

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

TRAVELERS UNITED

2833 Alabama Ave SE #30736
Washington, D.C. 20020,

Plaintiff,

Civil Action No. _____

v.

SMILE TEXAS

4665 Sweetwater Blvd, Suite 450
Sugar Land, TX, 77479

Defendant.

**COMPLAINT FOR VIOLATIONS OF THE
CONSUMER PROTECTION PROCEDURES ACT**

Travelers United brings this action pursuant to D.C. Code § 28-3905 for injunctive relief and statutory damages against Smile Texas for violations of the District’s Consumer Protection Procedures Act (“CPPA”), D.C. Code § 28-3901, et seq. In support of its claims, Travelers United states as follows:

INTRODUCTION

1. This is a misleading and deceptive advertising case. For many years Smile Texas has run a social media account promoting its dental services. On March 12, 2024 Smile Texas ran a coordinated advertisement campaign on South Dakota Governor Kristi Noem’s personal social media pages without requiring her to disclose that these were advertisements for Smile Texas as required by law. Smile Texas has run many similar

advertising campaigns with influencers over the past few years. As far as Travelers United could see, none of these advertising campaigns ever had proper advertising disclosure. Smile Texas ran the same advertisement with Noem on their own social media pages.

2. Influencers are required to disclose when they have a financial relationship with a company. Any sort of material connection must be disclosed. If an influencer received a service at a discount, but she did not get directly paid to promote the service, then she still must be upfront on social media about her material connection to the brand, service or product. If an influencer received a product for free, that must be disclosed.
3. Since the advertisements on Kristi Noem's personal social media pages seem to have been professionally produced by Smile Texas and the advertisement was filmed at Smile Texas, it is clear that Smile Texas played the driving role in the production and placement of these advertisements. Brands are responsible for their advertisements that are placed on influencer's personal social media pages. They are also responsible for the content put on their own brand's social media pages.
4. Here Smile Texas did not require Kristi Noem to disclose that she had a financial relationship with Smile Texas on her social media pages. Travelers United is taking action to force Smile Texas to make corrective disclosures on all social media posts where she promotes Smile Texas products or services and to make corrective advertising disclosure on all of their social media advertisements on those influencers social media pages.
5. Smile Texas is a cosmetic dentistry practice based in Sugar Land, Texas that promotes its services to customers across the country. On the practice's website

(<https://www.smiletexas.com/travel/>) and on the practice's social media pages they list hotels nearby where out of state customers can stay when receiving medical services at Smile Texas. Smile Texas is in the business of bringing in clients from out of state for medical tourism.

6. Smile Texas is a cosmetic dental practice that promotes itself on social media with Facebook (www.facebook.com/SmileTexas), Instagram (@smiletexas_houston), TikTok (@smiletexas_houston1) and X (@SmileTexas) accounts.
7. Some of the dentists involved in the practice also promote themselves and their practice on social media. Doctor Mackenzi Dooley promotes Smile Texas on her Instagram account @doctor.dooley. Doctor Bret Davis promotes Smile Texas on his Instagram account @therealdrbretdavis.
8. Smile Texas organized a coordinated advertising campaign of its services with influencer Governor Kristi Noem. Noem has an Instagram, Facebook, Truth Social and X (formerly Twitter) account where she is able to influence the purchasing decisions of her followers. An influencer is a social media personality who posts photos and content in addition to pitching and advertising products amongst those photos and content. Instagram is a Meta owned social media platform where people can post photos in three ways. The first is where people can post individual photos that stay on the social media personality's account forever unless deleted. The second way to post photos on Instagram is through Instagram stories which, unless saved to their account, disappear within 24 hours. The third is through Instagram reels which are a short video, similar to TikTok. Governor Noem has, as of March 12, 2024, 250,000 Instagram followers on her Instagram handle @kristinoem.

9. Kristi Noem is also active on social media on platforms other than Instagram. She has a very active personal X account (formerly Twitter) where she has 489,600 followers (@KristiNoem). Kristi Noem is also active on the social media platform Truth Social where she has 969,000 followers. Kristi Noem is also active on Facebook. Noem has 275,000 Facebook followers on her personal Facebook page (www.facebook.com/kristi.noem). Kristi Noem conducts her social media influencing business from South Dakota where she is currently serving as governor.
10. Instagram is a social media platform that is visible throughout the world, unless blocked by the local government. People with a high number of followers, such as Kristi Noem, have the option on turning off a specific country's viewership.¹ Noem, Smile Texas, Doctor Mackenzi Dooley and Doctor Bret Davis have made their Instagram accounts accessible to the audience of the United States of America, including the District. Noem's X (formerly Twitter), Facebook and Truth Social account are also viewable from Washington, D.C. Smile Texas' social media accounts are viewable from Washington, D.C. Doctor Mackenzi Dooley and Doctor Bret Davis' social media accounts are viewable from Washington, D.C.
11. Instagram accounts can be public or private. Many regular people decide to make their Instagram accounts private to keep their photos between a limited number of people they have selected to share the photos with. Influencers, however, are in the business of getting their follower count as high as possible and this is only possible with a public account. Kristi Noem selected to make her Instagram account public. Smile Texas has set

¹ Ivan Mehta, Instagram Is Testing Geo-Restriction For Stories and Posts, THE NEXT WEB (Sep. 20, 2018), <https://thenextweb.com/apps/2018/09/20/instagram-is-testing-geo-restriction-for-stories-and-posts/>

all of their social media accounts to public. Doctor Mackenzi Dooley and Doctor Bret Davis' social media accounts are set to public.

12. Governor Kristi Noem is the Governor of South Dakota for a living but seems to have taken up work as a social media influencer as of March 12, 2024. It is not uncommon for social media influencers to work part-time as influencers while holding another job.
13. Companies, like Smile Texas, pay influencers, like Kristi Noem, to promote their product or service to her followers. The social media account for Smile Texas and the doctors of Smile Texas with public social media profiles are all viewable from the District.
14. District residents can, like Kristi Noem, fly to Texas to receive treatment from Smile Texas. Encouraging medical tourism is the point of the undisclosed advertisement. Smile Texas has a page devoted to travel information on their website (<https://www.smiletexas.com/travel/>).
15. Kristi Noem's X, Truth Social, Facebook, Instagram and other social media accounts are used to advertise, market and sell goods and/or services to residents of the District of Columbia. Smile Texas' Facebook, Instagram, TikTok and other social media accounts are used to advertise, market and sell goods and/or services to residents of the District of Columbia. Doctor Mackenzi Dooley and Doctor Bret Davis' social media accounts are used to advertise, market and sell goods and/or services to District residents.

JURISDICTION

16. This Court has jurisdiction over the subject matter of this case pursuant to D.C. Code § 11-921 and D.C. Code § 28-3905.
17. This Court has personal jurisdiction over the Defendant pursuant to D.C. Code § 13-423(a).

SMILE TEXAS' DECEPTIVE ADVERTISING PRACTICES
Defendant's Practice of Misleading and Deceptive Advertising

18. This action was commenced after Smile Texas produced and coordinated an undisclosed advertising campaign on influencer Kristi Noem's personal social media accounts.

Influencers are defined by the American Bar Association as "any person with credibility who can influence the opinions or purchase decisions of others."² When asked to describe an influencer in the HBO Documentary *Fake Famous*, Taylor Lorenz, a reporter of internet culture, described them as "somebody who is half entrepreneur and half celebrity." Hana Hussein, a social media manager, described an influencer in the documentary as "anyone who has access to a large following whether it is real or fake and they are able to promote themselves or brands."³

19. The higher someone's follower count is on social media, the more that social media star can charge to "influence" their followers. Influencing is big business. The *Harvard Business Review* reported that "in 2018, 19% of all U.S. consumers – including 36% of those aged under 25 – purchased a product or a service because a social media influencer recommended it."⁴ On the *Under the Influence* podcast by Jo Piazza, she reports that

² Mark Goodrich and Jason Howell, *Influencers: What Every Brand and Legal Counsel Should Know*, THE AMERICAN BAR ASSOCIATION, (last visited May 1, 2021) https://www.americanbar.org/groups/intellectual_property_law/publications/landslide/2018-19/september-october/influencers/.

³ FAKE FAMOUS (Nick Bilton, 2021)

⁴ Alice Audrezet and Karine Charry, *Do Influencers Need To Tell Audiences They're Getting Paid*, HARVARD BUSINESS REVIEW, August 29, 2019, <https://hbr.org/2019/08/do-influencers-need-to-tell-audiences-theyre-getting-paid>

“brands are going to bring in more than 10 billion dollars from Instagram this year, 15 billion by 2022. It’s a multi-billion dollar industry.”⁵

20. The goal of influencing on Instagram, and other social media platforms, is to get as many followers and as much engagement (people liking and commenting on posts, people watching their Instagram stories) as possible. That shows to a brand that a certain influencer has a loyal and engaged following who will listen to what products said influencer recommends. Companies pay influencers big money to advertise on behalf of their brands. Kim Kardashian has reported earned up to one million dollars per Instagram post⁶ while her sister Kylie Jenner is reportedly earning 1.2 million dollars per Instagram post. Cristiano Ronaldo, the soccer star who happens to be the most followed person on Instagram, commands \$975,000 per Instagram post.⁷ Very large sums of money are paid by brands to influencers to have them promote products on Instagram and other forms of social media. “Lives that can be monetized”⁸ summarizes Jo Piazza on her podcast *Under the Influence*. Jo Piazza reports that there is a by post baseline for how much influencers get paid per post and that is “\$100 per 10,000 followers.”⁹

⁵ Jo Piazza, *A More Perfect Mother*, UNDER THE INFLUENCE PODCAST, (February 4, 2021) <https://open.spotify.com/episode/67Rtv0Hfcq0pm7KCFcKMnU>.

⁶ Alicia Brunker, *Kim Kardashian Says She Makes More Money on Instagram Than for an Entire Season of KUWTK*, IN STYLE, October 18, 2020, <https://www.instyle.com/celebrity/kim-kardashian-makes-more-money-on-instagram-than-kuwtk>

⁷ BBC, *How much does Kylie Jenner earn on Instagram?* WWW.BBC.CO.UK, (July 26, 2019) <https://www.bbc.co.uk/newsround/49124484>.

⁸ Jo Piazza, *A More Perfect Mother*, UNDER THE INFLUENCE PODCAST, (February 4, 2021) <https://open.spotify.com/episode/67Rtv0Hfcq0pm7KCFcKMnU>.

⁹ Jo Piazza, *A More Perfect Mother*, UNDER THE INFLUENCE PODCAST, (February 4, 2021) <https://open.spotify.com/episode/67Rtv0Hfcq0pm7KCFcKMnU>.

21. In the Smile Texas’ advertisement, Kristi Noem speaks of how Smile Texas helped her with her “beautiful new teeth.” A new set of veneers could easily cost 30,000 dollars.¹⁰¹¹

Kristi Noem’s salary is 139,100 dollars annually.¹² Noem would likely be interested in reduced price or free dental services so that she does not have to pay the full-cost of this very costly procedure.

22. In addition to the medical procedure itself, Noem advertises that she flew from South Dakota to Texas for this procedure. Smile Texas promotes itself as a leader in cosmetic dentistry and it clearly wants to attract out of state customers.

23. Smile Texas promotes itself as a leader in medical tourism for dental procedures. On their website and on all of their social media they promote traveling to Smile Texas from out of state for dental procedures. On their Instagram page, they have an Instagram story highlight of “Travel.” In that story they recommend hotels to stay at while visiting Smile Texas (see below). They also recently posted on Instagram a static post, a reel and a tagged video highlighting “What is it like being an out of state patient?” (see below). Smile Texas is clearly in the business of promoting travel and tourism for medical procedures. They are advertising medical tourism on their social media platforms.

¹⁰ Miami Perfect Smile, <https://miamiperfectsmile.com/how-much-are-full-mouth-veneers-in-us/> (Visited April 26, 2024).

¹¹ Dentakay, <https://dentakay.com/full-mouth-veneers-cost/> (Visited April 26, 2024).

¹² Open SD South Dakota Transparency Website, https://open.sd.gov/executive_salaries.aspx (Visited April 26, 2024).

9:03



TRAVEL 🌸 March 29, 2023



Hotel Recommendations

•
**Marriott Sugar Land 1-800-321-2211 or
1-281-275-8400
16090 City Walk Town Square
Sugar Land, TX 77479**

•
**Hyatt Place 281-491-0300 or 1-800-223-1234
16730 Creek Bend Drive
Sugar Land, TX 77479**

•
**Courtyard by Marriott Lake Point 1-800-321-2211 or
281-494-0555
16740 Creekbend Dr. Sugar Land, TX 77478**

•
**Hilton Garden Inn 281-491-7777
722 Bonaventure Way
Sugar Land, Texas 77479**

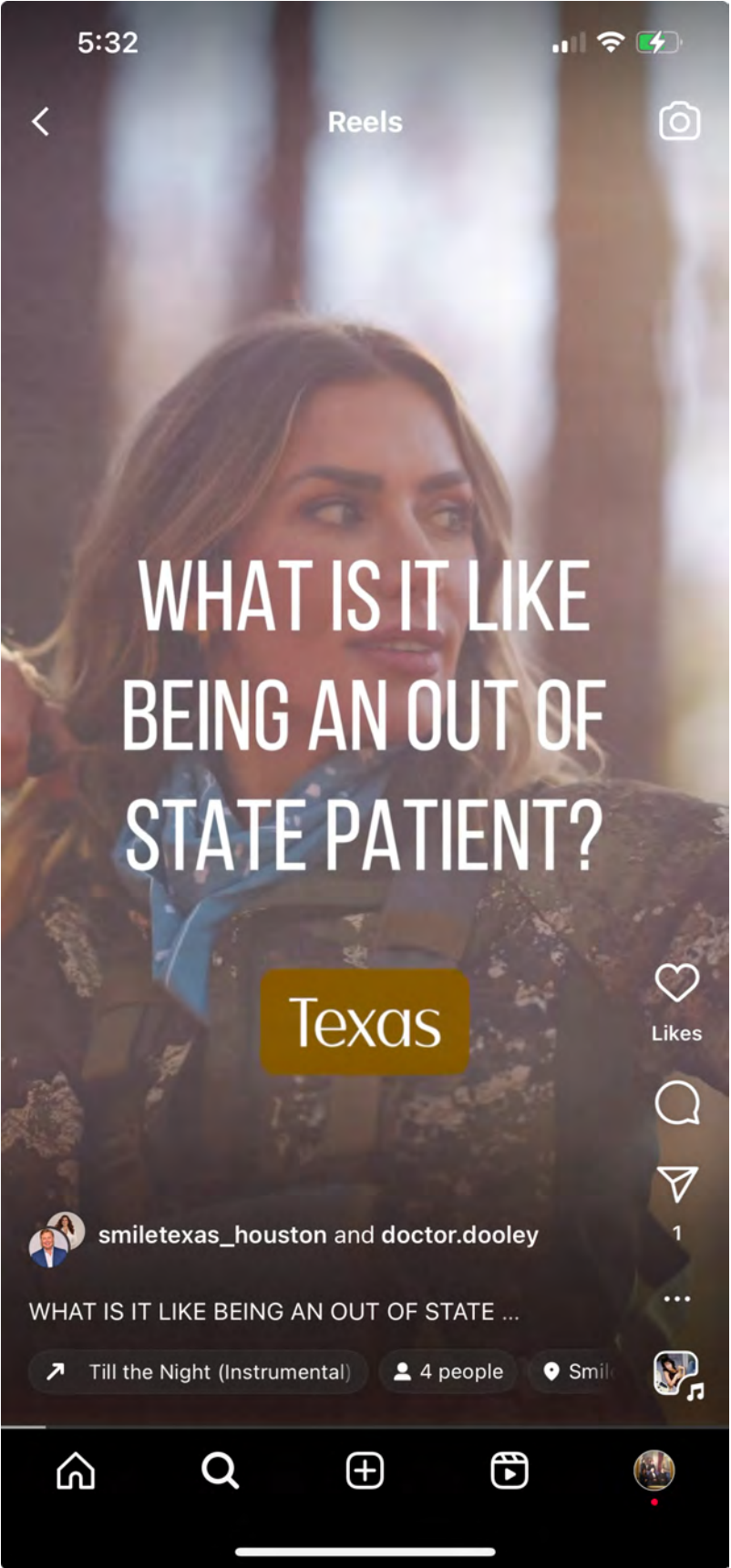
•
**Staybridge Suites 281-302-6535
11101 Fountain Lake Drive
Stafford, TX 77477**

•
**Home2 346-309-2240
11121 Fountain Lake Dr.
Stafford, TX 77477**

•
**Post Oak Hotel at Uptown Houston
1-844-386-1600 or 346-227-5000
1600 West Loop South
Houston, TX 77027**

Send message





24. Kristi Noem posted an undisclosed advertisement for Smile Texas on March 12, 2024 on her social media accounts. Smile Texas promoted the same video on its social media accounts. The following video was placed on Kristi Noem's Facebook, X, Truth Social, Instagram page, Instagram Stories and Instagram reels. The caption "I love my new family at Smile Texas! The video says it all, and I am so grateful for their help fixing my smile for me." The text is followed by a smile emoji, a hands up emoji and another smile emoji. There is no disclosure that this is an advertisement or that she received any free or discounted medical procedures in exchange for this social media advertisement.

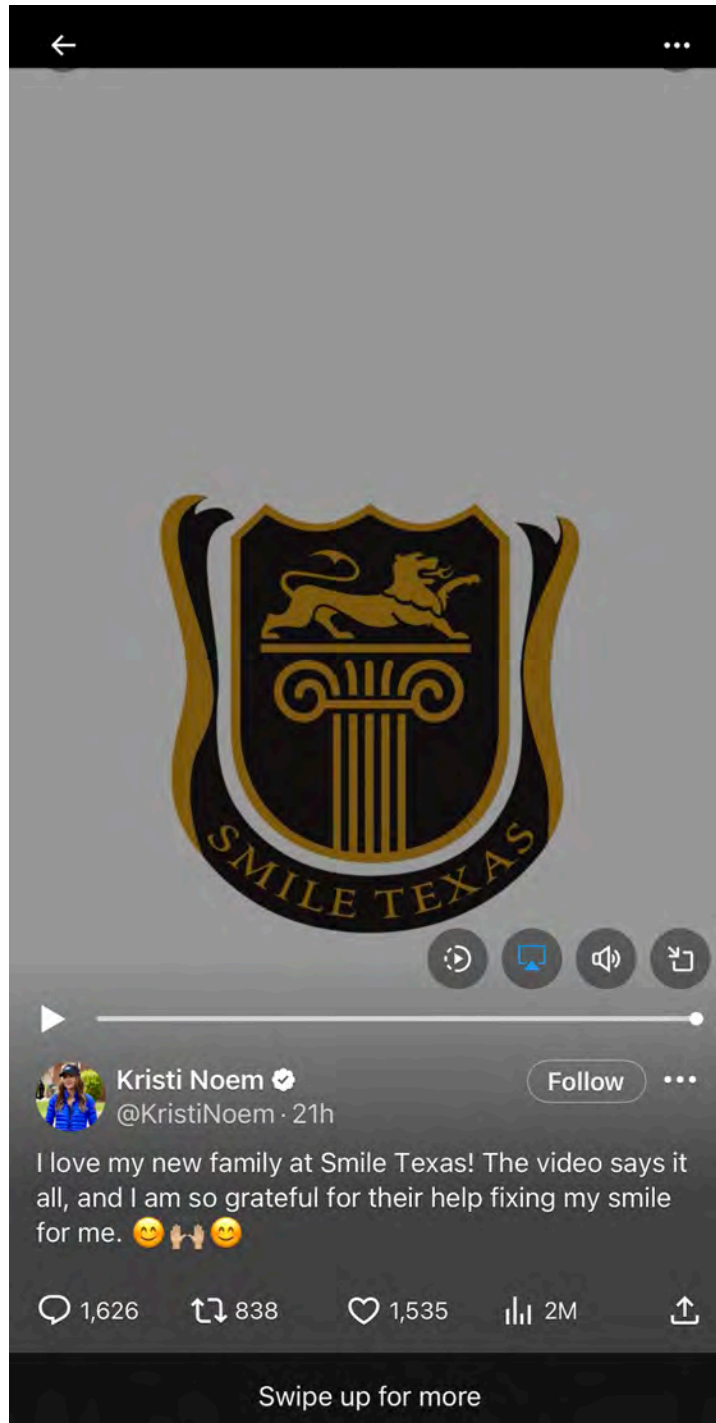
25. The text of the undisclosed Smile Texas advertisement that Kristi Noem reads is:

"Well, Hi, I'm Kristi Noem. I'm the Governor of South Dakota and had the opportunity to come to Smile Texas to fix my teeth which has been absolutely amazing. For years I have needed to have an adjustment to my teeth from a biking accident. And they have been absolutely phenomenal. Years ago I was out bike riding with all of my kids when they were little and had a biking accident and knocked out all of my front teeth. And so several years ago I did a consultation here at Smile Texas and did it here by Zoom but could never quite find the time um and recently got the chance to work with Dr. Davis, Dr. Dooley has always been fantastic to me too, but the team here was remarkable and finally gave me a smile that I can be proud of and confident in and that really is a gift that I think is going to be incredibly special to have. You know I think that I chose the team here at Smile Texas because they are the best, first of all, I studied a lot of the work that they had done and talked to a lot of people that had been here but also because they were so kind. They wanted to make sure that I was happy with my smile. Not only that the bite was correct and that I liked the shape, the color, but that it was going to work for me for the rest of my life and it was something that I could be proud of so for them, they care about people and that they are happy more than they are fixing something to get by. They want it to be perfect and for me, if you are going to go through a process like this, that means a lot to have someone that cares that much about the work that they do. Well for me, I realize that the job that I am in, I spent my whole life farming and ranching, riding horses, chasing cows and then got into government and politics where everything is speaking and interviews and giving speeches. I want when people look at me to hear the words that I say and not be distracted by something I am wearing or how I look or even my appearance. I want them to focus on my thoughts and ideas and what we can do to make this country better. For me being able to have a confident smile and be my teeth be something that is not a distraction but actually is appealing to people will be helpful because I think that it will make sure that we are focused on really the right points that I

want to make and make sure that that confidence shines through. I love it. I love that my bite is better. That my teeth are a better shape. That they feel better in my mouth and that I can be confident when I smile at people and know that they can actually appreciate and see the kindness in my face and the love that I have for them. Also my schedule is kind of crazy and very busy. I remember I got a phone call from Jenell that said that we can actually do this if you are willing to fly in. My husband and I flew down to Houston. Got here at 2 o'clock in the morning and did an appointment that very next week. Then they quickly got the teeth constructed and back and I came back just seven days later and had the final install done and the work completed. It was amazing to me how flexible this team was with my schedule and they are that way with everyone. Made it work with me and my team so that we could make sure that the entire process was done not rushed. But that I also was able to get back on the road and back home to South Dakota as quick as possible. When they first showed me with a mirror my new teeth I started to cry. I think it's because I had an uncle that's an orthodontist. He did braces on all of his nieces and nephews. Everyone. Except for me. And I remember being a little girl and having him say your teeth just aren't bad enough. Even from that time I knew my teeth were not perfect. That they were okay but they were not bad enough to fix. It's just been something that I've always thought and hoped that someday I could address it and have a confident smile. When they showed me my beautiful new teeth I hugged Dr. Davis and thanked him and started to cry because he really does care about the work that he does. To make sure that it's perfect and it means a lot to me that something as small as your smile really can change the world. Peoples first impressions of you are important. I want people to know how much I enjoy seeing them and how much I love being with people. And the fact that he gave me the smile to do that now. I will be eternally grateful. It has been a gift to be here at Smile Texas."

The video finishes with an image of a logo for Smile Texas.

26. The undisclosed advertisement posted by Governor Kristi Noem for Smile Texas ends with a Smile Texas logo. A screenshot of the end of the advertisement is below:

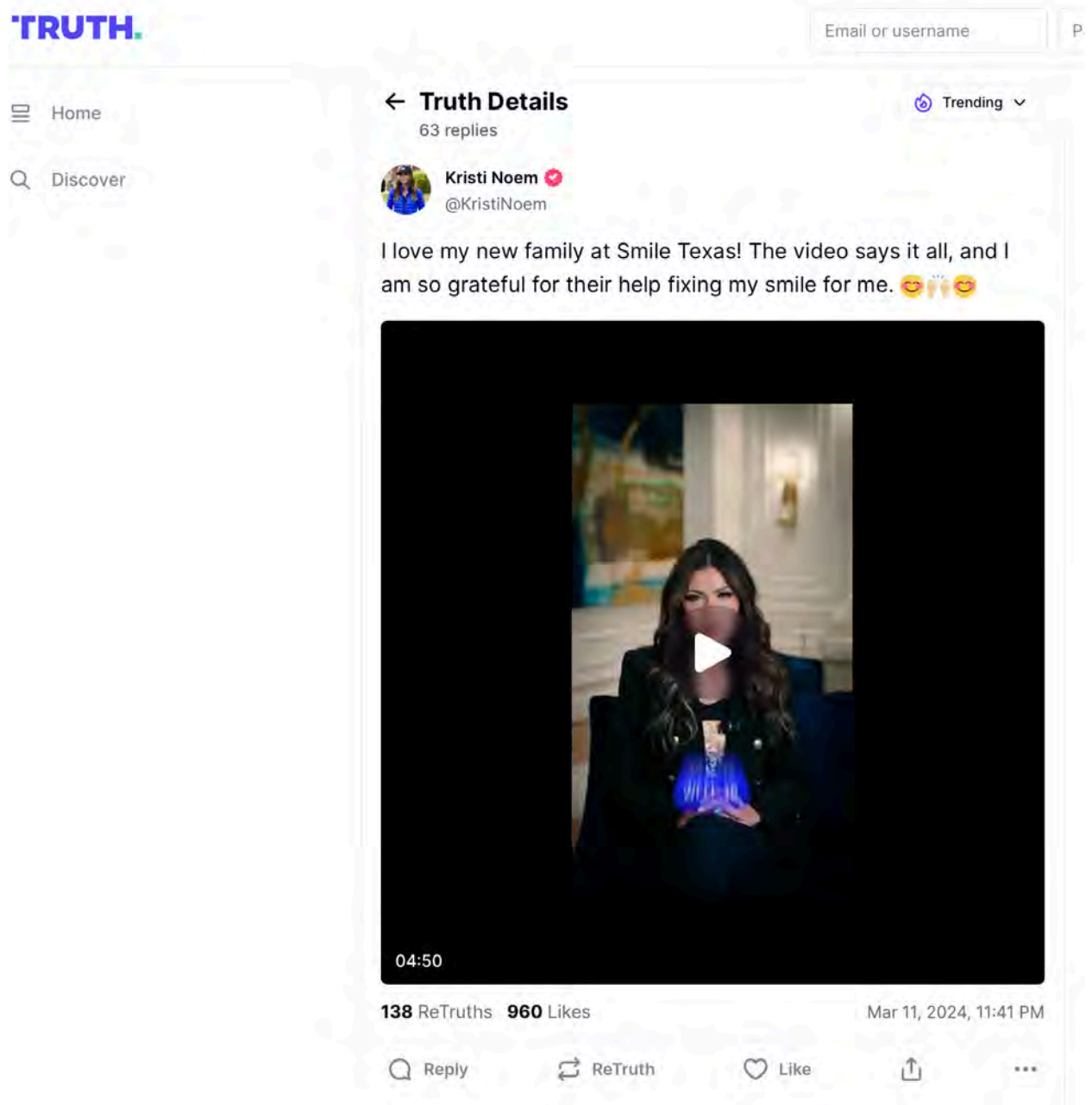


The final image on Kristi Noem's undisclosed Smile Texas advertisement

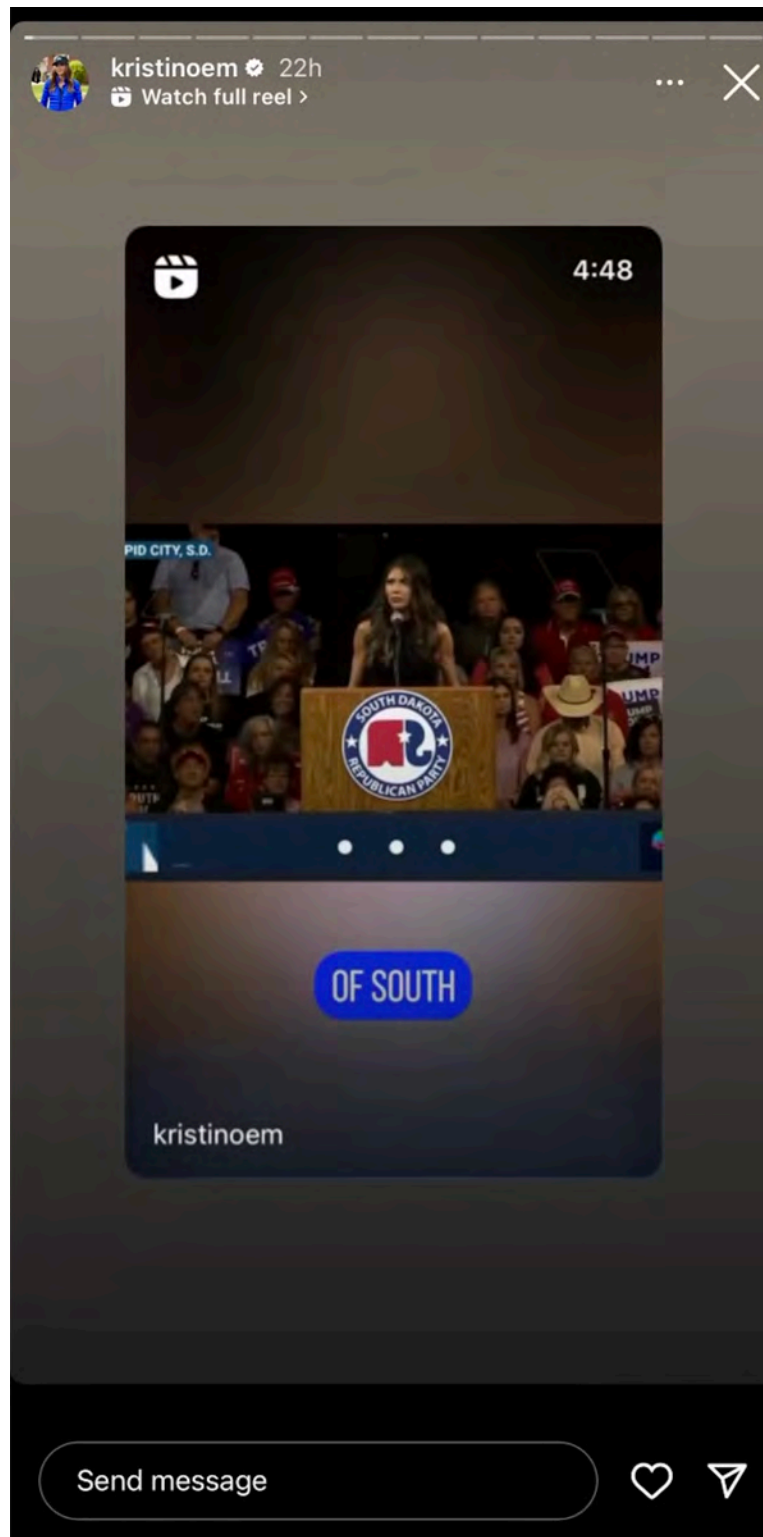
27. The following is a screenshot of the undisclosed advertisement for Smile Texas on Kristi Noem's Facebook account.



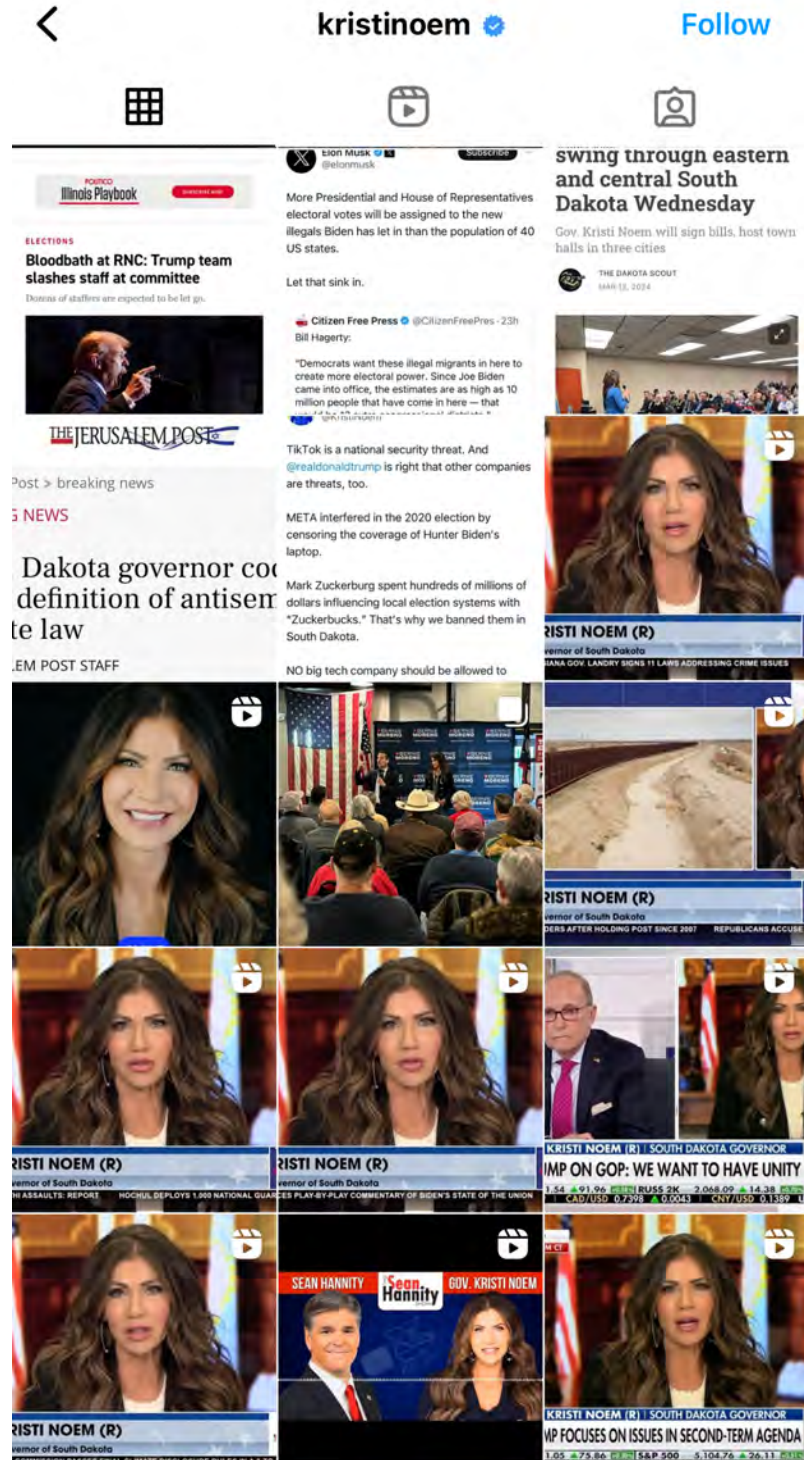
28. The following is a screenshot of the undisclosed advertisement for Smile Texas on Kristi Noem's Truth Social account.



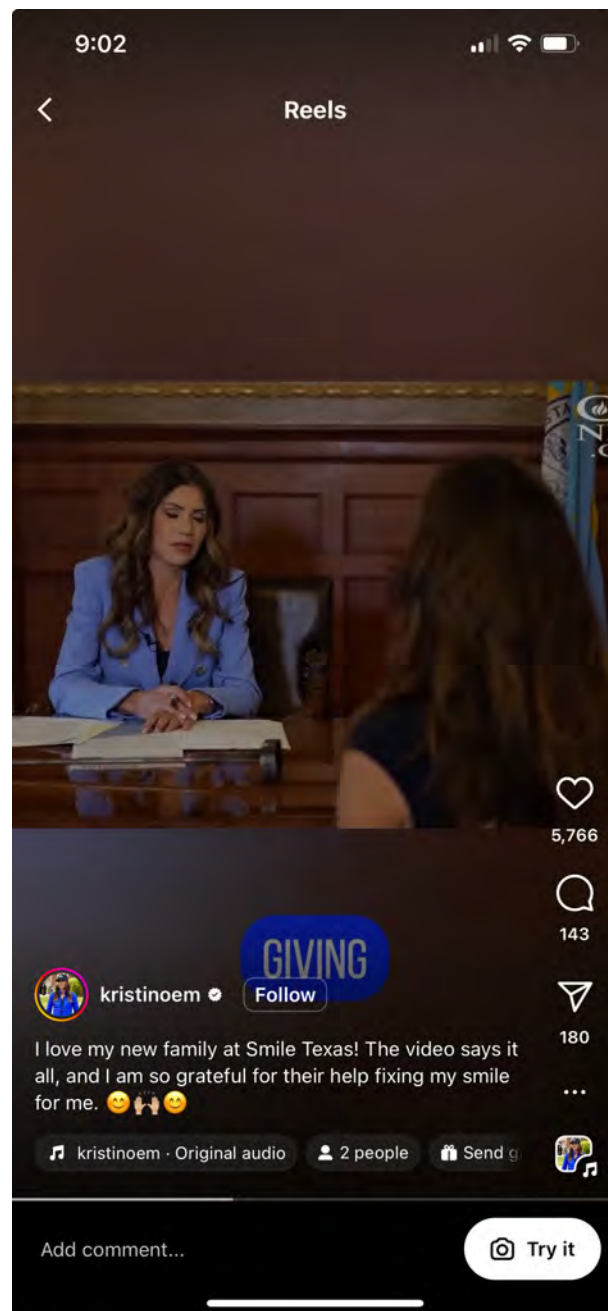
29. The following is a screenshot of the undisclosed advertisement for Smile Texas on Kristi Noem's Instagram stories.



30. The following is a screenshot of the undisclosed advertisement for Smile Texas on Kristi Noem's Instagram page.



31. The following is a screenshot of the undisclosed advertisement for Smile Texas on Kristi Noem's Instagram reels.



32. The following is a screenshot of the undisclosed advertisement for Smile Texas on Kristi Noem's X account.



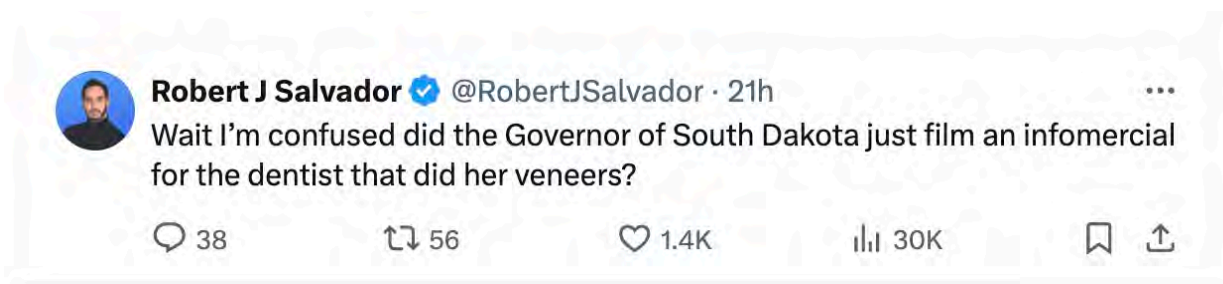
33. The background of the undisclosed advertisement is clearly that of Smile Texas. It seems that Governor Kristi Noem filmed this advertisement at Smile Texas. They likely professionally produced the advertisement. Smile Texas regularly works with influencers



in promoting their products and services. Travelers United was unable to find any proper disclosure of influencer advertising on Smile Texas' social media accounts. The Kristi Noem Smile Texas advertisement was also placed on Smile Texas' social media accounts.









Above is an Instagram story of someone showing off the interior of Smile Texas. This is the same background as the Governor Kristi Noem Smile Texas advertisement.

34. Someone with a very busy job does not take time off of that job to make a free advertisement for medical services in another state. There are many dentists and cosmetic dentists in South Dakota. No one with an extremely important job in the South Dakota would fly to Texas to receive dental treatment and then sit in that office and film an advertisement without some form of compensation. Kristi Noem acted here as an influencer. She likely either received free dental care in exchange for this advertisement, discounted dental care in exchange for this advertisement or she was paid and received free dental care for the advertisement. Unfortunately Noem did not mark this as an “Ad” or “Advertisement” when posting so she is participating in an unfair and deceptive practice. She likely did not mark this undisclosed advertisement as an ad or advertisement at the direction of Smile Texas.
35. Consumers of social media and followers of Kristi Noem replied with comments that questioned what was going on with this undisclosed advertisement. The social media commentary seems focused on the confusion of why an influencer, here Governor Kristi Noem, would be able to post an advertisement on social media without the necessary Federal Trade Commission requirement of disclosing that the post is an advertisement by writing Ad, Advertisement or Sponsored. The following comments were posted on X (formerly Twitter):



 **Brian Stephens**  @brianstephens00 · 10h ...

You're legally required to add the [#ad](#)

   2  305  

 **Ashley St. Clair**  @stclairashley · 7h ...


Kristi Noem: the dental care in the state I run is so piss poor that I did a brand deal for one in Texas

 12  5  99  4.7K  







 **Stephen Horn**  @stephenhorn · 10h ...


How much did you get paid for this ad?

 1   12  700  







 **Kenny Howard**  @God_winsforever · 13h ...









Why is a sitting governor doing an influencer ad for a dental office?

  5  48  1.5K  

 **Yaakov Strasberg**  @YaakovStras · 17h ...

Why on earth is the governor of South Dakota advertising for the company that put in her veneers and is based in Texas?!

  1  37  1.5K  

- **Underground**    @shannon4t76 · 7h ...
A governor should never be doing ads for a company.
   3  145  
- **BowTiedRad**  @BowTiedRad · 13h ...
I'm to the right of Ben Shapiro but gotta call out my side when they deserve it. This is strange
 1   10  649  
- **Beka**  @beka45458 · 1h ...
My goodness... an influencer. Smh
    55  
- **Yasmine Mary, ARNP-FNP-C**  @yazzy1967 · 15h ...
What fresh hell is this? Are you advertising?
 1  3  76  2.6K  
- **Tai M**  @TaaifMehadi · 10h ...
Nice AD
   1  289  
- **Jimmy McCambridge**  @JimmyMack0320 · 20h ...
It's not a gift if you have to promote them to pay for it.
 2   3  170  



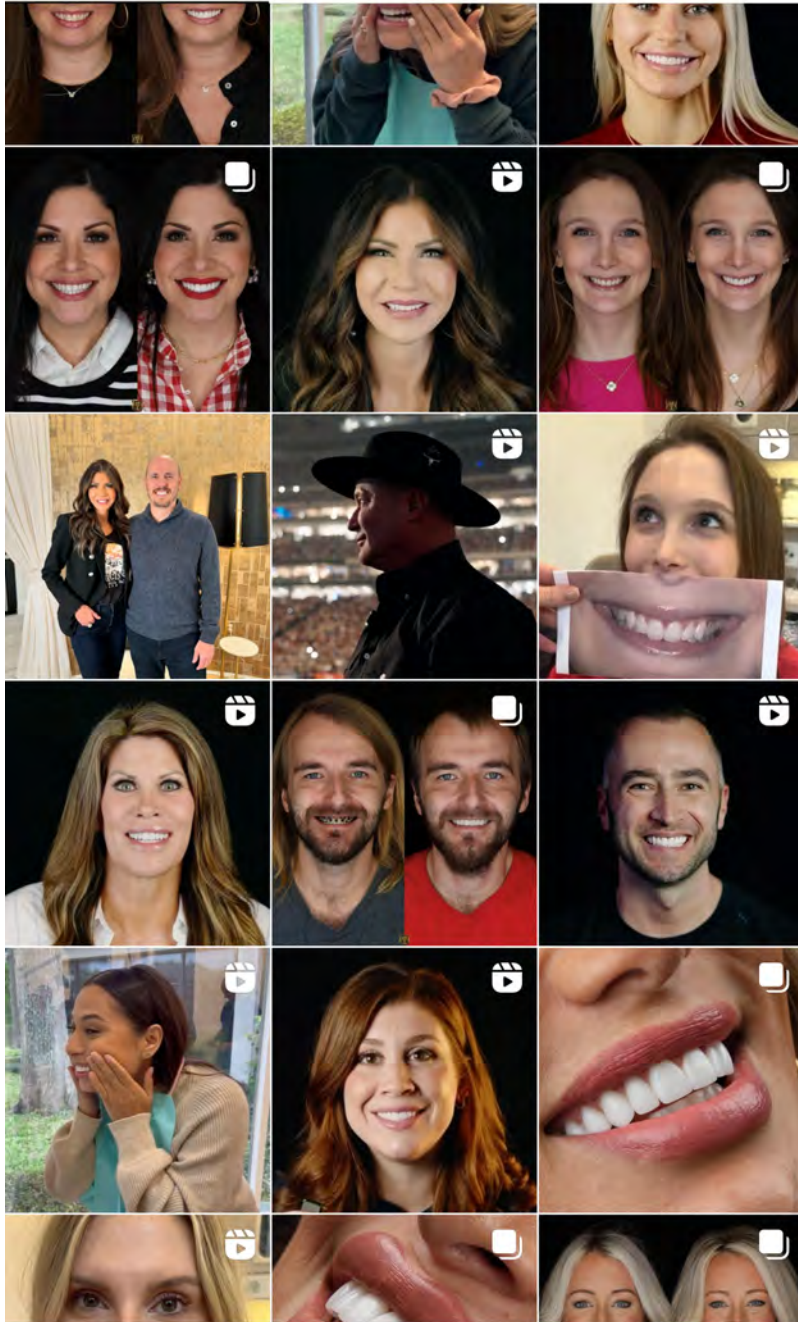
36. Smile Texas is a successful dental practice who knows that laws apply to advertising on social media. The Federal Trade Commission (FTC) has been clear that influencers need to post Ad, Advertisement or Sponsored as the first word in a caption in an advertisement on social media. Smile Texas does not have influencers who are promoting Smile Texas disclose that the influencers have a material connection to the company.
37. Smile Texas did not just push their advertisement through influencer Kristi Noem's personal social media accounts, they also promoted her advertisement on their own social media accounts. Below is Kristi Noem's promotional advertisement for Smile Texas on the Smile Texas Instagram page.

4:33



smiletexas_houston

Follow



38. Smile Texas added the Kristi Noem advertisement video to their “Patients” section of their saved Instagram stories on March 12, 2024 (see below).

11:52



PATIENTS 1 day ago

Watch full reel >



4:49



kristinoem

Send message



39. The Noem advertisement video is not the only content that Smile Texas promoted. They also promoted the following image of Kristi Noem on Instagram. The caption reads “This gracious leading lady @govkristinoem just received an executive, feminine, beautiful smile here at Smile Texas. I’ll be posting later how we achieved this smile on this gracious, calm, and courageous patriot! - @therealdrbretdavis #KristiNoem #Veneers #SmileMakeover #CosmeticDentist #HoustonTX #SmileTexas #USA”



SMILETEXAS_HOUSTON
Posts

Follow



smiletexas_houston and therealdrbretdavis
Smile Texas



Liked by Ivjada and others

smiletexas_houston This gracious leading lady
@govkristinoem 🇺🇸 just received an executive, feminine,
beautiful smile here at Smile Texas.

I'll be posting later how we achieved this smile on this
gracious, calm, and courageous patriot! -
@therealdrbretdavis

#KristiNoem #Veneers #SmileMakeover #CosmeticDentist
#HoustonTX #SmileTexas #USA

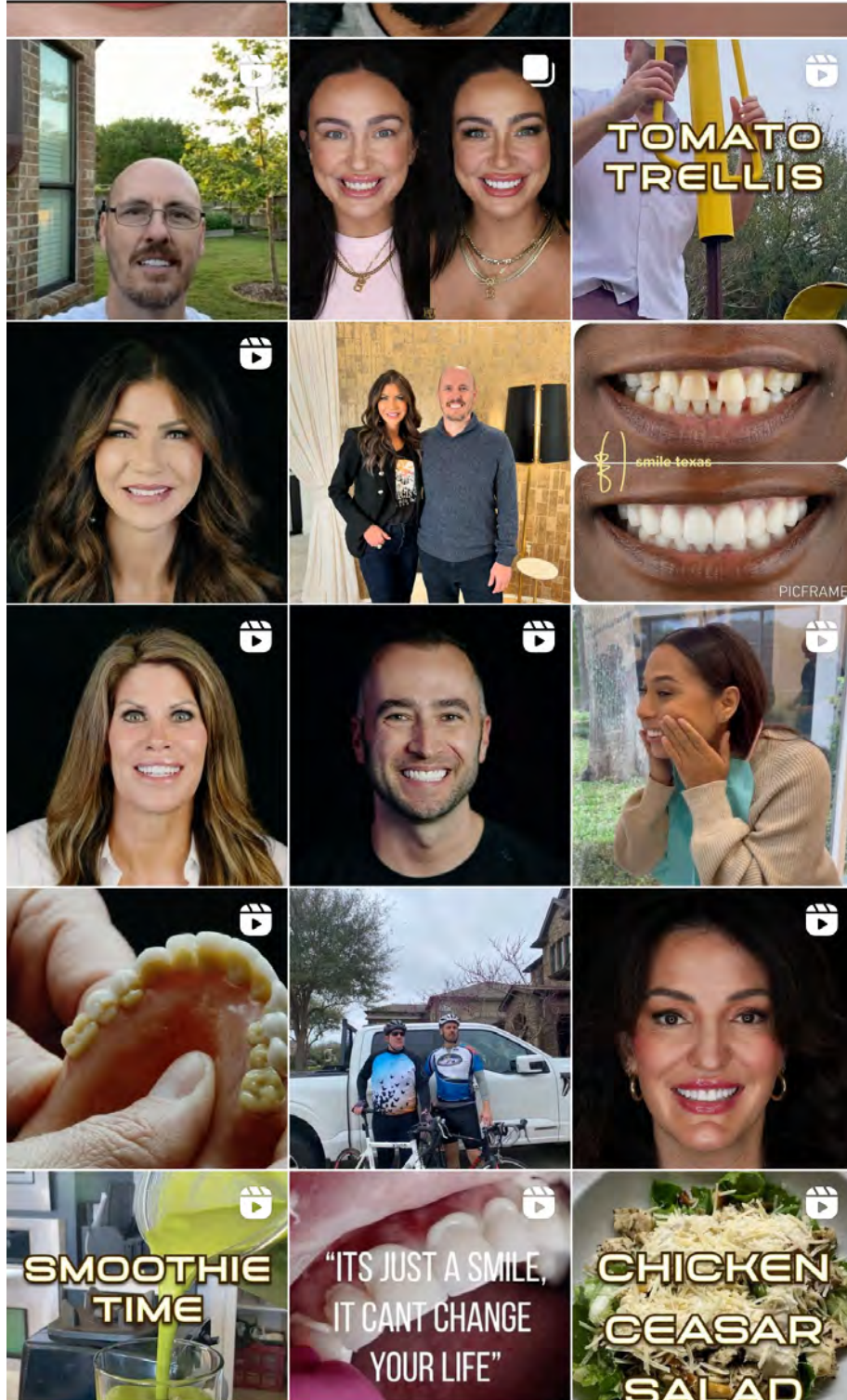
View all 33 comments

40. These posts are also then posted from Doctor Bret Davis' personal Instagram accounts where he also promotes Smile Texas (see below).

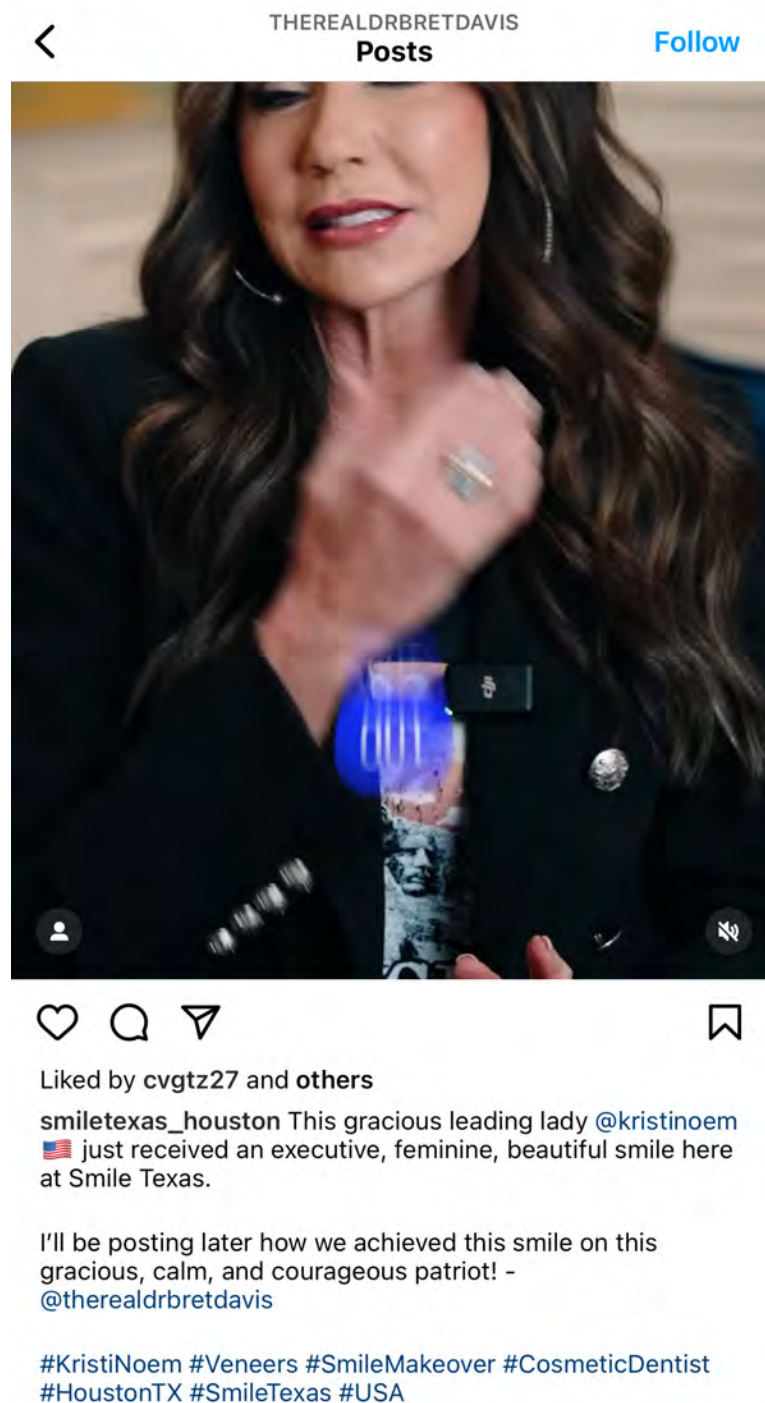


therealdrbretdavis

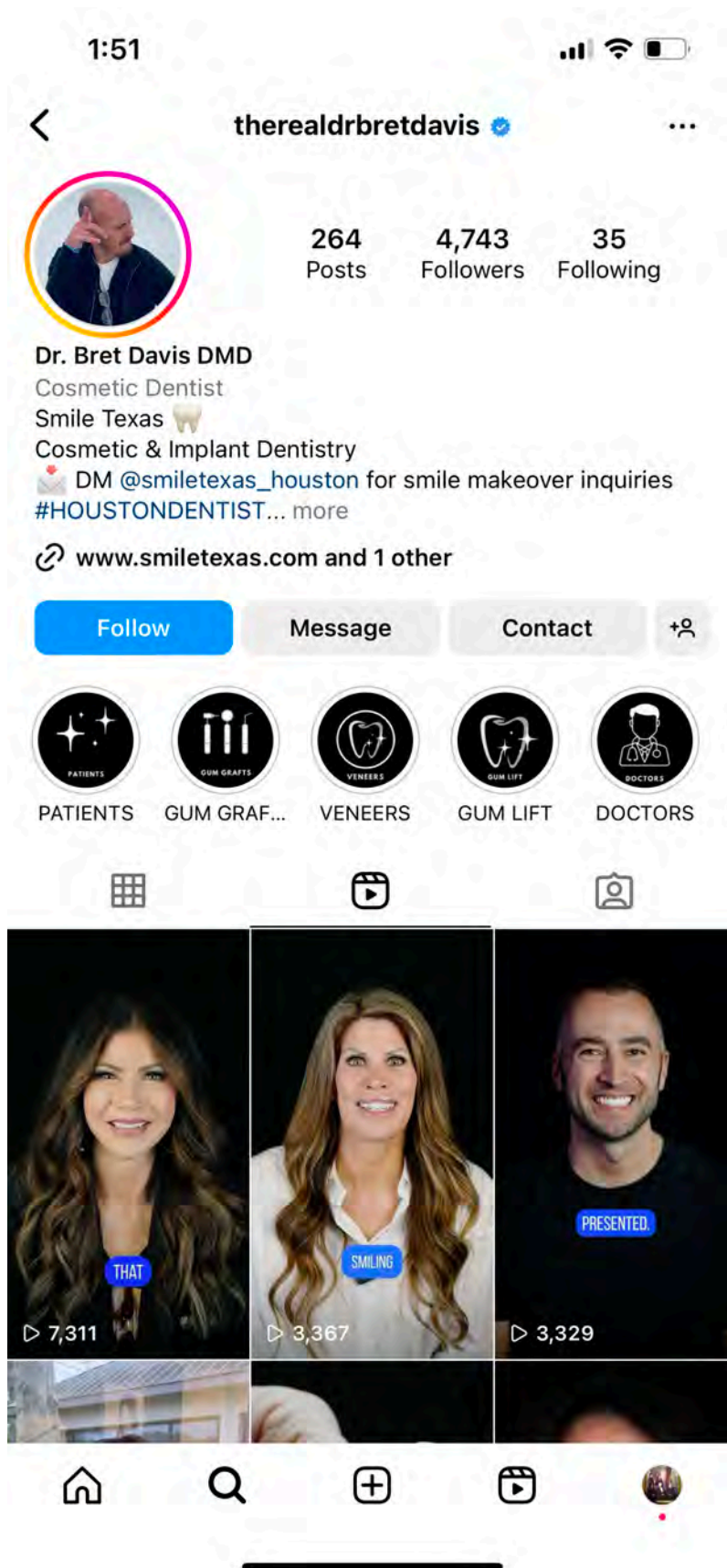
Follow



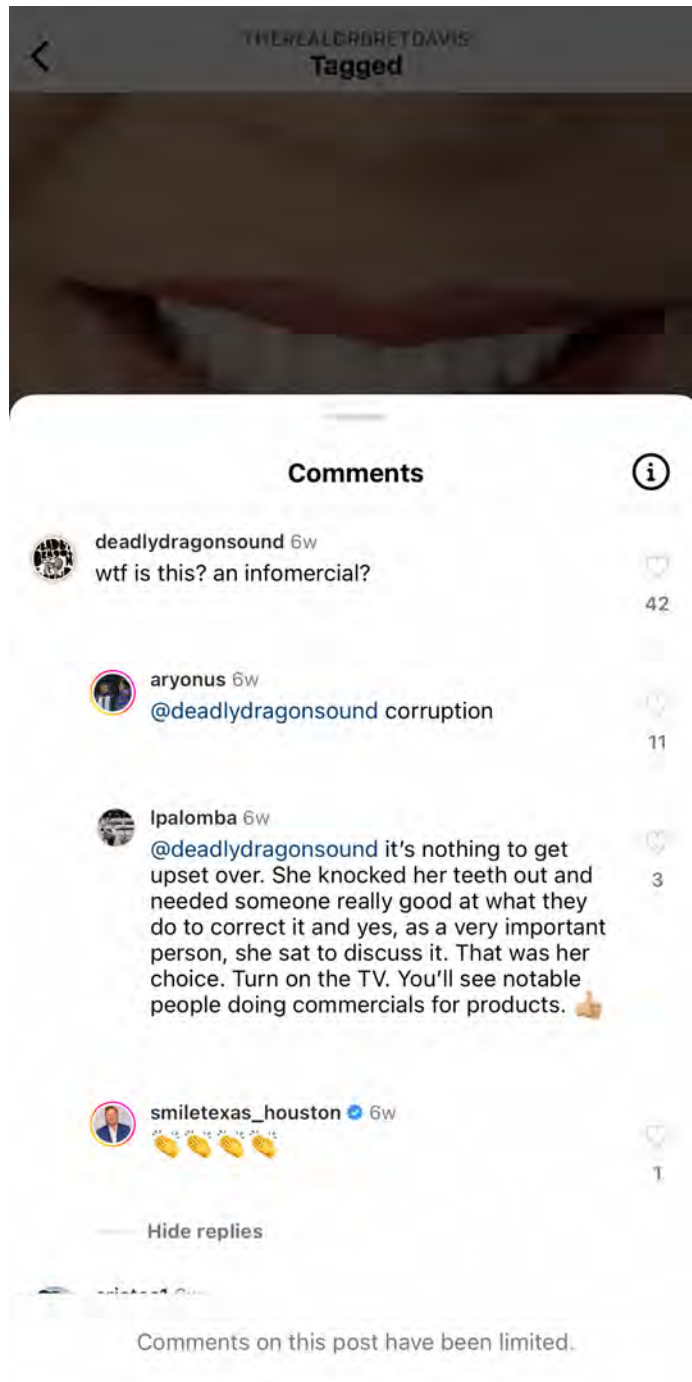
41. Doctor Bret Davis of Smile Texas posted twice on his personal Instagram account about his patient/influencer's teeth.



42. Doctor Bret Davis of Smile Texas did not just static post on Instagram, he posted on reels and stories as well.

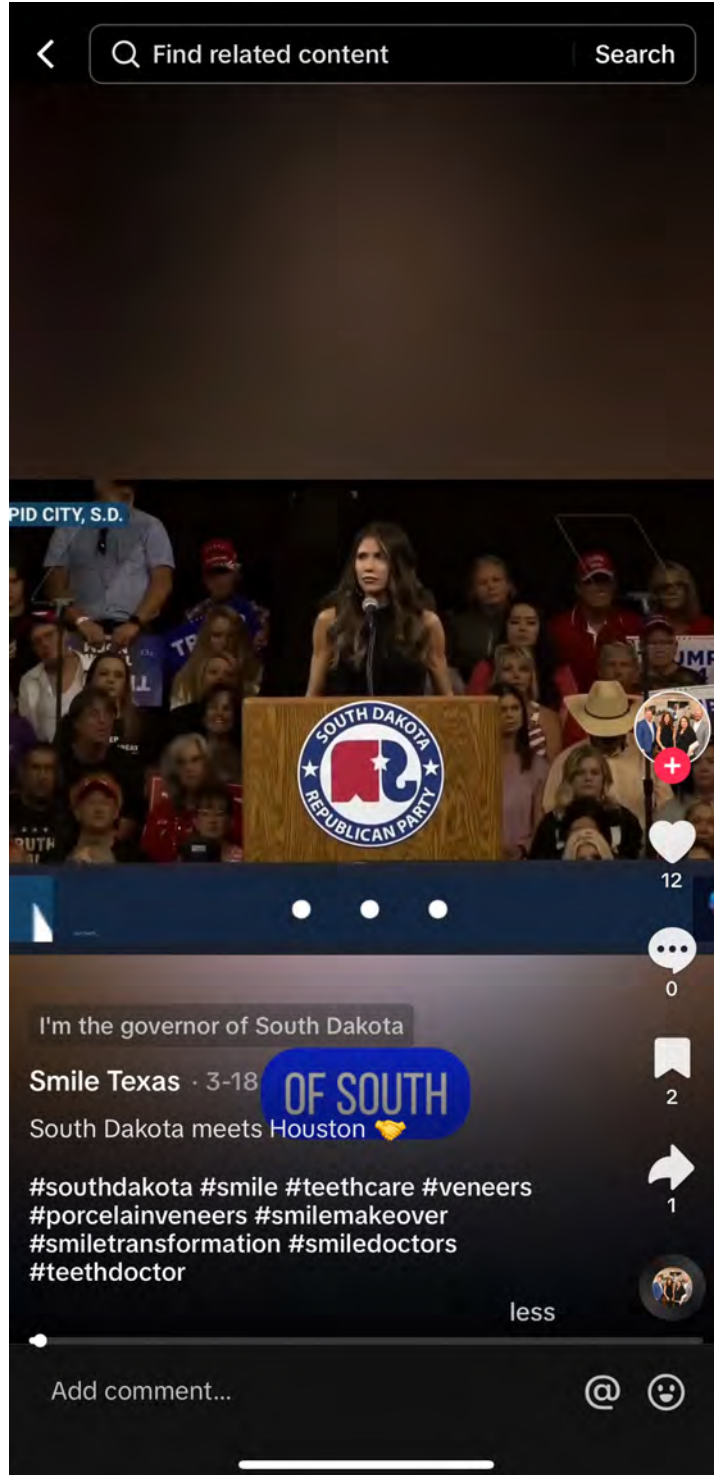


43. Smile Texas is a very successful business that knows that its influencers must disclose when they are making advertisements on behalf of the company. They recognize that this advertisement video of Noem's is an infomercial for Smile Texas. On the main video advertisement of Noem's the first comment on Instagram is "wtf is this? an infomercial?" and Smile Texas acknowledges that sentiment by replying to that comment with four clapping emojis (see below).



44. Smile Texas also reposted the video advertisement on its TikTok. Noem herself does not have a TikTok but Smile Texas does (@smiletexas_houston1). They posted the Noem video advertisement to their TikTok¹³ on March 18, 2024.

¹³ Smile Texas TikTok, <https://www.tiktok.com/t/ZTLHB5S2Y/> (last visited April 27, 2024).



On March 18, 2024 the Noem advertisement video was placed on Smile Texas' TikTok

45. Smile Texas is a successful dental practice with a focus on medical tourism. Smile Texas specifically advertises to encourage people to travel to their practice from out of state. They have done extensive advertising using social media influencers yet they are not following the requirements of disclosure of material connections between themselves and their influencers. By failing to disclose the material connection between an influencer and a brand, Smile Texas is violating the law.

CAUSE OF ACTION
(Violations of the District of Columbia Consumer Protection Procedures Act)

46. The allegations of paragraphs 1 through 45 are re-alleged as if fully set forth here.

47. The CPPA is a remedial statute that is to be broadly construed. It establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia §28-3901(c).

48. Travelers United has standing to bring this Count under §28-3905(k)(1)(D)(i) “Subject to sub-paragraph (ii) of this subparagraph, a public interest organization may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District if the consumer or class could bring an action under subparagraph (A) of this paragraph for relief from such use by such person of such practice.” Travelers United is a public interest organization, with members in the District, that has done significant advocacy work against deceptive advertising across the travel industry, both locally in the District

and on the federal level. Deceptive and misleading social media advertising is a trade practice in violation of a law of the District.

49. The District’s Consumer Protection Procedures Act §28-3901(d) states “in construing the term ‘unfair or deceptive practice’ due consideration and weight shall be given to the interpretation by the Federal Trade Commission and the federal courts of the term “unfair or deceptive act or practice,” as employed in section 5(a) of An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes, approved September 26, 1914 (38 Stat. 719; 15 U.S.C. § 45(a)).” The Federal Trade Commission (FTC) has long addressed the use of endorsements and testimonials in advertising.¹⁴ The Federal Trade Commission’s 2019 “Disclosures 101 for Social Media Influencers” clearly states that “simple and clear language” should be used such as “advertisement,” “ad” and “sponsored” to disclose when a social media post is an advertisement.¹⁵ The Federal Trade Commission updated their guides concerning the use of endorsements and testimonials in advertising on July 26, 2023 (88 FR 4810) and states “when there exists a connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement, and that connection is not reasonably expected by the audience, such a connection must be disclosed clearly and conspicuously.” Here the FTC is clear in the examples presented under 16 CFR § 255.5 Disclosure of material connections that Smile Texas was acting in unfair and deceptive way by not requiring Noem to disclose that she had a material connection to their

¹⁴ FEDERAL TRADE COMMISSION 16 CFR § 255 Guides Concerning the Use of Endorsements and Testimonials in Advertising, (last visited March 12, 2024) <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-publishes-final-guides-governing-endorsements-testimonials/091005revisedendorsementguides.pdf>

¹⁵ Disclosures 101 for Social Media Influencers – The Federal Trade Commission (last visited March 12, 2024) https://www.bulkorder.ftc.gov/sites/bulkorder.ftc.gov/files/publications/1001a_influencer_guide_508.pdf

company. The FTC states in 16 CFR § 255.5 Disclosure of Material Connections (b)

Example Three:

(i) During an appearance by a well-known professional tennis player on a television talk show, the host comments that the past few months have been the best of the player's career and during this time the player has risen to their highest level ever in the rankings. The player responds by attributing that improvement to seeing the ball better ever since having laser vision correction surgery at a specific identified clinic. The athlete continues talking about the ease of the procedure, the kindness of the clinic's doctors, the short recovery time, and now being able to engage in a variety of activities without glasses, including driving at night. The athlete does not disclose having a contractual relationship with the clinic that includes payment for speaking publicly about the surgery. Consumers might not realize that a celebrity discussing a medical procedure in a television interview has been paid for doing so, and knowledge of such payments would likely affect the weight or credibility consumers give to the celebrity's endorsement. Without a clear and conspicuous disclosure during the interview that the athlete has been engaged as a spokesperson for the clinic, this endorsement is likely to be deceptive. A disclosure during the show's closing credits would not be clear and conspicuous. Furthermore, if consumers are likely to take away from the interview that the athlete's experience is typical of those who undergo the same procedure at the clinic, the advertiser must have substantiation for that claim.

(ii) Assume that the tennis player instead touts the results of the surgery—mentioning the clinic by name—in the player's social media post. Consumers might not realize that the athlete is a paid endorser, and because that information might affect the weight consumers give to the tennis player's endorsement, the relationship with the clinic should be disclosed—regardless of whether the clinic paid the athlete for that particular post. It should be disclosed even if the relationship involves no payments but only the tennis player getting the laser correction surgery for free or at a significantly reduced cost.

(iii)

(A) Assume that the clinic reposts the tennis player's social media post to its own social media account and that the player's original post either—

(1) Did not have a clear and conspicuous disclosure, or

(2) Had such a disclosure that does not appear clearly and conspicuously in the repost.

(B) Given the nature of the endorsement (*i.e.*, a personally created statement from the tennis player's social media account), the viewing audience of the

clinic's social media account would likely reasonably not expect the tennis player to be compensated. The clinic should clearly and conspicuously disclose its relationship to the athlete in its repost.

50. Smile Texas' claims related to her undisclosed advertisement for cosmetic dental work out of state is a misrepresentation of material fact which has a tendency to mislead §28-3904(e) and fail to state a material fact if such failure tends to mislead §28-3904(f) when they advertise products and services online through their and Kristi Noem's social media channels without disclosing she received money or reduced price services to show those products.
51. Smile Texas purposefully sought to deceive consumers by failing to require its influencers, specifically Governor Kristi Noem, from placing the required disclosure in their advertised posts. Kristi Noem and Smile Texas knew and should have known that reasonable consumers she was advertising to without disclosure may believe she just liked a certain product and may purchase that product accordingly, without realizing that she was being paid to promote a product. Consumers were deceived by the lack of disclosure.

Prayer for Relief

WHEREFORE, Travelers United respectfully requests this Court enter a judgment in its favor and grant relief against Defendant, as follows:

- (a) Permanently enjoin and restrain Defendant, pursuant to D.C. Code § 28-3905(k)(2)(D), from engaging in conduct determined to be in violation of the CPPA;
- (b) Permanently enjoin Defendant from advertising on social media without disclosing that they are advertising;

- (c) Order the Defendant to pay statutory damages to Travelers United pursuant to D.C. Code § 28-3905(k)(2)(A), for each and every violation of the CPPA proven at trial;
- (d) Order the Defendant to pay punitive damages in an amount to be determined at trial, pursuant to D.C. Code § 28-3905(k)(2)(C);
- (e) Award Travelers United the costs and reasonable attorneys' and expert fees for its investigation and this action, pursuant to D.C. Code § 28-3905(k)(2)(B); and
- (f) Grant such further relief as the Court deems just and proper.

Jury Demand

Travelers United demands a trial by jury.

Respectfully submitted,

Dated: April 27, 2024

/s/ Lauren Wolfe

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