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15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 FEDERAL TRADE COMMISSION,

18 Plaintiff,

19 v.

20 AGE OF LEARNING, INC., a
21 corporation, also d/b/a ABCmouse and
22 ABCmouse.com,

23 Defendant.

Case No. 2:20-cv-7996

**STIPULATION ON ORDER
FOR PERMANENT
INJUNCTION AND
MONETARY JUDGMENT**

24 Plaintiff, the Federal Trade Commission (“Commission”), filed its
25 Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”) for
26 a permanent injunction and other equitable relief in this matter, pursuant to
27 Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15

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1 U.S.C. §§ 53(b), 57b, and the Restore Online Shoppers' Confidence Act
2 ("ROSCA"), 15 U.S.C. § 8404. The Commission and Defendant stipulate to the
3 entry of a Stipulated Order for Permanent Injunction and Monetary Judgment
4 (lodged concurrently herewith) to resolve all matters in dispute in this action
5 between them.

6 Plaintiff and Defendant hereby stipulate to entry of a Stipulated Order for
7 Permanent Injunction and Monetary Judgment with the following terms:

8 FINDINGS

9 A. This Court has jurisdiction over this matter.

10 B. The Complaint alleges that Defendant participated in deceptive and
11 unfair acts or practices in violation of Sections 13(b) and 19 of the FTC Act, 15
12 U.S.C. §§ 53(b), 57b, and ROSCA, 15 U.S.C. § 8404, in the advertisement,
13 marketing, distribution, and sale of online educational programs to consumers
14 throughout the United States.

15 C. Defendant neither admits nor denies any of the allegations in the
16 Complaint, except as specifically stated in this Order. Only for purposes of this
17 action, Defendant admits the facts necessary to establish jurisdiction.

18 D. Defendant waives any claim that it may have under the Equal Access
19 to Justice Act, 29 U.S.C. § 2412, concerning the prosecution of this action through
20 the date of this Order, and agrees to bear its own costs and attorney fees.

21 E. Defendant waives all rights to appeal or otherwise challenge or
22 contest the validity of this Order.

23 DEFINITIONS

24 For the purpose of this Order, the following definitions apply:

25 A. "**Billing Information**" means any data that enables any person to
26 access a customer's account, such as a credit card, checking, savings, share or
27 similar account, utility bill, mortgage loan account, or debit card.

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1 B. **“Charge,” “Charged,” or “Charging”** means any attempt to collect
2 money or other consideration from a consumer, including causing Billing
3 Information to be submitted for payment, including against the consumer’s credit
4 card, debit card, bank account, telephone bill, or other account.

5 C. **“Clear(ly) and Conspicuous(ly)”** means that a required disclosure is
6 difficult to miss (i.e., easily noticeable) and easily understandable by ordinary
7 consumers, including in all of the following ways:

8 1. In any communication that is solely visual or solely audible, the
9 disclosure must be made through the same means through which the
10 communication is presented. In any communication made through both
11 visual and audible means, such as a television advertisement, the disclosure
12 must be presented simultaneously in both the visual and audible portions of
13 the communication even if the representation requiring the disclosure is
14 made in only one means.

15 2. A visual disclosure, by its size, contrast, location, the length of time it
16 appears, and other characteristics, must stand out from any accompanying
17 text or other visual elements so that it is easily noticed, read, and understood.

18 3. An audible disclosure, including by telephone or streaming video,
19 must be delivered in a volume, speed, and cadence sufficient for ordinary
20 consumers to easily hear and understand it.

21 4. In any communication using an interactive electronic medium,
22 such as the Internet or software, the disclosure must be unavoidable.

23 5. The disclosure must use diction and syntax understandable to
24 ordinary consumers and must appear in each language in which the representation
25 that requires the disclosure appears.

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1 Negative Option Feature, are permanently restrained and enjoined from
2 misrepresenting, expressly or by implication:

3 A. Any cost to the consumer to purchase, receive, use, or return the initial good
4 or service;

5 B. That the consumer will not be Charged for any good or service;

6 C. That a good or service is offered on a “free,” “trial,” “sample,” “bonus,”
7 “gift,” “no obligation,” “discounted,” “upgraded” basis, or words of similar
8 import, denoting or implying the absence of an obligation on the part of the
9 recipient of the offer to affirmatively act in order to avoid Charges, including
10 where a Charge will be assessed pursuant to the offer unless the consumer takes
11 affirmative steps to prevent or stop such a Charge;

12 D. That the consumer can obtain a good or service for a processing, service,
13 shipping, handling, or administrative fee with no further obligation;

14 E. Any purpose for which the consumer’s Billing Information will be
15 used;

16 F. The date by which the consumer will incur any obligation or be
17 Charged unless the consumer takes an affirmative action on the Negative Option
18 Feature;

19 G. That a transaction has been authorized by the consumer;

20 H. Any material aspect of the nature or terms of a refund, cancellation,
21 exchange, or repurchase policy for the good or service, including whether it is
22 easy for consumers to cancel Defendant’s good or service; or
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24 I. Any other material fact.
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1 **II. REQUIRED DISCLOSURES RELATING TO NEGATIVE**
2 **OPTION FEATURES**

3 **IT IS FURTHER ORDERED** that Defendant, Defendant's officers, agents,
4 employees, and attorneys, and all other persons in active concert or participation
5 with any of them, who receive actual notice of this Order, whether acting directly
6 or indirectly, in connection with promoting or offering for sale any good or service
7 with a Negative Option Feature, are permanently restrained and enjoined from:

8 A. Representing directly or indirectly, expressly or by implication, that any
9 good or service that includes a Negative Option Feature is being offered on a
10 free, trial, no obligation, reduced, upgraded, or discounted basis, or for a
11 specific term, without disclosing Clearly and Conspicuously, and immediately
12 adjacent to, any such representation:

13 1. The extent to which the consumer must take any affirmative action to
14 avoid any Charges: a) for the offered good or service, b) of an increased
15 amount after the trial or promotional period ends, and c) on a recurring
16 basis;

17 2. The total cost (or range of costs) the consumer will be Charged
18 and, if applicable, the frequency of such Charges unless the consumer timely takes
19 steps to prevent or stop such Charges; and

20 3. The deadline(s) (by date or frequency) by which the consumer must
21 affirmatively act in order to stop all recurring Charges.

22 B. Obtaining Billing Information from a consumer for any transaction
23 involving a good or service that includes a Negative Option Feature, without first
24 disclosing Clearly and Conspicuously, and immediately adjacent to where a
25 consumer provides Billing Information:
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1 1. The extent to which the consumer must take affirmative action to
2 avoid any Charges: a) for the offered good or service, b) of an increased
3 amount after the trial or promotional period ends, and c) on a recurring
4 basis;

5 2. The total cost (or range of costs) the consumer will be Charged,
6 the date the initial Charge will be submitted for payment, and, if applicable, the
7 frequency of such Charges unless the consumer timely takes affirmative steps to
8 prevent or stop such Charges;

9 3. The deadline(s) (by date or frequency) by which the consumer
10 must affirmatively act in order to stop all recurring Charges;

11 4. The name of the seller or provider of the good or service and, if
12 the name of the seller or provider will not appear on billing statements, the billing
13 descriptor that will appear on such statements;

14 5. A description of the good or service;

15 6. Any Charge or cost for which the consumer is responsible in
16 connection with the cancellation of an order, any service or the return of any good;
17 and

18 7. The simple cancellation mechanism to stop any recurring
19 Charges, as required by Section IV of this Order.

20 C. Failing to send the consumer:

21 1. Immediately after the consumer's submission of an online
22 order, written confirmation of the transaction by email. The email must Clearly
23 and Conspicuously disclose all the information required by Subsection B, and
24 contain a subject line reading "Order Confirmation" along with the name of the
25 good or service, which may read, "Welcome to ABCmouse! Order
26 confirmation," and no additional information; or
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1 1. The extent to which the consumer must take affirmative action to
2 avoid any Charges: a) for the offered good or service, b) of an increased
3 amount after the trial or promotional period ends, and c) on a recurring
4 basis;

5 2. The total cost (or range of costs) the consumer will be Charged
6 and, if applicable, the frequency of such Charges unless the consumer timely takes
7 affirmative steps to prevent or stop such Charges; and

8 3. The deadline(s) (by date or frequency) by which the consumer
9 must affirmatively act in order to stop all recurring Charges.

10 B. For all oral offers, prior to obtaining any Billing Information from the
11 consumer:

12 1. Clearly and Conspicuously disclose the information contained in
13 Subsection B of the Section titled Required Disclosures Relating To
14 Negative Option Features; and

15 2. Obtain affirmative unambiguous express oral confirmation that the
16 consumer: a) consents to being Charged for any good or service, including
17 providing, at a minimum, the last 4 digits of the consumer's account number
18 to be Charged, b) understands that the transaction includes a Negative
19 Option Feature, and c) understands the specific affirmative steps the
20 consumer must take to prevent or stop further Charges.

21 C. For transactions conducted through Telemarketing, Defendant shall
22 maintain for 3 years from the date of each transaction an unedited voice recording
23 of the entire transaction, including the prescribed statements set out in Subsection
24 B of this Section. Each recording must be retrievable by date and by the
25 consumer's name, telephone number, or Billing Information, and must be provided
26 upon request to the consumer, the consumer's bank, or any law enforcement entity.

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1 G. All money paid to the Commission pursuant to this Order may be
2 deposited into a fund administered by the Commission or its designee to be used
3 for equitable relief, including consumer redress and any attendant expenses for the
4 administration of any redress fund. If a representative of the Commission decides
5 that direct redress to consumers is wholly or partially impracticable or money
6 remains after redress is completed, the Commission may apply any remaining
7 money for such other equitable relief (including consumer information remedies)
8 as it determines to be reasonably related to Defendant's practices alleged in the
9 Complaint. Any money not used for such equitable relief is to be deposited to the
10 U.S. Treasury as disgorgement. Defendant has no right to challenge any actions
11 the Commission or its representatives may take pursuant to this Subsection.

12 VI. CUSTOMER INFORMATION

13 **IT IS FURTHER ORDERED** that Defendant, Defendant's officers, agents,
14 employees, attorneys, and all other persons in active concert or participation with
15 any of them, who receive actual notice of this Order, whether acting directly or
16 indirectly are permanently restrained and enjoined from directly or indirectly
17 failing to provide sufficient customer information to enable the Commission to
18 efficiently administer consumer redress. If a representative of the Commission
19 requests in writing any information related to redress, Defendant must provide it,
20 in the form prescribed by the Commission, within 14 days.

21 VII. ORDER ACKNOWLEDGMENTS

22 **IT IS FURTHER ORDERED** that Defendant obtains acknowledgments of
23 receipt of this Order:

24 A. Defendant, within 7 days of entry of this Order, must submit to the
25 Commission an acknowledgment of receipt of this Order sworn under penalty of
26 perjury.

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1 B. For 5 years after entry of this Order, Defendant must deliver a copy of
2 this Order to: (1) all principals, officers, directors, and LLC managers and
3 members; (2) all employees, agents, and representatives having managerial
4 responsibilities for conduct related to the subject matter of the Order; and (3) any
5 business entity resulting from any change in structure as set forth in the Section
6 titled Compliance Reporting. Delivery must occur within 7 days of entry of this
7 Order for current personnel. For all others, delivery must occur before they
8 assume their responsibilities.

9 C. From each individual or entity to which Defendant delivered a copy of
10 this Order, Defendant must obtain, within 30 days, a signed and dated
11 acknowledgment of receipt of this Order.

12 **VIII. COMPLIANCE REPORTING**

13 **IT IS FURTHER ORDERED** that Defendant make timely submissions to
14 the Commission:

15 A. One year after entry of this Order, Defendant must submit a
16 compliance report, sworn under penalty of perjury. Defendant must:

- 17 1. identify the primary physical, postal, and email address and
18 telephone number, as designated points of contact, which representatives of the
19 Commission may use to communicate with Defendant;
- 20 2. identify all of Defendant's businesses by all of their names,
21 telephone numbers, and physical, postal, email, and Internet addresses;
- 22 3. describe the activities of each business, including the goods and
23 services offered, the means of advertising, marketing, and sales;
- 24 4. describe in detail whether and how Defendant is in compliance
25 with each Section of this Order; and
- 26 5. provide a copy of each Order Acknowledgment obtained
27 pursuant to this Order, unless previously submitted to the Commission.

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1 B. For 20 years after entry of this Order, Defendant must submit a
2 compliance notice, sworn under penalty of perjury, within 14 days of any change
3 in the following:

- 4 1. any designated point of contact; or
5 2. the structure of Defendant or any entity that Defendant has any
6 ownership interest in or controls directly or indirectly that may affect compliance
7 obligations arising under this Order, including: creation, merger, sale, or
8 dissolution of the entity or any subsidiary, parent, or affiliate that engages in any
9 acts or practices subject to this Order.

10 C. Defendant must submit to the Commission notice of the filing of any
11 bankruptcy petition, insolvency proceeding, or similar proceeding by or against
12 Defendant within 14 days of its filing.

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

19 E. Unless otherwise directed by a Commission representative in writing,
20 all submissions to the Commission pursuant to this Order must be emailed to
21 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:
22 Associate Director for Enforcement, Bureau of Consumer Protection, Federal
23 Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The
24 subject line must begin: *FTC v. Age Of Learning, Inc.*, FTC Matter No. 1723186.

25 **IX. RECORDKEEPING**

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1 **IT IS FURTHER ORDERED** that Defendant must create certain records
2 for 20 years after entry of the Order, and retain each such record for 5 years.

3 Specifically, Defendant must create and retain the following records:

4 A. Accounting records showing the revenues from all goods or services
5 sold;

6 B. Personnel records showing, for each person providing services,
7 whether as an employee or otherwise, that person's: name; addresses; telephone
8 numbers; job title or position; dates of service; and (if applicable) the reason for
9 termination;

10 C. Records of all consumer complaints and refund requests, whether
11 received directly or indirectly, such as through a third party, and any response;

12 D. All records necessary to demonstrate full compliance with each
13 provision of this Order, including all submissions to the Commission; and

14 E. A copy of all websites, advertisements and other marketing materials
15 that Defendant has reviewed to ensure compliance with this Order.

16 **X. COMPLIANCE MONITORING**

17 **IT IS FURTHER ORDERED** that, for the purpose of monitoring
18 Defendant's compliance with this Order:

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

26 B. For matters concerning this Order, the Commission is authorized to
27 communicate directly with Defendant. Defendant must permit representatives of
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1 the Commission to interview any employee or other person affiliated with
2 Defendant who has agreed to such an interview. The person interviewed may have
3 counsel present.

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

10 **XI. RETENTION OF JURISDICTION**

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

13 **SO STIPULATED AND AGREED:**

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15 **FOR PLAINTIFF:**

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Date: Sept. 1, 2020

18 _____
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STIPULATION

FOR DEFENDANT:



Date: 9-1-2020

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DEFENDANT AGE OF LEARNING, INC.:



Date: 9/1/20

Shannon Castellani
General Counsel and Senior Vice President of Compliance, Age of Learning, Inc.

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