

1 WILLARD C. TOM
2 General Counsel

3 ROBIN ROSEN SPECTOR (DC Bar No. 449324)
4 ROSEMARY ROSSO (NY 1729730)
5 Federal Trade Commission
6 600 Pennsylvania Avenue, NW
7 Mail Drop NJ-3212
8 Washington, DC 20580
9 (202) 326-3740, -2174 (Tel.)
10 (202) 326-3259 (Fax)
11 rspector@ftc.gov
12 rosso@ftc.gov

13 Attorneys for Plaintiff
14 FEDERAL TRADE COMMISSION

15 UNITED STATES DISTRICT COURT
16 SOUTHERN DISTRICT OF CALIFORNIA

17 FEDERAL TRADE COMMISSION,
18 Plaintiff,

19 v.

20 YOUR BABY CAN, LLC, HUGH
21 PENTON, JR., and ROBERT TITZER,
22 Ph.D,

23 Defendants.

Case No. 12-CV-2114 DMS (BGS)

**STIPULATED FINAL
JUDGMENT AND ORDER
FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF FOR
DEFENDANTS YOUR BABY
CAN, LLC AND HUGH
PENTON**

24 Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), filed a Complaint for
25 Permanent Injunctive and Other Equitable Relief against Your Baby Can, LLC; Hugh Penton,
26 Jr.; and Robert Titzer, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC
27 Act"), 15 U.S.C. § 53(b), alleging deceptive acts or practices in violation of Section 5(a) of the
28 FTC Act, 15 U.S.C. § 45(a).

The Commission and Defendants Your Baby Can, LLC, and Hugh Penton, Jr. have stipulated to the entry of this Stipulated Final Judgment and Order for Permanent Injunction and

1 Other Equitable Relief ("Order") in settlement of the Commission's allegations against these
2 Defendants. The Court, having been presented with this Order, finds as follows:

3 **FINDINGS**

4 1. This Court has jurisdiction over the subject matter of this case and over all parties.

5 Venue in the United States District Court for the Southern District of California is proper.

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7 2. The Complaint states a claim upon which relief can be granted, and the Commission has
8 the authority to seek the relief it has requested.

9 3. The activities of Defendants Your Baby Can, LLC, and Hugh Penton, Jr., for the
10 purposes of this Order, are in or affecting commerce, as defined in Section 4 of the FTC Act, 15
11 U.S.C. § 44.

12 4. The parties stipulate and agree to entry of this Order, without trial or final adjudication of
13 any issue of fact or law, to settle and resolve all matters in dispute between the FTC and
14 Defendants Your Baby Can, LLC, and Hugh Penton, Jr. arising from the conduct alleged in the
15 Complaint to the date of entry of this Order. Defendants Your Baby Can, LLC and Hugh
16 Penton, Jr. neither admit nor deny the allegations set forth in the Complaint, other than the
17 jurisdictional facts, by stipulating and agreeing to entry of this Order. This settlement does not
18 settle and resolve any matters not alleged in the Complaint.
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21 5. The Commission's action against Defendants Your Baby Can, LLC, and Hugh Penton, Jr.
22 is an exercise of the Commission's police or regulatory power as a governmental unit.

23 6. Defendants Your Baby Can, LLC, and Hugh Penton, Jr. waive all rights to seek judicial
24 review or otherwise challenge or contest the validity of this Order. Defendants Your Baby Can,
25 LLC, and Hugh Penton, Jr. also waive any claims they may have held under the Equal Access to
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1 Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order.

2 Each settling party shall bear its own costs and attorneys' fees.

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4 7. This action and the relief awarded herein are in addition to, and not in lieu of, other
5 remedies as may be provided by law, including both civil and criminal remedies.

6 8. Entry of this Order is in the public interest.

7 **ORDER**

8 **DEFINITIONS**

9 Unless other specified,

10 1. "Defendants" means Your Baby Can, LLC, and its successors and assigns, and Hugh
11 Penton, Jr.

12 2. "Defendant YBC" means Your Baby Can, LLC, and its successors and assigns.

13 3. "Defendant Penton" means Hugh Penton, Jr. and his agents, representatives, and
14 employees.

15 4. "Defendant Titzer" means Robert Titzer, PhD, and his agents, representatives, and
16 employees.

17 5. "Commerce" means as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

18 6. The term "including" in this Order means "including without limitation."

19 7. The terms "and" and "or" in this Order shall be construed conjunctively or disjunctively
20 as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.

21 **I.**

22 **PROHIBITED REPRESENTATIONS**

23 **IT IS ORDERED** that Defendants YBC and Penton, directly or through any corporation,
24 partnership, subsidiary, division, trade name, or other device, and their officers, agents, servants,
25 representatives, employees, and all persons or entities in active concert or participation with
26 them who receive actual notice of this Order, by personal service or otherwise, in connection
27 with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of
28 any product, in or affecting commerce, are hereby permanently restrained and enjoined from

1 making, or assisting others in making, directly or indirectly, expressly or by implication,
2 including through the use of a product name, endorsement, depiction, or illustration, any
3 representation about the benefits, performance, or efficacy of such product for teaching reading
4 or speech, or enhancing language ability, cognitive ability, school performance, or brain
5 development, including, but not limited to, that such product:

- 6 A. Teaches infants and children to read;
- 7 B. Teaches children as young as three or four years to read books such as Charlotte's Web
8 or Harry Potter;
- 9 C. Gives infants and children an early start on academic learning; or
- 10 D. Helps children perform better in school and later in life than children who did not use the
11 product;

12 unless the representation is true, non-misleading, and, at the time of making such representation,
13 Defendants YBC and Penton possess and rely on competent and reliable scientific evidence that
14 is sufficient in quality and quantity based on standards generally accepted in the relevant
15 scientific fields, when considered in light of the entire body of relevant and reliable scientific
16 evidence, to substantiate that the representation is true. For purposes of this Section, competent
17 and reliable scientific evidence means tests, analysis, research, or other studies that have been
18 conducted and evaluated in an objective manner by qualified persons and are generally accepted
19 in the profession to yield accurate and reliable results.

20 **II.**

21 **PROHIBITED USE OF TERM**

22 **IT IS FURTHER ORDERED** that Defendants YBC and Penton, directly or through any
23 corporation, partnership, subsidiary, division, trade name, or other device, and their officers,
24 agents, servants, representatives, employees, and all persons or entities in active concert or
25 participation with them who receive actual notice of this Order, by personal service or otherwise,
26 in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or
27 distribution of any product, in or affecting commerce, are hereby permanently restrained and
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1 enjoined from employing the term "Your Baby Can Read" in conjunction with or as part of any
2 product name or product logo.

3 **III.**

4 **PROHIBITED MISREPRESENTATIONS**

5 **IT IS FURTHER ORDERED** that Defendants YBC and Penton, directly or through any
6 corporation, partnership, subsidiary, division, trade name, or other device, and their officers,
7 agents, servants, representatives, employees, and all persons or entities in active concert or
8 participation with them who receive actual notice of this Order, by personal service or otherwise,
9 in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or
10 distribution of any product, in or affecting commerce, are hereby permanently restrained and
11 enjoined from misrepresenting in any manner, directly or indirectly, expressly or by implication,
12 including through the use of endorsements:

- 13 A. The existence, contents, validity, results, conclusions, or interpretations of any test,
14 study or research; or
15 B. That the benefits of any product are scientifically proven, including, but not limited
16 to, that scientific studies prove that Your Baby Can Read!® teaches infants and
17 children to read.

18 **IV.**

19 **MONETARY JUDGMENT**

20 **IT IS FURTHER ORDERED** that:

- 21 A. Judgment is hereby entered against Defendant YBC in favor of the Commission and
22 against Defendant YBC in the amount of ONE HUNDRED EIGHTY-FIVE MILLION
23 DOLLARS (\$185,000,000), which represents the gross sales of the Your Baby Can Read!
24 product; *provided, however*, subject to Section V of this Order, that due to Defendant YBC's
25 current financial condition and its inability to pay, this judgment shall be suspended, upon
26 payment to the FTC or its designated agent of FIVE HUNDRED THOUSAND DOLLARS
27 (\$500,000).

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1 B. Defendant YBC shall transfer \$500,000 to the FTC no later than fifteen (15) days after
2 entry of the Order pursuant to instructions that the FTC will provide.

3 C. Any funds received by the FTC pursuant to this Section shall be deposited into a fund
4 administered by the FTC or its agent to be used for equitable relief, including but not limited to
5 consumer redress and any attendant expenses for the administration of any redress funds. In the
6 event that direct redress to consumers is wholly or partially impracticable or funds remain after
7 redress is completed, the FTC may apply any remaining funds for such other equitable relief,
8 including, but not limited to, consumer information remedies, as the FTC determines to be
9 reasonably related to the practices alleged in the Complaint. Any funds not used for such
10 equitable relief shall be deposited to the U.S. Treasury as equitable disgorgement. Defendant
11 YBC shall have no right to challenge the FTC's choice of remedies or the manner of distribution.

12 D. Defendant YBC relinquishes all dominion, control, and title to the funds paid to the
13 fullest extent permitted by law. Defendant YBC shall make no claim to or demand for return of
14 the funds, directly or indirectly, through counsel or otherwise.

15 E. Defendant YBC agrees that the facts as alleged in the Complaint filed in this action shall
16 be taken as true without further proof in any bankruptcy case or subsequent civil litigation
17 pursued by the Commission to enforce its rights to any payment or money judgment pursuant to
18 this Order, including but not limited to a nondischargeability complaint in any bankruptcy case.
19 Defendant YBC further stipulates and agrees that that facts alleged in the Complaint establish all
20 elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of
21 the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and that this Order shall have collateral estoppel
22 effect for such purposes.

23 F. In accordance with 31 U.S.C. § 7701, Defendant YBC is hereby required, unless it has
24 already done so, to furnish to the FTC its tax identification numbers, which shall be used for the
25 purposes of collecting and reporting on any delinquent amount arising out of this Order.
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V.

RIGHT TO REOPEN

IT IS FURTHER ORDERED that, the FTC's agreement to, and the Court's approval of, this Order is expressly premised on the truthfulness, accuracy and completeness of Defendant YBC's financial statements previously submitted to the FTC. If, upon motion by the FTC, the Court finds that the financial statements of Defendant YBC contains any material misrepresentation or omission, the judgment entered in Section IV of this Order shall be reinstated and become immediately due and payable as to that defendant, less any amounts turned over to the FTC or its designated agent pursuant to Sections IV and V of this Order; *provided, however*, that in all other respects this Order shall remain in full force and effect unless otherwise ordered by the Court; and, *provided further*, that proceedings instituted under this provision would be in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that the FTC may initiate to enforce this Order. For purposes of this Section, the Defendant YBC waives any right to contest any of the allegations in the Complaint. Notwithstanding anything to the contrary in this Order, Defendant YBC expressly retains the right and ability to contest all or any of the facts alleged in the Complaint filed in this action in: (1) any criminal proceeding; and (2) any civil or administrative proceeding to which the FTC is not a party.

VI.

COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendants YBC and Penton make timely submissions to the Commission:

A. One-hundred and eighty days (180) after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury.

1. Each Defendant must: (a) designate at least one telephone number and an email, physical, and postal address as points of contact, which representatives of the Commission may use to communicate with Defendant; (b) identify all of the Defendants' businesses by all of their names, telephone numbers, and physical,

1 postal, email and Internet addresses; (c) describe the activities of each such business,
2 including the products and services offered, the means of advertising, marketing, and
3 sales, and the involvement of any other Defendant, including Defendant Titzer,
4 (which Defendant Penton must describe if he knows or should know due to his
5 involvement); (d) describe in detail whether and how that Defendant is in compliance
6 with each Section of this Order; and (e) provide a copy of each Order
7 Acknowledgment obtained pursuant to this Order, unless previously submitted;

8 2. Additionally, Defendant Penton must: (a) identify all telephone numbers and all
9 email, Internet, physical, and postal addresses, including all residences; (b) identify
10 all titles and roles in all business activities, including any business for which such
11 Defendant performs services whether as an employee or otherwise and any entity in
12 which Defendant Penton has an ownership interest; and (c) describe in detail
13 Defendant Penton's involvement in each such business, including title, role,
14 responsibilities, participation, authority, control, and any ownership.

15 B. For twenty (20) years following entry of this Order, each Defendant must submit a
16 compliance notice, sworn under penalty of perjury, within fourteen (14) days of any change in
17 the following:

18 1. Each Defendant must report any change in: (a) any designated point of contact; (b)
19 the structure of Defendant YBC or any entity that either Defendant has any ownership
20 interest in or directly or indirectly controls that may affect compliance obligations
21 arising under this Order, including: creation, merger, sale, or dissolution of the entity
22 or any subsidiary, parent, or affiliate that engages in any acts or practices subject to
23 this Order.

24 2. Additionally, Defendant Penton must report any change in: (a) name, including
25 aliases or fictitious name, or residence address; or (b) title or role in any business
26 activity, including any business for which Defendant Penton performs services
27 whether as an employee or otherwise and any entity in which Defendant Penton has
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1 any ownership interest, and identify its name, physical address, and Internet address,
2 if any.

3 C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy
4 petition, insolvency proceeding, or any similar proceeding by or against such Defendant within
5 fourteen (14) days of its filing.

6 D. Any submission to the Commission required by this Order to be sworn under penalty of
7 perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I
8 declare under penalty of perjury under the laws of the United States of America that the
9 foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full
10 name, title (if applicable), and signature.

11 E. Unless otherwise directed by a Commission representative in writing, all submissions to
12 the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight
13 courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of
14 Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington,
15 DC 20580. The subject line must begin: FTC v. Your Baby Can, LLC, et al.

16 **VII.**

17 **COMPLIANCE MONITORING**

18 **IT IS FURTHER ORDERED** that, for the purpose of monitoring Defendants YBC and
19 Penton’s compliance with this Order:

20 A. Within fourteen (14) days of receipt of a written request from a representative of the
21 Commission, each Defendant must: submit additional compliance reports or other requested
22 information, which must be sworn under penalty of perjury; appear for depositions; and produce
23 documents, for inspection and copying. The Commission is also authorized to obtain discovery,
24 without further leave of court, using any of the procedures prescribed by the Federal Rules of
25 Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

26 B. For matters concerning this Order, the Commission is authorized to communicate directly
27 with each Defendant through undersigned counsel. If such counsel no longer represents
28 Defendants YBC and Penton, the Commission is authorized to communicate directly with such

1 Defendant. Defendants YBC and Penton must permit representatives of the Commission to
2 interview any employee or other person affiliated with any Defendant who has agreed to such an
3 interview. The person interviewed may have counsel present.

4 C. The Commission may use all other lawful means, including posing, through its
5 representatives, as consumers, suppliers, or other individuals or entities, to Defendants YBC and
6 Penton or any individual or entity affiliated with Defendants YBC and Penton, without the
7 necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful
8 use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49,
9 57b-1.

10 **VIII.**

11 **RECORDKEEPING**

12 **IT IS FURTHER ORDERED** that Defendants YBC and Penton must create certain
13 records for twenty (20) years after entry of the Order, and retain each such record for five (5)
14 years. Specifically, Defendant YBC and Defendant Penton, for any business in which that
15 Defendant, individually or collectively with any other Defendant, including Defendant Titzer, is
16 a majority owner or directly or indirectly controls, must maintain the following records:

17 A. Accounting records showing the revenues from all goods or services sold, all costs
18 incurred in generating those revenues, and the resulting net profit or loss;

19 B. Personnel record showing, for each person providing services, whether as an employee or
20 otherwise, that person's: name, addresses, and telephone numbers, job title or position; dates of
21 service; and, if applicable, the reason for termination;

22 C. Complaints and refund requests, whether received directly or indirectly, such as through a
23 third party, and any response;

24 D. A copy of each advertisement or other marketing material; and

25 E. All records necessary to demonstrate full compliance with each provision of this Order,
26 including all submissions to the Commission.

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IX.

ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendants YBC and Penton obtain acknowledgments of receipt of this Order:

- A. Each Defendant, within seven (7) days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For three (3) years after entry of this Order, Defendant Penton, for any business that he, individually or collectively with any other Defendant, including Defendant Titzer, is the majority owner or directly or indirectly controls, and Defendant YBC, must deliver a copy of this Order to: (1) all principals, officers, directors, and managers; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of this Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within seven (7) days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities.
- C. From each individual or entity to which a Defendant delivered a copy of this Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

X.

COOPERATION WITH PLAINTIFF

IT IS FURTHER ORDERED that, upon reasonable notice from the Commission, Defendants YBC and Penton shall reasonably and in good faith, cooperate with the Commission in connection with this action or any subsequent investigation or litigation related to or associated with the acts or practices that are the subject of the Commission's Complaint. Defendants YBC and Penton acknowledge, understand, and agree that such cooperation shall include, but not be limited to, the following:

- A. Appearing for interviews as may reasonably be requested by the Commission;
- B. Responding to all reasonable inquiries of the Commission;

- 1 C. Providing all documents, records, and other tangible evidence reasonably requested by
- 2 the Commission;
- 3 D. Providing truthful declarations, affidavits, certifications, and written testimony that may
- 4 be reasonably requested by the Commission;
- 5 E. Appearing and providing truthful testimony at any trial, deposition, or other proceeding.
- 6 Defendants YBC and Penton agree to accept service of any subpoena to appear and provide
- 7 testimony in such proceedings and will accept such service through overnight delivery to
- 8 Defendants YBC and Penton or their counsel; and
- 9 F. Releasing any YBC and Penton Overseas current or former employees from any
- 10 confidentiality or other agreements that might limit their ability to appear for interviews, provide
- 11 truthful declarations, affidavits, certifications and written testimony, or appear and provide
- 12 truthful testimony at any trial, deposition or other proceeding.
- 13 Defendants YBC and Penton's failure to cooperate as required herein constitutes a material
- 14 breach of the settlement between the parties and a violation of this Order.

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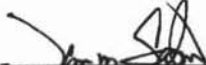
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XI.


RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for the purposes of construction, modification, and enforcement of this Order.

IT IS SO ORDERED, this 12th day of SEPTEMBER, 2012.



UNITED STATES DISTRICT JUDGE


SO STIPULATED:


ROBIN ROSEN SPECTOR
ROSEMARY ROSSO
Federal Trade Commission

Attorneys for Plaintiff

YOUR BABY CAN, LLC, Defendant


By: Hugh Penton, Jr.


HUGH PENTON, JR., Defendant


ANTHONY DIRESTA
Winston & Strawn, LLP
1700 K Street, N.W.
Washington, DC 20006
adiresta@winston.com
(202) 282-5782

DAVID ARONOFF
Winston & Strawn, LLP
333 South Grand Avenue
Los Angeles, CA 90071
daronoff@winston.com
(213) 615-1866

Attorneys for Defendants YBC and Penton