



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

Division of Advertising Practices

December 5, 2007

William C. MacLeod, Esquire  
Kelley Drye Collier Shannon  
3050 K Street, N.W. Suite 400  
Washington, DC 20007

Dear Mr. MacLeod:

As you know, the staff of the Federal Trade Commission's Division of Advertising Practices has conducted an investigation into whether your client, The Brainy Baby Company, LLC ("Brainy Baby"), violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, in connection with its marketing of the Brainy Baby® line of video products for children under two years of age. This matter was the subject of a complaint that the Campaign for a Commercial-Free Childhood ("CCFC") filed with the Commission in May 2006.

In its complaint, the CCFC asserted that Brainy Baby was marketing videos for children under two years of age with deceptive educational and developmental claims. The CCFC contended that the company lacked substantiation for its claims and, moreover, that the claims were false because some research suggests that television viewing is actually detrimental to these very young children.

Upon careful review of the matter, including non-public information submitted to the staff, we have determined not to recommend enforcement action at this time. Among the factors we considered are changes made recently to the Brainy Baby website – including the removal of numerous testimonials that had previously appeared on the website, changes in the descriptions of certain videos marketed for this age group, and revisions to the Parent Guide – as well as Brainy Baby's representations that the company will take appropriate steps to ensure that any future advertising claims of educational and/or developmental benefit for children are adequately substantiated.

In this regard, we note that certain claims – such as that a product "introduces" or "presents" or "exposes" children to certain content – are unlikely, by themselves, to convey an educational or developmental benefit claim that would require reliable scientific substantiation. Of course, we will consider such statements in the context of the "four corners" of the advertisements in which they appear, as we do in analyzing all advertising claims. Similarly, although we lack empirical evidence at this time that the brand name "Brainy Baby" by itself conveys an educational or developmental benefit claim for which substantiation would be required, the name would be a factor considered in determining whether the marketing statements or depictions with which it appears convey a claim that requires substantiation.

William C. MacLeod, Esq.  
December 5, 2007  
Page 2

This action is not to be construed as a determination that a violation may not have occurred, just as the pendency of an investigation should not be construed as a determination that a violation has occurred. The Commission reserves the right to take such further action as the public interest may require.

Very truly yours,

A handwritten signature in cursive script that reads "Mary K. Engle". The signature is written in black ink and is positioned above the printed name.

Mary Koebel Engle  
Associate Director