



GEORGETOWN UNIVERSITY LAW CENTER
INSTITUTE FOR PUBLIC REPRESENTATION

Hope M. Babcock
Angela J. Campbell
David C. Vladeck
Directors
Marvin Ammori+*
Jillian M. Cutler
Emma E. Garrison
Jennifer L. Prime+**
Kristi M. Smith
Staff Attorneys

600 New Jersey Avenue, NW, Suite 312
Washington, DC 20001-2075
Telephone: 202-662-9535
TDD: 202-662-9538
Fax: 202-662-9634

June 13, 2006

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

Re: Amendment to the Campaign for a Commercial-Free Childhood's Complaint and Request for Investigation filed May 1, 2006.

Dear Mr. Clark:

On May 1, 2006 The Campaign for a Commercial-Free Childhood ("CCFC"), a non-profit national coalition of health care professionals, educators, advocacy groups, and concerned parents, filed a Complaint and Request for Investigation ("Complaint") with the Federal Trade Commission ("FTC"). 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 making similar deceptive claims. CCFC now amends its Complaint to include BabyFirstTV.

BabyFirstTV, located at 12100 Wilshire Blvd. Suite 1070, Los Angeles, CA 90025, markets a subscription television channel targeted to babies up to three years of age and their parents. In May 2006, it began offering its channel to DirectTV customers for \$9.99 per month. Attachment 1. The channel airs programming 24 hours a day seven days a week and has video-on-demand capabilities. *Id.* It offers original programming as well as programming from Baby DVD brands, including Brainy Baby and So Smart. *Id.* To induce customers into subscribing, BabyFirstTV claims that its programming is educational and beneficial for infants. Like Baby Einstein and Brainy Baby, BabyFirstTV violates Section 5 of the FTC Act because it makes

¹ On May 25, 2006 the American Academy of Pediatrics, which represents 60,000 pediatricians, filed a letter with the FTC supporting CCFC's Complaint.

claims which it cannot substantiate, are false, and are likely to deceive a consumer acting reasonably under the circumstances.

First, BabyFirstTV makes numerous express and implied claims. Throughout its consumer materials, BabyFirstTV uses educational and informational claims as the cornerstone of its marketing campaign. To start, it claims its subscription channel “goes above and beyond traditional TV – it is an educational tool that provides a positive learning environment” and uses the slogan, “Watch your baby blossom.” Attachment 2. These claims send an initial message to consumers that its programming is educational and beneficial for babies. Next, BabyFirstTV explains that its programming is labeled using a color coded system which “helps inform parents about the educational value of each segment.” Attachment 1. For example, BabyFirstTV uses yellow to indicate “Thinking Journey” programs, which BabyFirstTV claims “[e]ngages children in identifying patterns of thinking and developing creative ways of viewing the world,” and orange to indicate “Feeling Garden” programs which it claims “[e]xposes children to basic social skills and learning how to relate to others.” Attachment 3. Also, in the frequently asked questions section of its website, BabyFirstTV claims that television is not harmful to babies because “[w]hen used responsibly, age appropriate, educational television programming has been associated with very positive results such as improvements in vocabulary.” Attachment 4. These claims give the overall net impression that BabyFirstTV’s subscription channel will educate and benefit children under two years of age.

Second, BabyFirstTV is required to have substantiation for its claims. Specifically, BabyFirstTV must possess the amount of support implied by its claims. Compliant at 14 citing FTC Policy Statement Regarding Advertising Substantiation, appended to *Thompson Medical Co.*, 104 F.T.C. 648, 839 (1984). Because BabyFirstTV relies heavily on medical and health professionals it implies that its claims are supported by science. For example, it: 1) claims its programming is “[s]upported by top child development experts, [and is] tailored to meet the needs of babies up to three years of age in a safe and inspiring commercial-free learning environment,” Attachment 1; 2) refers consumers to its advisory board which includes two pediatricians, Dr. Edward R.B. McCabe and Dr. Mary Ann LoFrumento, and four psychologists, including its “Chief Educational Advisor,” Dr. Arthur Pober, Attachment 5; and 3) provides parents with “10 Tips for Healthy Viewing” and a “Parent’s Guide” to help introduce babies to television. Attachment 6. Moreover, because Dr. McCabe is paid and BabyfirstTV does not disclose this relationship, consumers are likely to be deceived into thinking his endorsement is unbiased. *Good Morning America: I Want My Baby TV!* (ABC television broadcast, May 11, 2006) available at <http://www.abcnews.go.com/GMA/story?id=1948816>.

It is extremely unlikely that BabyFirstTV can provide any support let alone the significant amount of support implied by its claims. As CCFC explained, there is no available scientific research to prove that babies receive any educational or developmental benefits from watching television. Complaint at 15-16. In fact, Zero to Three, a national non-profit organization dedicated to researching the needs of young children, recently confirmed that “there is not a robust body of research which conclusively answers” what the impact of TV is on young children. Press Release, What is the Research Tells Us About the Impact of Media on Young Children (May 23, 2006), available at http://www.zerotothree.org/ztt_newsmedia.html.

Third, in addition to lacking substantiation, BabyFirstTV's claims are likely false because research suggests that television viewing is potentially harmful for very young children. As CCFC explained, studies have found a link between television viewing by children under age two and negative affects on cognitive development, sleep irregularity in babies, and displacement of proven brain stimulating activities like interacting with adults and other children. Complaint at 17-18. Moreover, excessive television viewing by adolescents has been associated with obesity, decreased school performance, and violent behavior. *Id.* at 18. Infants who watch TV may face these problems when they are adolescents because watching television at a young age can be habit forming. In fact, a study released this month found that exposure to television in the first four years of life was associated with children at age six resisting turning off the television. Dimitri A. Christakis and Frederick J. Zimmerman, *Early Television Viewing is Associated with Protesting Turning Off the Television at Age 6*, *Medscape General Medicine* 8(2):63 (June 2006) available at <http://medgenmed.medscape.com/viewarticle/531503>. Thus, BabyFirstTV's claims about the benefits of its programming are false because viewing television can be harmful for children under age two.

Fourth, as explained in the Complaint at 19-21 and 21-22, BabyFirstTV's claims are material and are likely to deceive consumers acting reasonably under the circumstances into thinking that its programming is educational and beneficial for infants. As Dr. Daniel Anderson explains "pitches for products like BabyFirstTV and the Baby Einstein line of educational videos and DVD's have convinced parents that fixation on television is educational for young children, even though little research has been devoted to television's effect on infants and toddlers." Lynette Clemetson, *Parents Making Use of TV Despite Risks*, *New York Times*, May 25, 2006. Moreover, the testimonials BabyFirstTV uses confirm Dr. Anderson's assessment that parents buy BabyFirstTV's product because they think the programming is educational. For example, Heather B., from Buena Park, California, explains that BabyFirstTV's color coding "made it very simple to know that this program is helping my child learn some developmental skills." Attachment 7. Thus, it is clear that consumers are buying BabyFirstTV's product because they think it will benefit infants.

A Kaiser Family Foundation Report, released this month, demonstrates how large the infant media market is, shows that children whose parents think TV is educational are more likely to watch television, and underscores the fact that parents need honest information about the impact of TV on young children. Victoria J. Rideout, et al., *The Henry J. Kaiser Family Foundation, The Media Family: Electronic Media in the Lives of Infants, Toddlers, Preschoolers and Their Parents* (May 2006). The report found that "[i]n a typical day, 61% of children [under age two] watch TV, a video, or a DVD, for an average of one hour and nineteen minutes." *Id.* at 26. The parents who were surveyed, including parents with children over age two, were split on whether or not TV helps (38%) or is harmful (31%) to their children's learning. *Id.* at 32. This confusion is understandable, because, as noted in the report, "scientific research about the impact of media use on babies and toddlers has not kept pace with the marketplace." *Id.* at 4. However, it is clear that once a parent decides that television is educational it changes the amount of time children spend with TV. "For example, 48% of children whose parents say TV mostly hurts learning watch every day, compared to 76% of those whose parents believe TV mostly helps children's learning. Likewise, children whose parents say TV mostly hurts learning spend an average of 27 minutes less per day watching than children whose parents think TV mostly helps." *Id.* at 15.

Therefore, prompt FTC action is needed to make sure these companies are not making false or unsubstantiated claims which are, at best, leading consumers into buying products that do not educate infants or, much worse, leading consumers into harming the infants they think they are educating.

For the foregoing reasons, CCFC urges the FTC to: 1) bring an action pursuant to 15 U.S.C. § 53 to obtain preliminary and permanent injunction against BabyFirstTV for its deceptive acts and practices in marketing and selling its subscription television channel; 2) initiate an action under 15 U.S.C § 45 to permanently prohibit BabyFirstTV and any other companies that markets videos or television for children under age two, from making claims about the educational and developmental benefits of their programming; 3) require BabyFirstTV and any other company that is marketing programming for children under age two to clearly and conspicuously disclose the American Academy of Pediatrics' recommendation of no screen time for children under age two on their websites, packaging, and other forms of advertising.; and 4) provide such other relief as the Commission finds appropriate. Should you have any questions or if CCFC can provide you with additional information, please do not hesitate to contact me.

Respectfully Submitted,

Jennifer Prime
Angela J. Campbell
Counsel for the Campaign for a
Commercial-Free Childhood

Cc:

Mary Koelbel Engel
Alyssa Bernstein
Tom Paul