

*Before the*  
FEDERAL TRADE COMMISSION  
Washington, DC 20580

In the Matter of )  
 )  
Request for Investigation of Deceptive )  
Practices in Connection with Open Solutions, )  
Developer and Marketer of Mobile Apps for )  
Infants and Very Young Children )  
 )  
 )

**REQUEST FOR INVESTIGATION**

**Submitted by**

**Campaign for a Commercial-Free Childhood**

Of Counsel:

Amanda K. Burkett  
Georgetown Law Student

Eric G. Null  
Laura M. Moy  
Angela J. Campbell  
Institute for Public Representation  
Georgetown University Law Center  
600 New Jersey Avenue, NW  
Suite 312  
Washington, DC 20001  
(202) 662-9535  
gulcivr@law.georgetown.edu

August 7, 2013

*Counsel for Campaign for a  
Commercial-Free Childhood*

## Table of Contents

I.	Background .....	1
	Baby Puzzle Games .....	2
	Baby Hear & Read Games .....	4
	Baby Touch & Hear Games .....	5
II.	Open Solutions Makes Numerous Deceptive Claims in Violation of Section 5 of the Federal Trade Commission Act .....	6
	A. Open Solutions Markets its Apps as Educational for Babies .....	7
	B. Open Solutions Makes Many Substantive Claims About the Educational Value of its Products .....	7
	C. Open Solutions Lacks Substantiation for These Claims .....	9
	D. Open Solutions' Claims Are Likely to Deceive Consumers Acting Reasonably Under the Circumstances .....	13
	E. Open Solutions' Claims Are Material .....	14
	1. Open Solutions' Deceptive Claims are Objective and Imply Substantiation .....	14
	2. Open Solutions' Deceptive Claims Are Likely to Affect a Consumers' Choice of or Conduct Regarding its Products .....	15
	3. Open Solutions' Apps May Be Harmful to Very Young Children .....	15
III.	Conclusion .....	18

The Campaign for a Commercial-Free Childhood (CCFC), by its attorneys, the Institute for Public Representation (IPR), asks the Federal Trade Commission (FTC) to investigate and bring an action against Open Solutions s.r.o. for engaging in deceptive trade practice in violation of Section 5 of the Federal Trade Commission Act<sup>1</sup> in the sale and marketing of its mobile apps, all of which are targeted to babies and very young children, including those ages 0–2.

Marketing these apps as educationally beneficial to very young children is deceptive. Open Solutions makes a number of unsubstantiated claims about how its apps will improve very young children’s learning and skills. Based on CCFC’s and IPR’s investigation, however, there does not appear to be any evidence that babies and toddlers benefit from the apps in the ways that Open Solutions claims. On the contrary, using apps such as those that Open Solutions sells may be detrimental to very young children. Open Solutions makes deceptive claims in connection with its products, and parents and babies are harmed as a result. The FTC should therefore take enforcement action to stop these deceptive practices.

## **I. Background**

Open Solutions, based in Slovakia, is “a small company specializing in the development of custom software applications, reengineering and re-factoring existing applications and nearshore software outsourcing services.”<sup>2</sup> The company has eight apps available for download, a complete list of which can be found in Appendix A. These apps are targeted to the U.S. market through Apple’s App Store.<sup>3</sup> The company also operates a website at [www.babykidszone.com](http://www.babykidszone.com)

---

<sup>1</sup> 15 U.S.C. § 45 (2006).

<sup>2</sup> Welcome to Open Solutions, <http://www.opensolutions.sk>.

<sup>3</sup> The FTC thus has jurisdiction to investigate Open Solutions and seek a temporary restraining order or preliminary injunction against Open Solutions if found to be in violation of the FTCA. *See* 15 U.S.C. § 46(f)-(l).

that features most of these apps, along with a number of the same marketing claims it makes in the App Store. That site links visitors directly to the App Store to buy and download the apps.<sup>4</sup>

All eight of Open Solutions' apps have titles that start with "Baby." In Apple's App Store, the apps are categorized under "Education" and are marketed for age ranges that include children 2 years old or younger. The apps are prominently featured, some of them appearing in the first page of results when parents search for "baby" in the Education section of the App Store. Some of Open Solutions' apps also appear to be very popular—for example, one of Open Solutions' apps has over 2,000 ratings in iTunes.<sup>5</sup>

The eight apps sold by Open Solutions fall into three categories: "Baby Puzzle" games, "Baby Hear & Read" games, and "Baby Touch & Hear" games.

### **Baby Puzzle Games**

The three Baby Puzzle games are drag-and-drop style games in which a child user swipes her finger to drag an item from one part of the screen to a matching open space.

---

<sup>4</sup> Because most of the claims on the [www.babykidszone.com](http://www.babykidszone.com) website are the same as those in the iTunes store, we will mostly refer to what is found in the iTunes store as it is more likely to be seen and used by parents

<sup>5</sup> *iTunes Preview: Baby Touch & Hear Lite - Listen Sounds of Animals & Tools for Free - Best Game For The Youngest Kids*, Apple iTunes, <https://itunes.apple.com/us/app/baby-touch-hear-lite-listen/id427540962> (last visited Aug. 5, 2013).



**Figure 1**

*In Baby First Puzzle Farm, the baby uses a finger to drag the animal from the upper left corner to the corresponding open space.*

In two of these games, Baby First Puzzle Farm and Baby First Puzzle Christmas Winter, an audio component identifies the object on the screen. For example, in Figure 1 above, a voice says “horse” as the horse appears in the upper left corner of the screen.

Open Solutions markets Baby First Puzzle Farm for ages 0–6,<sup>6</sup> Baby First Puzzle Christmas Winter for ages 1–7,<sup>7</sup> and it is reasonable to assume that Baby Puzzle is marketed for similar ages. Open Solutions states that these apps will entertain and educate babies with their images and themes, and that the apps will teach infants motor skills, shapes, logic and precision.<sup>8</sup>

---

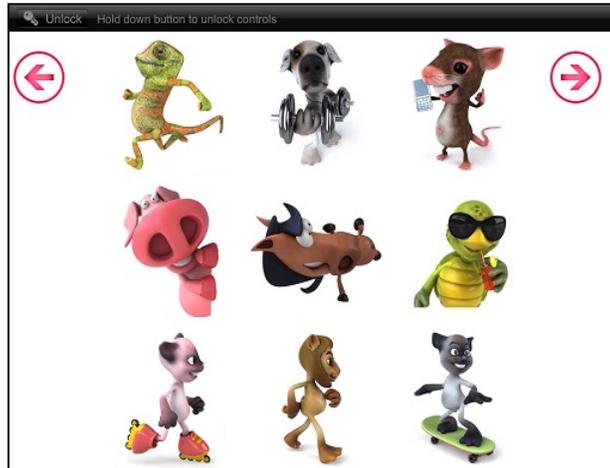
<sup>6</sup> *iTunes Preview: Baby First Puzzle Farm - Best Game For The Youngest Kids - Top Fun And Education*, Apple iTunes, <https://itunes.apple.com/us/app/baby-first-puzzle-farm-best/id467306817?mt=8> (last visited Aug. 5, 2013).

<sup>7</sup> *iTunes Preview: Baby First Puzzle Christmas Winter - Best Game For The Youngest Kids - Top Fun And Education*, Apple iTunes, <https://itunes.apple.com/ca/app/baby-first-puzzle-christmas/id578626423?mt=8&ign-mpt=uo%3D2> (last visited Aug. 5, 2013).

<sup>8</sup> *iTunes Preview: Baby Puzzle - Best Game For The Youngest Kids (Top Fun and Education)*, Apple iTunes, <https://itunes.apple.com/app/baby-puzzle-best-game-for/id430855273?mt=8&ls=1> (last visited Aug. 5, 2013).

## Baby Hear & Read Games

The two Baby Hear & Read apps are flashcard-style games in which a child user taps on an image to bring up a full-screen flashcard of the image.



**Figure 2**

*In Baby Hear & Read Verbs, the index screen shows a variety of small images. If the baby taps on a small image, a full-screen flashcard of that image shows up.*



**Figure 3**

*In the full-screen flashcard, a voice states the word, then spells it out as the letters in the word are highlighted at the bottom of the screen.*

As the image appears, the app plays sounds related to the image. For example, in Figure 3 above, the app plays the sound of a pig squealing. A voice states the word out loud, then spells it out as the written word is spelled out along the bottom of the screen.

Open Solutions markets both of its Hear & Read games for ages 0–8. The company claims that these apps will teach children through its “3D” “HD quality” images.<sup>9</sup> Open Solutions claims, “This application provides learning opportunity [sic] to learn how to read, pronounce and spell basic nouns [or verbs].”<sup>10</sup>

### **Baby Touch & Hear Games**

The three Baby Touch & Hear apps are flashcard-style games very similar to the Hear & Read games, but these include a foreign language component instead of a spelling component. These apps include an option to hear the words pronounced and shown in two different languages. When a baby taps on an image, the full-screen flashcard that appears states the name of the object once in each language. The app then plays sounds related to the image.



**Figure 4**

*In Baby Touch & Hear Music, the baby can hear the name of the object in two different languages.*

---

<sup>9</sup> E.g., *iTunes Preview: Baby Hear & Read Verbs*, Apple iTunes, <https://itunes.apple.com/us/app/baby-hear-read-verbs-see-listen/id445187552?mt=8> (last visited Aug. 5, 2013).

<sup>10</sup> *Id.*

Open Solutions markets Baby Touch & Hear for ages 0–7,<sup>11</sup> Baby Touch & Hear Safari & Jungle Animals for ages 0–10,<sup>12</sup> and Baby Touch & Hear Musical Instruments for ages 1–7.<sup>13</sup> The company describes these as the “best game for the youngest kids.”<sup>14</sup> Open Solutions claims these apps will “entertain and educate your baby” with different images, sounds, and verbal and text identifications.<sup>15</sup> Open Solutions specifically lays out what a child will learn by using these apps, stating, “Teach your baby what animal[, tool, or musical instrument] makes what sound, what is the correct pronunciation of its name, how to say its name in foreign language, how to write the name.”<sup>16</sup> The company claims that the apps will teach very young children foreign languages, stating, “Your baby can even hear the name of animal or tool [or instrument] pronounced in two languages, making this an ideal language learning tool (the earlier you introduce a second language, the easier it will be for your child to pick up its unique sounds).”<sup>17</sup>

## **II. Open Solutions Makes Numerous Deceptive Claims in Violation of Section 5 of the Federal Trade Commission Act**

Section 5 of the Federal Trade Commission Act prohibits deceptive marketing practices.<sup>18</sup> To determine whether marketing practices are deceptive, the FTC considers three

---

<sup>11</sup> *iTunes Preview: Baby Touch & Hear - Listen Sounds of Animals & Tools - Best Game For The Youngest Kids*, Apple iTunes, <https://itunes.apple.com/us/app/baby-touch-hear-listen-sounds/id418509661?mt=8> (last visited Aug. 5, 2013).

<sup>12</sup> *iTunes Preview: Baby Touch & Hear - Safari and Jungle Animals - Best Game and Top Fun for the Youngest Kids*, Apple iTunes, <https://itunes.apple.com/us/app/baby-touch-hear-safari-jungle/id560955666> (last visited Aug. 5, 2013).

<sup>13</sup> *iTunes Preview: Musical Instruments: Baby Flashcards Free - Best Game and Top Fun for the Youngest Kids*, Apple iTunes, <https://itunes.apple.com/us/app/musical-instruments-baby-flashcards/id506619686?mt=8> (last visited Aug. 5, 2013).

<sup>14</sup> *Supra* notes 11-13.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> 15 U.S.C. § 45 (2006).

elements.<sup>19</sup> First, it considers whether there has been a representation, omission, or practice that is likely to mislead the consumer. Second, it examines the practice from the perspective of a consumer acting reasonably in the circumstances. Third, it asks whether the representation, omission, or practice is a “material” one.<sup>20</sup> Applying each of these factors, Open Solutions has made material representations that are likely to mislead parents acting reasonably in the circumstances, to the detriment of the parents and their babies.

#### **A. Open Solutions Markets its Apps as Educational for Babies**

There is no question that Open Solutions markets its apps to parents for babies. As mentioned above, all of the apps have titles that start with “Baby,” are categorized under “Education” in the App Store, and are marketed for age ranges as young as zero.

The apps are prominently featured in the App Store. Parents who search for “baby” in the Education section of the App Store encounter Open Solutions apps within the first page of results for both iPhone and iPad apps when results are sorted by “relevance” (the default). Baby Puzzle is listed in the first page of results of paid education apps with the search term “baby” for both iPad and iPhone, when sorted by relevance.<sup>21</sup>

#### **B. Open Solutions Makes Many Substantive Claims About the Educational Value of its Products**

Open Solutions makes a number of substantive claims about the educational value of its products for babies and very young children. A list of the apps and the substantive claims associated with each app can be found in Appendix A.

---

<sup>19</sup> *Cliffdale Associates, Inc.*, 103 F.T.C. 110 app. at \*45 (1984) (FTC Policy Statement on Deception) [hereinafter Deception Statement], *available at* <http://www.ftc.gov/bcp/policystmt/ad-decept.htm>.

<sup>20</sup> *Id.*

<sup>21</sup> We tested this ourselves in the App Store from both an iPhone and an iPad.

**Open solutions claims that every one of its apps will help babies develop “motor skills.”** For example, on the iTunes preview page for Baby First Puzzle Farm Lite, Open Solutions claims, “This application provides learning opportunity [sic] to practice motor skills, shapes, logic and precision while keeping babies entertained (rewarding them with sounds and visual effects when completed).”<sup>22</sup> The description for Baby Touch & Hear states, “Help your toddler to develop fine motor skills while being entertained.”<sup>23</sup> And the company asserts that Baby Hear & Read Verbs Lite “helps develop your kid’s motor skills while keeping them entertained.”<sup>24</sup>

**Open Solutions claims that some of its apps will teach infants multiple languages.** For the apps offering a foreign language component—the Touch & Hear apps—Open Solutions’ claims that the apps are “ideal language learning tool[s],” explaining that “the earlier you introduce a second language, the easier it will be for your child to pick up its unique sounds.”<sup>25</sup>

**Open Solutions makes a number of claims that its apps will teach babies to read, pronounce, spell, and write new words.** For example, the iTunes description for Baby Touch & Hear states, “Teach your baby what animal makes what sound, what is the correct pronunciation of its name, how to say its name in foreign language, how to write the name.”<sup>26</sup> The description

---

<sup>22</sup> *iTunes Preview: Baby First Puzzle Farm Lite - Best Free Game For The Youngest Kids - Top Fun And Education*, Apple iTunes, <https://itunes.apple.com/us/app/baby-first-puzzle-farm-lite/id478806230> (last visited Aug. 5, 2013).

<sup>23</sup> *iTunes Preview: Baby Touch & Hear - Listen Sounds of Animals & Tools - Best Game For The Youngest Kids*, Apple iTunes, <https://itunes.apple.com/us/app/baby-touch-hear-listen-sounds/id418509661> (last visited Aug. 5, 2013).

<sup>24</sup> *iTunes Preview: Baby Hear & Read Verbs Lite - See, Listen and Spell with 3D Animals for Free - Best Game and Top Fun for Kids*, Apple iTunes, <https://itunes.apple.com/us/app/baby-hear-read-verbs-lite/id451376264> (last visited Aug. 5, 2013).

<sup>25</sup> *iTunes Preview: Baby Touch & Hear - Listen Sounds of Animals & Tools - Best Game For The Youngest Kids*, Apple iTunes, <https://itunes.apple.com/us/app/baby-touch-hear-listen-sounds/id418509661> (last visited Aug. 5, 2013).

<sup>26</sup> *iTunes Preview: Baby Touch & Hear - Listen Sounds of Animals & Tools - Best Game For The Youngest Kids*, Apple iTunes, <https://itunes.apple.com/us/app/baby-touch-hear-listen-sounds/id418509661> (last visited Aug. 5, 2013).

for Hear & Read Nouns Lite says, “This application provides learning opportunity [sic] to learn how to read, pronounce and spell basic nouns.”<sup>27</sup>

**Open Solutions’ marketing of these apps creates the impression of having evidence for its claims.** For each app, Open Solutions claims, “We have tested this app and the babies and parents simply love it!” For example, this is from the description in the App Store of Baby Touch & Hear Lite:



**Figure 5**

*App Store description of Baby Touch & Hear Lite*

Based on the context in which the claim to have “tested this app” is delivered, a parent would assume the “test” to be an indicator that the app has been shown to teach babies what it claims to teach them. A reasonable consumer would read this as an implicit claim of substantiation.

### **C. Open Solutions Lacks Substantiation for These Claims**

Open Solutions’ claims about its baby apps are likely to mislead consumers because these claims, read together by a reasonable consumer, indicate substantiation, but are in fact unsubstantiated. To avoid making false or misleading claims, the FTC’s *Policy Statement on*

---

<sup>27</sup> *iTunes Preview: Baby Hear & Read Nouns Lite - See, Listen and Spell with 3D Animals for Free - Best Game and Top Fun for Kids*, Apple iTunes, <https://itunes.apple.com/us/app/baby-hear-read-nouns-lite/id451052498?mt=8> (last visited Aug. 5, 2013).

*Substantiation* states that companies should have a “reasonable basis for their advertising claims before they are disseminated.”<sup>28</sup> If an advertiser impliedly or expressly claims a certain level of support—such as “studies show”—then the advertiser must possess the advertised level of substantiation.<sup>29</sup> Moreover, responding to complaints made by CCFC regarding videos for babies that were marketed as educational, Commission staff explained several years ago that

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 of child development or on studies of products that are materially different from the advertised product will not be sufficient.<sup>30</sup>

CCFC is not aware of any scientific studies evaluating the effectiveness of Open Solutions’ apps at achieving the ambitious claims the company makes. Neither the iTunes descriptions of the apps nor Open Solutions’ own website provides any information regarding the “tests” that the company claims to have performed. Moreover, to CCFC’s knowledge, as of the date of this request for investigation there have been no scientifically credible studies published that demonstrate that so-called “educational” iPad apps for infants have any beneficial effects whatsoever.

On the contrary, the most current research on child development and learning suggests that screen interactivity alone does *not* have educational value where very young children are concerned. Rather, very young children are unable to learn from screens without the substantial

---

<sup>28</sup> *Thompson Medical Co.*, 104 F.T.C. 648, 839, app. at 1 (1984), *aff’d*, 791 F.2d 189 (D.C. Cir. 1986), cert. denied, 479 U.S. 1086 (1987) (FTC Policy Statement Regarding Advertising Substantiation) [hereinafter Advertising Substantiation Statement], *available at* <http://www.ftc.gov/bcp/guides/ad3subst.htm>.

<sup>29</sup> *Id.* at 2.

<sup>30</sup> Letter from Mary Engle, Assoc. Dir. FTC Bureau of Consumer Protection Div. of Advertising Practices, to Angela Campbell and Susan Linn (Dec. 5, 2007), at 2, *available at* <http://www.ftc.gov/os/closings/staff/071205ccfc.pdf>.

involvement of and facilitation by a social partner, such as a parent. As researchers explained in a 2011 review of the state of research into children’s learning from screen media between birth and 6 years of age that was published in *Child Development*,

[M]ere exposure to information is not sufficient for learning, and screen models do not replace live models as social partners who can scaffold learning at these young ages [under 3 years]. . . .

On-screen models do not, on their own, effectively scaffold very young children’s learning. . . .<sup>31</sup>

The findings are particularly significant with respect to word learning:

. . . [T]he findings about word learning suggest that before 3 years of age, it takes substantial training and assistance from an adult present during the interaction or from an on-screen model for young children to see the relation between information presented on television and the real world.<sup>32</sup>

Writing about the policy and practice implications of the research, the authors explained,

[C]hildren under 2 years of age primarily learn from screen media under specific conditions in which the social relevance of the on-screen models has been made apparent (e.g., through live-feed, socially contingent interactions). Thus, screen models do not function in the same way as live social interaction in early learning and development. . . . In terms of policy, media producers must be cautious in how they advertise media intended for children under 2 years of age, being careful not to imply educational value where none has been demonstrated.<sup>33</sup>

Indeed, although at this time there have been relatively few studies specifically examining touch screen media, a large body of research literature has established that babies do not learn from screens. For example:

---

<sup>31</sup> Rebekah A. Richert, Michael B. Robb, & Erin I. Smith, *Media as Social Partners: The Social Nature of Young Children’s Learning from Screen Media*, 82 *Child Dev.* 82, 89 (2011), available at <http://onlinelibrary.wiley.com/doi/10.1111/j.1467-8624.2010.01542.x/pdf>.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 92.

- A 2003 study published by researchers at the University of Washington’s Center for Mind, Brain, and Learning reported that infants who took part in 12 language sessions over a four-week period performed no better on a subsequent language test than infants who did not take part in the sessions when the sessions were video- or audiotaped, but performed significantly better when the language sessions were conducted in person.<sup>34</sup>
- A 2007 study found a link between the viewing of baby DVDs/videos and lower scores on the Communicative Development Inventory, a standard instrument for measuring children’s language development.<sup>35</sup>
- A 2010 study found that 12- to 18-month-old babies who viewed a popular DVD several times a week for four weeks at home did not learn any more words from their month-long exposure to it than did a control group who did not view the DVD.<sup>36</sup> This was in spite of the fact that “recent research indicates that 40% of mothers of young children believe that their children learn from television.”<sup>37</sup>
- A study currently in press finds that “the types of dialogic interactions associated with better reading outcomes are more prevalent when parents and children read traditional books together than when they read [battery-operated, touch-sensitive children’s electronic console] books.”<sup>38</sup>

---

<sup>34</sup> Patricia K. Kuhl, Feng-Ming Tsao, & Huei-Mei Liu, *Foreign-Language Experience in Infancy: Effects of Short-Term Exposure and Social Interaction on Phonetic Learning* (2003), available at [http://ilabs.washington.edu/kuhl/pdf/Kuhl\\_et\\_al\\_PNAS\\_2003.pdf](http://ilabs.washington.edu/kuhl/pdf/Kuhl_et_al_PNAS_2003.pdf); see Patricia K. Kuhl, *Early Language Learning and Literacy: Neuroscience Implications for Education*, 5 *Mind Brain Educ.* 128, 139 (2011), available at [http://ilabs.uw.edu/sites/default/files/2011%20Kuhl\\_MindBrainEducation.pdf](http://ilabs.uw.edu/sites/default/files/2011%20Kuhl_MindBrainEducation.pdf) (“Machines are not sufficient as instructors, at least in the early period and when standard machines like television sets are used as the instructor.”)

<sup>35</sup> Frederick J. Zimmerman, Dimitri A. Christakis, & Andrew N. Meltzoff, *Associations Between Media Viewing and Language Development in Children Under Age 2 Years*, 151 *J. Pediatrics* 364, 366 (2007).

<sup>36</sup> Judy S. DeLoache, et al., *Do Babies Learn from Baby Media?*, 21 *Psychol. Sci.* 1570 (2010).

<sup>37</sup> *Id.* at 1570 (citing Victoria Rideout, *Parents, Children, and Media* (2007)).

<sup>38</sup> Julia Parish-Morris, Kathy Hirsh-Pasek, Roberta Michnick Golinkoff, Molly Fuller Collins, & Neha Mahajan, *Once Upon a Time: Parent-Child Dialogue and Storybook Reading in the Electronic Era*, *Mind, Brain, & Educ.* (forthcoming).

Thus, despite Open Solutions' numerous claims that its apps are educational and beneficial to very young children and have been "tested," these claims are unsubstantiated. The claims are supported neither by Open Solutions own evidence nor by a thorough review of the literature on screen interactivity and the education of very young children.

**D. Open Solutions' Claims Are Likely to Deceive Consumers Acting Reasonably Under the Circumstances**

To determine whether a practice is deceptive, the Commission examines it from the perspective of a consumer acting reasonably under the circumstances. If the representation is directed to a particular group, the Commission examines reasonableness from the perspective of that group.<sup>39</sup> To determine whether the consumer's conclusions were reasonable, the Commission will examine the "entire advertisement, transaction, or course of dealing" to find the net impression that the advertisement gives.<sup>40</sup> The consumer's interpretation is reasonable if the consumer draws the conclusion that the advertiser intends to convey.<sup>41</sup>

As the examples cited above show, the marketing of Open Solutions is targeted to parents of infants and very young children. The iTunes descriptions for the apps repeatedly refer to how the apps will benefit "your baby."<sup>42</sup> Moreover, it is clear that Open Solutions intends that consumers draw the conclusion that if they buy Open Solutions' apps for their infants to use, their babies will gain the skills specified.

A reasonable parent would perceive the claims made by Open Solutions as an indication that the apps are educational and beneficial. In addition, a reasonable consumer would interpret

---

<sup>39</sup> See Deception Statement, *supra* note 19, at \*45-47.

<sup>40</sup> *Id.* at \*48.

<sup>41</sup> *Id.* at \*47.

<sup>42</sup> *E.g.*, iTunes Preview: *Musical Instruments: Baby Flashcards - Best Game and Top Fun for the Youngest Kids*, Apple iTunes, <https://itunes.apple.com/us/app/baby-touch-hear-musical-instruments/id506608787> (last visited Aug. 5, 2013).

the reference to testing the apps to mean that the apps were tested to show they were as beneficial to the child as the company claims.

Thus, ample evidence shows that Open Solutions' claims are likely to deceive reasonable consumers into thinking that these apps are educational and beneficial for their very young children.

#### **E. Open Solutions' Claims Are Material.**

Open Solutions' claims are material because they are objective claims, they are likely to affect a consumer's choice or conduct regarding their apps, and because using the apps may in fact be harmful to very young children.

##### **1. Open Solutions' Deceptive Claims are Objective and Imply Substantiation**

Open Solutions makes objective claims in marketing materials about what its products will do, and those objective claims are unsubstantiated. As such, they are presumed material. According to the FTC's Policy Statement Regarding Advertising Substantiation,

Objective claims for products or services represent explicitly or by implication that the advertiser has a reasonable basis supporting these claims. These representations of substantiation are material to consumers. That is, consumers would be less likely to rely on claims for products and services if they knew the advertiser did not have a reasonable basis for believing them to be true.<sup>43</sup>

As explained above, Open Solutions makes a number of claims about how its products will objectively benefit babies and very young children, and those claims are unsubstantiated. Therefore, materiality may be presumed.

---

<sup>43</sup> Advertising Substantiation Statement, *supra* note 28.

## 2. Open Solutions' Deceptive Claims Are Likely to Affect a Consumers' Choice of or Conduct Regarding its Products

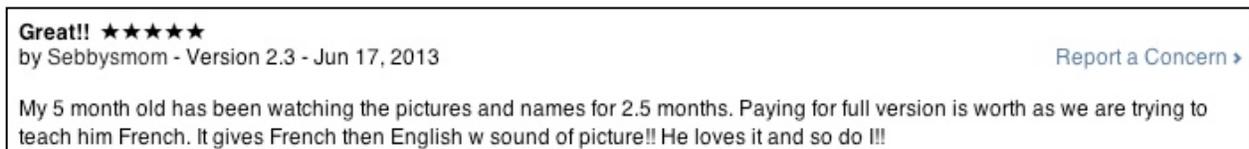
Even if the Commission declines to presume materiality here, Open Solutions' claims are material because they are likely to affect consumer decisions about whether to purchase the full version of the apps. Parents may try truncated version of the apps for free, but must pay \$0.99 for the full version of each. Parents are more likely to buy the full version of the games if they believe their very young children are benefiting from the games in the ways described by Open Solutions.

Indeed, parents' reviews in the iTunes store indicate that parents are downloading these apps because they believe in the educational value of the apps. For example, one parent wrote about Baby Touch & Hear,



*Figure 6*  
*iTunes Review of Baby Touch & Hear Lite*

Another parent says,



*Figure 7*  
*iTunes Review of Baby Touch & Hear Lite*

These parents would likely not have paid for the app but for the claimed educational benefits.

## 3. Open Solutions' Apps May Be Harmful to Very Young Children

In addition to deceiving consumers into spending money on their apps, Open Solutions' claims are material because they significantly involve the health, safety, and wellbeing of infants and toddlers. Evidence suggests that the apps may be harmful to very young children, and Open Solutions encourages parents to expose infants to touch screen devices by claiming that its apps are educational and beneficial for infants to use.

Based on the current state of research into the potential risks to very young children's wellbeing that screen time presents, the American Academy of Pediatrics recommends,

Television and other entertainment media should be avoided for infants and children under age 2. A child's brain develops rapidly during these first years, and young children learn best by interacting with people, not screens.<sup>44</sup>

Apps that are designed to teach factual information, such as those marketed by Open Solutions, go beyond what babies are developmentally ready for. According to Dr. Michael Rich, Director of the Center on Media and Child Health ("CMCH") at the Children's Hospital Boston, Harvard Medical School, and Harvard School of Public Health,

The most important developmental task of two-year-old children is not to learn fact (which is what computers teach) but to learn *how to learn*. Computers really only provide tasks with right and wrong answers and thus don't encourage the kind of problem solving and logical thinking necessary to build flexible learners. Instead, they teach kids to memorize and to be afraid of being wrong. That fear is a problem because you *want* your [child] to take risks in learning.<sup>45</sup>

Also according to Dr. Rich, there is a large potential for children to "zone out" during their interactions with the iPad, when interactions become reflexive and automatic instead of

---

<sup>44</sup> *Media and Children*, American Academy of Pediatrics, <http://www.aap.org/en-us/advocacy-and-policy/aap-health-initiatives/Pages/Media-and-Children.aspx> (last visited Aug. 5, 2013).

<sup>45</sup> Dr. Michael Rich, *Which Computer Games Are Good for My 2 Year Old?*, Ask the Mediatrixian (Sept. 17, 2009, 3:55 PM), <http://cmch.typepad.com/mediatrixian/2009/09/which-computer-games-are-good-for-my-2-year-old.html>; see Richert, *supra* note 31, at 89 ("the findings about word learning suggest that before 3 years of age, it takes substantial training and assistance from an adult present during the interaction or from an on-screen model for young children to see the relation between information presented on television and the real world.").

being a learning and evolving experience. “There is little positive that comes out of that experience,” Dr. Rich says.<sup>46</sup>

Children who grow up using iPads may be at an educational disadvantage when it comes to language acquisition. Marco Catani of the Institute of Psychiatry at King’s College London, co-author of a recently published article on word learning,<sup>47</sup> told *Business Insider* that because communications via the internet, mobile devices, and tablets are “visual rather than auditory, . . . it is likely that [kids who grow up with these] will end up with a lower average number of words than previous generations.”<sup>48</sup>

Moreover, screen time may even be addictive. Research suggests that interactive games on screens cause the release of dopamine, a brain chemical associated with pleasure, in children’s brains, encouraging children to keep playing the game. The games do this by offering rewards or exciting visuals at unpredictable times.<sup>49</sup>

Finally, screen time for infants carries an opportunity cost—each minute a baby spends interacting with a screen is one less minute available to be spent interacting with other people, as

---

<sup>46</sup> Allison Lichter, *Live Chat: Do Toddlers and Tablets Mix?*, WSJ Blog: The Juggle (May 21, 2012, 3:21 PM), <http://blogs.wsj.com/juggle/2012/05/21/live-chat-do-toddlers-and-tablets-mix> (go to bottom of transcript, click link for page 2); to view only the above-quoted comment made by Dr. Rich, visit

[http://www.scribblelive.com/Event/Should\\_Your\\_Toddler\\_Use\\_a\\_Tablet/30876301](http://www.scribblelive.com/Event/Should_Your_Toddler_Use_a_Tablet/30876301).

<sup>47</sup> Diana López-Barroso, Marco Catani et al., *Word Learning Is Mediated by the Left Arcuate Fasciculus*, 110 Proc. Nat’l Acad. Sci. 1073 (2013), available at

<http://www.pnas.org/content/early/2013/07/24/1301696110>.

<sup>48</sup> Hayley Dixon, *Kids Who Grow Up Using iPads Have Restricted Vocabularies*, Bus. Insider (July 23, 2013), available at <http://www.businessinsider.com/kids-who-grow-up-using-ipads-have-restricted-vocabularies-2013-7>.

<sup>49</sup> Ben Worthen, *What Happens When Toddlers Zone Out With an iPad*, Wall St. J. (May 22, 2012), [http://online.wsj.com/article/SB10001424052702304363104577391813961853988.html?mod=googlenews\\_wsj](http://online.wsj.com/article/SB10001424052702304363104577391813961853988.html?mod=googlenews_wsj); see M.J. Koeppe, et al., *Evidence for Striatal Dopamine Release During a Video Game*, 393 Nature 266, 266 (1998) (“Binding of raclopride to dopamine receptors in the striatum was significantly reduced during the video game compared with baseline levels of binding, consistent with increased release and binding of dopamine to its receptors.”).

babies must do in order to learn.<sup>50</sup> Indeed, the opportunity cost of screen time has been demonstrated in the television context: a 2006 study found “that the more time that children spent viewing television without parents and siblings present, the less time they spent interacting with parents or siblings, respectively.”<sup>51</sup>

Although there is no research that definitively shows the harms of educational apps on very young children, there is more than enough evidence showing that there is a serious risk of these apps causing potential harm to very young children, making Open Solutions’ claims material.

### **III. Conclusion**

Open Solutions’ misleading claims violate Section 5’s prohibition against unfair and deceptive trade practices. The company makes false and unsubstantiated claims that mislead parents into purchasing the apps for babies and very young children. Purchases based on these false claims not only harm consumers economically, but potentially put infants and toddlers at risk of harm. For these reasons, CCFC requests that the Commission promptly initiate an investigation of Open Solutions’ advertising and bring appropriate actions to remedy these violations and prevent further unfair and deceptive conduct.

---

<sup>50</sup> Richert, *supra* note 31, at 89 (“[T]he findings about word learning suggest that before 3 years of age, it takes substantial training and assistance from an adult present during the interaction or from an on-screen model for young children to see the relation between information presented on television and the real world.”).

<sup>51</sup> Elizabeth A. Vandewater, David S. Bickham, & June H. Lee, *Time Well Spent? Relating Television Use to Children’s Free-Time Activities*, 117 *Pediatrics* 181, 188 (2006), available at <http://pediatrics.aappublications.org/content/117/2/e181.full.pdf+html>.

Of Counsel:

Amanda K. Burkett  
Georgetown Law Student

August 7, 2013

Respectfully submitted,

---

Eric G. Null  
Laura M. Moy  
Angela J. Campbell  
Institute for Public Representation  
Georgetown University Law Center  
600 New Jersey Avenue, NW  
Suite 312  
Washington, DC 20001  
(202) 662-9535  
gulcivr@law.georgetown.edu

*Counsel for Campaign for a  
Commercial-Free Childhood*

**Appendix A: Complete List of Open Solutions' Baby Apps**

Name of App	Target Age	Type	Claims
Baby Puzzle <sup>52</sup>	2–6	Baby Puzzle	<ul style="list-style-type: none"> <li>• “best game for the youngest kids”</li> <li>• “top fun and education”</li> <li>• “entertain and educate your baby”</li> <li>• “designed by parents for young babies”</li> <li>• “new and innovative form of baby education”</li> <li>• “practice motor skills, shapes, logic and precision”</li> <li>• “We have tested this app and the babies and parents simply love it!”</li> <li>• “it will teach them a lot but your child will just think it’s fun!”</li> <li>• “We love to build the best learning apps for your kids”</li> </ul>
Baby First Puzzle Farm <sup>53</sup>	0–6	Baby Puzzle	<ul style="list-style-type: none"> <li>• “best game for the youngest kids”</li> <li>• “top fun and education”</li> <li>• “entertain and educate your baby”</li> <li>• “designed by parents for young babies”</li> <li>• “new and innovative form of baby education”</li> <li>• “practice motor skills, shapes, logic and precision”</li> <li>• “We have tested this app and the babies and parents simply love it!”</li> <li>• “it will teach them a lot but your child will just think it’s fun!”</li> </ul>

<sup>52</sup> *iTunes Preview: Baby Puzzle - Best Game For The Youngest Kids (Top Fun and Education)*, Apple iTunes, <https://itunes.apple.com/us/app/baby-puzzle-best-game-for/id430855273> (last visited Aug. 5, 2013).

<sup>53</sup> *iTunes Preview: Baby First Puzzle Farm - Best Game For The Youngest Kids - Top Fun And Education*, Apple iTunes, <https://itunes.apple.com/us/app/baby-first-puzzle-farm-best/id467306817> (last visited Aug. 5, 2013).

			<ul style="list-style-type: none"> <li>• “We love to build the best learning apps for your kids”</li> </ul>
Baby First Puzzle Christmas Winter <sup>54</sup>	1–7	Baby Puzzle	<ul style="list-style-type: none"> <li>• “best game for the youngest kids”</li> <li>• “top fun and education”</li> <li>• “entertain and educate your baby”</li> <li>• “designed by parents for young babies”</li> <li>• “new and innovative form of baby education”</li> <li>• “practice motor skills, shapes, logic and precision”</li> <li>• “We have tested this app and the babies and parents simply love it!”</li> <li>• “it will teach them a lot but your child will just think it’s fun!”</li> <li>• “We love to build the best learning apps for your kids”</li> </ul>
Baby Hear & Read Nouns <sup>55</sup>	0–8	Baby Hear & Read	<ul style="list-style-type: none"> <li>• “entertain and teach your kids how to read (American English), pronounce and spell basic nouns”</li> <li>• “designed by parents for young kids”</li> <li>• “new and innovative form of kids education”</li> <li>• “learn how to read, pronounce and spell basic nouns”</li> <li>• “We have tested this app and the kids and parents simply love it!”</li> <li>• “Also helps develop your kid’s motor skills”</li> <li>• “it will teach them a lot but your child will just think it’s fun!”</li> </ul>

<sup>54</sup> *iTunes Preview: Baby First Puzzle Christmas Winter - Best Game For The Youngest Kids - Top Fun And Education*, Apple iTunes, <https://itunes.apple.com/us/app/baby-first-puzzle-christmas/id578626423> (last visited Aug. 5, 2013).

<sup>55</sup> *iTunes Preview: Baby Hear & Read Nouns - See, Listen and Spell with 3D Animals - Best Game and Top Fun for Kids*, Apple iTunes, <https://itunes.apple.com/us/app/baby-hear-read-nouns-see-listen/id440459394> (last visited Aug. 5, 2013).

			<ul style="list-style-type: none"> <li>• “We love to build the best learning apps for your kids”</li> </ul>
Baby Hear & Read Verbs <sup>56</sup>	0–8	Baby Hear & Read	<ul style="list-style-type: none"> <li>• “entertain and teach your kids how to read (American English), pronounce and spell basic verbs”</li> <li>• “designed by parents for young kids”</li> <li>• “new and innovative form of kids education”</li> <li>• “learn how to read, pronounce and spell basic verbs”</li> <li>• “We have tested this app and the kids and parents simply love it!”</li> <li>• “Also helps develop your kid’s motor skills”</li> <li>• “it will teach them a lot but your child will just think it’s fun!”</li> <li>• “We love to build the best learning apps for your kids”</li> </ul>
Baby Touch & Hear <sup>57</sup>	0–7	Baby Touch & Hear	<ul style="list-style-type: none"> <li>• “best game for the youngest kids”</li> <li>• “entertain and educate your baby”</li> <li>• “new and innovative form of baby education”</li> <li>• “Teach your baby what animal makes what sound, what is the correct pronunciation of its name, how to say its name in foreign language, how to write the name.”</li> <li>• “Help your toddler to develop fine motor skills”</li> <li>• “We have tested this app and the babies and parents simply love it!”</li> <li>• “Your baby can even hear the name of animal or tool pronounced in two or three languages,</li> </ul>

<sup>56</sup> *iTunes Preview: Baby Hear & Read Verbs*, Apple iTunes, <https://itunes.apple.com/us/app/baby-hear-read-verbs/id445187552> (last visited Aug. 5, 2013).

<sup>57</sup> *iTunes Preview: Baby Touch & Hear - Listen Sounds of Animals & Tools - Best Game For The Youngest Kids*, Apple iTunes, <https://itunes.apple.com/us/app/baby-touch-hear-listen-sounds/id418509661> (last visited Aug. 5, 2013).

			<p>making this an ideal language learning tool (the earlier you introduce a second language, the easier it will be for your child to pick up its unique sounds).”</p> <ul style="list-style-type: none"> <li>• “it will teach them a lot but your child will just think it’s fun!”</li> <li>• “We love to build the best learning apps for your kids”</li> </ul>
Baby Touch & Hear Musical Instruments <sup>58</sup>	1–7	Baby Touch & Hear	<ul style="list-style-type: none"> <li>• “best game and top fun for the youngest kids”</li> <li>• “entertain and educate your baby”</li> <li>• “new and innovative form of baby education”</li> <li>• “Teach your baby what musical instrument makes what sound, what is the correct pronunciation of its name, how to say its name in foreign language, how to write the name.”</li> <li>• “Help your babies to develop fine motor skills”</li> <li>• “We have tested this app and the babies and parents simply love it!”</li> <li>• “Your baby can even hear the name of instrument pronounced in two languages, making this an ideal language learning tool (the earlier you introduce a second language, the easier it will be for your child to pick up its unique sounds).”</li> <li>• “it will teach them a lot but your child will just think it’s fun!”</li> <li>• “We love to build the best learning apps for your kids”</li> </ul>
Baby Touch & Hear Safari and Jungle Animals <sup>59</sup>	0–10	Baby Touch & Hear	<ul style="list-style-type: none"> <li>• “best game and top fun for the youngest kids”</li> <li>• “entertain and educate your baby”</li> </ul>

---

<sup>58</sup> *iTunes Preview: Musical Instruments: Baby Flashcards - Best Game and Top Fun for the Youngest Kids*, Apple iTunes, <https://itunes.apple.com/us/app/baby-touch-hear-musical-instruments/id506608787> (last visited Aug. 5, 2013).

			<ul style="list-style-type: none"> <li>• “new and innovative form of baby education”</li> <li>• “Teach your baby what animal makes what sound, what is the correct pronunciation of its name, how to say its name in foreign language, how to write the name.”</li> <li>• “Help your toddler to develop fine motor skills”</li> <li>• “We have tested this app and the babies and parents simply love it!”</li> <li>• “Your baby can even hear the name of animal pronounced in two languages, making this an ideal language learning tool (the earlier you introduce a second language, the easier it will be for your child to pick up its unique sounds).”</li> <li>• “it will teach them a lot but your child will just think it’s fun!”</li> <li>• “We love to build the best learning apps for your kids”</li> </ul>
--	--	--	--

---

<sup>59</sup> *iTunes Preview: Baby Touch & Hear - Safari and Jungle Animals - Best Game and Top Fun for the Youngest Kids*, Apple iTunes, <https://itunes.apple.com/us/app/baby-touch-hear-safari-jungle/id560955666> (last visited Aug. 5, 2013).