

**VIA FEDERAL EXPRESS**

June 27, 2019

Andrew Smith, Esq.  
Director, Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Ave. NW  
Washington, DC 20520

Re: SmileDirectClub's Deceptive Practices in Marketing and Selling to Consumers its Orthodontic Plastic Bracket Device Product and Related Services

Dear Mr. Smith:

I write on behalf of the American Dental Association (ADA) to ask the Federal Trade Commission (FTC) to investigate false and misleading claims made by SmileDirectClub, LLC (SDC) to entice consumers to purchase its products and services. The ADA respectfully submits these false and misleading claims constitute unfair and deceptive practices within the meaning of §5 of the Federal Trade Commission Act (FTCA), 15 U.S.C. §45.

SDC currently manufactures, markets, sells, and distributes in interstate commerce plastic tooth aligners. It also relabels, markets, sells, and distributes in interstate commerce plastic aligners manufactured by others. Despite its assertions to the contrary, SDC sells its products directly to consumers without the adequate safeguards that the law requires, but represents otherwise.

SDC'S deceptive practices include:

1. Informing customers they have recourse against SDC via arbitration when, in the same document, SDC hides a "small print" provision obligating the customer to waive any and all rights the customer "or any third party" may have against SDC;
2. Encouraging consumers to become customers by telling them individually and directly that SDC aligners will correct their overbite, underbite, and crossbite conditions or their "extreme" malocclusion<sup>1</sup>, and then, when customers complain, SDC invokes other SDC

---

<sup>1</sup> Recently, SDC has modified its description in this regard in a deceptive and misleading way, see, *infra*, at pp. 5, 6.

documents that state its aligners cannot treat bite conditions at all and can only treat mild to moderate teeth misalignment, not “extreme” misalignment; and,

3. Claiming that SDC customers receive the same level of dental/orthodontic care as actual dental patients when actually SDC and its “affiliated dentists” provide virtually no care and, contrary to its prominent and repeated claims, SDC does not use teledentistry.

### **I. This Complaint Addresses Issues Different from those Raised in the ADA’s Pending FDA Citizen Petition**

On May 1, 2019 the FDA posted the ADA’s citizen petition (Docket ID: FDA-2019-P-2038), which focuses on SDC’s failure to comply with the FDA’s Class II Device “prescription only” requirement applicable to plastic teeth aligners and on the clinical dangers that conduct poses to public health and safety. Although the present complaint recites some of the same facts as the citizen petition, and even uses some of the same language and exhibits, the ADA is fully aware of the respective agencies’ differing areas of concentration and jurisdiction.

The ADA is not seeking duplicative review here, but in compiling its FDA petition the ADA identified a number of substantive deceptive acts that SDC depends on to generate sales. SDC’s disregard for consumer health and safety, on the one hand, and its persistent deceptive acts to drive high volume sales, on the other, together form the foundation of the company’s business model. SDC’s business approach depends on ignoring important treatment standards while attempting to persuade customers either that it does observe those standards or that failing to do so is unimportant.

### **II. Who is SmileDirectClub, LLC?**

Although SDC has variously described itself as a mere “re-packager,” or “contract manufacturer,” of Orthodontic Plastic Brackets (in FDA filings), and in court papers as “a dental support organization [DSO] that provides administrative non-clinical support to dentists and orthodontists...”<sup>2</sup>, in reality SDC is very aggressively involved at every level in the manufacture,

---

<sup>2</sup> *Scott D. Galkin, D.M.D. and New Jersey Dental Association v. SmileDirectClub, LLC, Danny Leeds, D.D.S., Robert M. DeRosso, D.M.D. and Isaac V. Perle, D.M.D.*, MID-C-19-19, Brief in Support of Defendant’s Motion to Dismiss, p. 3.

product sale, and service business of straightening teeth using FDA Class II, “by prescription only” plastic teeth aligners. To any extent SDC may have lowered costs to customers it has done so by selling “do-it-yourself dentistry” over-the-counter, while assuring customers that their “cases” are overseen by the dentist “assigned to your [the customer’s] smile” through teledentistry when that is not the case.

### **III. SmileDirectClub’s Deceptive Practices**

The ADA respectfully submits that each of the following examples of SDC’s deceptive acts by itself violates §5 of the Federal Trade Commission Act (FTCA), 15 U.S.C. §45. Taken together, they comprise a pattern of deceptive conduct aimed at misleading consumers, often causing

#### **A. SDC’s Hidden Waiver of Rights Clause is Anti-Consumer and Deceptive**

SDC’s business model does not involve establishing or facilitating a doctor-patient relationship between its “affiliated” dentists and its customers (see, section C, *infra*). Rather, a customer’s legal and commercial relationship is exclusively with SDC and is detailed in SDC’s long Consent and History document. [Exhibit 1, “Smile Direct Club Consent and History”, revised June, 2019]<sup>3</sup>

One of the large, bolded subheadings in the document is “**AGREEMENT TO ARBITRATE**”. [Exhibit 1, p.2] It provides in part that “any dispute regarding the products and services offered through Smile Direct Club and/or by my [sic] affiliated dental professionals, including but not limited to medical malpractice disputes, will be resolved through final and binding arbitration.” Of course, SDC is the entity that has so-called “affiliated dental professionals”, not the customer, who really has no dentist at all with respect to SCD products and services. The described arbitration process places various burdens on the customer for SDC’s convenience, and requires the customer to waive any rights to join class actions against SDC..

---

<sup>3</sup> <https://smiledirectclub.com/consent>

But, really, the details of the arbitration provision are unimportant. This is because in the second to last paragraph of the Consent and History document, in what otherwise appears to be a photo/publicity release, SDC has inserted the following language, which we have highlighted:

I hereby grant SmileDirectClub the right to use photographs taken of me and my first name for educational and/or marketing purposes. I acknowledge that because my participation is voluntary I will receive no financial compensation. I also agree that participation confers on me no right of ownership. I release SmileDirectClub from liability for any claims by me or any third party in connection with my participation or use of the invisible aligner therapy treatment. I also understand that my treatment is not conditioned on my agreement to use my photographs or name, and that I can revoke this grant at any time by sending a written revocation to SmileDirectClub, who will then inform my treating dentists.

[Exhibit1, p.4] Even though this buried, blanket waiver is probably unenforceable almost everywhere, and is particularly objectionable, illegal, and unethical in a healthcare setting, it undoubtedly has a chilling effect when SDC reveals it to lay consumers who are considering taking action against SDC.

What is the purpose, other than a deceptive one, of bill-boarding a formal sounding arbitration clause when in reality SDC binds customers with a highly likely-to-be-missed surrender of the right to pursue any remedy against it for any wrong it commits or injury it causes?

**B. SDC Induces Customers by Stating it Can Correct Certain Orthodontic Problems but Later Points to Language Saying Otherwise When Customers Complain about Poor Outcomes**

SDC is a relentless marketer. That in itself might not be legally objectionable, but SDC makes claims to potential customers that it later disowns once they become customers. For example, a consumer interested in orthodontic treatment can visit SDC's website and fill out a questionnaire that the company says will determine whether she or he is a candidate for SDC's "aligner therapy treatment." For many potential customers, this is probably the first interaction they have with the company.

The form [Exhibit 2, “Free 30-second Smile Assessment”]<sup>4</sup>, asks the consumer to, “[c]hoose the option that best describes your **biggest concern** with your smile.” [Emphasis original] The options are: “1) teeth crowding; 2) Fix bite problem (overbite, underbite or crossbite); 3) teeth spacing.”

The form then asks the potential customer to compare his or her teeth to six photographs. Three show various degrees of teeth crowding and three show various degrees of gaps between the teeth. In June, 2019, after the ADA filed its FDA citizen petition, the photos in each category are labeled, respectively: “mild, (or no crowding)<sup>5</sup>; moderate, and *moderate+*”. [Emphasis supplied]

Once the consumer has completed the form and pressed the “Get Your Results Button” the screen changes, telling the consumer that, “[w]e’re Grading Your Tooth Test.” [Exhibit 2, p. 3] Even if the potential customer answers that he or she wants to fix a bite problem (i.e., underbite, overbite, crossbite) and/or has the most severe degree shown for both crowding and gaps the inevitable result of the “Tooth Test” is that, “[y]ou’re a great candidate.” [Exhibit 2, p. 4] An almost immediate follow up email states: “Congrats, you’re a great candidate”, and declares:

We have helped thousands of people with **bite issues**, just like yours... [Emphasis original]

[Exhibit 3, Email Received after Submitting Exhibit 2]

“Moderate+”, SDC’s new description for the most severe teeth misalignment it shows in the “Smile Assessment” form is not a recognized term. SDC only adopted it very recently. Before June 1, 2019 those same photos, now labeled “**moderate+**”, were labeled “**extreme**”. [Exhibit 4, ¶8, and attachment A, p.2]<sup>6</sup>

---

<sup>4</sup> [https://smiledirectclub.com/smile\\_assessment](https://smiledirectclub.com/smile_assessment)

<sup>5</sup> Or, in the case of spacing, “mild (or no extra spacing)”.

<sup>6</sup> Exhibit 4 here comprises ADA’s Exhibit 12 to its FDA citizen petition, Docket ID FDA-2019-2038.

This change to the newly minted “moderate+” designation may deceive consumers in two ways. First, superficially it may make the “Smile Assessment” seem less obviously inconsistent with SDC’s other statements that its products can only treat mild to moderate malocclusion while still leading consumers to believe otherwise based on what the photos show. [Exhibit 5, Examples of SDC Statements that “Clear Aligners” are Intended to Treat Mild to Moderate Misalignment]<sup>7</sup> Second, for those consumers who are aware of SDC’s representations that it can only correct mild to moderate misalignment and whose teeth most resemble the photos formerly labeled “extreme”, the term “moderate+” may encourage them to submit the “Smile Assessment” when they might have previously refrained from doing so because they believed they would not be “a great candidate.”

Customers who trust SDC’s claim that it can correct their bite problems or their “extreme” (now fashioned “moderate+”) malocclusion may then go ahead with SDC’s “alignment treatment therapy”. If they end up suffering disappointing, painful, or injurious results, SDC has a ready answer. [Exhibit 6, Example of Customer Complaint Concerning SDC Failure to Correct Bite, and SDC’s Responses]

What is SDC’s answer? In response to the customer complaint of Exhibit 6, SDC first states that the customer has not met SmileDirectClub’s refund protocol. When the customer rejects this response, SDC replies:

SmileDirectClub Consent form states, ‘I further understand that my SmileDirectClub invisible aligner treatment **will only address the alignment of my teeth and will not correct my existing bite condition. In order to correct the current condition of my bite, I will need to seek more comprehensive treatment via a local professional...**’ [Emphasis supplied]

[Exhibit 6, pp. 1-2] In this way, SDC disclaims any responsibility for the customer’s situation.

---

<sup>7</sup> Exhibit 5, p.1, excerpt from 3/3/15 SDC *Grin Life Blog*, p.2, excerpt from SDC Sponsored Content, in 6/15/18 *Edge Media Network*, “Interview” with SDC Lead Dentist, Jeffrey Sulitzer, DMD.

It is true that the language declaring SDC's inability to correct bite problems is included in the Consent and History document [see, Exhibit 1, p.4, 3<sup>rd</sup> paragraph from the bottom]. It is also true that the language communicates the complete opposite of the repeated message so prominently emphasized by the "Free 30-Second Smile Assessment" and follow-up email [see, Exhibits 2, 3, 4]

What purpose, other than a deceptive one, is there to make a bold, unambiguous promise to potential customers that SDC can correct their underbites, overbites, and crossbites, and then cite hard-to-find language in the Consent and History document to emphatically repudiate that promise?

What purpose, other than a deceptive one, is there to tell potential customers in the Smile Assessment and the emails that follow it that SDC can correct their "extreme" (now "moderate+") misalignment, but then represent in other places that it can only correct "mild to moderate" misalignment?

**C. SDC Falsely Claims that it Provides its Customers, Through Teledentistry, the Same Level of Care that Dental Patients Receive from Their Dentists**

SDC tells customers that:

An individual who is requesting treatment by using SmileDirectClub's aligners is receiving the same level of care from a treating dentist or orthodontist as an individual visiting a traditional orthodontist or dentist for treatment. The Teledentistry platform allows for more convenient access and flexibility for individuals who may not have access to local care, says [Jeffrey Sulitzer, DMD, Lead Dentist at SmileDirectClub](#).

[Exhibit 7, pages 1-3, from the 4/3/18 *Grin Life Blog*, p. 3] These statements are materially deceptive. For one thing, SDC's business model depends financially on providing a much lower level of care to its customers so it can sell its products faster and for less. Also, SDC does not have a teledentistry platform in use. Customers know that orthodontic treatment requires professional expertise, and these deceptive claims may lull them into a false sense of security in choosing SDC's "aligner therapy".

In keeping with its statement in Section I, the ADA is not providing an exhaustive review here of the applicable medical Standard of Care. We are pointing out major misrepresentations SDC make to consumers on the subject of the level of care SDC provides because the ADA believes they constitute another anti-consumer deceptive practice on SDC's part. For background purposes, we are including herewith as Exhibit 8, the April 25, 2019 Affidavit of Dr. Randall Markarian, DMD, MS.<sup>8</sup> The affidavit provides information about the level of care dentists provide to their patients in delivering orthodontic treatment.

### **1. SDC's "Level of Care" Claim is Deceptive**

Contradicting Dr. Sulitzer's assurances quoted above, the SDC Consent and History document *requires* customers to agree to a lower level of care. Specifically, a customer must acknowledge that: "[b]ecause I am choosing not to engage the in-patient services of a local dental professional, I understand and accept that my teeth will be straighter than they currently are but may still be compromised." [Exhibit 1, p. 4, 3d paragraph from the bottom] This is an unambiguous declaration and explicit admission by SDC that its customers *do not* receive the same level of care as do dental patients.

---

<sup>8</sup> Exhibit 8 here is Exhibit 5 to the ADA's pending citizen petition, Docket ID FDA-2019-2038.

SDC customer service representatives<sup>9</sup> quote this language, or some version of it, when addressing customer complaints. Exhibit 6 provides an example of SDC invoking the Consent document. It first quotes the language and then reminds the customer that she agreed to it:

‘Because I am choosing to not engage the in-patient services of a local dental professional, I understand and accept that my bite or occlusion will be improved and that my teeth will be straighter than they currently are but will still be compromised.’ Customer accepted and signed this consent form before beginning of treatment.

[Exhibit 6, p. 2]

Also, SDC’s blanket statements that that “invisible aligners are [only] intended to correct mild-to-moderate alignment issues” [e.g., Exhibit 5, p. 1] are deceptive. They imply that if consumers wish to have more severe conditions corrected they will have to wear metal braces. The truth is that under a dentist’s care, invisible aligner systems, such as the Invisalign System, can be used to correct many severe orthodontic conditions. SDC acknowledges this in the Consent and History document where it states:

In the event that the dentist who reviews my chart and other information that I submit determines that I am not an appropriate candidate for the SmileDirectClub aligner therapy treatment, but that I am a candidate for more advanced clear aligner therapy treatment, I hereby consent to having all of my records in SmileDirectClub’s possession (including without limitation dental impressions, digital scans, photographs, and medical history documentation) sent to Align Technology, Inc. for further review and treatment planning, including but not limited to, contacting me to refer my case to an Invisalign-certified provider of my choosing or to market and sell me Invisalign products or services.

So SDC’s public declarations about the limits of invisible aligners are erroneous. It is the lower level of care SDC customers receive compared to dental patients that compels SDC to tell customers that they may have to go elsewhere for invisible aligner therapy.

---

<sup>9</sup> SDC calls them the customer’s “Dental Team”.

Obviously, patients' ready access to their dentists is a foundational aspect of the level of care they receive. Dentists are ethically and legally bound to be reasonably available to their patients to provide answers to questions, follow up care, modifications to treatment plans when appropriate, and the like.

Although SDC's Consent and History document recites for the customer that, "I have had an opportunity to discuss and ask any questions about aligner therapy treatment with a licensed state dentist who engaged SmileDirectClub to facilitate my treatment" [Exhibit 1, p. 4, 3d paragraph from the bottom], SDC does not identify for the customer who that dentist is or actually provide the opportunity for the patient to discuss anything with him or her.<sup>10</sup> Dental patients, by way of contrast, of course know who their treating dentists are, so that is certainly a material difference demonstrating the lower level of care that SDC provides.

SDC's response in Exhibit 6 illustrates SDC's marked hesitancy to reveal to customers who their "treating dentist" is or to facilitate any communication between them. Instead, without identifying the dentist allegedly treating the customer, or explaining who or what "specialized agents" are and what they do, the SDC employee tells the customer:

SmileDirectClub refund protocol requires the licensed dental professional to determine that the customer has not achieved significant improvement in the alignment of their teeth. The licensed professional overseeing the case has stated that the results have been achieved and a refund is not warranted. SmileDirectClub has offered the customer two Refinements in which we would provide additional aligners. Specialized agents have been in contact with the customer.

[Exhibit 6, p. 1]

Clearly, this and other customers are not utilizing a teledentistry platform for a consult (synchronous or asynchronous) with their "treating dentists" and there is no suggestion by SDC

---

<sup>10</sup> See also, §2, *infra*.

that they do so. What happens to SDC customers when they lodge a complaint is not anything like the level of care that a dental patient would rightly expect and require from his or her dentist.

Another deceptive aspect of SDC's marketing claim that its customers are getting the same level of care as dental patients is that SDC and its affiliated dentists have no requirement that customers undergo a dental exam prior to aligner treatment. SDC merely requires customers to attest as part of the Consent and History document that they have done so, and SDC does not require the customer to furnish any dental records for considered professional review by the "dentist guiding your smile."

The Consent and History document provides that:

By signing this Informed Consent, I understand that I am certifying that: My dentist cleaned my teeth. My dentist took x-rays of my teeth. My dentist checked for and repaired cavities, loose or defective fillings, crowns or bridges. My dentist checked my x-rays and I have no shortened or resorbed roots. My dentist checked my x-rays and I have no impacted teeth. My dentist has probed or measured my gum pockets and says I do not have periodontal or gum disease. My dentist preformed a full oral-cancer screening in the last 6 months and I do not have oral cancer. I have no pain in any of my teeth. I have no pain in my jaws. I have no loose teeth. I have no 'baby teeth' and all of my permanent teeth are present.

[Exhibit 1, p. 4, 1<sup>st</sup> paragraph] This SDC clause is an acknowledgment by it that everything listed is relevant in prescribing or deciding not to prescribe orthodontic treatment (compare with Dr. Markarian's Affidavit, Exhibit 8).

Dentists, as members of a learned profession, are bound by ethical duties and legal obligations to their patients. Dentists have a responsibility to satisfy themselves that they have sufficient evidence and information that the treatments they are prescribing are appropriate and safe. In order to make this determination they can review patient records compiled by other dentists and they should conduct their own patient examination as well if the dental record is not complete.

[See, Exhibit 8, ¶¶ 16-19]

Lay self-reporting does not match the level of care a dental patient would receive as a matter of routine as part of a dentist's required professional due diligence. Lay people are not expected to be familiar with specialized technical or medical vocabularies. SDC and the dentists ordering aligners to send to customers have no way of knowing whether what the lay consumer attests to is accurate, informed, or true in any respect. That is an extremely low level of care if it can be called "care" at all.

Apparently, SDC and the affiliated dentists believe they are professionally off the hook once the customer signs the form. As one SDC affiliated dentist explained, one of the things that really impressed him about SDS's business is, "how brilliant and **legal** it was..." [Emphasis added] [Exhibit 9, Selected Pages from Facebook Q&A with Dr. Ben Burris, member, SDC Clinical Advisory Board, 5/13/17, Q&A #1]

The following shows how important Dr. Burris considers the Consent and History document with its customer self-certification provision:

12. What would you say we have to be most vigilant about, knowing we don't see a dentist in person specifically about the aligners? What would be the red flags to look out for?

1. **Well first, every SDC patient signs a document saying they are under the care of a dentist** and I'd recommend cleaning and checkups every 6 months or every three months while in treatment just like I do with in office patients...Look, this isn't rocket science or brain surgery this is just moving teeth. Teeth move on their own all the time and despite all the fearmongering from dentists and orthodontists trying to scare people out of SDC **there is very little that can go wrong if you are honest on your health history** and keep your teeth clean. [Emphasis added]

[Exhibit 9, p. 3, Q&A 12] The questioner is asking what *customers* should be most vigilant about since they're not actually going to see/communicate with a dentist in connection with their SDC transaction, and the SDC's affiliated dentist's first response is to invoke the customer signed document that he obviously believes legally protects *him*. Beyond that, the Question contains an

unambiguous statement that customers are not examined by SDC affiliated dentists (whether in office or via teledentistry), and the Answer includes the admission that SDC affiliated dentists don't review, or at least are not required to review, any customer dental records or perform an examination.<sup>11</sup>

Of course, not requiring dental exams or dental records means that "cases" can be processed at lightning speed so that a maximum number of SDC aligners can be sold. Once the sale is made and the customer receives aligners there is no true follow up care, in contrast to what dental patients would experience. Instead, SDC customers are left to their own devices--literally. They have to cut and reshape their aligners if they don't fit. [Exhibit 9, p. 4, Q&A #19] Some patients have been less than thrilled by this, [Exhibit 10, Better Business Complaint, 7/10/18] and the situation would not arise if the customer were actually under a dentist's care.

SDC's true attitude about the level of care it provides is expressed in the above Q&A:

Look, this isn't rocket science or brain surgery this is just moving teeth. Teeth move on their own all the time and despite all the fearmongering from dentists and orthodontists trying to scare people out of SDC **there is very little that can go wrong if you are honest on your health history** and keep your teeth clean. [Emphasis added]

SDC knows that the public expects a certain level of care in connection with orthodontic procedures, and so it deceptively claims it provides that level of care. If SDC were being honest, it would tell customers that it does not provide the same level of care that dental patients get, which is why it can sell its product for less.

## **2. SDC's Assertion that it Uses Teledentistry is Deceptive**

SDC business model includes little if any actual dentistry. Aligner orders, apparently characterized as prescriptions, are written by SDC's "affiliated dentists" who have no

---

<sup>11</sup> The ADA has heard anecdotal evidence that a small number of "affiliated dentists" have on occasion requested additional customer information.

information about the customer other than some 3-D scans and some mouth photos taken by others<sup>12</sup> and a customer's Consent and History form (or at least know the form has been signed).

Perhaps SDC tells customers in its marketing materials and its Consent and History document [Exhibit 7, p 3; Exhibit 1, p. 3] that they are being served by teledentistry to explain away all the gaps in treatment and the lack of dentist-patient communication that they experience with SDC, since consumer might not be familiar with what teledentistry can and should be. Some of SDC's recent statements suggest that it is positioning itself as a competition-promoting market-disrupter that is advocating for the public against entrenched interests, even while it compromises the public's health and safety. This marketing tactic has been used in the past, sometimes in admittedly extreme situations.<sup>13</sup> But whatever the reason for SDC's claim, its services do not include teledentistry.

Customers are not required to upload or otherwise provide their existing dental records and, of course, there is absolutely no dental examination, via teledentistry platform or otherwise, conducted by the SDC affiliated dentists.<sup>14</sup> No doctor-patient interactions via teledentistry take place. SDC never states that it provides environments where true teledentistry can be conducted because it doesn't have any, nor does the company claim that its "affiliated dentists" have them.

Photos and scans are presumably uploaded and sent electronically by SDC for alleged review by the "affiliated dentists", and aligners are produced and sent to the customer as a result. That seems to be pretty much it. Its claim that it uses a "teledentistry platform" really just boils down to a statement that it uses the internet.

---

<sup>12</sup> In many cases the photos are taken by customers themselves using their phones.

<sup>13</sup> See, e.g., *Charlatan: America's Most Dangerous Huckster, the Man Who Pursued Him, and the Age of Flimflam*, Pope Brock, Random House, Inc., New York, 2008.

<sup>14</sup> Petitioner knows of exactly *one* (1) instance where a patient's general dentist was asked to clear him for SDC aligners.

Without a doubt, sufficiently robust teledentistry platforms can make it possible to expand patient access to quality care. The ADA’s support for safe and effective teledentistry modalities is one of its current policies.<sup>15</sup> Included among the important elements of an acceptable telehealth platform, but which are not part of what SDC offers, is “live, two-way interaction between a person (patient, caregiver, or provider) and a provider using audiovisual telecommunications.” It should also require that patient dental records be furnished for review over a secure system.

The ADA policy points out that:

The dentist is responsible for, and retains the authority for ensuring, the safety and quality of services provided to patients using teledentistry technologies and methods. **Services delivered via teledentistry should be consistent with in-person services,** and the delivery of services utilizing these modalities must abide by laws addressing privacy and security of a patient’s dental/medical information.<sup>16</sup> [Emphasis added]

SDC does not meet these basic standards. Customers and SDC “affiliated dentists” do not interact in real time or asynchronously despite SDC’s representations to customers that they are able to “chat with your dental team whenever you’d like.”

What SDC means by “chatting with your dental team” is engaging in on-line exchanges with SDC’s customer services department or social media employees. The responses often appear to be automated and sometimes extremely frustrating. [Exhibit 11, 4/5/19 exchange on SDC website between customer Jessica Cheaves and SDC’s “dental team”] Ms. Cheaves experience is demonstrative of the real state of things for SDC customers having treatment problems. It seems she went around and around with what appears to be an internet bot until it reached its limit and dismissed her with “have a nice weekend”.

---

<sup>15</sup> The ADA policy supporting teledentistry is consistent with the views of both the U.S. Federal Trade Commission (see, e.g., 8/3/16 FTC Opinion Letter to Delaware Board of Occupational Therapy Practice), and U.S. Department of Justice (see, e.g., 11/29/16 Opinion Letter from the DOJ Antitrust Division to Senator Peter MacGregor, Michigan State Senate).

<sup>16</sup> Comprehensive ADA Policy Statement on Teledentistry (*Trans.*2015:244)

Other customer “chats” included here confirm that there is no SDC teledentistry happening and that customers deal almost exclusively with sales representatives or marketing teams and not dentists in connection with their SDC transaction. [Exhibit 12, 1/28/19 Yelp Review by ZY reporting that his wisdom teeth erupted during treatment and SDC response; Exhibit 13, 4/6/19 Facebook post by Myhoa Tran showing ill fit of aligners and efforts at resolution; Exhibit 14, 2/5/19 Yelp Review by Garrett F. concerning dental issues and SDC response; Exhibit 15, Facebook post 4/11/19 by Nicholas Stevens about treatment problems and SDC response]<sup>17</sup>

If SDC actually did provide a teledentistry platform the patient could make an appointment with the “dentist assigned to your smile” and not have to post on social media at all.

---

<sup>17</sup> Petitioner acknowledges that SDC also receives positive customer reviews.

### **CONCLUSION**

SmileDirectClub is engaging in a business that ADA respectfully submits relies on deceptive practices to persuade consumers to drop their guard and buy SDC's products and services. This is not fair to consumers, who are far more likely to be disappointed, and even injured, than they are led to believe because of SDC's deceptive practices. This should not be permitted to continue.

For these reasons, the ADA respectfully requests that the Commission investigate SmileDirectClub to determine whether the acts described herein violate §5 of the FTCA. Of course, this determination may involve a review in greater detail of various level of care and teledentistry practice issues that are beyond the scope of this letter. However, the ADA would be pleased to meet with you, and with appropriate members of the Bureau of Consumer Protection, to discuss those issues with you. Please let me know if such a meeting can be arranged.

For now, thank you for your consideration of this request.

Very truly yours,

C. Michael Kendall  
Senior Associate General Counsel  
312-440-2810  
[kendallc@ada.org](mailto:kendallc@ada.org)

cc: Jeffrey M. Cole, D.D.S., M.B.A, F.A.G.D, President  
Chad P. Gehani, D.D.S., President-Elect  
Kathleen T. O'Loughlin, D.M.D., M.P.H., Executive Director