Although Plaintiff cannot recall all representations he was exposed to, given the sheer
19 volume of Hismile's marketing, he recalls seeing and relying on the following ones
20 before he decided to purchase the Product:

- 21 i. The before-and-after photos and videos which demonstrated instant results
22 after one application, as alleged in Section V.C.i. above.
- 23 ii. Videos that demonstrated the science of color theory by wiping purple paint
24 off of yellow objects like bananas, as alleged in Section V.C.vi. above.
- 25 iii. Videos involving purported scientists and dentists explaining the science of
26 color theory, as alleged in Section V.C.vi. above.
- 27 iv. Videos claiming that the V34 Product is "clinically proven" to instantly whiten
28 teeth, as alleged in Section V.C.v. above.

v. Influencer promotions of the Product, including those from Kim Kardashian and other less famous micro-influencers, as alleged in Section V.C.iv. above.

vi. Hismile's promotional materials that randomly popped up when he was browsing other subjects on the internet, such as promotional discounts, as alleged in Section V.E. above.

vii. Customer reviews he saw on Amazon.com and Hismile's webpage, as alleged in Section V.C.ii. above.

Based on the core "instant" teeth whitening message behind these representations, Plaintiff expected that the Products would instantly whiten his teeth as was shown uniformly in these advertisements.

c. **Failure of the Products to Deliver the Advertised Benefits.** Plaintiff used the Products as instructed. After using the Product, Plaintiff was extremely disappointed that his teeth did not show any whitening whatsoever, let alone the instant whitening promised in Hismile's advertisements. Plaintiff received no benefit from his use of the Product.

d. **No Actual Knowledge of Falsity.** At the time of purchase, Plaintiff did not know that the Fraudulent Misrepresentations were false in that Plaintiff did not know that the Product does not instantly whiten teeth as advertised.

e. **No Notice of Contradictions.** Plaintiff did not notice any disclaimer, qualifier, or other explanatory statement or information on the Product's labels or advertising that contradicted the prominently advertised instant whitening results or otherwise suggested that the Product could not instantly whiten teeth.

f. **Causation/Damages.** Plaintiff would not have purchased the Product had Plaintiff known that it does not instantly whiten teeth.

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

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

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

141. **Plaintiff Anne Lynn Elkind.** The following is alleged based upon Plaintiff Elkind's personal knowledge:

a. **Exposure to Hismile's Deceptive Marketing Scheme.** Hismile's advertisements and online reviews influenced Plaintiff's decision to purchase the Products. She recalled seeing several ads on social media, primarily on Facebook and at least once on Instagram. In addition to the advertisements, she also viewed the customer reviews that appeared both through Google search results and on Hismile's official website.

b. **Reliance on Hismile's Fraudulent Misrepresentations.** In making her purchases of the V34 Colour Corrector Serum and PAP+ Whitening Pen, Plaintiff relied on the depictions and promises of instant whitening she saw in Hismile's advertisements on Facebook and Instagram. Although Plaintiff cannot recall all representations she was exposed to, given the sheer volume of Hismile's marketing, she recalls seeing and relying on the following ones before she decided to purchase the Product:

i. The before-and-after photos which demonstrated instant results after one application, as alleged in Section V.C.i. above.

ii. Positive customer reviews that appeared both through Google search results and on HiSmile's official website, as alleged in Sections V.C.ii. above.

Based on the core “instant” teeth whitening message behind these representations, Plaintiff expected that the Products would instantly whiten her teeth as was shown uniformly in these advertisements.

- c. **Failure of the Products to Deliver the Advertised Benefits.** Plaintiff used the Products as instructed. Plaintiff experienced no whitening whatsoever from either Product, and she was extremely disappointed that the Products did not deliver instant teeth whitening as advertised. Plaintiff received no benefit from her use of the Products.
- d. **No Actual Knowledge of Falsity.** At the time of purchase, Plaintiff did not know that the Fraudulent Misrepresentations were false in that Plaintiff did not know that the Products do not instantly whiten teeth as advertised.
- e. **No Notice of Contradictions.** Plaintiff did not notice any disclaimer, qualifier, or other explanatory statement or information on the Products’ labels or advertising that contradicted the prominently advertised instant whitening results or otherwise suggested that the Products could not instantly whiten teeth.
- f. **Causation/Damages.** Plaintiff would not have purchased the Products had Plaintiff known that they do not instantly whiten teeth.
- g. **Desire to Repurchase.** Plaintiff continues to see the Products available for purchase and desires to purchase them again if the representations in the advertisements were in fact true.
- h. **Lack of Personal Knowledge/Expertise to Determine Truth.** Plaintiff does not personally know what ingredients are actually contained in the Products or the methods used to make the Products (including sourcing and manufacturing processes), and Plaintiff does not possess any specialized knowledge or general familiarity with the Products’ ingredients or the methods typically used to obtain or make such ingredients (including sourcing and manufacturing processes), such that Plaintiff does not personally know and cannot determine whether the Products’

ingredients can instantly whiten teeth; and, therefore, Plaintiff has no way of determining whether the advertised representations are true.

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

142. **Plaintiff Anna Ioffe.** The following is alleged based upon Plaintiff Ioffe's personal knowledge:

- a. **Exposure to Hismile's Deceptive Marketing Scheme.** Plaintiff was exposed to numerous advertisements on online platforms for three months before making her purchase—so many that she described them as being “all over the place.” She estimated that she saw around thirty advertisements on Instagram, including endorsement from Kim Kardashian, which appeared frequently and repeatedly in her feeds. In addition to Instagram, she saw Hismile's advertisements for about a dozen times on Facebook and approximately seven to ten times on YouTube. Additionally, she viewed many five-star consumer reviews on the official product website.

- b. **Reliance on Hismile's Fraudulent Misrepresentations.** In making her purchases of the V34 Colour Corrector Serum, Plaintiff relied on the depictions and promises of instant whitening she saw in Hismile's advertisements on Facebook, Instagram, and YouTube. Although Plaintiff cannot recall all representations she was exposed to, given the sheer volume of Hismile's marketing, she recalls seeing and relying on the following ones before she decided to purchase the Product:

- i. The before-and-after photos and videos in which she saw “scientists” and “dentists” demonstrate that the Products could instantly turn teeth white because of the science of color theory, as alleged in Sections V.C.i. and V.C.vi. above.
- ii. Images of yellow bananas turning white after being coated with purple paint, as alleged in Section V.C.vi. above.
- iii. Endorsement from Kim Kardashian, as alleged in Section V.C.iv. above.

iv. Customer five-star reviews on Hismile’s official website, as alleged in Section V.C.ii. above.

Based on the core “instant” teeth whitening message behind these representations, Plaintiff expected that the Products would instantly as was shown uniformly in these advertisements.

- c. **Failure of the Products to Deliver the Advertised Benefits.** Plaintiff used the Products as instructed. Plaintiff experienced no whitening whatsoever from either Product, and she was extremely disappointed that the Products did not deliver instant teeth whitening as advertised. Plaintiff received no benefit from her use of the Products.
- d. **No Actual Knowledge of Falsity.** At the time of purchase, Plaintiff did not know that the Fraudulent Misrepresentations were false in that Plaintiff did not know that the Products do not instantly whiten teeth as advertised.
- e. **No Notice of Contradictions.** Plaintiff did not notice any disclaimer, qualifier, or other explanatory statement or information on the Products’ labels or advertising that contradicted the prominently advertised instant whitening results or otherwise suggested that the Products could not instantly whiten teeth.
- f. **Causation/Damages.** Plaintiff would not have purchased the Products had Plaintiff known that they do not instantly whiten teeth.
- g. **Desire to Repurchase.** Plaintiff continues to see the Products available for purchase and desires to purchase them again if the representations in the advertisements were in fact true.
- h. **Lack of Personal Knowledge/Expertise to Determine Truth.** Plaintiff does not personally know what ingredients are actually contained in the Products or the methods used to make the Products (including sourcing and manufacturing processes), and Plaintiff does not possess any specialized knowledge or general familiarity with the Products’ ingredients or the methods typically used to obtain or make such ingredients (including sourcing and manufacturing processes), such that

Plaintiff does not personally know and cannot determine whether the Products' ingredients can instantly whiten teeth; and, therefore, Plaintiff has no way of determining whether the advertised representations are true.

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

J. The Products are Substantially Similar

143. As described herein, Plaintiffs purchased the V34 Colour Corrector Serum, Glostik Tooth Gloss, PAP+ Whitening Pen, and/or the PAP+ Whitening Strips.

- a. **Defendants.** All Products are manufactured, sold, marketed, advertised, labeled, and packaged by Hismile.
- b. **Brand.** All Products are sold under the same brand name: Hismile.
- c. **Purpose.** All Products are oral care products intended to be used for instant teeth whitening.
- d. **Marketing Demographics.** All Products are marketed directly to consumers for at-home use.
- e. **Fraudulent Misrepresentations.** All Products are advertised with the same Fraudulent Misrepresentations.
- f. **Misleading Effect.** The misleading effect of the Fraudulent Misrepresentations on consumers is the same for all Products—consumers over-pay a premium for Products that instantly whiten teeth. However, consumers receive Products that do not instantly whiten teeth as advertised.

E. No Adequate Remedy at Law

144. **No Adequate Remedy at Law.** Plaintiffs and members of the Class are entitled to equitable relief as no adequate remedy at law exists.

- a. **Broader Statutes of Limitations.** The statutes of limitations for the causes of action pled herein vary. The limitations period is four years for claims brought under the UCL, which is one year longer than the statutes of limitations under the FAL and CLRA. In addition, the statutes of limitations vary for certain states'

1 laws for breach of warranty and unjust enrichment/restitution, between
2 approximately 2 and 6 years. Thus, California Subclass members who purchased
3 the Products more than 3 years prior to the filing of the complaint will be barred
4 from recovery if equitable relief were not permitted under the UCL. Similarly,
5 given the three-year statutes of limitations under GBL § 349 and GBL § 350, if
6 New York Subclass members' claims for equitable relief are not allowed to
7 proceed, those who purchased the Products more than three years before the filing
8 of this complaint may be barred from any form of financial recovery. Further,
9 Nationwide Class members who purchased the Products prior to the furthest
10 reach-back under the statute of limitations for breach of warranty, will be barred
11 from recovery if equitable relief were not permitted for restitution/unjust
12 enrichment.

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

1 statutorily enumerated conduct). Similarly, unjust enrichment/restitution is
2 broader than breach of warranty. For example, in some states, breach of warranty
3 may require privity of contract or pre-lawsuit notice, which are not typically
4 required to establish unjust enrichment/restitution. Thus, Plaintiffs and Class
5 members may be entitled to recover under unjust enrichment/restitution, while not
6 entitled to damages under breach of warranty, because they purchased the
7 products from third-party retailers or did not provide adequate notice of a breach
8 prior to the commencement of this action.

9 c. **Injunctive Relief to Cease Misconduct and Dispel Misperception.** Injunctive
10 relief is appropriate on behalf of Plaintiffs and members of the Class because
11 Hismile continues to misrepresent the Products with the Fraudulent
12 Misrepresentations. Injunctive relief is necessary to prevent Hismile from
13 continuing to engage in the unfair, fraudulent, and/or unlawful conduct described
14 herein and to prevent future harm—none of which can be achieved through
15 available legal remedies (such as monetary damages to compensate past harm).
16 Further, injunctive relief in the form of disclosures and cessation of fraudulent
17 activity is necessary to dispel the public misperception about the Products that has
18 resulted from years of Hismile’s unfair, fraudulent, and unlawful marketing
19 efforts. Such disclosures would include, but are not limited to, publicly
20 disseminated statements that the Products’ Fraudulent Misrepresentations are not
21 true and providing accurate information about the Products’ true nature; and/or
22 requiring prominent qualifications and/or disclaimers on the Products’ front label
23 concerning the Products’ true nature. An injunction requiring affirmative
24 disclosures to dispel the public’s misperception and prevent the ongoing deception
25 and repeat purchases based thereon, is also not available through a legal remedy
26 (such as monetary damages). In addition, Plaintiffs are *currently* unable to
27 accurately quantify the damages caused by Hismile’s future harm, because
28 discovery and Plaintiffs’ investigation have not yet completed, rendering

injunctive relief all the more necessary. For example, 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 restitution, would bar recovery for non-California members of the Class. In other words, legal remedies available or adequate under the California-specific causes of action (such as the UCL, FAL, and 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.
- f. **Procedural Posture—Incomplete Discovery & Pre-Certification.** Lastly, this is an initial pleading in this action and discovery has not yet commenced and/or is at its initial stages. No class has been certified yet. No expert discovery has commenced and/or completed. The completion of fact/non-expert and expert discovery, as well as the certification of this case as a class action, are necessary to finalize and determine the adequacy and availability of all remedies, including legal and equitable, for Plaintiffs’ claims and any certified class or subclass. Plaintiffs therefore reserve their right to amend this 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.

VI. CLASS ACTION ALLEGATIONS

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

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

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

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

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

146. **Class Definition Exclusions.** Excluded from the Class are: (i) Hismile, its assigns, successors, and legal representatives; (ii) any entities in which Hismile has controlling interests; (iii) federal, state, and/or local governments, including, but not limited to, their departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or subdivisions; and (iv) any judicial officer presiding over this matter and person within the third degree of consanguinity to such judicial officer.

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

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

1 **149. Common Questions Predominate:** There are numerous and substantial questions of
 2 law or fact common to all members of the Class that predominate over any individual issues.

3 Included within the common questions of law or fact are:

- 4 a. Whether Hismile engaged in unlawful, unfair or deceptive business practices by
 5 fraudulently advertising and selling the Products;
- 6 b. Whether Hismile's conduct of advertising the Products as being able to instantly
 7 whiten teeth when they cannot constitutes an unfair method of competition, or unfair
 8 or deceptive act or practice, in violation of Civil Code section 1750, *et seq.*;
- 9 c. Whether Hismile used deceptive representations in connection with the sale of the
 10 Products in violation of Civil Code section 1750, *et seq.*;
- 11 d. Whether Hismile represented that the Products have characteristics or quantities that
 12 they do not have in violation of Civil Code section 1750, *et seq.*;
- 13 e. Whether Hismile advertised the Products with intent not to sell them as advertised in
 14 violation of Civil Code section 1750, *et seq.*;
- 15 f. Whether Hismile's advertising of the Products are untrue or misleading in violation
 16 of Business and Professions Code section 17500, *et seq.*;
- 17 g. Whether Hismile knew or by the exercise of reasonable care should have known its
 18 advertising was and is untrue or misleading in violation of Business and Professions
 19 Code section 17500, *et seq.*;
- 20 h. Whether Hismile's conduct is an unfair business practice within the meaning of
 21 Business and Professions Code section 17200, *et seq.*;
- 22 i. Whether Hismile's conduct is a fraudulent business practice within the meaning of
 23 Business and Professions Code section 17200, *et seq.*;
- 24 j. Whether Hismile's conduct is an unlawful business practice within the meaning of
 25 Business and Professions Code section 17200, *et seq.*;
- 26 k. Whether Hismile's Fraudulent Misrepresentations are deceptive within the meaning
 27 of New York's General Business Law section 349;
- 28 l. Whether Hismile made Fraudulent Misrepresentations to mislead consumers into

believing that the Products can deliver instant teeth whitening effect when they cannot within the meaning of New York's General Business Law section 349;

m. Whether Hismile's Fraudulent Misrepresentations caused the purchases of the Products within the meaning of New York's General Business Law section 349;

n. Whether Hismile's Fraudulent Misrepresentations are misleading in a material respect within the meaning of New York's General Business Law section 350;

o. Whether Hismile chose to include the Fraudulent Misrepresentations so as to induce reasonable consumers within the meaning of New York's General Business Law section 350;

p. Whether Plaintiffs and the Class paid more money for the Products than they actually received;

q. How much more money Plaintiffs and the Class paid for the Products than they actually received;

r. Whether Hismile's conduct constitutes breach of warranty;

s. Whether Plaintiffs and the Class are entitled to injunctive relief; and

t. Whether Hismile was unjustly enriched by their unlawful conduct.

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

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

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1 **152. Superiority and Substantial Benefit:** A class action is superior to other methods for
 2 the fair and efficient adjudication of this controversy, since individual joinder of all members of the
 3 Class is impracticable and no other group method of adjudication of all claims asserted herein is
 4 more efficient and manageable for at least the following reasons:

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

19 **153. Inconsistent Rulings.** Because Plaintiffs seek relief for all members of the Class, the
 20 prosecution of separate actions by individual members would create a risk of inconsistent or varying
 21 adjudications with respect to individual members of the Class, which would establish incompatible
 22 standards of conduct for Hismile.

23 **154. Injunctive/Equitable Relief.** The prerequisites to maintaining a class action for
 24 injunctive or equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as Hismile has acted or
 25 refused to act on grounds generally applicable to the Class, thereby making appropriate final
 26 injunctive or equitable relief with respect to the Class as a whole.

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155. **Manageability.** Plaintiffs and Plaintiffs' counsel are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

COUNT ONE

Violation of California Unfair Competition Law

(Cal. Bus. & Prof. Code §§ 17200, *et seq.*)

(On Behalf of Plaintiff Ledesma, Plaintiff Tanaka, Plaintiff Jones, Plaintiff Deuel, and the California Subclass)

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

157. **California Subclass.** This cause of action is brought pursuant to Business and Professions Code Section 17200, *et seq.*, on behalf of Plaintiff Ledesma, Plaintiff Tanaka, Plaintiff Jones, Plaintiff Deuel, and the California Subclass who purchased the Products within the applicable statute of limitations.

158. **The UCL.** California Business & Professions Code, sections 17200, *et seq.* (the “UCL”) prohibits unfair competition and provides, in pertinent part, that “unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising.”

159. **Misleading Advertising Claims.** Hismile, in its advertising and marketing of the Products, made misleading statements regarding the quality and characteristics of the Products—specifically, the Fraudulent Misrepresentations—despite the fact that the Products do not instantly whiten teeth. The claims appear on the Products’ advertisements, social media posts, and website listings, which are sold at online and at retail stores.

160. **Hismile’s Deliberately Fraudulent Marketing Scheme.** Hismile does not have any reasonable basis for the claims about the Products made in Hismile’s advertising and on Hismile’s advertisements, social media posts, and website listings because the Products do not instantly whiten teeth. Hismile knew and knows that the Products do not instantly whiten teeth, though Hismile

1 intentionally advertised and marketed the Products to deceive reasonable consumers into believing
2 that Products instantly whiten teeth.

3 **161. Misleading Advertising Claims Cause Purchase of Products.** Hismile’s deceptive
4 advertisements, social media posts, and website listings of the Products led to, and continues to lead
5 to, reasonable consumers, including Plaintiffs, believing that the Products can instantly whiten teeth.

6 **162. Injury in Fact.** Plaintiffs and the California Subclass have suffered injury in fact and
7 have lost money or property as a result of and in reliance upon Hismile’s misleading advertising
8 claims—namely, Plaintiffs and the California Subclass lost the purchase price for the Products they
9 bought from the Hismile.

10 **163. Conduct Violates the UCL.** Hismile’s conduct, as alleged herein, constitutes unfair,
11 unlawful, and fraudulent business practices pursuant to the UCL. The UCL prohibits unfair
12 competition and provides, in pertinent part, that “unfair competition shall mean and include
13 unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading
14 advertising.” Cal. Bus. & Prof. Code § 17200. In addition, Hismile’s use of various forms of
15 advertising media to advertise, call attention to, or give publicity to the sale of goods or merchandise
16 that are not as represented constitutes unfair competition, unfair, deceptive, untrue or misleading
17 advertising, and an unlawful business practice within the meaning of Business and Professions Code
18 Sections 17200 and 17531, which advertisements have deceived and are likely to deceive the
19 consuming public, in violation of Business and Professions Code Section 17200.

20 **164. No Reasonably Available Alternatives/Legitimate Business Interests.** Hismile
21 failed to avail itself of reasonably available, lawful alternatives to further its legitimate business
22 interests.

23 **165. Business Practice.** All of the conduct alleged herein occurred and continues to occur
24 in Hismile’s business. Hismile’s wrongful conduct is part of a pattern, practice and/or generalized
25 course of conduct, which will continue on a daily basis until Hismile voluntarily alters its conduct
26 or Hismile is otherwise ordered to do so.

27 **166. Injunction.** Pursuant to Business and Professions Code Sections 17203 and 17535,
28 Plaintiffs and the members of the California Subclass seek an order of this Court enjoining Hismile

1 from continuing to engage, use, or employ its practice of marketing and advertising the Products as
2 capable of instantly whitening teeth. Likewise, Plaintiffs and the members of the California Subclass
3 seek an order requiring Hismile to disclose such misrepresentations, and to preclude Hismile's
4 failure to disclose the existence and significance of said misrepresentations.

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

14 168. **Punitive Damages.** Plaintiffs seek punitive damages pursuant to this cause of action
15 for violation of the UCL on behalf of Plaintiffs and the California Subclass. Hismile's unfair,
16 fraudulent, and unlawful conduct described herein constitutes malicious, oppressive, and/or
17 fraudulent conduct warranting an award of punitive damages as permitted by law. Hismile's
18 misconduct is malicious as Hismile acted with the intent to cause Plaintiffs and consumers to pay
19 for Products that they were not, in fact, receiving. Hismile willfully and knowingly disregarded the
20 rights of Plaintiffs and consumers as Hismile was, at all times, aware of the probable dangerous
21 consequences of its conduct and deliberately failed to avoid misleading consumers, including
22 Plaintiffs. Said misconduct subjected Plaintiffs and consumers to cruel and unjust hardship in
23 knowing disregard of their rights. Hismile's misconduct is fraudulent as Hismile intentionally
24 misrepresented and/or concealed material facts with the intent to deceive Plaintiffs and consumers.
25 The wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized,
26 adopted, approved, and/or ratified by officers, directors, and/or managing agents of Hismile.

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“Unfair” Prong

169. **Unfair Standard.** Under the UCL, a challenged activity is “unfair” when “any injury it causes outweighs any benefits provided to consumers and the injury is one that the consumers themselves could not reasonably avoid.” *Camacho v. Auto Club of Southern California*, 142 Cal. App. 4th 1394, 1403 (2006).

170. **Injury.** Hismile’s action of misrepresenting the Products with the Fraudulent Misrepresentations did not confer any benefit to consumers; rather, doing so causes injuries to consumers, who do not receive a product commensurate with their reasonable expectations, overpay for the Products, and receive Products of lesser standards than what they reasonably expected to receive. Consumers cannot avoid any of the injuries caused by Hismile’s deceptive advertising of the Products. Accordingly, the injuries caused by Hismile’s deceptive advertising outweigh any benefits.

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

172. **No Utility.** Here, Hismile’s conduct of advertising the Products with the Fraudulent Misrepresentations when the Products do not instantly whiten teeth has no utility and financially harms purchasers. Thus, the utility of Hismile’s conduct is vastly outweighed by the gravity of harm.

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

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

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175. **Reasonably Available Alternatives.** There existed reasonably available alternatives to further Hismile's legitimate business interests, other than the conduct described herein. Hismile could have refrained from labeling and advertising the Products with the Fraudulent Misrepresentations.

176. **Hismile's Wrongful Conduct.** All of the conduct alleged herein occurs and continues to occur in Hismile's business. Hismile's wrongful conduct is part of a pattern or generalized course of conduct repeated on thousands of occasions daily.

177. **Injunction.** Pursuant to Business and Professions Code Sections 17203, Plaintiffs and the California Subclass seek an order of this Court enjoining Hismile from continuing to engage, use, or employ its practices of labeling and advertising the Products with the Fraudulent Misrepresentations.

178. **Causation/Damages.** Plaintiffs and the California Subclass have suffered injury in fact and have lost money as a result of Hismile’s unfair conduct. Plaintiffs and the California Subclass paid an unwarranted premium for the Products. Specifically, Plaintiffs and the California Subclass paid for Products that do not instantly whiten teeth, which runs contrary to the Fraudulent Misrepresentations. Plaintiffs and the California Subclass would not have purchased the Products, or would have paid substantially less for the Products, if they had known that the Products’ advertising and labeling were deceptive. Accordingly, Plaintiffs seek damages, restitution and/or disgorgement of ill-gotten gains pursuant to the UCL.

“Fraudulent” Prong

179. **Fraud Standard.** The UCL considers conduct fraudulent (and prohibits said conduct) if it is likely to deceive members of the public. *Bank of the West v. Superior Court*, 2 Cal. 4th 1254, 1267 (1992).

180. **The Fraudulent Misrepresentations.** Hismile used the Fraudulent Misrepresentations with the intent to sell the Products to consumers, including Plaintiffs and the California Subclass. The Fraudulent Misrepresentations are false and misleading, and Hismile knew or should have known of their falsity. The Fraudulent Misrepresentations are likely to deceive

1 consumers into purchasing the Products because they are material to the average, ordinary, and
2 reasonable consumer.

3 181. **Fraudulent Business Practice.** As alleged herein, the misrepresentations by Hismile
4 constitute a fraudulent business practice in violation of California Business & Professions Code
5 Section 17200.

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

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

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

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

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

24 ***"Unlawful" Prong***

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

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

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

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

16 191. **Reasonably Available Alternatives.** Hismile had reasonably available alternatives
17 to further its legitimate business interests, other than the conduct described herein. Hismile could
18 have refrained from labeling and advertising the Products with the Fraudulent Misrepresentations.

19 192. **Business Practice.** All of the conduct alleged herein occurs and continues to occur in
20 Hismile’s business. Hismile’s wrongful conduct is part of a pattern or generalized course of conduct.

21 193. **Injunction.** Pursuant to Business and Professions Code Section 17203, Plaintiffs and
22 the California Subclass seek an order of this Court enjoining Hismile from continuing to engage,
23 use, or employ its practice of deceptive advertising of the Products.

24 194. **Causation/Damages.** Plaintiffs and the California Subclass have suffered injury in
25 fact and have lost money as a result of Hismile’s unlawful conduct. Plaintiffs and the California
26 Subclass paid an unwarranted premium for the Products. Plaintiffs and the California Subclass
27 would not have purchased the Products if they had known that Hismile purposely deceived
28

consumers into believing that the Products instantly whiten teeth. Accordingly, Plaintiffs seek damages, restitution and/or disgorgement of ill-gotten gains pursuant to the UCL.

COUNT TWO

Violation of California False Advertising Law

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

(On Behalf of Plaintiff Ledesma, Plaintiff Tanaka, Plaintiff Jones, Plaintiff Deuel, and the California Subclass)

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

196. **California Subclass.** Plaintiff Ledesma, Plaintiff Tanaka, Plaintiff Jones, and Plaintiff Deuel bring this claim individually and on behalf of the California Subclass who purchased the Products within the applicable statute of limitations.

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

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

199. **Knowledge.** In making and disseminating the representations alleged herein, Hismile knew or should have known that the representations were untrue or misleading, and acted in violation of § 17500.

200. **Intent to sell.** Hismile’s Fraudulent Misrepresentations were specifically designed to induce reasonable consumers, like Plaintiffs and the California Subclass, to purchase the Products.

201. **Causation/Damages.** As a direct and proximate result of Hismile’s misconduct in violation of the FAL, Plaintiffs and members of the California Subclass were harmed in the amount

1 of the purchase price they paid for the Products. Further, Plaintiffs and members of the Class have
2 suffered and continue to suffer economic losses and other damages including, but not limited to, the
3 amounts paid for the Products, and any interest that would have accrued on those monies, in an
4 amount to be proven at trial. Accordingly, Plaintiffs seek a monetary award for violation of the FAL
5 in damages, restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiffs and the
6 California Subclass for said monies, as well as injunctive relief to enjoin Hismile's misconduct to
7 prevent ongoing and future harm that will result.

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

22 **COUNT THREE**

23 **Violation of California Consumers Legal Remedies Act**

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

25 ***(On Behalf of Plaintiff Ledesma, Plaintiff Tanaka, Plaintiff Jones, Plaintiff Deuel, and the***
26 ***California Subclass)***

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

1 204. **California Subclass.** Plaintiff Ledesma, Plaintiff Tanaka, Plaintiff Jones, and
2 Plaintiff Deuel bring this claim individually and on behalf of the California Subclass who purchased
3 the Products within the applicable statute of limitations.

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

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

9 207. **Hismile.** Hismile is a “person,” as defined by the CLRA in California Civil Code
10 §1761(c).

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

13 209. **Transactions.** The purchase of the Products by Plaintiffs and members of the
14 California Subclass are “transactions” as defined by the CLRA under California Civil Code section
15 1761(e).

16 210. **Violations of the CLRA.** Hismile violated the following sections of the CLRA by
17 selling the Products to Plaintiffs and the California Subclass through the misleading, deceptive, and
18 Fraudulent Misrepresentations and actions:

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

25 211. **Knowledge.** Hismile’s uniform and material representations regarding the Products
26 was likely to deceive, and Hismile knew or should have known that its representations were
27 misleading.

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1 212. **Malicious.** Hismile’s conduct is malicious, fraudulent, and wanton in that Hismile
2 intentionally misled and withheld material information from consumers, including Plaintiffs, to
3 increase the sale of the Products.

4 213. **Plaintiffs Could Not Have Avoided Injury.** Plaintiffs and members of the California
5 Subclass could not have reasonably avoided such injury. Plaintiffs and members of the California
6 Subclass were unaware of the existence of the facts that Hismile suppressed and failed to disclose,
7 and Plaintiffs and members of the California Subclass would not have purchased the Products and/or
8 would have purchased it on different terms had they known the truth.

9 214. **Causation/Reliance/Materiality.** Plaintiffs and the California Subclass suffered
10 harm as a result of Hismile’s violations of the CLRA because they relied on the Fraudulent
11 Misrepresentations in deciding to purchase the Products. The Fraudulent Misrepresentations were
12 substantial factors. The Fraudulent Misrepresentations were material because a reasonable
13 consumer would consider them important in deciding whether to purchase the Products.

14 215. **Section 1782 – Prelitigation Demand/Notice.** Pursuant to California Civil Code
15 section 1782, more than thirty days prior to the filing of this complaint, on or about February 16,
16 2024, Plaintiffs’ counsel, acting on behalf of Plaintiffs and members of the Class, deposited with
17 the U.S. Postal Service a notice for mailing via certified mail, return receipt requested, addressed to
18 Hismile’s registered agent, FLP Services, LLC at 1201 N. Orange St., Suite 7419, Wilmington, DE
19 19801, which was delivered on February 26, 2024. Said notice described Hismile’s particular
20 violations of the California Consumers Legal Remedies Act, as set forth above, and demanded that
21 Hismile correct and otherwise rectify those violations with respect to Plaintiffs and all members of
22 the Class. The form, content, and delivery of the notice satisfy subsections (1) and (2) of section
23 1782(a). The notice of violations and demand for remedial action, as of the filing of this complaint,
24 did not result in adequate correction, repair, replacement, and/or other remedy by Hismile, including
25 all remedial action set forth in the notice letter and as set forth under section 1782(c).

26 216. **Causation/Damages.** As a direct and proximate result of Hismile’s misconduct in
27 violation of the CLRA, Plaintiffs and members of the California Subclass were harmed in the
28 amount of the purchase price they paid for the Products. Further, Plaintiffs and members of the Class

1 have suffered and continue to suffer economic losses and other damages including, but not limited
2 to, the amounts paid for the Products, and any interest that would have accrued on those monies, in
3 an amount to be proven at trial. Accordingly, Plaintiffs seek a monetary award for violation of this
4 Act in the form of damages, restitution, disgorgement of ill-gotten gains to compensate Plaintiffs
5 and the California Subclass for said monies.

6 217. **Injunction.** Given that Hismile's conduct violated California Civil Code section
7 1780, Plaintiffs and members of the California Subclass are entitled to seek, and do hereby seek,
8 injunctive relief to put an end to Hismile's violations of the CLRA. Plaintiffs have no adequate
9 remedy at law. Without equitable relief, Hismile's unfair and deceptive practices will continue to
10 harm Plaintiffs and the California Subclass.

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

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COUNT FOUR

Violation of New York’s Gen. Bus. Law § 349

(On Behalf of Plaintiff Elkind, Plaintiff Ioffe, and the New York Subclass)

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

220. **The New York Subclass.** Plaintiff Elkind and Plaintiff Ioffe bring this claim individually and on behalf of the New York Subclass who purchased the Products.

221. **Deceptive Trade Practices Act.** New York Gen. Bus. Law, section 349, *et seq.* prohibits the “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state.”

222. **Defendants’ Deceptive Acts.** Defendants, in their advertising and packaging of the Products, made misleading statements regarding the quality and characteristics of the Products—specifically, the Fraudulent Misrepresentations—to mislead consumers into believing that the Products can deliver instant teeth whitening effect, when they, in fact, cannot.

223. **Defendants’ Deceptive Actions Cause Purchase of Products.** Defendants’ labeling and advertising of the Products led to, and continues to lead to, reasonable consumers, including Plaintiffs, believing that the Products can deliver instant teeth whitening effect, when they, in fact, cannot.

224. **Deceptive Challenged Representations.** The Fraudulent Misrepresentations are likely to deceive consumers into purchasing the Products because they are material to the average, ordinary, and reasonable consumer. Defendants knew consumers would purchase the Products and/or pay more for them under the false belief that the Products can deliver instant teeth whitening effect. As a result of their deceptive acts and practices, Defendants have sold thousands or tens of thousands (or more) of the Products to unsuspecting consumers across New York. If Defendants had advertised their Products truthfully and in a non-misleading fashion, Plaintiffs and the New York Subclass Members, would not have purchased the Products or would not have paid as much.

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1 225. **Reasonable and Detrimental Reliance.** Plaintiffs and the New York Subclass
2 reasonably and detrimentally relied on the material and false Fraudulent Misrepresentations to their
3 detriment in that they purchased the Products.

4 226. **Injury in Fact.** Plaintiffs and the New York Subclass have suffered injury in fact and
5 have lost money or property as a result of and in reliance upon Defendants' deceptive advertising—
6 namely Plaintiffs and the New York Subclass lost the entire or a portion of the purchase price for
7 the Products they bought from the Defendants.

8 227. **Standing.** Plaintiffs have standing to pursue this claim because they have suffered an
9 injury-in-fact and has lost money or property as a result of Defendants' deceptive acts and practices.
10 Specifically, Plaintiffs purchased the Products for their own personal use. In doing so, Plaintiffs
11 relied upon Defendants' false, misleading, and deceptive representations that the Products can
12 deliver instant teeth whitening effect, when they could not, and cannot. Plaintiffs spent money in
13 the transaction that he otherwise would not have spent had they known the truth about the Fraudulent
14 Misrepresentations.

15 228. **Causation/Damages.** As a direct and proximate result of Defendants' false,
16 misleading, and deceptive representations, Plaintiffs and the New York Subclass were harmed in
17 that they: (1) paid money for the Products that were not what Defendants represented; (2) were
18 deprived of the benefit of the bargain because the Products they purchased were different than what
19 Defendants advertised; and (3) were deprived of the benefit of the bargain because the Products they
20 purchased had less value than as represented by Defendants that the Products can deliver optimal
21 instant teeth whitening effect. Accordingly, Plaintiffs seek to enjoin Defendants' unlawful acts and
22 practices and to recover their actual damages or fifty (50) dollars per violation, whichever is greater,
23 three times actual damages, and reasonable attorneys' fees.

24 229. **Punitive Damages.** Defendants' unfair, fraudulent, and unlawful conduct described
25 herein constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of punitive
26 damages as permitted by law. Defendants' misconduct is malicious as Defendants acted with the
27 intent to cause Plaintiffs and consumers to pay for Products that they were not, in fact, receiving.
28 Defendants willfully and knowingly disregarded the rights of Plaintiffs and consumers as

Defendants were aware of the falsity and deceptive effect of its Fraudulent Misrepresentations and deliberately failed to avoid misleading consumers, including Plaintiffs. Defendants' misconduct is oppressive as, at all relevant times, said conduct was so vile, base, and/or contemptible that reasonable people would look down upon it and/or otherwise would despise such corporate misconduct. Said misconduct subjected Plaintiffs and consumers to cruel and unjust hardship in knowing disregard of their rights. Defendants' misconduct is fraudulent as Defendants, at all relevant times, intentionally misrepresented material facts with the intent to deceive Plaintiffs and consumers. The wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized, adopted, approved, and/or ratified by officers, directors, and/or managing agents of Defendants.

COUNT FIVE

Violation of New York's Gen. Bus. Law § 350, *et seq.*

(On Behalf of Plaintiff Elkind, Plaintiff Ioffe, and the New York Subclass)

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

231. **The New York Subclass.** Plaintiff Elkind and Plaintiff Ioffe bring this claim individually and on behalf of the New York Subclass who purchased the Products.

232. **False Advertising Standard.** The New York False Advertising Law, codified at Gen. Bus. Law section 350, *et seq.*, prohibits advertising, including labeling, that "is misleading in a material respect."

233. **False & Material Misrepresentations Disseminated to Public.** Defendants violated section 350 when it advertised and marketed the Products through the unfair, deceptive, untrue, and misleading Fraudulent Misrepresentations, disseminated to the public through the Products' labeling, packaging, and advertising. These representations were false because the Products do not conform to them. The representations were material because they are likely to mislead a reasonable consumer into purchasing the Products.

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1 234. **Knowledge.** In making and disseminating the Fraudulent Misrepresentations alleged
2 herein, Defendants knew or should have known that the representations were untrue or misleading.

3 235. **Intent to Sell.** Defendants specifically chose to include the Fraudulent
4 Misrepresentations so as to induce reasonable consumers, like Plaintiffs and the New York Subclass,
5 to purchase the Products.

6 236. **Standing.** Plaintiffs have standing to pursue this claim because Plaintiffs have
7 suffered an injury-in-fact and have lost money or property as a result of Defendants' deceptive acts
8 and practices. Specifically, Plaintiffs purchased the Products for their own personal use. In doing
9 so, Plaintiffs relied upon Defendants' false, misleading, and deceptive representations that the
10 Products can deliver instant teeth whitening effect, when they could not, and cannot. Plaintiffs spent
11 money in the transaction that he otherwise would not have spent had he known the truth about the
12 Fraudulent Misrepresentations.

13 237. **Causation/Damages.** As a direct and proximate result of Defendants' misconduct,
14 Plaintiffs and the New York Subclass were harmed in that they: (1) paid money for the Products
15 that were not what Defendants represented; (2) were deprived of the benefit of the bargain because
16 the Products they purchased were different than what Defendants advertised; and (3) were deprived
17 of the benefit of the bargain because the Products they purchased had less value than as represented
18 by Defendant that the Products can deliver instant teeth whitening. Accordingly, on behalf of
19 Plaintiffs and the Members of the New York Subclass, Plaintiffs seeks to enjoin Defendants'
20 unlawful acts and practices and to recover their actual damages or five hundred (500) dollars per
21 violation, whichever is greater, three times actual damages, and reasonable attorneys' fees.

22 238. **Punitive Damages.** Defendants' unfair, fraudulent, and unlawful conduct described
23 herein constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of punitive
24 damages as permitted by law. Defendants' misconduct is malicious as Defendants acted with the
25 intent to cause Plaintiffs and consumers to pay for Products that they were not, in fact, receiving.
26 Defendants willfully and knowingly disregarded the rights of Plaintiffs and consumers as
27 Defendants were aware of the falsity and deceptive effect of its representations and deliberately
28 failed to avoid misleading consumers, including Plaintiffs. Defendants' misconduct is oppressive

as, at all relevant times, said conduct was so vile, base, and/or contemptible that reasonable people would look down upon it and/or otherwise would despise such corporate misconduct. Said misconduct subjected Plaintiffs and consumers to cruel and unjust hardship in knowing disregard of their rights. Defendants' misconduct is fraudulent as Defendants, at all relevant times, intentionally misrepresented material facts with the intent to deceive Plaintiffs and consumers. The wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized, adopted, approved, and/or ratified by officers, directors, and/or managing agents of Defendants.

COUNT SIX

Breach of Warranty

(On behalf of Plaintiffs and the Nationwide Class, or, in the alternative, the Subclasses)

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

240. **Nationwide Class, California Subclass, and New York Subclass.** Plaintiffs bring this claim on behalf of the Nationwide Class under California law, or, in the alternative, on behalf of the respective state Plaintiffs under their respective state law, which are substantially similar on breach of warranty.

241. **Express Warranty.** Under California law, to state a claim for breach of express warranty, a plaintiff must show: (1) the seller made an affirmation of fact or promise or provided a description of its goods; (2) the promise or description formed part of the basis of the bargain; (3) the express warranty was breached; and (4) the breach caused injury to the plaintiff. Under New York law, to state a claim for breach of an express warranty, a plaintiff must show: (1) the existence of a material statement amounting to a warranty; (2) the buyer's reliance on this warranty as a basis for the contract with the immediate seller; (3) breach of the warranty; and (4) injury to the buyer caused by the breach.

242. Hismile's extensive advertising and marketing campaign satisfies these requirements under both states' laws. Through its advertisements, website content, influencer promotions, and product packaging, Hismile made specific, affirmative representations that its Products would deliver "instant teeth whitening" results. These representations constitute affirmations of fact and

1 descriptions of the Products' performance, amounting to express warranties under both California
2 and New York law.

3 243. Plaintiffs and members of the Classes were repeatedly exposed to and relied upon
4 these representations when deciding to purchase the Products, forming part of the basis of their
5 bargain with Hismile. The Products, however, did not perform as expressly promised and failed to
6 produce any instant whitening effect as expressly advertised. Hismile's breach of these express
7 warranties directly caused Plaintiffs and Class members to suffer economic injury, having paid a
8 price premium for Products that did not conform to the warranted performance. Accordingly,
9 Hismile's marketing and advertising constitute express warranties that were breached, satisfying the
10 elements of an express warranty claim under both California and New York law.

11 244. **Implied Warranty of Merchantability.** Under California law, the elements of a
12 breach of implied warranty of merchantability claim include: (1) that the plaintiff bought the product
13 from defendant; (2) that, at the time of purchase, defendant was in the business of selling these
14 goods; (3) that the product was not fit for the ordinary purpose for which such goods are used; (4)
15 that plaintiff was harmed; and (5) that the failure of the product to have the expected quality was a
16 substantial factor in causing plaintiffs harm. Under New York law, the implied warranty of
17 merchantability is a guarantee by the seller that its goods are fit for the intended purpose for which
18 they are used and that they will pass in the trade without objection; in addition, privity between a
19 plaintiff and a defendant is required.

20 245. Hismile was in the regular business of designing, marketing, and selling teeth-
21 whitening products, including the Products at issue, directly to consumers. Plaintiffs purchased these
22 Products from Hismile or its authorized retailers, thereby establishing privity under New York law.
23 Hismile's marketing, labeling, and promotional materials uniformly represented that the Products
24 were effective teeth-whitening products capable of delivering visible, "instant" whitening results.
25 These representations created a reasonable consumer expectation that the Products would be fit for
26 the ordinary purpose of whitening teeth instantly and would perform as advertised.

27 246. In reality, the Products failed entirely to provide any instant whitening benefit Hismile
28 promised. Accordingly, the Products were not of merchantable quality because they did not function

1 as instant teeth-whitening products that met the reasonable expectations of consumers or conformed
2 to the representations Hismile made about their efficacy. As a result, Plaintiffs and Class members
3 suffered economic injury, paying for Products that were unfit for their intended purpose and failed
4 to deliver the promised performance. Hismile's conduct therefore constitutes a breach of the implied
5 warranty of merchantability under both California and New York law.

6 **247. Breach of Warranty.** Contrary to Hismile's warranties, the Products do not conform
7 to the Fraudulent Misrepresentations and, therefore, Hismile breached its warranties about the
8 Products and their qualities.

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

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

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

COUNT SEVEN

Unjust Enrichment/Restitution

(On behalf of Plaintiffs and the Nationwide Class, or, in the alternative, the Subclasses)

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

251. **Nationwide Class & California Subclass & New York Subclass.** Plaintiffs bring this claim on behalf of the Nationwide Class under California law, or, in the alternative, on behalf of the respective state Plaintiffs under their respective state law, which are substantially similar on unjust enrichment. California law requires: (1) receipt of a benefit; (2) unjust or wrongful retention of the benefit; and (3) at the expense of another. New York law requires: (1) the other party was enriched, (2) at that party's expense, and (3) that it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered.

252. **Plaintiff/Class Conferred a Benefit.** By purchasing the Products, Plaintiffs and members of the Class conferred a benefit on Hismile in the form of the purchase price of the Products.

253. **Hismile's Knowledge of Conferred Benefit.** Hismile had knowledge of such benefit and Hismile appreciated the benefit because, were consumers not to purchase the Products, Hismile would not generate revenue from the sales of the Products.

254. **Hismile's Unjust Receipt Through Deception.** Hismile's knowing acceptance and retention of the benefit is inequitable and unjust because the benefit was obtained by Hismile's fraudulent, misleading, and deceptive representations.

255. **Causation/Damages.** As a direct and proximate result of Hismile's unjust enrichment, Plaintiffs and members of the Class were harmed in the amount of the purchase price they paid for the Products. Further, Plaintiffs and members of the Class have suffered and continue

1 to suffer economic losses and other damages including, but not limited to, the amounts paid for the
2 Products, and any interest that would have accrued on those monies, in an amount to be proven at
3 trial. Accordingly, Plaintiffs seek a monetary award for unjust enrichment in damages, restitution,
4 and/or disgorgement of ill-gotten gains to compensate Plaintiffs and the Class for said monies, as
5 well as injunctive relief to enjoin Hismile's misconduct to prevent ongoing and future harm that
6 will result.

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

23 **PRAYER FOR RELIEF**

24 **257.** WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated,
25 pray for judgment against Hismile as follows:

- 26 a. **Certification:** For an order certifying this action as a class action, appointing
27 Plaintiffs as the Class Representatives, and appointing Plaintiffs' Counsel as Class
28 Counsel;

- b. **Declaratory Relief:** For an order declaring that Hismile's conduct violates the statutes and laws referenced herein;
- c. **Injunction:** For an order requiring Hismile to immediately cease and desist from selling the unlawful Products in violation of law; enjoining Hismile from continuing to market, advertise, distribute, and sell the Products in the unlawful manner described herein; and requiring all further and just corrective action, consistent with permissible law and pursuant to only those causes of action so permitted;
- d. **Damages/Restitution/Disgorgement:** For an order awarding monetary 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: October 23, 2025

CLARKSON LAW FIRM, P.C.

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

Attorneys for Plaintiffs