



Campaign for a Commercial-Free Childhood

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Donald Clark
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, DC 20580

Re: Campaign for a Commercial-Free Childhood's Complaint and Request for Investigation filed June 13, 2006.

Dear Mr. Clark:

On May 1, 2006, The Campaign for a Commercial-Free Childhood ("CCFC") filed a Complaint and Request for Investigation ("Complaint") with the Federal Trade Commission ("FTC" or "Commission"). CCFC asked the FTC to bring an action against two companies, Baby Einstein and Brainy Baby, for violating Section 5 of the FTC Act by making false and deceptive claims that their video programming is educational and beneficial for infants.¹ Shortly after CCFC filed its Complaint, BabyFirstTV began to make similar deceptive claims and, on June 13, 2006, CCFC amended its Complaint to include BabyFirstTV.² On December 5, 2007, the FTC responded to CCFC's Complaint against Baby Einstein and Brainy Baby, noting that "advertisers must have adequate substantiation for educational claims that they make for their products, including for videos marketed to children under the age of two."³ The Commission, however, limited its response to Baby Einstein and Brainy Baby, and did not address explicitly the case of BabyFirstTV.

Despite the fact that it was filed more than two years ago, the FTC still has not explicitly responded to CCFC's Complaint against BabyFirstTV. We urge the Commission to respond to our Complaint and to apply to BabyFirstTV the same standards it applied to Baby Einstein and Brainy Baby.

We are particularly concerned that the lack of a public response from the Commission will be interpreted by consumers as an indication that, unlike Baby Einstein and Brainy

¹ Campaign for a Commercial-Free Childhood (May 1, 2006). *Complaint and Request for Investigation: re Brainy Baby and Baby Einstein*. Available at <http://www.commercialfreechildhood.org/babyvideos/babyvideocomplaint.pdf>.

² Campaign for a Commercial-Free Childhood (June 23, 2006). *Amendment to the Campaign for a Commercial-Free Childhood's Complaint and Request for Investigation filed May 1, 2006*. Available at <http://www.commercialfreechildhood.org/babyvideos/attachments/bftattachments/ftcletterbabyfirstTV.pdf>.

³ Engle, Mary K., Federal Trade Commission (December 5, 2007). Letter to Angela J. Campbell and Susan Linn. Available at: <http://commercialfreechildhood.org/actions/lettertoccfc.pdf>, p. 1

Baby, BabyFirstTV is able to substantiate its educational claims—which does not seem to be the case. Since CCFC filed its Complaint against BabyFirstTV, the channel has been added to three major cable carriers, which means that millions more families will be able to subscribe.⁴ While Baby Einstein and Brainy Baby have significantly modified their websites as a result of CCFC’s Complaint,⁵ BabyFirstTV continues to make explicit educational claims about its programming. In addition, unlike Brainy Baby and Baby Einstein, which have “agreed to take steps to ensure that any claims of educational and/or developmental benefit for children under the age of two are adequately substantiated,”⁶ BabyFirstTV has not agreed to substantiate its claims.

Educational Claims

BabyFirstTV continues to use educational claims as the cornerstone of its marketing. For instance, the words “educational” and “learning” appear frequently on BabyFirstTV’s website, www.babyfirsttv.com, to describe BabyFirstTV’s programming for babies. Examples of these claims include:

- We are delighted to offer you a series of engaging, educational programs designed to enrich your relationship with your baby by providing you with new opportunities for learning and playing together.⁷
- BabyFirstTV goes above and beyond traditional TV – it is an educational tool that provides a positive learning environment and an engaging experience for both you and your baby.⁸
- BabyFirstTV is a safe, positive and friendly resource and provides an engaging and educational experience for baby [sic.] during their first states of learning.⁹
- We know that parents want the best for their babies, and we strive to deliver the very best educational content for the best value on the market.¹⁰
- It’s Not Traditional TV - It’s a Brand New Educational Tool.¹¹

In addition to these and other general educational claims about its programming, BabyFirstTV also makes claims that its programming fosters specific skills. For example, the narration on a video commercial posted on BabyFirstTV’s YouTube channel says:

Give your child a head start, in art, math, language, and music. With BabyFirstTV, the first 24 hour, commercial-free television network for babies 6-months to 3-years old. BabyFirstTV is supported by top child

⁴ Moss, Linda (May 5, 2008). Time Warner Cable Adds BabyFirstTV. *Multichannel News*. Retrieved July 11, 2008 from <http://www.commercialfrechildhood.org/news/timewarnercable.htm>

⁵ FTC letter to Campbell and Linn, p. 3.

⁶ Ibid.

⁷ Attachment 1. Retrieved July 3, 2008 from http://www.babyfirsttv.com/content.asp?xml_id=1612.

⁸ Ibid.

⁹ Ibid.

¹⁰ Attachment 2. Retrieved July 3, 2008 from http://www.babyfirsttv.com/content.asp?xml_id=1574.

¹¹ Attachment 3. Retrieved July 3, 2008 from http://www.babyfirsttv.com/content.asp?xml_id=1785.

development experts. Give your baby the essential skills they need. BabyFirstTV. Watch your baby blossom.”¹²

BabyFirstTV has instituted a “unique color coded system,” which “helps inform parents about the educational value of each segment”¹³ and links the viewing of specific programs to the development of specific skills. For example, BabyFirstTV uses yellow to indicate “Thinking Journey” programming, which BabyFirstTV claims, “Engages children in identifying patterns of thinking and developing creative ways of viewing the world”; red to indicate “Language Playground,” which “[e]ncourages children to develop language through introduction to words, signs and languages from around the world”; pink to indicate “Imagination Lane,” which “[i]nspires creativity through cultural and multi-sensory experiences for children”; and green to indicate “Sensory Wonderland,” which “[d]evelops children’s ability to identify the five senses and the world around them.”¹⁴

Lack of Substantiation for Educational Claims

In its response to CCFC’s Complaint against Brainy Baby and Baby Einstein, the Commission stated, “It is well established that advertisers must have a reasonable basis to substantiate objective product claims.”¹⁵ The Commission then elaborated on what qualifies as adequate substantiation for educational claims for screen media marketed to babies:

Accordingly, advertisers must have adequate substantiation for educational and/or cognitive development claims that they make for their products, including for videos marketed for children under the age of two; reliance on general theories of child development or on studies of products that are materially different from the advertised product will not be sufficient. In this regard, we note that the practice of using video as an educational tool for children under two is a relatively recent development. Moreover, it cannot be assumed that this young audience possesses the necessary cognitive skills that would allow generalization from techniques that may be successful in other circumstances, *e.g.*, with older children or one-on-one interaction using traditional board books.¹⁶

According to the criteria laid out by the FTC, BabyFirstTV’s substantiation for educational claims does not seem to be adequate. The company appears to rely on generalizations from other techniques and circumstances to promote its programming as educational. For example, BabyFirstTV touts its programming’s “Interactive Subtitles” for parents to read while watching with their babies, claiming that makes “the experience

¹² <http://www.youtube.com/watch?v=KhWoR7uBuHs>. Retrieved July 3, 2008.

¹³ Attachment 4. Retrieved July 8, 2008 from <http://www.babyfirsttv.com/categories.asp>.

¹⁴ Ibid.

¹⁵ FTC letter to Campbell and Linn, p. 2.

¹⁶ Ibid.

as educational and engaging as reading a book.”¹⁷ This claim is particularly troubling since research does demonstrate the positive educational benefits of reading books to babies¹⁸ and parents may mistakenly infer that similar research exists for television. In any case, by the Commission’s own criteria, BabyFirstTV must provide substantiation for the claim “as educational . . . as reading a book” and should not imply that reading subtitles from a screen to babies has the same educational value as reading them a book.

In 2007, BabyFirstTV responded directly to CCFC’s charge of false and deceptive marketing by citing studies mostly conducted with older children to substantiate claims that its programming is educational for babies – precisely the type of substantiation that the Commission has declared is inadequate. On May 17, 2007, BabyFirstTV’s legal representatives sent a cease and desist letter to CCFC.¹⁹ The letter stated that “any and all claims [BabyFirstTV] makes about its programming are backed by overwhelming substantiation. And, although BabyFirstTV does not directly refer to this substantiation on its website or other promotion literature, the substantiation exists and is available to the public.”²⁰ The letter then listed eight brief summaries of research “demonstrating that BabyFirstTV’s programming is educational for infants.”²¹

None of the research cited in BabyFirstTV’s letter to CCFC was related to BabyFirstTV and seven of the eight studies cited by BabyFirstTV were conducted with preschool children, not babies and toddlers.²² Given the significant developmental differences between infants and preschool children, statements, such as the following, do not substantiate BabyFirstTV’s claims that its programming is “educational for infants”:

- “Preschoolers who viewed educational TV programs had higher grades and read more books in high school.”
- “Educational TV Viewing at two and three years of age predicted school readiness among low to moderate income children.”
- “Viewing child-audience informative programs between age 2 and 3 predicted high subsequent performance on all four measurements of academic skill.”²³

The one study cited by BabyFirstTV that was conducted with babies examined the correlation between viewing certain programs and language acquisition and found that some programs had positive correlations, some programs had negative correlations and some programs had no correlation at all.²⁴ The study has severe limitations. It was

¹⁷ Attachment 3. Retrieved July 3, 2008 from http://www.babyfirsttv.com/content.asp?xml_id=1785.

¹⁸ Raikes, H., Luze, Gayle., Brooks-Gunn, J. et al. (July 2006). Mother–Child Bookreading in Low-Income Families: Correlates and Outcomes During the First Three Years of Life. *Child Development*, Vol. 77 Issue 4, p924-953.

¹⁹ The letter was a response to a May 15, 2007 letter sent by CCFC, in connection with its FTC complaint against BabyFirstTV, to ten U.S. cable companies urging them not to carry BabyFirstTV because the channel “seduces potential subscribers with false claims that its programming is educational for infants.” CCFC’s letter to the cable companies is Attachment 5. BabyFirstTV’s letter to CCFC is Attachment 6.

²⁰ BabyFirstTV’s May 17, 2007 letter to CCFC, p. 2

²¹ Ibid, pp. 2-3.

²² Full citations and summaries of the studies cited by BabyFirstTV are in Attachment 7.

²³ BabyFirstTV’s May 17, 2007 letter to CCFC, pp. 2-3.

²⁴ Linebarger, D. L., & Walker, D. (January 2005) Infants’ and Toddlers’ television viewing and language outcomes *American Behavioral Scientist*. 624-645. The study found a positive correlation between

conducted with only fifty-one children and no control group. The studies' own authors concluded that, "Research is still needed to determine both causality and whether the results hold outside such a homogeneous sample as the one reported in this article." Regardless of these shortcomings, BabyFirstTV was not a part of this study so in no way do the findings substantiate any of its claims about its programming. It is also worth noting that this study has never been replicated and more recent studies have found that screen media is not an effective means of promoting language acquisition.²⁵

BabyFirstTV also misleads potential consumers about the state of the research on screen media and babies. On the "Frequently Asked Questions" section of its website, BabyFirstTV responds to the question, "Can television be harmful to my baby or toddler?" with the following answer: "When used responsibly, age-appropriate, educational television programming has been associated with very positive results such as improvements in vocabulary."²⁶ For babies, this statement is false. Research shows that screen media is not an effective means of teaching babies and toddlers the meaning of new words or for promoting their phonetic learning.²⁷ In fact, one recent study found that watching baby videos is associated with slower language development.²⁸

Conclusion

In its response to CCFC's Complaint against Baby Einstein and Brainy Baby, the FTC offered clear criteria for substantiation of educational claims for screen media marketed for babies, noting that the considerations that it applied to Baby Einstein and Brainy Baby, "would apply to representations made by any marketer of products claimed to provide educational or developmental benefits to children under two."²⁹ We believe that the Commission should explicitly apply that standard to BabyFirstTV.

There is no credible scientific research to prove that babies gain educational or developmental benefits from watching television and BabyFirstTV's substantiation of its

viewing certain programs (such as Blue's Clues and Dora the Explorer) and vocabulary acquisition, a negative correlation between other programs (such as Barney & Friends and Teletubbies) and no correlation with other programs (such as Dragon Tales, Sesame Street, and Disney movies).

²⁵ Krmar, M., Grela, B., & Lin, K. (2007) Can Toddlers Learn Vocabulary from Television? An Experimental Approach. *Media Psychology*. 10: 41-63; Robb, M., Richert, R., & Wartella, E. (in press). Just a talking book? Word learning from watching baby videos. *British Journal of Developmental Psychology*.

²⁶ Attachment 8. Retrieved July 3, 2008 from

http://www.babyfirsttv.com/parents.asp?xml_id=1627&subXml_id=1773.

²⁷ Robb, M., Richert, R., & Wartella, E. (in press). Just a talking book? Word learning from watching baby videos. *British Journal of Developmental Psychology*; Krmar, D., Grela, B., Lin, K. (2007) Can Toddlers Learn Vocabulary from Television? An Experimental Approach. *Media Psychology*. 10 (1): 41-63; Kuhl, P.K., Tsaw, F, Liu, H. (2003). Foreign-language experience in infancy: Effects of short-term exposure and social interaction. *Proceedings of the National Academy of Science*. 100: 9096-9101.

²⁸ Zimmerman, F.J., Christakis, D.A., & Meltzoff, (2007, August) A.N. Associations between Media Viewing and Language Development in Children Under Age 2 years. *The Journal of Pediatrics*. 151(4): 364-368.

²⁹ FTC letter to Campbell and Linn, Pg. 1, Footnote 1.

product claims relies almost exclusively on research conducted with older children and entirely on children watching programming other than BabyFirstTV.

We believe that BabyFirstTV's marketing does not meet the FTC's criteria and that the company continues to make unsubstantiated claims about the educational benefits of its programs. Given that BabyFirstTV's reach has expanded significantly since our original Complaint, we believe that it is imperative that the FTC respond to the Complaint in order to hold BabyFirstTV to the same standards it set for Baby Einstein and Brainy Baby.

We also believe BabyFirstTV should not only be forced to remove from its website and advertisements any educational claims that it cannot substantiate, but should also be held accountable for violating Section 5 of the FTC Act and the ongoing deception of its customers. We therefore ask that the Commission require BabyFirstTV to offer refunds to its past and current subscribers and to notify them that BabyFirstTV cannot substantiate its claims that its programming is educational for babies.

We thank you for your attention to this matter. If you have any questions, please do not hesitate to contact us.

Sincerely,

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