

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

IN THE MATTER OF

Nicolas Molina,  
Petitioner

and

Advance Your Child, LLC d/b/a My Talking Toddler,  
Petitioner.

\_\_\_\_\_ / 323079 \_\_\_\_\_



**NICOLAS MOLINA'S PETITION TO QUASH OR  
LIMIT PORTIONS OF THE CIVIL INVESTIGATIVE DEMAND**

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*Counsel for Petitioner*

**NICOLAS MOLINA'S PETITION TO QUASH OR  
LIMIT PORTIONS OF THE CIVIL INVESTIGATIVE DEMAND**

Petitioner Nicolas Molina, through undersigned counsel, hereby petitions the Federal Trade Commission ("FTC"), pursuant to 16 C.F.R. §2.7(d) to either quash or limit portions of the Civil Investigative Demand ("CID") served on Petitioner on April 19, 2013. The CID issued to Petitioner makes various demands, including requiring Petitioner to state any ownership interest that he has "in any company or entity, including the amount of interest and the time period during which [Petitioner] held that interest." As discussed below, that specific request exceeds the reasonable boundaries of the FTC's authority under Section 45 of the Federal Trade Commission Act, as it improperly requires Petitioner to provide information that is wholly irrelevant to the instant matter and which is unlikely to lead to relevant evidence in this investigation.

**I. FACTUAL SUMMARY**

According to records on file with the State of Florida, Petitioner is a Manager of Advance Your Child LLC, a Florida limited liability company ("Advance Your Child" or the "Company"). Advance Your Child is the creator and distributor of a series of children's videos called "My Talking Toddler", which encourages early communication in children through audiovisual lessons provided on DVD ROM.

Both Petitioner and Advance Your Child received CIDs from the FTC.<sup>1</sup> The CIDs were purportedly issued to further the goals stated in the FTC's March 16, 2011 resolution, namely, to "determine whether unnamed persons . . . have engaged or are engaging in deceptive or unfair acts or practices in or affecting commerce in the advertising, marketing, or sale of products or

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<sup>1</sup> Copies of the Petitioner's CID and Advance Your Child's CID are attached.

services intended to provide an educational or developmental benefit to children under the age of six” (the “FTC Resolution”).

For the most part, the CID issued to Petitioner (the “Molina CID”) requests information that directly and/or substantially relates to Petitioner’s relationship with Advance Your Child and/or Petitioner’s involvement with the Company’s activities. Interrogatory Six, however, requests that Petitioner “[s]tate any ownership or membership interest in the Company, **and any other company or entity**, including the amount of such interest and the time period during which you held that interest.” *See*, Molina CID p. 10. Thus, Interrogatory Six requires Petitioner to provide information about **any** company in which he holds an ownership interest—even companies that have absolutely no relationship to Advance Your Child.

## **II. ARGUMENT**

### **A. The FTC’s Authority Under Section 45**

Although 15 U.S.C. §45(a) provides the FTC with the authority to investigate certain deceptive or unfair practices, the FTC’s authority is not without limits. Likewise, although Congress has empowered the FTC under Section 57b-1 to issue CIDs in support of investigations undertaken pursuant to Section 45, a CID is only enforceable to the extent it rests on a legitimate exercise of Section 45 authority.

The Supreme Court in *U.S. v. Morton Salt Co.*, 338 U.S. 632 (1950) established the standard for determining whether a CID must be limited. Although the Court enforced the decree at issue in *Morton*, it recognized that “a governmental investigation into corporate matters may be of such a sweeping nature and so unrelated to the matter properly under inquiry as to exceed the investigatory power.” *Id.* at 652. Accordingly, the Court instructed that CIDs should not be enforced to the extent that they demand information that is (a) not “within the authority of

the agency,” (b) “too indefinite,” or (c) not reasonably relevant to the inquiry.” *Id.* This standard has been consistently applied by federal courts for over six decades. *See, e.g., SEC v. Blackfoot Bituminous, Inc.*, 622 F.2d 512, 514 (10<sup>th</sup> Cir. 1980); *SEC v. Arthur Young & Co.*, 584 F.2d 1018, 1030-31 (D.C. Cir. 1978); *FTC v. Mt. Olympus Fin. LLC*, 211 F.3d 1278 (10<sup>th</sup> Cir. 2000).

**B. There Is No Basis Under Section 45 To Support Enforcement Of Interrogatory Six Of The Molina CID.**

Interrogatory Six should either be quashed or modified. Simply put: there is no basis under Section 45 or under the FTC Resolution to require Petitioner to disclose every ownership investment that he may have in any company, regardless of the size of his investment, and regardless of what the company may do, or where the company may be located.

The FTC Resolution establishes the scope of the FTC’s investigation in this matter. *See, e.g., FTC v. Carter*, 636 F.2d 781, 789 (D.C. Cir. 1980) (holding that the scope of a CID is limited and defined by the applicable authorizing resolution).<sup>2</sup>

Without question, the inquiry under the FTC Resolution is solely and exclusively limited to the “advertising, marketing, or sale of products or services intended to provide an educational or developmental benefit to children under the age of six.” (*See* FTC Resolution, attached as (unnumbered) page 3 to the Molina CID.) Thus, requests in the Molina CID for information that are “reasonably relevant” to that inquiry are proper, and permitted, under Section 45; requests for

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<sup>2</sup> Indeed, a court can look only at the applicable authorizing resolution, and not any other document or communications, to evaluate the scope of an investigation by the FTC. *See, e.g., FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1092 (D.C. Cir. 1992).

information that extend beyond the inquiry of the FTC Resolution are improper and unenforceable.<sup>3</sup>

Interrogatory Six is overbroad, and demands information that is not reasonably related to the inquiry authorized by the FTC Resolution. In its current form, the interrogatory requires production of information about any company in which Petitioner may have an ownership interest, regardless of whether the company advertises, markets or sells products or services that are intended to provide an educational or developmental benefit to children under age six. This would encompass minor investments (such as stocks and bonds), as well as minority interests in unrelated third party companies. Such a sweeping request is not reasonably related to the instant investigation, and is not justified under Section 45 or the FTC Resolution.

Notably, the FTC has not provided any basis or rationale to justify why it seeks information that clearly falls outside of the purpose authorized by the FTC Regulation. Indeed, there is no reason for requesting such information of Petitioner except, perhaps, to gain leverage in the instant matter by intimidating Petitioner into believing that the FTC may investigate his other, unrelated financial interests, unless he settles the instant matter. Such implied coercion, of course, is wholly prohibited. *See, e.g., FTC v. Bisaro*, No. 10-289, 2010 WL 3260042, at \*5 (D.D.C. July 13, 2012) (holding that an improper purpose for requesting information under a CID is, among other things, to “harass the [recipient] or . . . put pressure on him to settle.”

Given that Interrogatory Six requires the production of information that far exceeds the parameters of the inquiry under the FTC Resolution, the interrogatory must either be quashed or, as suggested below, modified.

### **C. Interrogatory Six Should Be Modified.**

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<sup>3</sup> *See, e.g., Invention Submission Corp.*, 965 F.2d at 1092 (“the validity of Commission subpoenas is to be measured against the purposes stated in the [authorizing] resolution.”); *also, FTC v. Texaco, Inc.*, 555 F.2d 862, 873 (D.C. Cir. 1977).

During the parties' "meet and confer" conference held on April 2, 2013, undersigned counsel and the FTC's counsel, Edwin Rodriguez, Esq., discussed Petitioner's objection to the scope and wording of Interrogatory Six. At that time, the parties agreed that undersigned counsel would submit a proposed revised version of Interrogatory Six for consideration by the Commission. To that end, the following revised version of Interrogatory Six is hereby requested by Petitioner (proposed additional wording is in bold font, and proposed struck language is indicated accordingly):

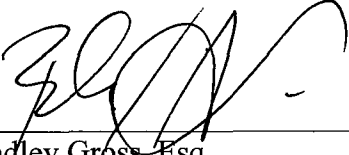
6. State any ownership or membership interest in the Company and any other company or entity **that advertises, markets, or sells products or services, directly or indirectly, which are intended to provide an educational or developmental benefit to children under the age of six, or which supports such endeavors,** including the amount of such interest(s) and the time period(s) during which you held ~~that~~ **such** interest(s).

The proposed revised version of Interrogatory Six would allow the FTC to fully investigate this matter in accordance with the parameters of the FTC Resolution, while balancing Petitioner's right to keep his personal, unrelated interests out of the public spotlight.

### III. CONCLUSION

For the reasons discussed above, Petitioner Nicolas Molina requests that the Commission either quash Interrogatory Six, or modify the interrogatory as described above.

Date: April 4, 2013



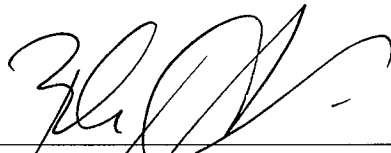
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Bradley Gross, Esq.  
Law Office of Bradley Gross, PA  
*Counsel for Petitioner*

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Phone: (954) 217-6225  
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Email: [brad@bradleygross.com](mailto:brad@bradleygross.com)

**CERTIFICATION**

Pursuant to 16 C.F.R. §2.7(d)(s), undersigned counsel hereby certifies that counsel met and conferred with FTC counsel in a good faith effort to resolve by agreement the issues set forth in this Petition, but were unable to reach agreement.

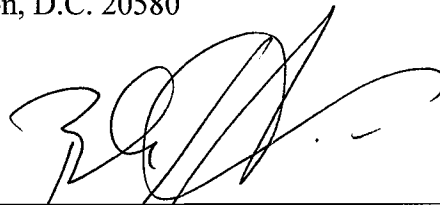
  
\_\_\_\_\_  
Bradley Gross, Esq.

**CERTIFICATE OF SERVICE**

01-01-13 9-59A EIBS

I hereby certify that on this 4<sup>th</sup> day of April, 2013, I caused the original and twelve (12) copies of Nicolas Molina's Petition to Quash or Limit Portions of the Civil Investigative Demand with attached exhibits to be delivered, via FedEx, to the Secretary of the Federal Trade Commission, and one (1) copy to Edwin Rodriguez, Esq., at the following address:

Federal Trade Commission  
600 Pennsylvania Ave., NW, Mail Drop NJ3212  
Washington, D.C. 20580



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Bradley Gross, Esq.



**MOLINA CID**



United States of America  
Federal Trade Commission

**CIVIL INVESTIGATIVE DEMAND**

1. TO

Nicolas Molina  
15050 N.W. 79th Court  
Suite 101A  
Hialeah, FL 33016

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED

You are required to appear and testify.

LOCATION OF HEARING

YOUR APPEARANCE WILL BE BEFORE

DATE AND TIME OF HEARING OR DEPOSITION

You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.

You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS MUST BE AVAILABLE

APR 15 2013

3. SUBJECT OF INVESTIGATION

See attached resolution.

4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN

Mary K. Engle, Assoc. Dir./Edwin Rodriguez, Attorney  
Federal Trade Commission  
600 Pennsylvania Avenue NW, Mail Drop NJ3212  
Washington, DC 20580

5. COMMISSION COUNSEL

Robin Rosen Spector/Edwin Rodriguez (202-326-3740, -3147)  
Federal Trade Commission  
600 Pennsylvania Avenue NW, Mail Drop NJ3212  
Washington, DC 20580

DATE ISSUED

3/14/13

COMMISSIONER'S SIGNATURE

**INSTRUCTIONS AND NOTICES**

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

**PETITION TO LIMIT OR QUASH**

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

**YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS**

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman) regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

**TRAVEL EXPENSES**

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

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## Form of Certificate of Compliance\*

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I/We do certify that all of the documents and information required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document responsive to this Civil Investigative Demand has not been submitted, the objections to its submission and the reasons for the objection have been stated.

If an interrogatory or a portion of the request has not been fully answered or a portion of the report has not been completed, the objections to such interrogatory or uncompleted portion and the reasons for the objections have been stated.

Signature \_\_\_\_\_

Title \_\_\_\_\_

Sworn to before me this day

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_

\*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**        **Jon Leibowitz, Chairman**  
                              **William E. Kovacic**  
                              **J. Thomas Rosch**  
                              **Edith Ramirez**  
                              **Julie Brill**

**RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN A NON-PUBLIC  
INVESTIGATION OF MARKETERS OF PRODUCTS OR SERVICES CLAIMING TO  
PROVIDE EDUCATIONAL OR DEVELOPMENTAL BENEFITS TO YOUNG  
CHILDREN**

File No. 112 3107

**Nature and Scope of Investigation:**


To determine whether unnamed persons, partnerships, corporations, or others have engaged or are engaging in deceptive or unfair acts or practices in or affecting commerce in the advertising, marketing, or sale of products or services intended to provide an educational or developmental benefit to children under the age of six, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended. The investigation is also to determine whether Commission action to obtain redress for injury to consumers or others would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed five (5) years from the date of issuance of this resolution. The expiration of this five-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the five-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the five-year period.

**Authority to Conduct Investigation:**

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; and FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 *et seq.*, and supplements thereto.

By direction of the Commission.

  
Donald S. Clark  
Secretary

Issued: March 16, 2011

**CIVIL INVESTIGATIVE DEMAND  
SCHEDULE FOR PRODUCTION OF DOCUMENTS AND ANSWERS  
TO WRITTEN INTERROGATORIES**

**I. DEFINITIONS**

As used in this Civil Investigative Demand, the following definitions shall apply:

A. **“Advertisement”** or **“advertising”** or **“ad”** shall mean any written or verbal statement, illustration, or depiction, whether in English or any other language, that is designed to effect a sale or create interest in the purchasing of goods or services, whether it appears on or in a label, package, package insert, radio, television, cable television, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, film, slide, audio program transmitted over a telephone system, telemarketing script, onhold script, upsell script, training materials provided to telemarketing firms, program-length commercial (“infomercial”), the Internet, or any other medium.

B. **“And,”** as well as **“or,”** shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any specification in this Schedule all information that otherwise might be construed to be outside the scope of the specification.

C. **“Any”** shall be construed to include **“all,”** and **“all”** shall be construed to include the word **“any.”**

D. **“CID”** shall mean the Civil Investigative Demand, including the attached Resolution and this Schedule, and including the Definitions, Instructions, and Specifications.

E. **“Communication”** shall mean any transmission or receipt of facts, information, opinions, or thought, whether conveyed in writing, orally, electronically, or by any other means, including written memorialization of oral communications.

F. **“Company”** shall mean Advance Your Child, LLC, also d/b/a My Talking Toddler, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.

G. **“Document”** shall mean the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including but not limited to any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book or label. **“Document” shall**

**also include all documents, materials, and information, including Electronically Stored Information, within the meaning of the Federal Rules of Civil Procedure.**

H. **“Each”** shall be construed to include **“every,”** and **“every”** shall be construed to include **“each.”**

I. **“Electronically Stored Information”** or **“ESI”** shall mean the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any electronic medium from which information can be obtained either directly or, if necessary, after translation by you into a reasonably usable form. This includes, but is not limited to, electronic mail, instant messaging, videoconferencing, and other electronic correspondence (whether active, archived, or in a deleted items folder), word processing files, spreadsheets, databases, and video and sound recordings, whether stored on: cards; magnetic or electronic tapes; disks; computer hard drives, network shares or servers, or other drives; cloud-based platforms; cell phones, PDAs, computer tablets, or other mobile devices; or other storage media.

J. **“FTC”** or **“Commission”** shall mean the Federal Trade Commission.

K. **“Identify”** or **“the identity of”** shall be construed to require identification of (a) natural persons by name, title, present business affiliation, present business address and telephone number, or if a present business affiliation or present business address is not known, the last known business and home addresses; and (b) businesses or other organizations by name, address, identities of natural persons who are officers, directors or managers of the business or organization, and contact persons, where applicable.

L. **“MTT”** shall mean the program of videos and other educational material or any substantially similar program manufactured, labeled, advertised, promoted, offered for sale, sold, or distributed by the Company under the name My Talking Toddler.

M. **“Person”** or **“persons”** shall mean all natural persons, corporations, partnerships, or other business associations, and all legal entities, including all members, officers, predecessors, assigns, divisions, affiliates, and subsidiaries.

N. **“Promotional material”** shall mean any document or thing designed or used to create interest in the purchasing of goods or services that is not counted as advertising, including, but not limited to: press releases, video news releases, and other communications with any print, television, or radio media, or any website designer, developer, manager, or host, or any online service; coupons; and payments for shelf space.

O. **“Referring to” or “relating to”** shall mean discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.

P. **“You” and “your”** shall mean Nicolas Molina, the person to whom this CID is issued, and all employees, agents, consultants or other persons working for or on behalf of Nicolas Molina.

Q. The singular shall include the plural, and the plural shall include the singular.

## II. INSTRUCTIONS

A. **Sharing of Information:** The Commission often makes its files available to other civil and criminal federal, state, local, or foreign law enforcement agencies. The Commission may make information supplied by you available to such agencies where appropriate pursuant to the Federal Trade Commission Act and 16 C.F.R. § 4.11 (c) and (j). Information you provide may be used in any federal, state, or foreign civil or criminal proceeding by the Commission or other agencies.

B. **Meet and Confer:** You must contact Edwin Rodriguez at 202-326-3147 as soon as possible to schedule a meeting (telephonic or in person) to be held within fourteen (14) days after receipt of this CID, or before the deadline for filing a petition to quash, whichever is first, in order to discuss compliance and to address and attempt to resolve all issues, including issues relating to protected status and the form and manner in which claims of protected status will be asserted, and the submission of ESI and other electronic productions as described in these Instructions. Pursuant to 16 C.F.R. § 2.7(k), you must make available personnel with the knowledge necessary for resolution of the issues relevant to compliance with this CID, including but not limited to personnel with knowledge about your information or records management systems, relevant materials such as organizational charts, and samples of material required to be produced. If any issues relate to ESI, you must make available a person familiar with your ESI systems and methods of retrieval.

C. **Applicable time period:** Unless otherwise directed in the specifications, the applicable time period for the request shall be from January 1, 2010, until the date of full and complete compliance with this CID.

D. **Claims of Privilege:** If any material called for by this CID is withheld based on a claim of privilege, work product protection, or statutory exemption, or any similar claim (*see* 16 C.F.R. § 2.7(a)(4)), the claim must be asserted no later than the return date of this CID. In addition, pursuant to 16 C.F.R. § 2.11(a)(1), submit, together with the claim, a detailed log of the items withheld. The information in the log shall be of sufficient detail to enable the Commission staff to assess the validity of the claim for each document, including attachments, without disclosing the protected information. Submit the log in a searchable electronic format, and, for each document, including attachments, provide:

- (1) Document control number(s);

- (2) The full title (if the withheld material is a document) and the full file name (if the withheld material is in electronic form);
- (3) A description of the material withheld (for example, a letter, memorandum, or email), including any attachments;
- (4) The date the material was created;
- (5) The date the material was sent to each recipient (if different from the date the material was created);
- (6) The email addresses, if any, or other electronic contact information to the extent used in the document, from which and to which each document was sent;
- (7) The names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all authors;
- (8) The names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all recipients of the material;
- (9) The names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all persons copied on the material;
- (10) The factual basis supporting the claim that the material is protected; and
- (11) Any other pertinent information necessary to support the assertion of protected status by operation of law.

16 C.F.R. § 2.11(a)(1)(i)-(xi).

In the log, identify by an asterisk each attorney who is an author, recipient, or person copied on the material. The titles, business addresses, email addresses, and relevant affiliations of all authors, recipients, and persons copied on the material may be provided in a legend appended to the log. However, provide in the log the information required by Instruction D.6. 16 C.F.R. § 2.11(a)(2). The lead attorney or attorney responsible for supervising the review of the material and who made the determination to assert the claim of protected status must attest to the log. 16 C.F.R. § 2.11(a)(1).

If only some portion of any responsive material is privileged, all non-privileged portions of the material must be submitted. Otherwise, produce all responsive information and material without redaction. 16 C.F.R. § 2.11(c). The failure to provide information sufficient to support a claim of protected status may result in denial of the claim. 16 C.F.R. § 2.11(a)(1).

**E. Document Retention:** You shall retain all documentary materials used in the preparation of responses to the specifications of this CID. The Commission may require the submission of additional documents at a later time during this investigation. Accordingly, you



should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this investigation during its pendency, irrespective of whether you believe such documents are protected from discovery by privilege or otherwise. *See* 15 U.S.C. § 50; *see also* 18 U.S.C. §§ 1505, 1519.

**F. Petitions to Limit or Quash:** Any petition to limit or quash this CID must be filed with the Secretary of the Commission no later than twenty (20) days after service of the CID, or, if the return date is less than twenty (20) days after service, prior to the return date. Such petition shall set forth all assertions of protected status or other factual and legal objections to the CID, including all appropriate arguments, affidavits, and other supporting documentation. 16 C.F.R. § 2.10(a)(1). Such petition shall not exceed 5,000 words as set forth in 16 C.F.R. § 2.10(a)(1) and must include the signed separate statement of counsel required by 16 C.F.R. § 2.10(a)(2). **The Commission will not consider petitions to quash or limit absent a pre-filing meet and confer session with Commission staff and, absent extraordinary circumstances, will consider only issues raised during the meet and confer process.** 16 C.F.R. § 2.7(k); *see also* § 2.11(b).

**G. Modification of Specifications:** If you believe that the scope of the required search or response for any specification can be narrowed consistent with the Commission's need for documents or information, you are encouraged to discuss such possible modifications, including any modifications of definitions and instructions, with Edwin Rodriguez at 202-326-3147. All such modifications must be agreed to in writing by the Bureau Director, or a Deputy Bureau Director, Associate Director, Regional Director, or Assistant Regional Director. 16 C.F.R. § 2.7(l).

**H. Certification:** A responsible corporate officer of the Company shall certify that the response to this CID is complete. This certification shall be made in the form set out on the back of the CID form, or by a declaration under penalty of perjury as provided by 28 U.S.C. § 1746.

**I. Scope of Search:** This CID covers documents and information in your possession or under your actual or constructive custody or control including, but not limited to, documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, and other agents and consultants, whether or not such documents and information were received from or disseminated to any person or entity.

**J. Document Production:** You shall produce the documentary material by making all responsive documents available for inspection and copying at your principal place of business. Alternatively, you may elect to send all responsive documents to Edwin Rodriguez, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., NJ-3212, Washington, D.C. 20580. Because postal delivery to the Commission is subject to delay due to heightened security precautions, please use a courier service such as Federal Express or UPS. Notice of your intended method of production shall be given by email or telephone to Edwin Rodriguez at [erodriguez@ftc.gov](mailto:erodriguez@ftc.gov) or 202-326-3147 at least five days prior to the return date.

**K. Document Identification:** Documents that may be responsive to more than one specification of this CID need not be submitted more than once; however, your response should indicate, for each document submitted, each specification to which the document is responsive.

If any documents responsive to this CID have been previously supplied to the Commission, you may comply with this CID by identifying the document(s) previously provided and the date of submission. Documents should be produced in the order in which they appear in your files or as electronically stored and without being manipulated or otherwise rearranged; if documents are removed from their original folders, binders, covers, containers, or electronic source in order to be produced, then the documents shall be identified in a manner so as to clearly specify the folder, binder, cover, container, or electronic media or file paths from which such documents came. In addition, number by page (or file, for those documents produced in native electronic format) all documents in your submission, preferably with a unique Bates identifier, and indicate the total number of documents in your submission.

**L. Production of Copies:** Unless otherwise stated, legible photocopies (or electronically rendered images or digital copies of native electronic files) may be submitted in lieu of original documents, provided that the originals are retained in their state at the time of receipt of this CID. Further, copies of originals may be submitted in lieu of originals only if they are true, correct, and complete copies of the original documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in any Commission proceeding or court of law; and provided further that you shall retain the original documents and produce them to Commission staff upon request. Copies of marketing materials and advertisements shall be produced in color, and copies of other materials shall be produced in color if necessary to interpret them or render them intelligible.

**M. Electronic Submission of Documents:** The following guidelines refer to the production of any Electronically Stored Information ("ESI") or digitally imaged hard copy documents. Before submitting any electronic production, you must confirm with the Commission counsel named above that the proposed formats and media types will be acceptable to the Commission. The FTC requests Concordance load-ready electronic productions, including DAT and OPT load files.

- (1) **Electronically Stored Information:** Documents created, utilized, or maintained in electronic format in the ordinary course of business should be delivered to the FTC as follows:
  - (a) Spreadsheet and presentation programs, including but not limited to Microsoft Access, SQL, and other databases, as well as Microsoft Excel and PowerPoint files, must be produced in native format with extracted text and metadata. Data compilations in Excel spreadsheets, or in delimited text formats, must contain all underlying data un-redacted with all underlying formulas and algorithms intact. All database productions (including structured data document systems) must include a database schema that defines the tables, fields, relationships, views, indexes, packages, procedures, functions, queues, triggers, types, sequences, materialized views, synonyms, database links, directories, Java, XML schemas, and other elements, including the use of any report writers and custom user data interfaces;

- (b) All ESI other than those documents described in (1)(a) above must be provided in native electronic format with extracted text or Optical Character Recognition (OCR) and all related metadata, and with corresponding image renderings as converted to Group IV, 300 DPI, single-page Tagged Image File Format (TIFF) or as color JPEG images (where color is necessary to interpret the contents); and
  - (c) Each electronic file should be assigned a unique document identifier ("DocID") or Bates reference.
- (2) **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business should be submitted in an electronic format when at all possible. These documents should be true, correct, and complete copies of the original documents as converted to TIFF (or color JPEG) images with corresponding document-level OCR text. Such a production is subject to the following requirements:
- (a) Each page shall be endorsed with a document identification number (which can be a Bates number or a document control number);
  - (b) Logical document determination should be clearly rendered in the accompanying load file and should correspond to that of the original document; and
  - (c) Documents shall be produced in color where necessary to interpret them or render them intelligible.
- (3) For each document electronically submitted to the FTC, you should include the following metadata fields in a standard ASCII delimited Concordance DAT file:
- (a) **For electronic mail:** begin Bates or unique document identification number ("DocID"), end Bates or DocID, mail folder path (location of email in personal folders, subfolders, deleted or sent items), custodian, from, to, cc, bcc, subject, date and time sent, date and time received, and complete attachment identification, including the Bates or DocID of the attachments (AttachIDs) delimited by a semicolon, MD5 or SHA Hash value, and link to native file;
  - (b) **For email attachments:** begin Bates or DocID, end Bates or DocID, parent email ID (Bates or DocID), page count, custodian, source location/file path, file name, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;
  - (c) **For loose electronic documents (as retrieved directly from network file stores, hard drives, etc.):** begin Bates or DocID, end Bates or DocID, page count, custodian, source media, file path, filename, file extension,

file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;

- (d) **For imaged hard copy documents:** begin Bates or DocID, end Bates or DocID, page count, source, and custodian; and where applicable, file folder name, binder name, attachment range, or other such references, as necessary to understand the context of the document as maintained in the ordinary course of business.
- (4) If you intend to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in your computer systems or electronic storage media, or if your computer systems contain or utilize such software, you must contact the Commission counsel named above to determine whether and in what manner you may use such software or services when producing materials in response to this Request.
- (5) Submit electronic productions as follows:
  - (a) With passwords or other document-level encryption removed or otherwise provided to the FTC;
  - (b) As uncompressed electronic volumes on size-appropriate, Windows-compatible, media;
  - (c) All electronic media shall be scanned for and free of viruses:
  - (d) Data encryption tools may be employed to protect privileged or other personal or private information. The FTC accepts TrueCrypt, PGP, and SecureZip encrypted media. The passwords should be provided in advance of delivery, under separate cover. Alternate means of encryption should be discussed and approved by the FTC.
  - (e) Please mark the exterior of all packages containing electronic media sent through the U.S. Postal Service or other delivery services as follows:

**MAGNETIC MEDIA – DO NOT X-RAY  
MAY BE OPENED FOR POSTAL INSPECTION.**

- (6) All electronic files and images shall be accompanied by a production transmittal letter which includes:
  - (a) A summary of the number of records and all underlying images, emails, and associated attachments, native files, and databases in the production; and

- (b) An index that identifies the corresponding consecutive document identification number(s) used to identify each person's documents and, if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that the Commission counsel named above determines prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission counsel named above will provide a sample index upon request.

**A Bureau of Consumer Protection Production Guide is available upon request from the Commission counsel named above. This guide provides detailed directions on how to fully comply with this instruction.**

N. **Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information or sensitive health information of any individual, please contact us before sending those materials to discuss ways to protect such information during production. If that information will not be redacted, contact us to discuss encrypting any electronic copies of such material with encryption software such as SecureZip and provide the encryption key in a separate communication.

For purposes of these requests, sensitive personally identifiable information includes: an individual's Social Security number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth; Social Security number; driver's license number or other state identification number or a foreign country equivalent; passport number; financial account number; credit card number; or debit card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

O. **Information Identification:** Each specification and subspecification of this CID shall be answered separately and fully in writing under oath. All information submitted shall be clearly and precisely identified as to the specification(s) or subspecification(s) to which it is responsive.

P. **Submission of Documents in lieu of Interrogatory Answers:** Previously existing documents that contain the information requested in any written Interrogatory may be submitted as an answer to the Interrogatory. In lieu of identifying documents as requested in any Interrogatory, you may, at your option, submit true copies of the documents responsive to the Interrogatory, provided that you clearly indicate the specific Interrogatory to which such documents are responsive.

Q. **Certification of Records of Regularly Conducted Activity:** Attached is a Certification of Records of Regularly Conducted Activity, which may reduce the need to subpoena the Company to testify at future proceedings in order to establish the admissibility of documents

produced in response to this CID. You are asked to execute this Certification and provide it with your response.

### **III. INTERROGATORIES**

Demand is made for the following information:

1. Provide a detailed description of your specific responsibilities at the Company, and state the time period during which you exercised those responsibilities and the person(s) to whom you reported.
2. Describe the nature of your participation in or involvement with creating, designing, developing, reviewing, testing, evaluating, or approving any advertisement or promotional material for MTT or any individual MTT material. Include in your response the time period during which you provided such services and identify the person(s) to whom you reported.
3. Describe the nature of your participation in or involvement with soliciting, interviewing, or otherwise making any arrangements for consumers to appear as testimonialists in any advertisement or promotional material for MTT or any individual MTT material. Include in your response the time period during which you provided such services and identify the person(s) to whom you reported.
4. Describe the nature of your participation in or involvement with soliciting, interviewing, or otherwise making any arrangements for experts to appear as endorsers in any advertisement or promotional material for MTT or any individual MTT material. Include in your response the time period during which you provided such services and identify the person(s) to whom you reported.
5. Describe the nature of your participation in or involvement with developing, reviewing, or evaluating substantiation, scientific or otherwise, for representations made in any advertisement or promotional material for MTT or any individual MTT material. Include in your response the time period during which you provided such services and identify the person(s) to whom you reported.
6. State any ownership or membership interest in the Company, and any other company or entity, including the amount of such interest and the time period during which you held that interest.
7. State all compensation, remuneration, or thing of value, including any salary, dividends, consulting fees, royalty payments, travel expenses, deferred cash payments received or owed, license fees, membership or ownership interest, or any other compensation, remuneration or thing of value, you received for the years 2010, 2011, 2012, and 2013 to date, in connection with MTT or individual MTT material.

8. If, for any Document Specification below, any document that would be responsive to this CID was destroyed, mislaid, transferred, deleted, altered, or overwritten:

- a. describe the document;
- b. state the date such document was destroyed, mislaid, transferred, deleted, altered, or overwritten;
- c. describe the circumstances under which such document was destroyed, mislaid, transferred, deleted, altered, or overwritten; and
- d. identify the person authorizing or responsible for such action.

#### **IV. DOCUMENTARY MATERIALS**

Demand is made for the following documents:

1. A copy of your current resume or curriculum vitae that includes, but is not limited to, your educational background, employment history, postdoctoral training, licensure, and certification, any academic appointments, list of any research and clinical contributions, list of consulting arrangements and advisory board appointments, and list of publications in the last 10 years.
2. All advertisements and promotional materials for MTT or any individual MTT material, including, but not limited to, all such materials the Company provided to affiliates, including banner ads, text links, email creative, copy for blogs, and reviews.
3. All documents referring or relating to creating, developing, reviewing, editing, or approving any advertisement or promotional material for MTT or any individual MTT material.
4. All documents referring or relating to creating, developing, reviewing, or evaluating substantiation, scientific or otherwise, for representations made in any advertisement or promotional material for MTT or any individual MTT material.
5. Regardless of whether you believe these claims were made in advertising or promotional materials for MTT, produce all documents, including, but not limited to, studies, tests, experiments, demonstrations, and written or oral statements or opinions, that you rely upon to substantiate each of the following claims:
  - a. MTT:
    - i. increases children's learning ability and communication skills by using repeated vocalization, visual prompts, simple sign language, and the introduction of sight reading;
    - ii. encourages early communication;

- iii. can be used with babies and children at all levels of development, from those who have delays to those who are advanced; and
  - iv. is highly effective in achieving successful results.
- b. MTT helps autistic children:
- i. articulate words and sentences from an early age;
  - ii. use sign-language techniques and repeated vocalization of commonly used words to assist with their need to be understood and further their ability to communicate effectively;
  - iii. use proper gestures to give meaning to their speech;
  - iv. comprehend the meaning and rhythm of words and sentences;
  - v. interpret body language and the nuances of vocal tones;
  - vi. with the problem of inattention, such as avoiding eye contact; and
  - vii. build, enhance, and foster their communication skills.
- c. MTT helps children with speech delays:
- i. progress to the level of their peers and possibly even advance past a child who is not advanced-instructed;
  - ii. by stimulating them to comprehend and advance their communication skills to a higher level;
  - iii. resolve speech delays through intense practice speaking; and
  - iv. head-off more serious speech delay problems down the road.
- d. MTT sign language instruction:
- i. will teach children sign language even if they are not yet verbal; and
  - ii. will expand the spoken vocabulary of children who have already begun to communicate verbally.

6. All other documents not produced in response to Document Specification No. 5 that refer or relate to substantiation for the claims listed in Document Specification No. 5, including, but not limited to, documents that tend to call into question or disprove any of those claims and documents that question the existence of substantiation for those claims.



7. All documents, from any date, referring or relating to any study of the MTT or any substantially similar program conducted by you or by others, whether or not the study was completed or published, including but not limited to:
- a. All drafts and final protocols;
  - b. Copies of each test instrument used in the study;
  - c. All instructions provided to study participants, or their parents or guardians;
  - d. All documents referring or relating to the enrollment or randomization plan employed in the study;
  - e. All data, including baseline and outcome measurements, for all subjects enrolled in the study, including any control subjects and any subjects who may not have completed the study;
  - f. All logs or diaries completed by each of the subjects enrolled in the study, or their parents or guardians, including any control subjects and any subjects who may not have completed the study;
  - g. All compliance data for each of the subjects enrolled in the study, including any control subjects and any subjects who may not have completed the study;
  - h. All documents referring or relating to any statistical analysis of the data;
  - i. All documents referring or relating to the recruitment of subjects for the studies;
  - j. All documents referring or relating to the collection of data from the subjects, including, but not limited to, documents used to collect measurements from the subjects; and
  - k. All other documents not explicitly referenced herein that were used by the researchers to obtain or retain data, determine subject compliance, or otherwise provide guidance regarding the execution of the study.
8. All documents not already produced in response to Document Specification No. 7, from any date, referring or relating to any testing, analysis, or evaluation of MTT or any individual MTT material.
9. Copies of each employment contract, consulting agreement, or other agreement or contract with the Company, concerning your providing products or services for MTT or any individual MTT material.
10. Copies of documents showing your interest or ownership in any intellectual property rights to MTT, or any individual MTT material, including any trademarks, copyrights, rights of

authorship, mask word rights, moral rights, inventions, rights of inventorship, and all applications, registrations, and renewals in connection with the above.

11. All documents referring or relating to any communications between you and the Company, any affiliated person or entity, any federal, state, or local government entities, or any consumer advocacy groups, industry or trade organizations, Internet groups, privacy seal programs, or other privacy groups referring or relating to MTT.

**ADVANCE YOUR CHILD, LLC**  
**CID**



United States of America  
Federal Trade Commission

**CIVIL INVESTIGATIVE DEMAND**

1. TO

Advance Your Child, LLC, also d/b/a My Talking Toddler  
15050 N.W. 79th Court  
Suite 101A  
Hialeah, FL 33016

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED

You are required to appear and testify.

LOCATION OF HEARING	YOUR APPEARANCE WILL BE BEFORE
	DATE AND TIME OF HEARING OR DEPOSITION

You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.

You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS MUST BE AVAILABLE

**APR 15 2013**

3. SUBJECT OF INVESTIGATION

See attached resolution.

4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN

Mary K. Engle, Assoc.Dir./Edwin Rodriguez, Attorney  
Federal Trade Commission  
600 Pennsylvania Avenue NW, Mail Drop NJ3212  
Washington, DC 20580

5. COMMISSION COUNSEL

Robin Rosen Spector/Edwin Rodriguez (202-326-3740, -3147)  
Federal Trade Commission  
600 Pennsylvania Avenue NW, Mail Drop NJ3212  
Washington, DC 20580

DATE ISSUED

3/14/13

COMMISSIONER'S SIGNATURE

**INSTRUCTIONS AND NOTICES**

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

**PETITION TO LIMIT OR QUASH**

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

**YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS**

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman) regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

**TRAVEL EXPENSES**

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

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## Form of Certificate of Compliance\*

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I/We do certify that all of the documents and information required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document responsive to this Civil Investigative Demand has not been submitted, the objections to its submission and the reasons for the objection have been stated.

If an interrogatory or a portion of the request has not been fully answered or a portion of the report has not been completed, the objections to such interrogatory or uncompleted portion and the reasons for the objections have been stated.

Signature \_\_\_\_\_

Title \_\_\_\_\_

Sworn to before me this day

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_

\*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**        **Jon Leibowitz, Chairman**  
                                 **William E. Kovacic**  
                                 **J. Thomas Rosch**  
                                 **Edith Ramirez**  
                                 **Julie Brill**

**RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN A NON-PUBLIC  
INVESTIGATION OF MARKETERS OF PRODUCTS OR SERVICES CLAIMING TO  
PROVIDE EDUCATIONAL OR DEVELOPMENTAL BENEFITS TO YOUNG  
CHILDREN**

File No. 112 3107

**Nature and Scope of Investigation:**

To determine whether unnamed persons, partnerships, corporations, or others have engaged or are engaging in deceptive or unfair acts or practices in or affecting commerce in the advertising, marketing, or sale of products or services intended to provide an educational or developmental benefit to children under the age of six, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended. The investigation is also to determine whether Commission action to obtain redress for injury to consumers or others would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed five (5) years from the date of issuance of this resolution. The expiration of this five-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the five-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the five-year period.

**Authority to Conduct Investigation:**

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; and FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 *et seq.*, and supplements thereto.

By direction of the Commission.

  
Donald S. Clark  
Secretary

Issued: March 16, 2011

**CIVIL INVESTIGATIVE DEMAND  
SCHEDULE FOR PRODUCTION OF DOCUMENTS AND ANSWERS  
TO WRITTEN INTERROGATORIES**

**I. DEFINITIONS**

As used in this Civil Investigative Demand, the following definitions shall apply:

- A. **“Advertisement”** or **“advertising”** or **“ad”** shall mean any written or verbal statement, illustration, or depiction, whether in English or any other language, that is designed to effect a sale or create interest in the purchasing of goods or services, whether it appears on or in a label, package, package insert, radio, television, cable television, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, film, slide, audio program transmitted over a telephone system, telemarketing script, onhold script, upsell script, training materials provided to telemarketing firms, program-length commercial (“infomercial”), the Internet, or any other medium.
- B. **“And,”** as well as **“or,”** shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any specification in this Schedule all information that otherwise might be construed to be outside the scope of the specification.
- C. **“Any”** shall be construed to include **“all,”** and **“all”** shall be construed to include the word **“any.”**
- D. **“CID”** shall mean the Civil Investigative Demand, including the attached Resolution and this Schedule, and including the Definitions, Instructions, and Specifications.
- E. **“Communication”** shall mean any transmission or receipt of facts, information, opinions, or thought, whether conveyed in writing, orally, electronically, or by any other means, including written memorialization of oral communications.
- F. **“Company”** shall mean Advance Your Child, LLC, also d/b/a My Talking Toddler, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.
- G. **“Document”** shall mean the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including but not limited to any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book or label. **“Document”** shall

also include all documents, materials, and information, including Electronically Stored Information, within the meaning of the Federal Rules of Civil Procedure.

H. **“Each”** shall be construed to include **“every,”** and **“every”** shall be construed to include **“each.”**

L. **“Electronically Stored Information”** or **“ESI”** shall mean the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any electronic medium from which information can be obtained either directly or, if necessary, after translation by you into a reasonably usable form. This includes, but is not limited to, electronic mail, instant messaging, videoconferencing, and other electronic correspondence (whether active, archived, or in a deleted items folder), word processing files, spreadsheets, databases, and video and sound recordings, whether stored on: cards; magnetic or electronic tapes; disks; computer hard drives, network shares or servers, or other drives; cloud-based platforms; cell phones, PDAs, computer tablets, or other mobile devices; or other storage media.

J. **“FTC”** or **“Commission”** shall mean the Federal Trade Commission.

K. **“Identify”** or **“the identity of”** shall be construed to require identification of (a) natural persons by name, title, present business affiliation, present business address and telephone number, or if a present business affiliation or present business address is not known, the last known business and home addresses; and (b) businesses or other organizations by name, address, identities of natural persons who are officers, directors or managers of the business or organization, and contact persons, where applicable.

L. **“MTT”** shall mean the program of videos and other educational material or any substantially similar program manufactured, labeled, advertised, promoted, offered for sale, sold, or distributed by the Company under the name My Talking Toddler.

M. **“Person”** or **“persons”** shall mean all natural persons, corporations, partnerships, or other business associations, and all legal entities, including all members, officers, predecessors, assigns, divisions, affiliates, and subsidiaries.

N. **“Promotional material”** shall mean any document or thing designed or used to create interest in the purchasing of goods or services that is not counted as advertising, including, but not limited to: press releases, video news releases, and other communications with any print, television, or radio media, or any website designer, developer, manager, or host, or any online service; coupons; and payments for shelf space.



O. **"Referring to"** or **"relating to"** shall mean discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.

P. **"You"** and **"your"** shall mean the person or entity to whom this CID is issued.

Q. The singular shall include the plural, and the plural shall include the singular.

## II. INSTRUCTIONS

A. **Sharing of Information:** The Commission often makes its files available to other civil and criminal federal, state, local, or foreign law enforcement agencies. The Commission may make information supplied by you available to such agencies where appropriate pursuant to the Federal Trade Commission Act and 16 C.F.R. § 4.11 (c) and (j). Information you provide may be used in any federal, state, or foreign civil or criminal proceeding by the Commission or other agencies.

B. **Meet and Confer:** You must contact Edwin Rodriguez at 202-326-3147 as soon as possible to schedule a meeting (telephonic or in person) to be held within fourteen (14) days after receipt of this CID, or before the deadline for filing a petition to quash, whichever is first, in order to discuss compliance and to address and attempt to resolve all issues, including issues relating to protected status and the form and manner in which claims of protected status will be asserted, and the submission of ESI and other electronic productions as described in these Instructions. Pursuant to 16 C.F.R. § 2.7(k), you must make available personnel with the knowledge necessary for resolution of the issues relevant to compliance with this CID, including but not limited to personnel with knowledge about your information or records management systems, relevant materials such as organizational charts, and samples of material required to be produced. If any issues relate to ESI, you must make available a person familiar with your ESI systems and methods of retrieval.

C. **Applicable time period:** Unless otherwise directed in the specifications, the applicable time period for the request shall be from January 1, 2010, until the date of full and complete compliance with this CID.

D. **Claims of Privilege:** If any material called for by this CID is withheld based on a claim of privilege, work product protection, or statutory exemption, or any similar claim (*see* 16 C.F.R. § 2.7(a)(4)), the claim must be asserted no later than the return date of this CID. In addition, pursuant to 16 C.F.R. § 2.11(a)(1), submit, together with the claim, a detailed log of the items withheld. The information in the log shall be of sufficient detail to enable the Commission staff to assess the validity of the claim for each document, including attachments, without disclosing the protected information. Submit the log in a searchable electronic format, and, for each document, including attachments, provide:

- (1) Document control number(s);

- (2) The full title (if the withheld material is a document) and the full file name (if the withheld material is in electronic form);
- (3) A description of the material withheld (for example, a letter, memorandum, or email), including any attachments;
- (4) The date the material was created;
- (5) The date the material was sent to each recipient (if different from the date the material was created);
- (6) The email addresses, if any, or other electronic contact information to the extent used in the document, from which and to which each document was sent;
- (7) The names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all authors;
- (8) The names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all recipients of the material;
- (9) The names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all persons copied on the material;
- (10) The factual basis supporting the claim that the material is protected; and
- (11) Any other pertinent information necessary to support the assertion of protected status by operation of law.

16 C.F.R. § 2.11(a)(1)(i)-(xi).

In the log, identify by an asterisk each attorney who is an author, recipient, or person copied on the material. The titles, business addresses, email addresses, and relevant affiliations of all authors, recipients, and persons copied on the material may be provided in a legend appended to the log. However, provide in the log the information required by Instruction D.6. 16 C.F.R. § 2.11(a)(2). The lead attorney or attorney responsible for supervising the review of the material and who made the determination to assert the claim of protected status must attest to the log. 16 C.F.R. § 2.11(a)(1).

If only some portion of any responsive material is privileged, all non-privileged portions of the material must be submitted. Otherwise, produce all responsive information and material without redaction. 16 C.F.R. § 2.11(c). The failure to provide information sufficient to support a claim of protected status may result in denial of the claim. 16 C.F.R. § 2.11(a)(1).

**E. Document Retention:** You shall retain all documentary materials used in the preparation of responses to the specifications of this CID. The Commission may require the submission of additional documents at a later time during this investigation. Accordingly, you

should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this investigation during its pendency, irrespective of whether you believe such documents are protected from discovery by privilege or otherwise. See 15 U.S.C. § 50; see also 18 U.S.C. §§ 1505, 1519.

**F. Petitions to Limit or Quash:** Any petition to limit or quash this CID must be filed with the Secretary of the Commission no later than twenty (20) days after service of the CID, or, if the return date is less than twenty (20) days after service, prior to the return date. Such petition shall set forth all assertions of protected status or other factual and legal objections to the CID, including all appropriate arguments, affidavits, and other supporting documentation. 16 C.F.R. § 2.10(a)(1). Such petition shall not exceed 5,000 words as set forth in 16 C.F.R. § 2.10(a)(1) and must include the signed separate statement of counsel required by 16 C.F.R. § 2.10(a)(2). **The Commission will not consider petitions to quash or limit absent a pre-filing meet and confer session with Commission staff and, absent extraordinary circumstances, will consider only issues raised during the meet and confer process.** 16 C.F.R. § 2.7(k); see also § 2.11(b).

**G. Modification of Specifications:** If you believe that the scope of the required search or response for any specification can be narrowed consistent with the Commission's need for documents or information, you are encouraged to discuss such possible modifications, including any modifications of definitions and instructions, with Edwin Rodriguez at 202-326-3147. All such modifications must be agreed to in writing by the Bureau Director, or a Deputy Bureau Director, Associate Director, Regional Director, or Assistant Regional Director. 16 C.F.R. § 2.7(l).

**H. Certification:** A responsible corporate officer of the Company shall certify that the response to this CID is complete. This certification shall be made in the form set out on the back of the CID form, or by a declaration under penalty of perjury as provided by 28 U.S.C. § 1746.

**I. Scope of Search:** This CID covers documents and information in your possession or under your actual or constructive custody or control including, but not limited to, documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, and other agents and consultants, whether or not such documents and information were received from or disseminated to any person or entity.

**J. Document Production:** You shall produce the documentary material by making all responsive documents available for inspection and copying at your principal place of business. Alternatively, you may elect to send all responsive documents to Edwin Rodriguez, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., NJ-3212, Washington, D.C. 20580. Because postal delivery to the Commission is subject to delay due to heightened security precautions, please use a courier service such as Federal Express or UPS. Notice of your intended method of production shall be given by email or telephone to Edwin Rodriguez at [erodriguez@ftc.gov](mailto:erodriguez@ftc.gov) or 202-326-3147 at least five days prior to the return date.

**K. Document Identification:** Documents that may be responsive to more than one specification of this CID need not be submitted more than once; however, your response should indicate, for each document submitted, each specification to which the document is responsive.

If any documents responsive to this CID have been previously supplied to the Commission, you may comply with this CID by identifying the document(s) previously provided and the date of submission. Documents should be produced in the order in which they appear in your files or as electronically stored and without being manipulated or otherwise rearranged; if documents are removed from their original folders, binders, covers, containers, or electronic source in order to be produced, then the documents shall be identified in a manner so as to clearly specify the folder, binder, cover, container, or electronic media or file paths from which such documents came. In addition, number by page (or file, for those documents produced in native electronic format) all documents in your submission, preferably with a unique Bates identifier, and indicate the total number of documents in your submission.

L. **Production of Copies:** Unless otherwise stated, legible photocopies (or electronically rendered images or digital copies of native electronic files) may be submitted in lieu of original documents, provided that the originals are retained in their state at the time of receipt of this CID. Further, copies of originals may be submitted in lieu of originals only if they are true, correct, and complete copies of the original documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in any Commission proceeding or court of law; and provided further that you shall retain the original documents and produce them to Commission staff upon request. Copies of marketing materials and advertisements shall be produced in color, and copies of other materials shall be produced in color if necessary to interpret them or render them intelligible.

M. **Electronic Submission of Documents:** The following guidelines refer to the production of any Electronically Stored Information ("ESI") or digitally imaged hard copy documents. Before submitting any electronic production, you must confirm with the Commission counsel named above that the proposed formats and media types will be acceptable to the Commission. The FTC requests Concordance load-ready electronic productions, including DAT and OPT load files.

- (1) **Electronically Stored Information:** Documents created, utilized, or maintained in electronic format in the ordinary course of business should be delivered to the FTC as follows:
  - (a) Spreadsheet and presentation programs, including but not limited to Microsoft Access, SQL, and other databases, as well as Microsoft Excel and PowerPoint files, must be produced in native format with extracted text and metadata. Data compilations in Excel spreadsheets, or in delimited text formats, must contain all underlying data un-redacted with all underlying formulas and algorithms intact. All database productions (including structured data document systems) must include a database schema that defines the tables, fields, relationships, views, indexes, packages, procedures, functions, queues, triggers, types, sequences, materialized views, synonyms, database links, directories, Java, XML schemas, and other elements, including the use of any report writers and custom user data interfaces;

- (b) All ESI other than those documents described in (1)(a) above must be provided in native electronic format with extracted text or Optical Character Recognition (OCR) and all related metadata, and with corresponding image renderings as converted to Group IV, 300 DPI, single-page Tagged Image File Format (TIFF) or as color JPEG images (where color is necessary to interpret the contents); and
  - (c) Each electronic file should be assigned a unique document identifier (“DocID”) or Bates reference.
- (2) **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business should be submitted in an electronic format when at all possible. These documents should be true, correct, and complete copies of the original documents as converted to TIFF (or color JPEG) images with corresponding document-level OCR text. Such a production is subject to the following requirements:
- (a) Each page shall be endorsed with a document identification number (which can be a Bates number or a document control number);
  - (b) Logical document determination should be clearly rendered in the accompanying load file and should correspond to that of the original document; and
  - (c) Documents shall be produced in color where necessary to interpret them or render them intelligible.
- (3) For each document electronically submitted to the FTC, you should include the following metadata fields in a standard ASCII delimited Concordance DAT file:
- (a) **For electronic mail:** begin Bates or unique document identification number (“DocID”), end Bates or DocID, mail folder path (location of email in personal folders, subfolders, deleted or sent items), custodian, from, to, cc, bcc, subject, date and time sent, date and time received, and complete attachment identification, including the Bates or DocID of the attachments (AttachIDs) delimited by a semicolon, MD5 or SHA Hash value, and link to native file;
  - (b) **For email attachments:** begin Bates or DocID, end Bates or DocID, parent email ID (Bates or DocID), page count, custodian, source location/file path, file name, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;
  - (c) **For loose electronic documents (as retrieved directly from network file stores, hard drives, etc.):** begin Bates or DocID, end Bates or DocID, page count, custodian, source media, file path, filename, file extension,

file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;

- (d) **For imaged hard copy documents:** begin Bates or DocID, end Bates or DocID, page count, source, and custodian; and where applicable, file folder name, binder name, attachment range, or other such references, as necessary to understand the context of the document as maintained in the ordinary course of business.
- (4) If you intend to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in your computer systems or electronic storage media, or if your computer systems contain or utilize such software, you must contact the Commission counsel named above to determine whether and in what manner you may use such software or services when producing materials in response to this Request.
- (5) Submit electronic productions as follows:
  - (a) With passwords or other document-level encryption removed or otherwise provided to the FTC;
  - (b) As uncompressed electronic volumes on size-appropriate, Windows-compatible, media;
  - (c) All electronic media shall be scanned for and free of viruses;
  - (d) Data encryption tools may be employed to protect privileged or other personal or private information. The FTC accepts TrueCrypt, PGP, and SecureZip encrypted media. The passwords should be provided in advance of delivery, under separate cover. Alternate means of encryption should be discussed and approved by the FTC.
  - (e) Please mark the exterior of all packages containing electronic media sent through the U.S. Postal Service or other delivery services as follows:

**MAGNETIC MEDIA – DO NOT X-RAY  
MAY BE OPENED FOR POSTAL INSPECTION.**

- (6) All electronic files and images shall be accompanied by a production transmittal letter which includes:
  - (a) A summary of the number of records and all underlying images, emails, and associated attachments, native files, and databases in the production; and
  - (b) An index that identifies the corresponding consecutive

document identification number(s) used to identify each person's documents and, if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that the Commission counsel named above determines prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission counsel named above will provide a sample index upon request.

**A Bureau of Consumer Protection Production Guide is available upon request from the Commission counsel named above. This guide provides detailed directions on how to fully comply with this instruction.**

**N. Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information or sensitive health information of any individual, please contact us before sending those materials to discuss ways to protect such information during production. If that information will not be redacted, contact us to discuss encrypting any electronic copies of such material with encryption software such as SecureZip and provide the encryption key in a separate communication.

For purposes of these requests, sensitive personally identifiable information includes: an individual's Social Security number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth; Social Security number; driver's license number or other state identification number or a foreign country equivalent; passport number; financial account number; credit card number; or debit card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

**O. Information Identification:** Each specification and subspecification of this CID shall be answered separately and fully in writing under oath. All information submitted shall be clearly and precisely identified as to the specification(s) or subspecification(s) to which it is responsive.

**P. Submission of Documents in lieu of Interrogatory Answers:** Previously existing documents that contain the information requested in any written Interrogatory may be submitted as an answer to the Interrogatory. In lieu of identifying documents as requested in any Interrogatory, you may, at your option, submit true copies of the documents responsive to the Interrogatory, provided that you clearly indicate the specific Interrogatory to which such documents are responsive.

**Q. Certification of Records of Regularly Conducted Activity:** Attached is a Certification of Records of Regularly Conducted Activity, which may reduce the need to subpoena the Company to testify at future proceedings in order to establish the admissibility of documents produced in response to this CID. You are asked to execute this Certification and provide it with your response.

### III. INTERROGATORIES

Demand is made for the following information:

1. State the Company's full legal name, principal address, telephone number, state, and date of incorporation or licensing, and all other names under which the Company has done business.
2. Identify all of the Company's wholly or partially owned subsidiaries, parent companies, unincorporated divisions, joint ventures, partnerships, operations under assumed names, and predecessor companies, and describe the relationship of each to the Company.
3. If not already identified in the response to Interrogatory 2, describe the relationship between the Company and My Talking Toddler, Inc., of Hialeah, FL.
4. Identify all of the Company's MTT affiliates and affiliate managers.
5. Identify all officers, directors, principals, owners, and shareholders of the Company, stating the percentage of interest held by each owner or shareholder.
6. Identify each person or entity having an ownership interest in any intellectual property rights to MTT or any individual MTT material, including any trademarks, copyrights, rights of authorship, mask word rights, moral rights, inventions, and rights of inventorship.
7. Provide the full name and URL for each website, including, but not limited to, affiliate websites and co-branded landing pages, operated by or on behalf of the Company or affiliated persons or entities that describes, discusses, promotes, advertises, or sells MTT.
8. Provide any keywords, terms, phrases, or other criteria that the Company (or any person or entity acting for or on behalf of the Company) has used to effect the placement or delivery of any advertisement or sponsored link for MTT in connection with any online advertising network or advertisement delivery or contextual marketing software or system, including, but not limited to, the placement or delivery of any advertisement or sponsored link in search results generated by Google or any other Internet search engine (e.g., through the Google AdWords program).
9. Describe the Company's policies, practices, and procedures for purchasing sponsored links on search engines to direct consumers to the MTT website(s) or the websites of affiliates or other third parties.
10. Identify each Company employee, principal, consultant, agent or other person or entity with responsibilities for creating, designing, developing, reviewing, testing, evaluating, or approving any advertisement or promotional material submitted in response to Document Specification No. 3, and give a brief description of the functions performed by each person or entity and the current employment status of each person.



11. For each advertisement and promotional material produced in response to Document Specification No. 3, state the beginning and ending dates of dissemination, and the dates, times, and locations the ads or promotional material were disseminated:

- a. For print ads and press releases, specify every publication, date, and community of dissemination; for television or radio ads, provide every network, system or station, date, and community of dissemination;
- b. For Internet ads, specify every URL, date, and number of hits or visits; and
- c. For all other materials, provide sufficient information to permit a determination of how many items were disseminated, when, where, and to whom.

12. Identify each Company employee, principal, consultant, agent or other person or entity with responsibilities for soliciting, interviewing, or otherwise making any arrangements for consumers to appear as testimonialists in any advertisement or promotional material submitted in response to Document Specification No. 3, and give a brief description of the functions performed by each person or entity and the current employment status of each person.

13. Identify each Company employee, principal, consultant, agent or other person or entity with responsibilities for soliciting, interviewing, or otherwise making any arrangements for experts to appear as endorsers in any advertisement or promotional material submitted in response to Document Specification No. 3, and give a brief description of the functions performed by each person or entity and the current employment status of each person.

14. Identify each individual who appears as an endorser or testimonialist in any MTT advertisement. In addition, for each person identified, state:

- a. the circumstances by which the person became an endorser or testimonialist (for example, whether the person independently contacted the Company, or the Company initially contacted them); and
- b. any compensation, remuneration, or thing of value provided for the endorsement or testimonial.

15. Identify each Company employee, principal, consultant, agent or other person or entity with responsibilities for developing, reviewing, or evaluating substantiation, scientific or otherwise, for representations made in any advertisement or promotional material submitted in response to Document Specification No. 3, and give a brief description of the functions performed by each person or entity and the current employment status of each person.

16. Identify all experts consulted by the Company or any affiliated person or entity or ad agency acting on behalf of the Company, or upon whose advice, opinion, or expertise the Company or any affiliated person or entity or ad agency acting on behalf of the Company relied, to substantiate or refute the express or implied claims set forth in Document Specification No. 10.

17. Identify the person or persons at the Company most knowledgeable regarding:
  - a. the advertising and promotion of MTT; and
  - b. the substantiation for representations made in any advertisement or promotional material for MTT.
  
18. Provide the following sales and marketing expenditure information for MTT for the years 2010, 2011, 2012, and 2013 to date:
  - a. annual gross sales, in units sold;
  - b. annual gross sales, in dollar amount; and
  - c. total annual advertising and promotional expenditures.

If the Company maintains financial data on a fiscal year basis that differs from the calendar year, provide the requested data according to those fiscal years and identify the dates of the fiscal year.

19. Describe all lawsuits or legal proceedings filed against or otherwise involving the Company that refer or relate in any way to MTT. Your response should include the case name and the names of all parties, the jurisdiction in which the matter is or was pending, the date filed, the identity of counsel for all parties, and the current status or disposition of the matter.
  
20. Describe all investigations or proceedings by any federal, state, or local government entities, or any consumer advocacy groups, industry or trade organizations, or Internet groups, referring or relating to MTT. Your response should state the nature of the investigation or proceeding, case name and the names of all parties, the name and function of the product, and the current status or disposition of the matter.
  
21. If, for any Document Specification below, any document that would be responsive to this CID was destroyed, mislaid, transferred, deleted, altered, or overwritten:
  - a. describe the document;
  - b. state the date such document was destroyed, mislaid, transferred, deleted, altered, or overwritten;
  - c. describe the circumstances under which such document was destroyed, mislaid, transferred, deleted, altered, or overwritten; and
  - d. identify the person authorizing or responsible for such action.
  
22. Identify all persons at the Company who participated in the preparation of responses to this CID.

#### IV. DOCUMENTARY MATERIALS

Demand is made for the following documents:

1. A sample of each different version of the product distributed as MTT, including each different product package, package label, product label, package insert, instructions, book, guide, card, and DVD.
2. Documents sufficient to show the beginning and ending dates of distribution for each product produced in response to Document Specification No. 1.
3. All advertisements and promotional materials for MTT or any individual MTT material, including, but not limited to, all such materials the Company provided to affiliates, including banner ads, text links, email creative, copy for blogs, and reviews.
4. All dissemination schedules for each advertisement and promotional material produced in response to Document Specification No. 3, including, without limitation, documents sufficient to show the beginning and ending dates of dissemination for each advertisement or promotional material.
5. All documents referring or relating to creating, developing, reviewing, editing, or approving any advertisement or promotional material for MTT or any individual MTT material.
6. All documents referring or relating to marketing or advertising plans for MTT. Such documents include, but are not limited to, materials about advertising and marketing strategies, themes, or concepts, media recommendations, strategies and plans, marketing reports, business studies, and creative strategies that describe or discuss approaches for advertising, marketing, or promoting the products, whether or not actually implemented.
7. All documents referring or relating to individuals who have provided testimonials or endorsements for MTT or any individual MTT material.
8. All documents referring or relating to individuals who have provided expert endorsements for MTT or any individual MTT material, including, but not limited to:
  - a. Alexis Fischler-Schild, MS, CCC-SLP;
  - b. Jean Goldenberg, MA, CCC-SLP;
  - c. Jeanette Brown, M.Ed.; and
  - d. Sonya Harris, MS, CCC-SLP.
9. All documents referring or relating to creating, developing, reviewing, or evaluating substantiation, scientific or otherwise, for representations made in any advertisement or promotional material for MTT or any individual MTT material.

10. Regardless of whether the Company believes these claims were made in advertising or promotional materials for MTT, all documents, including, but not limited to, studies, tests, experiments, demonstrations, and written or oral statements or opinions, that the Company relies upon to substantiate each of the following claims:

a. MTT:

- i. increases children's learning ability and communication skills by using repeated vocalization, visual prompts, simple sign language, and the introduction of sight reading;
- ii. encourages early communication;
- iii. can be used with babies and children at all levels of development, from those who have delays to those who are advanced; and
- iv. is highly effective in achieving successful results.

b. MTT helps autistic children:

- i. articulate words and sentences from an early age;
- ii. use sign-language techniques and repeated vocalization of commonly used words to assist with their need to be understood and further their ability to communicate effectively;
- iii. use proper gestures to give meaning to their speech;
- iv. comprehend the meaning and rhythm of words and sentences;
- v. interpret body language and the nuances of vocal tones;
- vi. with the problem of inattention, such as avoiding eye contact; and
- vii. build, enhance, and foster their communication skills.

- c. MTT helps children with speech delays:
  - i. progress to the level of their peers and possibly even advance past a child who is not advanced-instructed;
  - ii. by stimulating them to comprehend and advance their communication skills to a higher level;
  - iii. resolve speech delays through intense practice speaking; and
  - iv. head-off more serious speech delay problems down the road.
- d. MTT sign language instruction:
  - i. will teach children sign language even if they are not yet verbal; and
  - ii. will expand the spoken vocabulary of children who have already begun to communicate verbally.

11. All other documents not produced in response to Document Specification No. 10 that refer or relate to substantiation for the claims listed in Document Specification No. 10, including, but not limited to, documents that tend to call into question or disprove any of those claims and documents that question the existence of substantiation for those claims.

12. All documents, from any date, referring or relating to any study of MTT or any substantially similar program conducted by the Company or by others, whether or not the study was completed or published, including, but not limited to:

- a. All drafts and final protocols;
- b. Copies of each test instrument used in the study;
- c. All instructions provided to study participants, or their parents or guardians;
- d. All documents referring or relating to the enrollment or randomization plan employed in the study;
- e. All data, including baseline and outcome measurements, for all subjects enrolled in the study, including any control subjects and any subjects who may not have completed the study;
- f. All logs or diaries completed by each of the subjects enrolled in the study, or their parents or guardians, including any control subjects and any subjects who may not have completed the study;
- g. All compliance data for each of the subjects enrolled in the study, including any control subjects and any subjects who may not have completed the study;

- h. All documents referring or relating to any statistical analysis of the data;
  - i. All documents referring or relating to the recruitment of subjects for the studies;
  - j. All documents referring or relating to the collection of data from the subjects, including, but not limited to, documents used to collect measurements from the subjects; and
  - k. All other documents not explicitly referenced herein that were used by the researchers to obtain or retain data, determine subject compliance, or otherwise provide guidance regarding the execution of the study.
13. All documents not already produced in response to Document Specification No. 12, from any date, referring or relating to any testing, analysis, or evaluation of MTT or any individual MTT material.
14. All notes, annotations, analyses, reports, or articles (whether published or unpublished), from any date, prepared by the Company or on its behalf concerning MTT or any individual MTT material.
15. All communications between the Company and others in which the Company provided scientific advice or reviewed or evaluated the accuracy of, or substantiation for, any representation concerning the performance or efficacy of MTT or any individual MTT material.
16. All documents referring or relating to any communication, theme, message, or inference intended, desired, believed, or discovered to be conveyed for each advertisement or promotional material responsive to Document Specification No. 3 above, including, but not limited to, all documents referring or relating to consumers' concerns, beliefs, perceptions, understandings, thoughts, or feelings about any of the claims set forth in Document Specification No. 10 above, including, without limitation, marketing or consumer research, regardless of whether completed or merely proposed, whether qualitative, empirical, or otherwise, referring or relating to such concerns, beliefs, perceptions, understandings, thoughts, or feelings.
17. All documents referring or relating to the messages, communications, or beliefs intended to be conveyed by any of the claims set forth in Document Specification No. 10 above.
18. All documents referring or relating to any communications between the Company or any affiliated person or entity or any ad agency and any magazine or newspaper publisher, television or radio network, or any other media outlet concerning any claims, messages, or communications in any proposed or disseminated advertisement or promotional material for MTT that convey any of the claims set forth in Document Specification No. 10 above. This inquiry includes, but is not limited to, any ad clearance correspondence with any media outlet.
19. Copies of each employment contract, consulting agreement, or other agreement or contract with the Company, concerning the Company providing products or services for MTT or any individual MTT material.

20. Copies of documents showing the Company's interest or ownership in any intellectual property rights to MTT, or any individual MTT material, including any trademarks, copyrights, rights of authorship, mask word rights, moral rights, inventions, rights of inventorship, and all applications, registrations, and renewals in connection with the above.
21. Copies of documents showing your assignment or licensing of your interest or ownership in any intellectual property rights to MTT, or any individual MTT material, including any trademarks, copyrights, rights of authorship, mask word rights, moral rights, inventions, rights of inventorship, and all applications, registrations, and renewals in connection with the above.
22. All documents referring or relating to scripts, instructions, memoranda, policy statements, guidelines, or any other documents or materials for telephone customer services, telephone operators, or call centers referring or relating to MTT. This request includes all drafts and previous versions of any such documents.
23. All recordings made of telephone conversations between consumers and the Company's agents, employees or independent contractors, including, but not limited to, calls to purchase MTT and complaints from consumers who had previously purchased MTT.
24. All documents referring or relating to consumer communications that refer or relate to MTT, including, without limitation, complaints concerning efficacy, safety, performance, shipment, delivery, billing, warranty issues, or refund requests.
25. All documents referring or relating to any communications between the Company and any MTT affiliate referring or relating to any claims, messages, or communications in any proposed or disseminated advertisement or promotional material for MTT or any individual MTT material, or to substantiation, scientific or otherwise, for claims made in any such advertisements or promotional materials.
26. Documents sufficient to show all contract terms between the Company and MTT affiliates, and commission rates, conversion rates, and commissions paid to each MTT affiliate.
27. All documents referring or relating to any communications between the Company or any affiliated person or entity and any federal, state, or local government entities, or any consumer advocacy groups, industry or trade organizations, Internet groups, privacy seal programs, or other privacy groups referring or relating to MTT.