UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Consumer Protection
Division of Advertising Practices

December 5, 2007

Angela J. Campbell, Esquire
Institute for Public Representation
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Susan Linn, Ed.D.
Campaign for a Commercial-Free Childhood
Judge Baker Children's Center
53 Parker Hill Avenue
Boston, MA 02120

Dear Ms. Campbell and Dr. Linn:

This letter responds to the Complaint and Request for Investigation that the Campaign for a Commercial-Free Childhood ("the CCFC") filed with the Federal Trade Commission last year. The CCFC asserted that The Baby Einstein Company ("Baby Einstein") and The Brainy Baby Company, LLC ("Brainy Baby") were violating Section 5 of the Federal Trade Commission Act by deceptively marketing their videos for children under two years of age as educational and beneficial for infant development, and asked the Commission to bring law enforcement actions against the two companies.[1]

The CCFC asserted that the American Academy of Pediatrics recommends that television be avoided for children under two years of age because "research on early brain development shows that babies and toddlers have a critical need for direct interactions with parents and other significant care givers . . . for healthy brain growth and the development of appropriate social, emotional, and cognitive skills." Complaint, at 3 (citing *Media Education*, 104(2) Pediatrics 341, 342 (Aug. 1999)). The CCFC contended that Baby Einstein and Brainy Baby nonetheless market videos aimed at this age group using educational and developmental claims that are material to consumers because they appeal to "parents' desires to give their very young children a leg up on learning and development. . . ." Complaint, at ii. The CCFC asserted that the companies lack substantiation for their claims and, moreover, that the claims are false because some research suggests that television viewing is actually detrimental to very young children.

Given the importance of the issues raised by the CCFC, the staff initiated inquiries to determine whether Baby Einstein® and Brainy Baby® videos had been marketed in violation of Section 5 of the FTC Act.

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[1] In June 2006, the CCFC amended its complaint to ask that the Commission also look into the marketing practices of BabyFirst TV, a new subscription cable television channel. This letter is limited to Baby Einstein and Brainy Baby. The considerations discussed below would apply, however, to representations made by any marketer of products claimed to provide educational or developmental benefits to children under two.

It is well established that advertisers must have a reasonable basis to substantiate objective product claims. FTC Policy Statement Regarding Advertising Substantiation, *appended to Thompson Medical Co.*, 104 F.T.C. 648, 839 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987). 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.

The substantiation required for claims about specific educational or cognitive development benefits that children will receive from using a particular product, however, differs from that required for claims that merely describe the product's content. The latter type of claims – *e.g.*, claims that the product "exposes" or "introduces" children to particular content – are unlikely, by themselves, to convey an educational or developmental benefit claim that would require reliable scientific substantiation.[2]

Until fairly recently, little research had focused on the effects of television viewing by this youngest segment of children or on the effects of the kinds of products identified in the CCFC's Complaint. To the extent the existing research does point in any direction, it suggests that television is an inferior means of teaching very young children compared to live demonstration. Based on our review, however, it appears that additional research is needed before reliable conclusions can be drawn about the effects of television viewing on this audience. A number of academics and researchers in this field have expressed a similar viewpoint. *See, e.g.*, F.J. Zimmerman, *et al.*, *Associations Between Media Viewing and Language Development in Children Under 2 Years*, 120 J. Pediatrics (forthcoming 2007) (suggesting directions for future research); D.L. Linebarger & D. Walker, *Infants' and Toddlers' Television Viewing and Language Outcomes*, 48 Am. Behavioral Scientist 625 (Jan. 2006) (noting need for research using experimental paradigm to answer questions about causation that the authors' correlational study could not address); D.R. Anderson & T.A. Pempek, *Television and Very Young Children*, 48 American Behavioral Scientist 505, 518-19 (Jan. 2005) (additional research, including both longitudinal studies and intervention experiments, is needed concerning impact of television on children under 2).

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[2] Determining whether an ad is making an educational/cognitive development claim or is simply describing the content of a product requires an analysis of an ad's entire content. As we do in analyzing all advertising, we look at the "net impression" created by all of the statements, graphics, and other depictions used in an ad.

Notwithstanding the state of the science, we note that both Baby Einstein and Brainy Baby have substantially modified their websites since the Coalition filed its Complaint. In addition, as noted in my letters to the companies (*copies of which are posted on the Commission's website, www.ftc.gov*), they both 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. We believe that these changes address in a meaningful manner the concerns identified in the CCFC's Complaint. For that reason, we have determined not to recommend enforcement action at this time.

Although the staff has decided not to recommend further action on the CCFC's Complaint, we appreciate your raising these important issues. The staff's decision should not be construed as a formal Commission determination of whether the challenged actions comply with Section 5 of the FTC Act, and the Commission reserves the right to take any such future action that the public interest may require.

Thank you for bringing this matter to the Commission's attention.

Very truly yours,

Mary K. Engle

Mary Koelbel Engle
Associate Director