

The false and misleading claims made by YBC have been exposed on national television.¹ The claims are false and misleading because the product does not teach babies to read. Moreover, in marketing YBCR, YBC makes numerous other factual claims for which it has no reasonable basis.

YBC's marketing claims are designed to take advantage of parents' natural desire to provide every possible advantage for their young children. Consumers are harmed by spending \$200 on a product that does not perform as claimed. Moreover, YBC's recommendations for using the product fly in the face of the American Academy of Pediatrics ("AAP") and White House Task force on Childhood Obesity's recommendations of no "television and video" and no "television" for children under age two and research suggesting that watching videos at such a young age may negatively affect a child's development. For these reasons, the Campaign for a Commercial-Free Childhood asks the Commission to promptly take action against YBC.

A. Parties

1. Campaign for a Commercial-Free Childhood (CCFC)

The Complainant, CCFC, is a non-profit, national coalition of health care professionals, educators, advocacy groups, and concerned parents. The coalition is a project of Third Sector New England, a Boston-based organization aimed at building the effectiveness of nonprofit and community organizations. CCFC is committed to countering the harmful effects of marketing to children through action, advocacy, education, research, and collaboration among organizations and individuals who care about children. CCFC has previously filed complaints with the FTC

¹ "Today Show" Investigation segment, *Your Baby Can Read Claims Overblown, Experts Say* (NBC television broadcast, November 2, 2010), available at <http://today.msnbc.msn.com/id/39953918/ns/today-money/> (last visited March 15, 2011) [hereinafter "Today Show segment"].

against companies that use deceptive techniques in marketing media products designed for young children.²

2. Your Baby Can, LLC

Your Baby Can, LLC is a California limited liability company with its principal office located at 1958 Kellogg Avenue, Carlsbad, CA 92008. YBC distributes YBCR and related products. It claims to have sold a million products.³

3. Dr. Robert Titzer

Dr. Robert Titzer is the founder of YBC. He claims to have created the YBCR program for his own children.⁴ He describes himself as “a recognized expert in the area of infant learning, [whose] work has been published in scientific journals—including the prestigious *Psychological Review*.”⁵ He holds a Ph.D. from Indiana University, where he claims to have “worked in developmental psychology laboratories conducting important theoretical experiments related to infant learning.”⁶ PR materials describe him as having “spoken with US Senators and

² See, e.g., Complaint and Request for Investigation, *In re Baby Einstein and Brainy Baby*, May 1, 2006, available at <http://www.commercialfreechildhood.org/babyvideos/babyvideocomplaint.pdf> [hereinafter “Baby Einstein letter”].

³ E.g., Today Show segment, *supra* note 1 (speaking about YBCR, saying “Titzer wouldn’t tell us how much money he’s made, but they’ve sold over a million kits”); YBCR, *Your Baby Can Read! Video - Marco & Olivia*, YouTube, Your Baby Can Read! channel, http://www.youtube.com/user/YBCR?feature=chclk#p/u/0/1_APoYNXbN4 (Nov. 1, 2010) (voiceover begins the testimonial saying “Rarely has a new way of teaching reached around the world touching the lives of nearly one million families...”).

⁴ Parent’s Guide at 30 (included with *Your Baby Can Read!*). See also About Dr. Titzer, Your Baby Can Read! Australia, <http://www.yourbabycanread.com.au/Content/about-dr-titzer>

⁵ Parent’s Guide at 30.

⁶ *Id.*

leading US Department of Education officials on the importance of early learning” and appeared on “thousands of TV broadcasts.”⁷

B. YBCR Product

CCFC examined YBCR. The front of the box in which YBCR is packaged looks like this:



⁷ *Teaching Baby to Read*, ABC7, June 13, 2006, <http://abclocal.go.com/wls/story?section=resources&id=4265738>.

Inside the box are a Parent's Guide and four volumes; each consists of a DVD, five sliding word cards, one sixteen-page lift-a-flap booklet, and a marking pen.

1. The DVDs

Each DVD begins with the message "Based on the research of Robert C. Titzer, Ph.D." An introductory sequence shows short clips of toddlers and children playing. Then a boy appears and speaks directly into the camera: "Hi, my name is Graham, we're going to read some words. Make sure you look at the words." Then the DVD begins showing words while the words are spoken.

In Volume 1, for example, the word "clap" appears in large font centered on the screen. A child's voice says "Can you say . . .," after which a male adult voice says "clap," while a triangle indicator under the word moves from left to right. After a pause, a child's voice says "clap," while the triangle reappears and again moves from left to right. The video then cuts to a toddler sitting on a living room floor clapping, while a child's voice says "The baby is clapping. Can you clap?" Next the word "nose" appears in white letters on a black background. A male adult voice announces "say nose," after which a child's voice says "nose." The triangular indicator moves from left to right underneath the word each time "nose" is said. The video then shows Graham from the introductory sequences, standing in a park and touching his nose. A female adult voice announces "touch your nose, just like Graham."

Similar sequences repeat for every word or phrase presented. Variations between words include changes in the font, the color of the text and the background color. The voices reading the words alternate between male and female adults and children. For example, a male child will say "Can you say . . .," an adult female will say the word, and then a child will speak the voiceover for the accompanying video clip.

Each DVD is between twenty and twenty-nine minutes long. The same words are repeated both within and across volumes. For example, in Volume 1, the word “nose” repeats after about six minutes. The repeated words are usually followed by new video clips. Repeated words eventually incorporate different suffixes or variants. For example, “reach” is followed by “reaching.” Words are also repeated across the DVDs with slight variations. For example, Volume 1 uses “toes” followed by a video clip of a child touching her toes, while Volume 4 uses the same video clip after displaying “touch your toes.”

The presentation of words is interspersed with special segments, such as children’s songs accompanied on screen by their lyrics.⁸ Themed groups of word slides are also shown. For example, Volume 1 has a one-minute segment titled “The Zoo,” in which video clips of animals play while the corresponding words are both spoken and flash alongside the video.⁹ At the end of each DVD there is a short segment of “Word Games.” For example, Volume 1’s Word Games begins with a voice saying “Look at the word ‘wave’” while “wave” appears on screen; then another word appears alongside “wave” on screen, while the voiceover says “now look for the word ‘wave.’”

As a child progresses from one volume to the next, the complexity increases somewhat. For example, later volumes use more phrases, questions and commands, words with suffixes, and related slides where words are followed by variants of the same word. The same words and video clips, however, are recycled throughout.

⁸ For example, Volume 1 uses “Itsy Bitsy Spider” and “Twinkle Twinkle Little Star.” Volume 2 uses “Head Shoulders Knees and Toes” and “If You’re Happy and You Know It,” but repeats both segments about ten minutes after their first use.

⁹ Similarly, Volume 4 has a “Pets Are Our Friends” segment, using pet related phrases and asking the viewer questions about back-to-back video clips.

2. Sliding word cards and lift-a-flap books

The sliding word cards and lift-a-flap books are designed to complement the DVDs. The large, glossy flashcards have a different word or phrase (e.g. “touch your toes”) printed on each side. Pulling on one end reveals an image representing what is printed on the card. The card’s glossy surface and the included dry-erase marker allow parents to mark up the cards, underlining or circling letters as they read it to their child. Similarly, the lift-a-flap books have a word or phrase printed on each page. Lifting the flap on the book reveals an image representing the word, as well as a question or sentence about the word. For example, in Volume 3, lifting the flap for “hat” reveals a girl wearing a hat along with “Point to the girl’s hat. Do you like to wear a hat?” Parents are directed to say and point to the word, perhaps underline it with a finger as they say it, then flip the page to reveal the image and read the text to the child.

3. The Parent’s Guide

The Parent’s Guide describes the DVDs as the “foundation for teaching your child to read.”¹⁰ It explains:

There are two ways to utilize the DVDs: allow your child to watch the DVDs independently, or watch the DVDs with your child. It is best to watch the DVDs with your child, especially the first few times, however the DVDs were created to have your child interact with the children on screen. When watching the DVDs independently, have your child sit in his highchair or other secure seat.¹¹

The Guide recommends beginning the program as soon as a baby develops visual tracking, which it states generally occurs between two and three months of age.¹² The recommended time to complete the four-volume program depends on the age of the child,

¹⁰ Parent’s Guide at 4.

¹¹ *Id.*

¹² *Id.* at 22. Dr. Titzer gives this same advice in other places as well. *E.g.* Dr. Titzer on Lowcountry Live (ABC 4 television broadcast, Charleston, SC, Mar. 2, 2010), *available at* <http://www.youtube.com/watch?v=NgTcqc5pHGo>.

ranging from six months for babies under one year old to four months for children aged three to five years old.¹³

The Guide instructs parents to start with Volume 1 regardless of their child's age. Babies are supposed to watch the Volume 1 DVD twice a day for one month. After that, they should watch Volume 2 twice a day for two months and in addition, watch Volume 1 "a few times per week."¹⁴ In months 4 and 5, the child is supposed to watch Volume 3 twice a day and Volumes 2 and 3 several times each week, and so on.¹⁵

¹³ Parents can also purchase Volume 5, which should be watched for an additional month. Parent's Guide at 16.

¹⁴ *Id.* at 14-15.

¹⁵ Parents are also instructed to use the supplemental materials with their children every day for a few minutes several times a day. *Id.*

In Month 1

Allow your child to watch the Volume 1 DVD twice a day. Move to Volume 2 after one month although it is likely that your baby will not recognize all of the words. Volume 2 repeats words from Volume 1 in a new context, and will help your child learn all of the words from the first volume.

- After your first few sessions watching the DVD, begin using the corresponding color-coded learning accessories. Play with the learning accessories for a few minutes at a time, several times a day.

In Months 2 & 3

Your child should be focused on watching the Volume 2 DVD about twice a day for two months.

- In addition, watch the Volume 1 DVD a few times each week to continue learning words from Volume 1.
- Play with the color-coded Volume 1 and 2 learning accessories for a few minutes, several times a day.

In Months 4 & 5

Your child is now watching the Volume 3 DVD. Follow this schedule for two months. Move on to the next DVD according to this schedule, even if your child does not know all of the words after two months. Your child will have more opportunities to master the words later.

- Allow your child to view the Volume 3 DVD about twice a day.

- Watch the Volume 1 and 2 DVDs a few times each week to refresh your child's memory of words she has recently learned.
- Play with the color-coded Volume 1, 2, and 3 learning accessories for a few minutes, several times a day.

In Month 6

Your child may now begin watching the Volume 4 DVD, which introduces three-word phrases, combining words your child has already seen in the previous DVDs with new words.

- Allow your child to watch the Volume 4 DVD about twice a day.
- Watch each of the previously-viewed DVDs a few times each week.
- Use the color-coded learning accessories for Volume 4, and continue using the learning accessories from the previous volumes to reinforce what your child has already learned.



If parents follow these directions starting when their baby is 3 months old, the baby will have spent over 202 hours watching the DVDs by the time she reaches 9 months.

C. The Marketing of YBCR

Your Baby Can, LLC advertises its “Your Baby Can Read!” products through a variety of means including its own website, television commercials, infomercials, YouTube videos, and a Facebook page. All of these marketing platforms contain similar or identical content.

On the Your Baby Can Read website, one can watch a video that describes YBCR as a “remarkable learning system which will have positive and permanent effects in your child’s life.”¹⁶ Visitors may also view testimonials of parents. Visitors are invited to fill out a form to try the system for only “\$14.99 with a money back guarantee.”

YBCR is advertised extensively on television. The advertisements, which range from 60 seconds to 2 minutes in length, are shown on cable networks, such as Nickelodeon, Nicktoons, and Disney DX, that are watched frequently by children and their parents. The YBCR ads have aired on broadcast networks during children’s programs such as CBS’s “Busytown Mysteries” and NBC’s “Magic School Bus.” They are also shown on cable networks, such as Lifetime, VH1, and MTV, that are often watched by young parents. The advertisements typically show babies reading flashcards, toddlers reading books, and mothers saying how it really works. The announcer urges parents to call or go online to order a “30-day risk free trial” for only \$14.99, while text on the screen reminds viewers that “additional costs apply after trial.” Those calling right away are promised free shipping and handling and a special free gift.¹⁷

¹⁶ Featured embedded infomercial, *Start Your Baby Reading Today*, Landing Page, <http://www.yourbabycanread.com> (last visited March 16, 2011).

¹⁷ E.g. *Early Language Development System 7*.

In addition to spot advertisements, YBCR also has a YouTube channel where one can watch 70 short videos promoting YBCR.¹⁸ Some videos are identified as being posted by YBCR and were clearly made by YBC. For example, some feature interviews with Dr. Titzer.¹⁹ Others feature Chad Murdock, who was previously the pitchman for Hooked on Phonics.²⁰ Identified on screen as a TV Producer & Father, Murdock states:

As a producer for over 30 years, I have seen thousands of products and until now I have never seen results like this. YBCR is the most remarkable reading program I have ever seen. It is changing the lives of thousands around the world by seizing a small window of opportunity of accelerated learning in the first five years of life. I believe YBCR could change the world of education. I know how things can appear real in video. What you're about to see are real home videos with real kids.²¹

Other video clips purport to be posted by satisfied customers. For example, one titled "1 Year Old Baby Reader" posted by 2babyreaders shows a mom writing words and a little girl reading them.²²

YBCR also has a Facebook page.²³ The Facebook page has links to the YouTube videos as well as videos of Dr. Titzer presenting at seminars and conferences.²⁴ The page also includes a "wall" where both YBC and individual users leave comments or links to videos.²⁵

¹⁸ Your Baby Can Read! YouTube Channel, <http://www.youtube.com/user/YBCR> (last accessed Mar. 17, 2011). YouTube user YBCR is the official Your Baby Can Read! account, designated by the Your Baby Can Read! Homepage, <http://www.yourbabycanread.com> (last visited Mar. 16, 2011) (follow link "Watch Us on YouTube" to the YBCR user profile at <http://www.youtube.com/user/YBCR>).

¹⁹ YBCR, *Your Baby Can Read! Video - Interview with Dr. Robert Titzer Part 1*, YouTube (Aug. 13, 2007), <http://www.youtube.com/watch?v=BWXVijZISEo>.

²⁰ Chad Murdock, Hooked on Phonics Infomercial, M2G Media, *available at* <http://www.m2gmedia.com/direct-response/long-form/hooked-on-phonics> (last visited Mar. 16, 2011) (playing an infomercial from the 1990's in which Chad Murdock identifies himself as a producer and director of Hooked on Phonics advertisements, and states he used Hooked on Phonics with his son); *see also In re Gateway Educational Products, Ltd.* 119 F.T.C. 729, 733-35 (1995).

²¹ YBCR, *Your Baby Can Read! Video - Amazing Home Videos of Kids Reading*, YouTube (May 12, 2009), <http://www.youtube.com/watch?v=dstmQm1ZUoA>.

²² 2babyreaders, *1 Year Old Baby Reader*, YouTube (Sep. 3, 2007), <http://www.youtube.com/watch?v=WaPirNFwv1Q>.

II. YOUR BABY CAN, LLC MAKES NUMEROUS FALSE AND MISLEADING CLAIMS IN VIOLATION OF SECTION FIVE OF THE FEDERAL TRADE COMMISSION ACT

Section 5 of the Federal Trade Commission Act prohibits unfair and deceptive acts and practices.²⁶ To determine whether marketing practices are deceptive, the FTC considers three elements.²⁷ 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. Applying each of these factors, it is clear that YBC has made material representations that are likely to mislead parents acting reasonably in the circumstances, to the detriment of the parents and their babies.

The FTC previously filed a complaint against Gateway Educational Products, Ltd. for making false and misleading statements in marketing a reading instruction program called "Hooked on Phonics."²⁸ The complaint alleged that the company had represented that Hooked on Phonics effectively taught reading comprehension skills, effectively taught persons to read in a home setting without the need for additional instruction, quickly and easily taught persons with reading problems or disabilities to read, and helped nearly one million students learn to read at home. The complaint also alleged that Gateway had represented that the testimonials and endorsements from consumers appearing in advertising reflected the typical or ordinary experience of members of the public who used the product. The complaint further alleged that

²³ Your Baby Can Read Profile, Facebook, <https://www.facebook.com/YourBabyCanRead> (last visited, Mar. 17, 2011).

²⁴ Your Baby Can Read's Albums, Facebook, <https://www.facebook.com/photos.php?id=46680126222> (last visited Mar. 17, 2011).

²⁵ Your Baby Can Read Profile, *supra* note 25.

²⁶ 15 U.S.C. § 45, 2010.

²⁷ FTC Policy Statement on Deception appended to *Cliffdale Associates Inc.*, 103 F.T.C. 110, 168-171 (1984) [hereinafter "Deception Statement"].

²⁸ *In re Gateway Educational Products, Ltd.*, 119 F.T.C. 729 (1995).

Gateway represented it possessed and relied upon a reasonable basis that substantiated such representation when, in fact, it did not. The case was resolved by a consent order prohibiting such claims.²⁹

A. YBC Makes Many False and Misleading Claims

YBC makes even more misleading claims about YBCR than Gateway made about Hooked on Phonics. These claims include that:

- 1) YBCR effectively teaches babies to read;
- 2) YBCR works by teaching babies to read during a “short window of opportunity” that closes at or before age five;
- 3) children who use YBCR will perform better than their peers in the future; and
- 4) YBCR teaches infants with learning or other disabilities to read.

Below, CCFC cites from examples to illustrate each claim. YBC typically makes similar or identical claims and uses similar or identical graphics and testimonials in all forms of its promotion and marketing.

1. YBC claims that YBCR teaches babies to read

The very name of the product – Your Baby Can Read! – explicitly claims that it teaches babies to read.³⁰ Repetition of the YBCR brand name in constant combination with explicit and implicit claims of efficacy reinforces the titular promise in every advertisement in which it is used.³¹ The claim is also explicitly made throughout the YBCR website. For example, the landing page of the website proclaims in large letters at the top: “START YOUR BABY

²⁹ *Id.* at 757-760.

³⁰ Product brand names can create misleading claims. *In re* Thompson Medical Company, Inc., 104 F.T.C. 648, 34 (1984)(opinion of the commission) (finding an advertisement that would not otherwise be misleading was made misleading by repetition of the brand name, even where brand name claim was implicit).

³¹ “The brand name of a product is the most powerful single stimulus in an ad.” *Id.* at 34.

READING TODAY.” The featured testimonials support the claim that it really works.³² For example, Lindsey, identified as the mom of Graham and Ridley, expresses skepticism at first. She says, when Graham was about 13 months old, “I thought he was just memorizing the order of the words on the screen ‘cause he had seen it so many times.” But then she wrote the words on paper and showed them to him in a different order, “And he read everything. It was amazing.”³³

Similarly, Kendra, the mother of three-year-old Saadia, asserts that her daughter loves to read and is reading on a second grade level. She says that Saadia has “conversation, I mean real conversations. She comprehends when she reads. She’s not only reading the words, she comprehends stories; she can answer questions about characters and messages in stories.”³⁴

This same claim is repeated in YBCR television infomercials. Spokeswoman “Dr. Wendy Walsh” states that “YBCR teaches babies to read using specific proven techniques.”³⁵ In another, Chad Murdock touts YBCR’s success in teaching babies to read, proclaiming that the “response to Your Baby Can Read has been overwhelming, with over one million families

³² YBCR Landing Page, <http://www.yourbabycanread.com> (last visited Mar. 17, 2011) [hereinafter “Landing Page”]. Six video testimonials from parents, labeled by their first names, are embedded in the lower left section of the Landing Page [hereinafter “Landing Page Testimonials”].

³³ Lindsey Landing Page Testimonial. An older Graham also appears on the DVDs: he introduces each DVD in a video clip, stating “Hi, my name is Graham, we’re going to read some words. Make sure you look at the words,” and is used in various voiceover and video clips throughout the DVDs.

³⁴ Kendra Landing Page Testimonial. A clip from this testimonial is also used in YBCR TV ads, e.g. *Dr. W. Walsh: Prepare Your Child*, <http://www.youtube.com/watch?v=If1b5ZLkdro> (showing Saadia pointing to a word on the TV screen near the end).

³⁵ *Dr. W. Walsh: Prepare Your Child*, *supra* note 34; *Dr. W. Walsh: Prepare Your Child 3* available at <http://www.youtube.com/watch?v=19uBcIS-ixg>.

helping babies learn to read,” while video clips of babies reading rotate around a computer graphic of a globe.³⁶

2. YBC claims that it works by teaching babies to read during a “short window of opportunity” that closes at or before age five

YBC urges parents to buy YBCR by explicitly and implicitly stating that it works during a “short window of opportunity” when a baby’s brain is developing. For example, the landing page of the YBCR website reads:

What Makes Your Baby Can Read!® So Special?

A baby's brain thrives on stimulation and develops at a phenomenal pace...nearly 90% during the first five years of life! The best and easiest time to learn a language is during the infant and toddler years...when the brain is creating thousands of synapses, or connections, allowing a child to learn both the written word and spoken word simultaneously.

Seize this small window of opportunity to enhance your child's learning ability with the Your Baby Can Read! Early Language Development System.

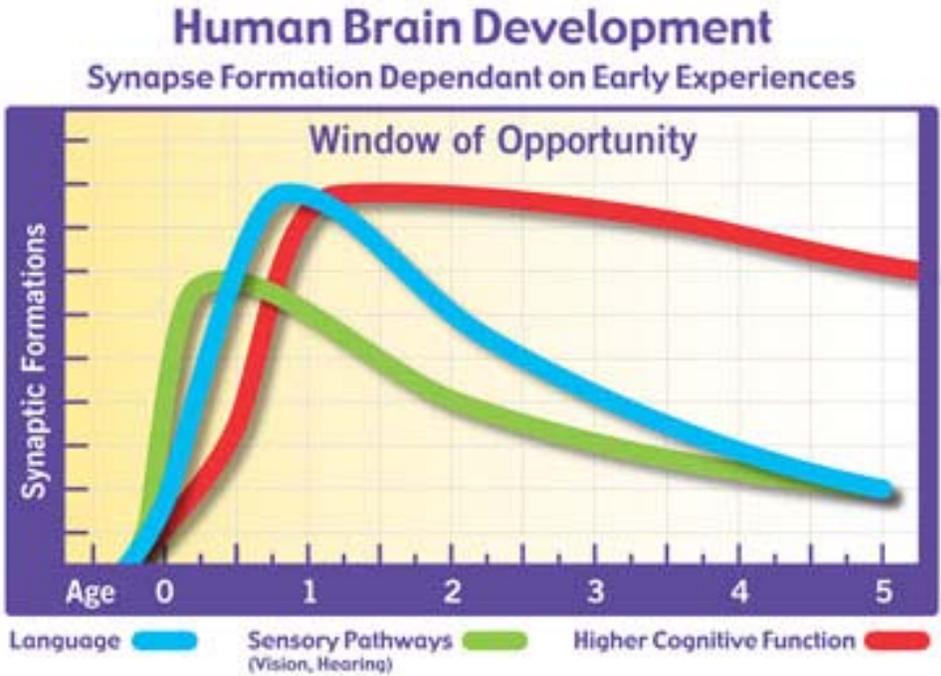
Benefits of Early Literacy

According to Your Baby Can Read! developer Dr. Robert Titzer, the current practice of starting to teach reading in school is too late. When children develop reading skills during their natural window of opportunity, from about birth to age four, they read better and are more likely to enjoy it.³⁷

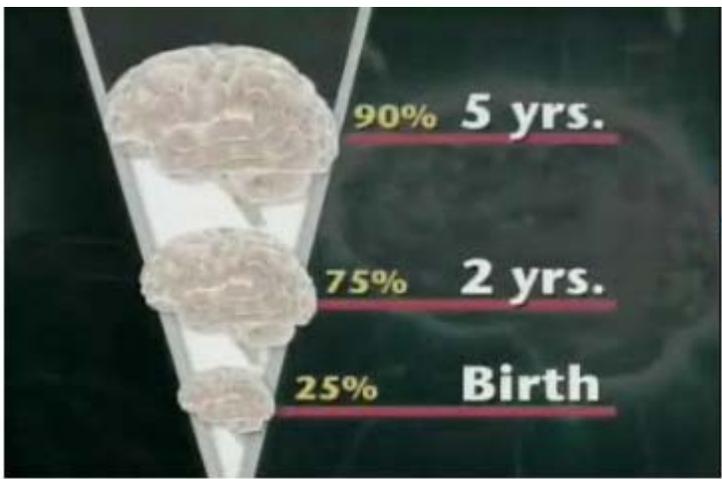
The landing page also features a chart purporting to show that the greatest “window of opportunity” is between age 0 and 1.

³⁶ C. Murdock: *More Incredible Stories 2*, available at <http://www.youtube.com/watch?v=bViKFndJCHQ>.

³⁷ A screen shot of the Landing Page is attached.



This message is repeated in the featured video embedded on the landing page. The following graphic is animated while a voiceover states “a baby’s brain craves stimulation and develops at a phenomenal pace. Nearly 90% is developed during the first five years of life. Seize this small window of opportunity before it closes.”



The voiceover continues: “The best and easiest time to learn a language is during the infant and toddler years, when the brain is creating thousands of synapses or connections allowing a child to learn both the written word and the spoken word at the same time.”



While this animated image appears, the voiceover explains that YBCR works by showing a word, saying the word, and asking the baby to do an action related to the word.³⁸ As the words are shown, parts of the baby’s brain light up. Then the voiceover continues:

Remember, your child has tens of thousands of new brain connections forming every second. While watching Your Baby Can Read, those connections now have even more value. Over time these billions of powerful connections give your child the tools for increased communication, enhanced learning, and overall confidence, giving them the edge they’ll need for a better education and career success.³⁹

³⁸ Featured infomercial, Landing Page.

³⁹ *Id.* The same claims are made and the same graphics are often used in the television advertisements. *E.g.*, *Spotlight Education in the News*, available at http://www.youtube.com/watch?v=IDid_iv249o (claiming: YBCR “teaches babies to read using specific proven techniques”; “a baby’s brain... develops at a phenomenal pace, nearly 90% within the first five years of life”; “the best time to learn language is during the infant and toddler years.” The ad uses the Building Brain Connections, and 90% Growth in Five Years graphics); *Man Notes Accelerated Learning*, available at <http://www.youtube.com/watch?v=IqVvYvrRcPg> (claiming: “Your Baby Can Read! is changing thousands of lives around the world by seizing a

The testimonials on the website reinforce the need to start children with the DVDs when they are very young. For example, Kendra warns in her endorsement that “it’s a mistake to wait until children get to school to teach them this basic life skill.”⁴⁰ Brandy Wilkie, who is identified as a mother and a linguist, states that “when a child learns to read at this age, it is not work. It comes as naturally for them as it does for an adult speaking.”⁴¹ A father named Brian stresses that infants have the ability to read so long as you start early.⁴²

3. YBC claims that children who use YBCR will perform better than their peers in the future

YBC repeatedly tells parents that YBCR will help their child perform better in school and in life. For example, in the advertisement “Spotlight Education in the News,” a woman identified as “Dr. Wendy Walsh” tells parents: “Give your child the tools to achieve lifelong success by teaching reading early, helping to increase your child’s confidence, self-esteem and later academic performance.”⁴³ She claims that if parents do not purchase YBCR, their children will enter a school system where “budget cuts run rampant in grades k-12” and “it’s easy for an unprepared child to get left behind.” However, parents can be certain their children will rise above their unprepared peers, she continues, because “now you can help ensure your child is on the right path to reaching their highest potential with Your Baby Can Read.”⁴⁴

The YBCR website claims under the heading “Benefits of Early Literacy” that “studies prove that the earlier a child learns to read, the better they perform in school and later in life.

small window of opportunity of accelerated learning in the first five years of life.” The ad uses the Building Brain Connections, and 90% in Five Years graphics).

⁴⁰ Kendra Landing Page Testimonial, <http://www.yourbabycanread.com>.

⁴¹ Brandy Landing Page Testimonial, <http://www.yourbabycanread.com>.

⁴² Brian Landing Page Testimonial, <http://www.yourbabycanread.com>.

⁴³ *Spotlight Education in the News; Dr. W. Walsh: Prepare Your Child* (nearly identical advertisement making the same claims).

⁴⁴ *Id.*

Early readers have more self-esteem and are more likely to stay in school.”⁴⁵ An earlier version of the website showed the following chart purportedly demonstrating that children who use YBCR will outperform their peers throughout preschool, kindergarten, and grade school.⁴⁶

Reading Grade Level Progression



Key: YBCR System readers* Standard age readers**
Late age readers**

* Based on information from children who were tested after learning to read using *Your Baby Can Read!*

** Cited from scientific studies.

The testimonials also claim that YBCR provides lasting benefits. Kendra asserts that “if you do this program . . . your child will be thanking you when they are 30 years old, and they have accomplished so much in life and they are brilliant people. You cannot put a dollar value on what you get back.”⁴⁷ Other enthusiastic parents tell the audience that the product will “pay off dividends for years to come.”⁴⁸

⁴⁵ Landing Page, <http://www.yourbabycanread.com/>.

⁴⁶ Reading Grade Level Progression chart, www.yourbabycanread.com (visited 10/19/2010, no longer available on the Landing Page). Available at YBCR West Africa Landing Page, <http://yourbabycanread-westafrica.com/> (last visited Mar. 17, 2011), and the YBCR Philippines Landing Page, <http://www.yourbabycanread.com.ph> (last visited Mar. 17, 2011).

⁴⁷ Kendra Landing Page Testimonial, <http://www.yourbabycanread.com/>.

⁴⁸ YBCR, *Your Baby Can Read! Video - Andrew & Michael*, YouTube, Your Baby Can Read! channel, Oct. 22, 2010, <http://www.youtube.com/user/YBCR?feature=chclk#p/u/37/aMTUnObQ3jM>.

4. YBCR claims to teach infants with learning or other disabilities to read

Several testimonials imply that YBCR works even for children with disabilities or health problems. For example, Angie tells how when her son Evan was 5 weeks old, they discovered he had heart defects requiring two surgeries. She was told by therapists not to be surprised if “he were delayed as far as his learning, his cognitive, his motor skills. Not to be surprised, it would probably take a couple years before he would be fully on track.” She claims that “because of Your Baby Can Read, Evan at 19 months is reading over five hundred words.”

Another testimonial features a girl who reportedly learned to read while watching YBCR in the hospital.⁴⁹ According to her mother, the girl watched it throughout her entire stay, and within the first two weeks, “she knew all of the words.” Although her parents never specify her condition, the audience is given the impression that it was serious because she appears on screen at almost two years old with no hair or eyebrows. The video clip ends with footage of the girl at age three, holding the flash cards for her younger brother. “He said spider!” the girl exclaims as her brother makes a noise.⁵⁰

5. YBC makes its misleading representation via testimonials

The testimonials emphasize how easy it is for children to read using YBCR and how much they enjoy it. The testimonials imply that any child can do it if they only use YBCR. For example, Kendra boasts that for her daughter reading is “like a game . . . it’s not like school for

⁴⁹ YBCR, *Your Baby Can Read! Video – Atia*, YouTube, Your Baby Can Read! channel, Oct. 22, 2010, <http://www.youtube.com/user/YBCR?feature=chclk#p/u/42/W9BMqqk0iTY>.

⁵⁰ *Id.*

her.” Later she says “every baby is born with this potential. It has nothing to do with my genes, it has nothing to do with my husband’s genes. It has to do with starting early.”⁵¹

In another testimonial, Brandy Wilkie says that her daughter Anya Alexa began reading at 8 months.⁵² She says Anya Alexa loves reading because “it is so easy for her. It has never been work. It has never been instructional time. It has always been fun and natural.” Brandy notes “It’s very hard for a parent sometimes to get past the idea that reading is work. When a child learns to read at this age, it is not work.” The testimonial includes “home videos” showing Anya Alexa reading at age 2 and again with even greater skill at age 3. Brandy concludes: “Any child could be doing and performing the way Anya Alexa is simply given the right opportunities. If there is one thing that I could do to change the world I would want to see the series YBCR in every household so that every child could have the opportunity that my daughter was allowed to have.”

B. YBC Lacks Substantiation for These Claims

To avoid making false or misleading claims, the FTC’s Policy Statement on Substantiation states that companies should have a “reasonable basis for their advertising claims before they are disseminated.”⁵³ 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.⁵⁴

YBC’s marketing materials create the impression of having a strong scientific basis for its claims. For example, they describe YBCR as an “Early Language Development System.”

⁵¹ Kendra Landing Page Testimonial, <http://www.yourbabycanread.com/>.

⁵² Brandy Landing Page Testimonial, <http://www.yourbabycanread.com/>.

⁵³ FTC Policy Statement Regarding Advertising Substantiation, appended to Thompson Medical Co., 104 F.T.C. 648, 839, at 1 (1984), *aff’d*, 791 F.2d 189 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987).

⁵⁴ *Id.* at 2.

They repeatedly refer to Dr. Titzer, PhD as an infant researcher and “early learning expert” – when his Ph.D. is in human performance, the study of physical and motor skills.⁵⁵ Diagrams and charts referring to brain development and synapses add to the impression that the product is based on research. The website states that “a national panel on reading specialists and educators determined that most of the nation’s reading problems could be solved if children began reading earlier,”⁵⁶ thus implying that the studies supported the use of YBCR. Dr. Titzer also claims in one of the videos that “in some countries about half of the babies are using YBCR. So entire countries are taking to this program and the world is changing because it actually works.”⁵⁷ Television advertisements refer to a “scientific study” showing that when compared to their peers, children who used YBCR “scored higher in every test. It’s proven.”⁵⁸

CCFC is not aware of any scientific studies evaluating the effectiveness of YBCR. Further, CCFC is not aware of studies that explain literacy development like YBC’s videos of “building brain connections,” or via a “short window of opportunity” for reading. Indeed, it seems inconceivable that YBC has any scientific studies – much less a reasonable basis – to back up its numerous claims. According to experts convened by National Institute of Education, the research arm of the Department of Education, “reading” is “the process of constructing meaning from written words.”⁵⁹ In other words, reading involves taking “information from the text and

⁵⁵ Today Show segment, *supra* note 1.

⁵⁶ Benefits of Early Literacy section, Landing Page, www.yourbabycanread.com (last visited Mar. 17, 2011).

⁵⁷ Dr. Titzer interviewed on Low Country Live, *supra* note 12.

⁵⁸ *Early Language Development System 7*, available at <http://www.youtube.com/watch?v=zewvKxvr25o>.

⁵⁹ Richard C. Anderson et. al., *Becoming a Nation of Readers: The Report of the Commission on Reading*, 7 (1984) available at <http://www.eric.ed.gov/ERICWebPortal/contentdelivery/servlet/ERICServlet?accno=ED253865>, [hereinafter *Nation of Readers*]. This report synthesizes a “diverse, rich body of scientific

the knowledge possessed by the reader acting together to produce meaning.”⁶⁰ Reading is a “complex skill requiring the coordination of a number of interrelated sources of information.”⁶¹ In many YBCR advertisements, children are shown ostensibly identifying or pointing a word. However, “while reading can be analyzed into subskills such as discriminating letters and identifying words, performing the subskills one at a time does not constitute reading.”⁶² Literacy includes mastering a complex set of understandings, attitudes, expectations and behaviors, in addition to specific skills, related to written language.⁶³

Since reading involves taking meaning from print, a significant component is knowing how the world works and what makes sense and what does not. The “knowledge required for reading comes from the experience of talking and learning about the world and talking and learning about written language.”⁶⁴ To be able to read, children need to acquire knowledge about the world as well as the basic grammar of oral language and written language.⁶⁵ Thus YBCR does not teach babies to read.⁶⁶ At best, it might teach babies to memorize images of words.

information into a systematic account of beginning reading and the comprehension of language.”

Id. at v.

⁶⁰ *Id.* at 8.

⁶¹ *Id.* at 7.

⁶² *Id.* at 7.

⁶³ *Id.* at 7-9, 21-22.

⁶⁴ Nation of Readers, at 21-22.

⁶⁵ Nation of Readers, at 21.

⁶⁶ Around 1% of children enter pre-school or first grade with the ability to read – termed “precocious readers.” Lynn A. Olson, *Precocious Readers: Past, Present, and Future*, 30 *Journal for the Education of the Gifted* 205, 205 (2006). However, the reasons for this “remain elusive.” *Id.* at 206. “Despite the research findings in the area, researchers and clinicians are still unable to predict who these children will be, describe how precocious readers fit into our current theories of emergent literacy and reading development, and confidently state whether this knowledge could be generalized beyond the precocious reader to the typically reading child.” *Id.* at 205.

Similarly, YBC lacks a reasonable basis for claiming that YBCR takes advantage of a “short window of opportunity” for reading. It is true that biologists have identified certain times when infants and children have more and less receptive periods for learning certain behaviors, such as language acquisition. However, a “window” for reading does not snap shut after the first 3 years of life. There is simply no basis to generalize that if there are responsive periods for learning evolutionarily primed behaviors, then there must be a critical period for everything the child could possibly learn.⁶⁷ Further, research shows that the learning potential for videos is “minimal” in infants under age one—at the peak of YBC’s claimed “window of opportunity.”⁶⁸ Not until 18 months of age will television hold attention due to the content becoming meaningful or comprehensible, whereas visual or format cues can hold attention earlier.⁶⁹ Further, research shows that video is not an effective or efficient means of educating infants and toddlers.⁷⁰

Summaries of research on early literacy show that it is unlikely that YBC is able to substantiate its claims. The National Early Literacy Panel (NELP) was convened to synthesize the research on early literacy development.⁷¹ Their search procedures resulted in finding over 8000 refereed published articles, 500 of which were used in NELP’s meta-analysis.⁷² NELP’s research was a continuation of earlier work—in 1997 Congress commissioned reading research,

⁶⁷ Kathy Hirsh-Pasek & Roberta Golinkoff, *Einstein Never Used Flashcards* 31 (2003).

⁶⁸ Mary L. Courage & Alissa E. Setliff, *When babies watch television: Attention-getting, attention -holding, and the implications for learning from video material*, 30 DEVELOPMENTAL REVIEW 220, 233 (2010).

⁶⁹ *Id.*

⁷⁰ Barr, R., Muentener, P., Garcia, A., Fujimoto, M., & Chavez, V., *The effect of repetition on imitation from television during infancy*. 49 DEVELOPMENTAL PSYCHOBIOLOGY 196 (2007).

⁷¹ National Early Literacy Panel, *Developing Early Literacy: A Scientific Synthesis of Early Literacy Development and Implications for Intervention* (2008)

<http://lincs.ed.gov/publications/pdf/NELPReport09.pdf> [hereinafter, NELP Report].

⁷² NELP Report, vi.

resulting in the creation of the National Reading Panel.⁷³ That panel’s report reviewed elementary and secondary reading instruction.⁷⁴ NELP applies a similar methodology to examine instruction of children from birth to age 5.⁷⁵ Rather than repetitive drilling with flash cards or limited memorization videos, studies show that 11 variables of “emergent” or “early literacy skills” predict later literacy achievements in pre-schoolers and kindergartners.⁷⁶ NELP found that earlier language enhancement interventions (up to 3 years) were better than later ones (up to 5 years) at improving only oral language outcomes.⁷⁷ The language enhancement interventions had *no significant impact on reading*.⁷⁸

YBC may not even be making these limited oral language gains. Video has been shown to be a particularly poor way of teaching infants vocabulary.⁷⁹ Research on baby videos shows no increased growth in expressive or receptive communication measures from watching videos.⁸⁰ After controlling for other factors, the most significant predictor of vocabulary was the amount of time that children were read to.⁸¹

There are some outlier early readers known as “precocious readers” who attain literacy ahead of their peers, but there is no indication that YBC’s claims or YBCR itself are in any way

⁷³ NELP Report, xiii.

⁷⁴ NELP Report, xiii.

⁷⁵ NELP Report, v.

⁷⁶ NELP Report, vii-viii.

⁷⁷ NELP Report, 218.

⁷⁸ NELP Report, 214.

⁷⁹ Michael B. Robb, Rebekah A. Richert & Ellen A. Wartella, *Just a talking book? Word learning from watching baby videos*, 27 BRITISH JOURNAL OF DEVELOPMENTAL PSYCHOLOGY 27 (2009). Krcmar, D., Grela, B., & Lin, K., *Can Toddlers Learn Vocabulary from Television? An Experimental Approach*, 10 MEDIA PSYCHOLOGY 41 (2007). Kuhl, P.K., Tsaw, F, Liu, H., *Foreign-language experience in infancy: Effects of short-term exposure and social interaction*, 100 PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCE 9096 (2003).

⁸⁰ Michael B. Robb, Rebekah A. Richert & Ellen A. Wartella, *Just a talking book? Word learning from watching baby videos*, 27 BRITISH JOURNAL OF DEVELOPMENTAL PSYCHOLOGY 27 (2009).

⁸¹ *Id.*

related to this unaccounted for phenomenon. Research-based understanding of the “precocious reader” phenomenon is limited:

Despite the research findings in the area, researchers and clinicians are still unable to predict who these children will be, describe how precocious readers fit into our current theories of emergent literacy and reading development, and confidently state whether this knowledge could be generalized beyond the precocious reader to the typically reading child.⁸²

Prominent researchers familiar with YBCR doubt its ability to perform as claimed. The “Today Show” show segment on YBCR included interviews with ten prominent child development specialists who all agreed that YBCR cannot and does not teach infants to read.⁸³ For example, when asked “are those babies reading?” Nonie Lesaux, Professor of Human Development at Harvard, answers “no.” She describes what the babies were doing in the videos as “memorization.” Dr. Karen Hopkins, from NYU’s department of pediatrics, describes YBCR as “misleading,” “false,” and “rais[ing] false expectations.” She adds that there is no evidence that memorizing images of words can make you a better reader. Similarly, Maryanne Wolf, Director of the Center for Reading and Language Research at Tufts, describes the company’s claims as “an extraordinary manipulation of facts.” She adds that she knows of no study “that claims that children who learn to read before the age of 5 do better later on.”⁸⁴

When NBC reporter Jeff Rossen asks Dr. Titzer to respond to these experts, he replies that “they’re all wrong.” Titzer claims that his program is backed by scientific research and that he has “a book of studies” to prove it. Rossen reports however, that the “studies” consisted of a customer satisfaction survey conducted by YBC and general studies that, upon review, experts

⁸² Lynn A. Olson, *Precocious Readers: Past, Present, and Future*, 30 JOURNAL FOR THE EDUCATION OF THE GIFTED 205 (2006).

⁸³ Today Show segment, *supra* note 1.

⁸⁴ Today Show segment, *supra* note 1.

said Titzer was “twisting” and “taking out of context.” Thus, YBC lacks any reasonable basis, much less scientifically valid studies, for its marketing claims.

YBC’s inability to substantiate the basic claim that its product teaches reading means that it is likely unable to substantiate its more elaborate claims that they provide a lifetime of benefit, take advantage of an early “window of opportunity,” or have benefits for disadvantaged children.

C. YBC’s Representations Are Misleading to Consumers Acting Reasonably under the Circumstances

Under the Policy Statement on Deception, the FTC examines the practice from the perspective of a consumer acting reasonably under the circumstances. If the representation is directed to a particular group, the FTC examines reasonableness from the perspective of that group.⁸⁵ 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.⁸⁶ Additionally, the Commission will presume that the consumer’s interpretation was reasonable if the consumer draws the conclusion that the advertiser intends to convey.⁸⁷

As the examples cited above show, the marketing of YBCR is clearly targeted to parents of young children. The text on the website repeatedly refers to “your baby” or tells parents that the program will enhance “your child’s” learning ability.⁸⁸ The testimonials come from parents and are aimed at other parents. Moreover, it is clear that YBC intends that consumers draw the conclusion that if they use YBCR, their babies will learn to read.

⁸⁵ See Deception Statement at 2, 3-6.

⁸⁶ *Id.* at 5.

⁸⁷ *Id.* at 3.

⁸⁸ See e.g., text, Landing Page, www.yourbabycanread.com.

In addition, YBC's marketing is designed to take advantage of parents' natural inclinations to give their children every possible advantage to succeed. Because parents are concerned with their children's educational success, they are particularly vulnerable to claims that a product can improve their child's success in school.⁸⁹ Many of the video clips and testimonials appear to target parents from disadvantaged socio-economic backgrounds, who may be particularly susceptible to such appeals to their status due to a number of factors: sensitivity based on their own struggles with reading and school; tendency to rely on purported educational expertise to provide their children with educational assistance they feel incapable of offering themselves; the perception of reading and promises of future educational success as key to upward social mobility; and a lack of scientific sophistication necessary to challenge YBCR's claims.

The testimonials exploit this particular susceptibility by portraying underprivileged families extolling YBCR as a way to overcome their disadvantages. In one example, young parents of a child with an illiterate grandfather praise the YBCR system.⁹⁰ The father states, "I don't think our baby would have been as outgoing or sharp" without the product. The mother describes her own difficulties learning to read, how she was made fun of in her special reading class, and that she bought the product so her child would not face the same difficulties.⁹¹ In another, a single mother tells the audience that she "may not be able to give [her son] money, but

⁸⁹ Cf. *FTC v. Tashman*, 318 F.3d 1273, 1277 (2003) (finding investors vulnerable to ads featuring a person with expertise selling novel business opportunities); and *In re Porter & Dietsch*, 90 F.T.C. 770 (1977) (finding that people seeking to lose weight quickly are vulnerable to weight loss ads despite the fact that most people know that dieting is the "conventional method of losing weight").

⁹⁰ YBCR, *Your Baby Can Read! Video - Amelia*, YouTube, Your Baby Can Read! channel, Oct. 22, 2010, <http://www.youtube.com/user/YBCR?feature=chclk#p/a/u/2/IugAJsh9Dbc>.

⁹¹ *Id.*

I can give him an education.”⁹² In yet another, the host tells the audience that YBCR was so important to one family because one parent grew up in a family that valued education and the other did not.⁹³ These claims prey upon the reasonable parents’ concerns about their child’s well-being. Thus, the FTC should conclude that YBC’s marketing is misleading to parents acting reasonably under the circumstances.

D. YBC’s Misrepresentations Are Material

Under the Deception Policy Statement, a material misrepresentation is one that is likely to affect a consumer’s choice regarding a product. The FTC presumes that express claims are material. It also considers claims or omissions material if they significantly involved health, safety, or other areas with which the reasonable consumer would be concerned. YBC’s misrepresentations are material under both tests.

As shown above, YBC’s marketing expressly claims that YBCR will teach babies to read and provide positive benefits to children in the future. Parents would likely not purchase the product if they did not believe these claims. Express claims such as these are presumed material.

The Policy Statement on Deception notes that “when consumers can easily evaluate the product or service, it is inexpensive, and it is frequently purchased, the Commission will examine the practice closely before issuing a complaint based on deception.” In such cases, there is “little incentive for sellers to misrepresent (either by an explicit false statement or a deliberate false implied statement) . . . since they normally would seek to encourage repeat

⁹² YBCR, *Your Baby Can Read! Video - Kyan*, YouTube, Your Baby Can Read! channel, Oct. 22, 2010, http://www.youtube.com/user/YBCR?feature=chclk#p/u/39/RqB_z8sMlg0.

⁹³ YBCR, *Your Baby Can Read! Video - Dane*, YouTube, Your Baby Can Read! YouTube channel, Oct. 28, 2010, <http://www.youtube.com/user/YBCR?feature=chclk#p/a/u/2/QWq9Mt4LSIM>.

purchases.”⁹⁴ In this case, however, the incentive to practice deception is high because the YBCR is considerably expensive, costing approximately \$200, and the company likely does not need repeat purchases.⁹⁵ Further, consumers cannot easily evaluate the efficacy of the product. According to the Parent’s Guide, babies are supposed to watch the DVDs several times each day over a six- or seven-month period and parents are also supposed to show their babies the flashcards and lift-the-flap books. Dr. Titzer warns that it may take a long time to see results.⁹⁶ Many parents will likely give up before six months and assume that the product failed because they did not follow the directions. Those that persist and do see “results” may incorrectly attribute their baby’s natural development to the use of the DVDs.

YBC’s marketing claims are also material because they affect the health and development of infants. As shown, there is no evidence to suggest that baby learning videos offer any benefits. On the other hand, others suggest that allowing babies to watch videos may adversely affect their development. YBCR may in fact cause the opposite of its advertised effect, detracting from a baby’s acquisition of language.

The video viewing instructions given by YBCR, as discussed above, coach parents to have babies as young as two months watch the Volume 1 DVD twice a day for one month and to

⁹⁴ Deception Statement at 5.

⁹⁵ Five-volume Deluxe TV Kit, priced at \$200.00 is the only model offered on the YBC site. <http://www.yourbabycan.com/Category/Read>; the cost is \$214.90 if paid in installments. *Your Baby Can Read Scam Alleged*, ClassAction.org, <http://www.classaction.org/your-baby-can-read.html> (last visited Mar. 17, 2011). Further, the “30-day money back guarantee” is illusory because over 30 days elapse before parents can expect to see results. The first page of the Parent’s Guide warns “be patient. . . learning to read takes time,” and that younger children may not have the motor control or speaking ability to let you know. Dr. Titzer has admitted that it may take a baby one year to get the hang of reading. See Inside San Diego, Dr. Robert Titzer interview, *infra* note 82.

⁹⁶ Inside San Diego, Dr. Robert Titzer Interview, broadcast on KUSI News, San Diego, *available at* <http://www.youtube.com/watch?v=OM6i95w4TXE> (posted Nov. 8, 2007) (responding to the question “how long does it take for kids to get the hang of reading?” Dr. Titzer admitted “starting as a baby it may take a year... it doesn’t happen overnight.”)

increase the amount of viewing time after the first month; a baby starting at the “ideal” age will have spent 202 hours watching YBCR DVDs by the time she reaches 9 months. This viewing time egregiously exceeds the AAP’s recommendation of no screen time for children under age two, and poses a number of serious developmental risks to babies. Moreover, the Parent’s Guide states that the program is designed to be viewed without parents in attendance and many of the video clips show babies watching the screen alone.

The American Academy of Pediatrics, an organization of 60,000 pediatricians committed to optimal physical, mental, and social health and well being of all infants, children, adolescents, and young adults, has consistently recommended “no screen time” for children under age two, regardless of the content. Over a decade ago, the AAP recommended that parents “avoid television viewing for children under the age of 2 years”⁹⁷ and has consistently reiterated this position.⁹⁸ The AAP Policy Statement on Media Education recently reaffirmed and further emphasized its recommendation that children under two should not watch any TV, regardless of content.

Pediatricians should continue to urge parents to avoid TV- and video-viewing for children younger than 2 years. Increasing amounts of research have shown that infants and toddlers have a critical need for direct interactions with parents and other regular caregivers for healthy brain growth. In addition, the results of 7 studies have shown that infants younger than 18 months who are exposed to TV may suffer from a delay in language development, and 1 study revealed that infant

⁹⁷ *Media Education*, 104(2) *Pediatrics* 341, 342 (Aug. 1999); Understanding the Impact of Media on Children and Teens, American Academy of Pediatrics, <http://www.aap.org/family/mediainpact.htm>.

⁹⁸ See, e.g., APA Advocates for Safer Media and Music Lyrics, *MEDICAL NEWS TODAY*, Oct. 20, 2009; Barbara C. Meltz, *DVD Series for Babies, Parents Fuels TV Debate*, *BOSTON GLOBE*, Mar. 22, 2006, at A1, available at <http://www.commercialfreechildhood.org/news/dvdseriesfuelsdebate.htm> (last viewed Feb. 22, 2010); American Academy of Pediatrics, Policy Statement, *Children, Adolescents, and Television*, 107(2) *PEDIATRICS* 423 (2001).

videos may delay language development. No studies have documented a benefit of early viewing.⁹⁹

Thus the AAP's long-held and scientifically supported warnings against screen time for young children are continually bolstered by widening research, while there remain no documented indications that video viewing offers infants any benefits. The AAP's recommendations on limiting television viewing have also been endorsed by the White House Task Force on Childhood Obesity.¹⁰⁰

The risks of infant television are demonstrated by numerous studies that find a direct correlation between infant viewing and a range of adverse developmental effects. Television viewing before age three has been found to adversely affect subsequent cognitive development. One study found that children who watched more than three hours of TV daily before age three scored lower on IQ and academic tests at ages six and seven versus children who watch less.¹⁰¹ A number of studies, some using baby-learning videos specifically, have demonstrated that exposure to screen media may impair children's linguistic development.¹⁰² Delays in language

⁹⁹ American Academy of Pediatrics, *Policy Statement – Media Education*, 126(5) Pediatrics 1012, 1014 (Nov. 2010) (emphasis added; citations omitted).

¹⁰⁰ White House Task Force on Childhood Obesity, *Solving the Problem of Childhood Obesity Within a Generation*, 18 (May 2010),

http://www.letsmove.gov/pdf/TaskForce_on_Childhood_Obesity_May2010_FullReport.pdf.

¹⁰¹ See, e.g., Frederick J. Zimmerman and Dimitri A. Christakis, *Children's Television Viewing and Cognitive Outcomes*, 159(7) Archives of Pediatrics & Adolescent Medicine 619 (Jul. 2005).

¹⁰² Rebekah A. Richert, Michael B. Robb, Jodi G. Fender & Ellen Wartella, *Word Learning from Baby Videos*. 164(5) Archives of Pediatrics & Adolescent Medicine (2010) (finding that children did not learn vocabulary from Baby Wordsworth videos and that the younger children were when they watched their first video, the lower their language scores were); Frederik J. Zimmerman, Dimitri A. Christakis & Andrew N. Meltzoff, *Associations between Media Viewing and Language Development in Children Under Age 2 Years*. 161(5) Archives of Pediatrics & Adolescent Medicine 364, 366 (2007) ("This analysis reveals a large negative association between viewing of baby DVDs/videos and vocabulary acquisition in children age 8 to 16 months."); Victor C. Strasburger, *First Do No Harm: Why Have Parents and Pediatricians Missed the Boat on Children and Media?* 161(5) Archives of Pediatrics & Adolescent Medicine

acquisition are exacerbated by early TV viewing, and lag even further with increased viewing.¹⁰³ However, even for older children in the YBCR recommended age group, television correlates to delayed child vocalizations and impaired language development.¹⁰⁴ The negative effects of video viewing extend to a child's sleep patterns.¹⁰⁵ Beyond health effects, a survey of scientific literature suggests that children under two are not developed enough to extract educational value from video; not only is video not helpful, screen time comes at the cost of more beneficial developmental activities.¹⁰⁶

Dr. Daniel Anderson, a developmental psychologist at the University of Massachusetts with a National Science Foundation grant to study the impact of baby videos, warns that "As a society, we are engaged in a vast and uncontrolled experiment with our infants and toddlers, plunging them into home environments that are saturated with electronic media. We should try

334-35 (2007) (citing three studies which all show that screen media for infants may impair linguistic development).

¹⁰³ Weerasak Chonchaiya and Chandhita Pruksananonda, *Television viewing associates with delayed language development*. 97(7) *Acta Paediatr.* 977 (2008) (finding a relationship between early onset and high frequency of TV viewing and language delay; children who started watching television before 12 months of age and watched greater than 2 hours per day were approximately six times more likely to have language development delays).

¹⁰⁴ Dimitri A. Christakis *et al.*, *Audible Television and Decreased Adult Words, Infant Vocalizations, and Conversational Turns*, 163(6) *Arch. Pediatric Adolescent Med.* 554 (2009) (finding audible television listening by 29-48 month old children is associated with decreased exposure to discernible human adult speech and significantly reduced child vocalizations; these results may explain the association between infant television exposure and delayed language development).

¹⁰⁵ Darcy A. Thompson and Dimitri A. Christakis, *The Association Between Television Viewing and Irregular Sleep Schedules Among Children Less Than 3 Years of Age*, 116(4) *Pediatrics* 851 (Oct. 2005) (concluding that television viewing among children 4 to 35 months of age watched per day was associated with both an irregular naptime schedule and an irregular bedtime schedule).

¹⁰⁶ Ellen Wartella and Michael Robb, *Young Children, New Media*, 1(1) *Journal of Children and Media* 35 (2007) (survey of research literature suggests that there may be too many representational and perceptual limitations on children under two for video to be of substantial educational value; further, screen time may come at the cost of critical parent-child interaction and play time).

to understand what we are doing and what [the] consequences [are].”¹⁰⁷ According to Dr. Anderson, “there is absolutely no evidence that baby videos enhance that world at all.”¹⁰⁸

Thus, use of YBRC as directed poses significant health and safety risks to infants. Because YBRC’s misleading claims have significant health implications, endangering the healthy development of thousands of infants, the claims are material.

¹⁰⁷ Daniel R. Anderson, and Tiffany A. Pempek, *Television and Very Young Children*, 48(5) *American Behavioral Scientist* 505, 519 (Jan. 2005).

¹⁰⁸ Patricia Simms, *Baby Einstein? Or Just Baby Couch Potatoes?* *Wisconsin State Journal*, February 3, 2006, at A1.

III. CONCLUSION

YBC and Dr. Titzer's unsupported and misleading claims about YBCR are a violation of the Federal Trade Commission Act's Section 5 prohibition on unfair and deceptive trade practices. YBC uses pseudo-science to mislead concerned parents into wasting significant sums of money on a product that has not been proven to help their babies read. Compelling scientific evidence suggests that these misleading claims are pushing a potentially harmful product. The YBCR program may cause a delay in cognitive development, consequential negative health effects, and do the very opposite of what it claims: hinder a child's language acquisition.

For the foregoing reasons, CCFC respectfully requests that the FTC take prompt action against Your Baby Can, LLC and Dr. Titzer to enjoin deceptive advertising practices, to prevent future harm, and to rectify past harms. We request that the Commission stop YBC's deceptive marketing practices in all forms, including in testimonials, television commercials, websites and product packaging. Further, we request that the Commission seek restitution for consumers, require that YBC disgorge its ill-gotten gains, and provide other such relief as the Commission finds appropriate.

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