

Before the
FEDERAL TRADE COMMISSION
Washington, DC 20580

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

REQUEST FOR INVESTIGATION

Submitted by

Campaign for a Commercial-Free Childhood

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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 Fisher-Price for engaging in deceptive and unfair trade practice in violation of Section 5 of the Federal Trade Commission Act¹ in its sale and marketing of its Laugh & Learn apps, all of which are targeted to children as young as 6 months old.

Marketing these apps as educationally beneficial to very young children is deceptive. Fisher-Price 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 Fisher-Price claims. On the contrary, using apps such as those that Fisher-Price sells may be detrimental to very young children. Fisher-Price 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

Fisher-Price creates and sells toys for infants and very young children. Since 1993, Fisher-Price has been a wholly owned subsidiary of Mattel, Inc., which is the highest-revenue toy company in the United States.² Fisher-Price is headquartered in East Aurora, New York, where it was founded in 1930.

Fisher-Price has seven “Laugh & Learn Apptivity” apps in the iTunes store, all of which are aimed at very young children and listed in the “Education” category in the iTunes store. Some of the apps specify that they are for children 6 months and older, while others do not specify an age but are marked with the word “baby” in their app icon and app header in the iTunes store. Fisher-Price’s seven Laugh & Learn apps include the titles “Learning Letters

¹ 15 U.S.C. § 45 (2006).

² *Fortune 500: Mattel*, CNNMoney (May 20, 2013), <http://money.cnn.com/magazines/fortune/fortune500/2013/snapshots/272.html>.

Monkey,” “Learning Letters Puppy, “Let’s Count Animals!,” “Where’s Puppy’s Nose?,” “Shapes and Colors,” “Animal Sounds,” and “Puppy’s Player.” All of the iTunes pages for the Apptivity apps include claims about these apps’ educational value and benefits for children.

Fisher-Price encourages parents to purchase Laugh & Learn brand physical items that correspond with the apps. For example, two apps, Learning Letters Monkey and Learning Letters Puppy, are meant to be used with physical toys called the Laugh & Learn Apptivity Monkey and the Laugh & Learn Apptivity Puppy, respectively. Fisher-Price also sells Laugh & Learn Apptivity cases for iPads and iPhones so that parents can protect their expensive electronics while their children play with the apps.³ Descriptions of some of these items include claims about the educational and beneficial value of these items, in conjunction with the apps, to very young children.⁴ Eight of the nine Laugh & Learn Apptivity products marketed through Fisher-Price’s website are described as appropriate for babies 6 months and older; one product (the Laugh & Learn Apptivity Creation Center) is described as appropriate for babies 9 months and up.⁵

Fisher-Price’s apps are exceptionally popular among parents of babies and very young children. A *New York Times* article published in July 2012 reported, “in the last year, there have been nearly three million downloads of Fisher-Price’s Laugh & Learn apps.”⁶

³ *Laugh & Learn Apptivity Products*, Fisher-Price, http://www.fisher-price.com/en_US/brands/laugh-and-learn/products/index.html#col=Apptivity_LAL (last visited Aug. 5, 2013).

⁴ See, e.g., *Laugh & Learn Apptivity Case for iPad Devices (Red)*, Fisher-Price, http://www.fisher-price.com/en_US/brands/laughandlearn/products/70809 (last visited Aug. 5, 2013) (“Free downloads offer lots of baby-appropriate learning”).

⁵ *Laugh & Learn Apptivity Products*, Fisher-Price, http://www.fisher-price.com/en_US/brands/laugh-and-learn/products/index.html#col=Apptivity_LAL (last visited Aug. 5, 2013).

⁶ Nicole LaPorte, *Where Apps Become Child’s Play*, N.Y. Times, July 8, 2012, at BU3, available at <http://www.nytimes.com/2012/07/08/technology/in-a-fisher-price-lab-apps-are-chilids-play-prototype.html>.

Laugh & Learn Puppy's Player

Puppy's Player is a platform for viewing videos. On the right side of the initial screen is a scrollbox with screenshots for several different videos.



Figure 1
Screenshot from Puppy's Player

When the baby taps on one of the shots, the selected video plays.

Fisher-Price lists this app under “Education” in the iTunes store. It has no listed targeted age group in the iTunes store, but the description in the iTunes store clearly indicates that it is intended for babies, saying things such as “baby-friendly interface makes it easy for baby to find and select entertaining & educational videos from Laugh & Learn!”⁷ Fisher-Price claims that the videos featured on Puppy's Player will “teach baby all about letters, numbers, colors, shapes, animals, opposites, body parts and more!”⁸

⁷ *iTunes Preview: Laugh & Learn Puppy's Player*, Apple iTunes, <https://itunes.apple.com/us/app/laugh-learn-puppys-player/id598983207> (last visited Aug. 5, 2013).

⁸ *Id.*

Laugh & Learn Learning Letters Monkey

The Learning Letters Monkey app is tied to and marketed alongside the Apptivity Monkey, a plush monkey toy with a built-in iPhone (or iPod touch) case in its abdomen. The Apptivity Monkey sells for \$24.99 at Fisher-Price.com.⁹



Figure 2
*The Laugh & Learn Apptivity Monkey.*¹⁰

The app includes an alphabet game, a counting game, and a shapes and colors game. When a baby squeezes one of the monkey's paws, each of which features an icon, the corresponding game appears on the screen of the connected iPhone. Then, each squeeze of the paw leads the game to the next screen. The spelling game shows a letter and then an object starting with that letter, with a voice component saying the letter and identifying the object.

⁹ *Laugh & Learn Apptivity Monkey*, Fisher-Price, http://www.fisher-price.com/en_US/brands/laughandlearn/products/67430 (last visited Aug. 5, 2013).

¹⁰ *Id.*

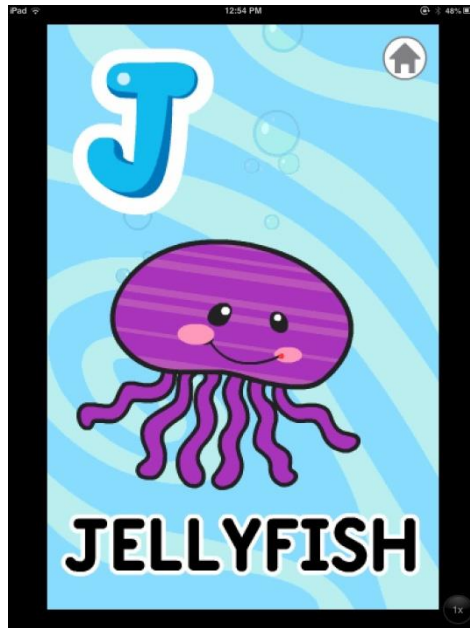


Figure 3

A screenshot from the spelling component of Learning Letters Monkey.

The colors and shapes game identifies a shape and then the color of the shape with both the words on the screen and a vocal component. The numbers game shows the number and that number of objects on the screen with a vocal component identifying the number and counting. The final game is a musical game that has the full alphabet, numbers up to 10, and all the colors and shapes.

Learning Letters Monkey has no listed targeted age group in the iTunes store, but the corresponding Apptivity Monkey is marketed for ages 6–36 months, indicating that the app is also intended for the same age range.¹¹ Fisher-Price claims that this app teaches babies “letters A-Z, numbers & counting 1-10, shapes, colors, and action/re-action.”¹²

¹¹ *Id.*

¹² *iTunes Preview: Laugh & Learn Learning Letters Monkey App*, Apple iTunes, <https://itunes.apple.com/us/app/laugh-learn-learning-letters/id525811595> (last visited Aug. 5, 2013).

Laugh & Learn Learning Letters Puppy

The Learning Letters Puppy app is the same as the Learning Letters Monkey app, except that it features a puppy instead of a monkey. It is tied to and marketed alongside the Apptivity Puppy. The Apptivity Puppy sells for \$30 at Fisher-Price.com.¹³ Both the app and the corresponding toy are very similar in design to Laugh and Learn Monkey and the Apptivity Monkey. Learning Letters Puppy has no listed targeted age group in the iTunes store, but the Apptivity Puppy is marketed through the web for ages 6 months and up.¹⁴ As with Learning Letters Monkey, Fisher-Price claims in the iTunes store that this app teaches babies “letters A-Z, numbers & counting 1-10, shapes, colors, and action/re-action.”¹⁵

Laugh & Learn Let’s Count Animals! for Baby

Let’s Count Animals! for Baby shows a number at the bottom of the screen and an animated animal (or animals, depending on the number) in the center of the screen. A cheery voice occasionally sounds out, saying things such as, “Can you find the animal?”; “Hi there! Where’s the animal!?”; “Wanna play?”; “Let’s find the animal!?”; and “See what’s new!” When the baby touches anywhere on the screen, the game highlights the animals on the screen, counts them off, and says what kind of animal they are.

¹³ *Laugh & Learn Apptivity Puppy for iPhone & iPod Touch Devices*, Fisher-Price, http://www.fisher-price.com/en_US/brands/laughandlearn/products/70991 (last visited Aug. 5, 2013).

¹⁴ *Id.*

¹⁵ *iTunes Preview: Laugh & Learn Learning Letters Puppy*, Apple iTunes, <https://itunes.apple.com/us/app/laugh-learn-learning-letters/id545715077> (last visited Aug. 5, 2013).



Figure 4
Screenshot from Let's Count Animals! for Baby

Fisher-Price lists this app under “Education” in the iTunes store.¹⁶ According to the iTunes description, the app is for babies 6 months and up.¹⁷ Fisher-Price claims that this app teaches babies “numbers & counting 1-10, animals, first words and action/reaction.”¹⁸

Laugh & Learn Where's Puppy's Nose? for Baby

Where's Puppy's Nose? has two levels. Level 1 features an animated dog or cat and frog. If the baby touches anywhere on the screen, the game zooms in on the dog or cat and names a

¹⁶ App developers choose the categories under which their apps will be listed when they apply to add an app to iTunes. See *iTunes Connect Developer Guide: Adding New Apps*, Apple Developer Library,

http://developer.apple.com/library/ios/#documentation/LanguagesUtilities/Conceptual/iTunesConnect_Guide/8_AddingNewApps/AddingNewApps.html (last visited Aug. 5, 2013) (“Choose the primary category that best describes your app. This is the category under which your app is listed. Choose a secondary category to further define your app if desired.”).

¹⁷ *iTunes Preview: Laugh & Learn Let's Count Animals for Baby for iPad*, Apple iTunes, <https://itunes.apple.com/us/app/laugh-learn-lets-count-animals/id480735351> (last visited Aug. 5, 2013).

¹⁸ *Id.*

part of its body. After naming a few body parts, the app plays a song about the parts of the body while the animated animals dance along.



Figure 5
Screenshot from Where's Puppy's Nose? for Baby

Level 2 is very similar to Level 1, but it asks the baby where each body part is, saying things like, "Where's puppy's nose?" If the baby touches the screen on the correct body part, the app says "Hooray!" or "Great job!" or "Awesome!" before identifying the body part again as in Level 1. If the baby touches anywhere else on the screen, the app zooms in on and identifies a body part.

Fisher-Price lists this app under "Education" in the iTunes store. According to the iTunes description, the app is for babies 6 months and up.¹⁹ Fisher-Price claims that this app teaches babies "body parts, body movements, first words, greetings, and action/reaction."²⁰

¹⁹ *iTunes Preview: Laugh & Learn Where's Puppy's Nose? for Baby for iPad*, Apple iTunes, <https://itunes.apple.com/us/app/laugh-learn-wheres-puppys/id480734094> (last visited Aug. 5, 2013).

²⁰ *Id.*

Laugh & Learn Shapes and Colors Music Show for Baby

Shapes and Colors Music Show is another two-level game. In Level 1, a colorful shape appears each time the baby touches the screen, and a voice either identifies the shape and color or says something playful like “peek-a-boo.” There are shapes in the corner of the screen as well, which light up with colors when pressed.



Figure 6

Screenshot from Level 1 of Shapes and Colors Music Show for Baby

In level 2, the shapes appear on a stage with a colored keyboard at the bottom of the screen, which produces keyboard sounds when touched. When the baby touches a shape, the shapes move to the foreground, and a voice identifies the shape and color, then sings a little song while the shape dances.



Figure 7

Screenshot from Level 2 of Shapes and Colors Music Show for Baby

After all five shapes have been touched, a longer song plays and all five shapes dance.

Fisher-Price lists this app under “Education” in the iTunes store. According to the iTunes description, the app is for babies 6 months and up.²¹ Fisher-Price claims that this app teaches babies “shapes, colors, first words and action/reaction.”²²

Laugh & Learn Animal Sounds for Baby

Animal Sounds is also a two-level game. In Level 1, an animated animal appears in the center of the screen. When the baby touches the animal, a voice identifies the animal as well as a characteristic of the animal, such as “Elephant has a long trunk!”

²¹ *iTunes Preview: Laugh & Learn Shapes & Colors Music Show for Baby*, Apple iTunes, <https://itunes.apple.com/us/app/laugh-learn-shapes-colors/id490650819> (last visited Aug. 5, 2013).

²² *Id.*



Figure 8
Screenshot from Animal Sounds for Baby

After several animals have been shown, the app plays a song about the animals. In Level 2, four animals appear on the screen at the same time. When the baby touches the screen, a short animation features the nearest animal and a voice identifies the animal. The screens featuring four animals alternate with screens featuring a song and animation.

Fisher-Price lists this app under “Education” in the iTunes store. According to the iTunes description, the app is for babies 6 months and up.²³ Fisher-Price claims that this app teaches babies “animals, animal sounds, first words, and action/reaction.”²⁴

II. Fisher-Price 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.²⁵ To determine whether marketing practices are deceptive, the FTC considers three

²³ *iTunes Preview: Laugh & Learn Animals Sounds for Baby for iPad*, Apple iTunes, <https://itunes.apple.com/us/app/laugh-learn-animal-sounds/id480737092> (last visited Aug. 5, 2013).

²⁴ *Id.*

elements.²⁶ 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.²⁷ Applying each of these factors, Fisher-Price 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. Fisher-Price Markets its Apps as Educational for Babies

There is no question that Fisher-Price markets its apps to parents as educational for babies. All of the apps are categorized under “Education” in the App Store and described as appropriate for babies as young as 6 months of age.

The apps are prominently featured in the App Store. When parents search for “baby” in the Education section of the App Store, they encounter Fisher-Price Laugh & Learn apps within the first page of results for both iPhone and iPad apps when results are sorted by “relevance” (the default).²⁸

B. Fisher-Price Makes Many Substantive Claims About the Educational Value of its Products

Fisher-Price 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. Among the many substantive claims that Fisher-Price makes in association with its Laugh & Learn “educational” apps are:

²⁵ 15 U.S.C. § 45 (2006).

²⁶ *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>.

²⁷ *Id.*

²⁸ We tested this ourselves in the App Store from both an iPhone and an iPad.

- Fisher-Price claims that four of its apps teach babies “first words.”
- Fisher-Price claims that its Learning Letters apps teach babies letters A-Z.
- Fisher-Price claims that three of its apps teach babies numbers and counting.
- Fisher-Price claims that three of its apps teach babies shapes and colors.

C. Fisher-Price Lacks Substantiation for These Claims

Fisher-Price’s claims about its baby apps are likely to mislead consumers because these claims, the “Laugh & Learn” product name, and Fisher-Price’s reputation as a leader in baby toys, imply substantiation but are in fact unsubstantiated. To avoid making false or misleading claims, the FTC’s *Policy Statement on Substantiation* states that companies should have a “reasonable basis for advertising claims before they are disseminated.”²⁹ 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 or on studies of products that are materially different from the advertised product will not be sufficient.³⁰

When an advertiser implies to consumers that there is evidence supporting the claims, the advertiser “must possess the amount and type of substantiation the ad actually communicates to consumers.”³¹ For implied claims, advertisers must be aware of “reasonable interpretations” of

²⁹ *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>.

³⁰ 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>.

³¹ Advertising Substantiation Statement, *supra* note 29.

their claims and are expected to have prior substantiation for such claims.³² Here, Fisher-Price implies substantiation for its claims by stating that its Laugh & Learn apps are “[d]esigned for babies 6 mos. & up.”³³

CCFC is not aware of any scientific studies evaluating the effectiveness of Fisher-Price’s apps at achieving the ambitious claims the company makes. Neither the iTunes descriptions of the apps nor Fisher-Price’s 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 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. . . .³⁴

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

³² *Id.*

³³ Fisher-Price makes this claim in the iTunes descriptions of four of the seven apps discussed in this document. *See* Appendix A.

³⁴ 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>.

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.³⁵

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.³⁶

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:

- 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.³⁷
- A 2007 study found a link between the viewing of baby DVDs/videos and lower scores on the Communicative

³⁵ *Id.*

³⁶ *Id.* at 92.

³⁷ 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*, 100 Proc. Nat'l Acad. Sci. 9096 (2003), available at http://ilabs.washington.edu/kuhl/pdf/Kuhl_etal_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 ("Machines are not sufficient as instructors, at least in the early period and when standard machines like television sets are used as the instructor.").

Development Inventory, a standard instrument for measuring children's language development.³⁸

- 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.³⁹ 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.”⁴⁰
- 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.”⁴¹

Thus, despite Fisher-Price's numerous claims that its apps are educational for babies, these claims are unsubstantiated. The claims are supported neither by Fisher-Price's own evidence nor by a thorough review of the literature on screen interactivity and the education of very young children.

D. Fisher-Price's 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.⁴² To determine whether the consumer's conclusions were reasonable, the Commission will examine the “entire advertisement, transaction, or course of dealing” to find the

³⁸ 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).

³⁹ Judy S. DeLoache et al., *Do Babies Learn from Baby Media?*, 21 Psychol. Sci. 1570 (2010).

⁴⁰ *Id.* at 1570 (citing Victoria Rideout, *Parents, Children, and Media* (2007)).

⁴¹ 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).

⁴² See Deception Statement, *supra* note 26, at *45-47.

net impression that the advertisement gives.⁴³ The consumer's interpretation is reasonable if the consumer draws the conclusion that the advertiser intends to convey.⁴⁴

As the examples cited above show, Fisher-Price's marketing is targeted to parents of infants and very young children. Many of the apps have "for baby" in the app name, and the iTunes descriptions of the apps make clear that the apps are for babies. Moreover, it is clear that Fisher-Price intends that consumers draw the conclusion that if they buy Fisher-Price's apps for their infants to use, their babies will gain the skills specified.

A reasonable parent would perceive the claims made by Fisher-Price as an indication that the apps are educational and beneficial. In addition, a reasonable consumer would interpret the claim Fisher-Price makes regarding several of the apps that they are "designed for babies 6 mos. & up" to mean that Fisher-Price has some basis for believing the apps are in fact educational and beneficial to babies.

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

E. Fisher-Price's Claims Are Material

Fisher-Price's 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.

⁴³ *Id.* at *48.

⁴⁴ *Id.* at *47.

1. Fisher-Price's Deceptive Claims are Objective and Imply Substantiation

Fisher-Price 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.⁴⁵

As explained above, Fisher-Price 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.

2. Fisher-Price's Deceptive Claims Are Likely to Affect a Consumers' Choice of or Conduct Regarding its Products

Even if the Commission declines to presume materiality here, Fisher-Price's claims are material because they are likely to affect consumer decisions about whether to purchase the physical products associated with the Laugh & Learn apps.

A search of Fisher-Price's online product inventory returns nine Laugh & Learn Apptivity products:

⁴⁵ Advertising Substantiation Statement, *supra* note 29.

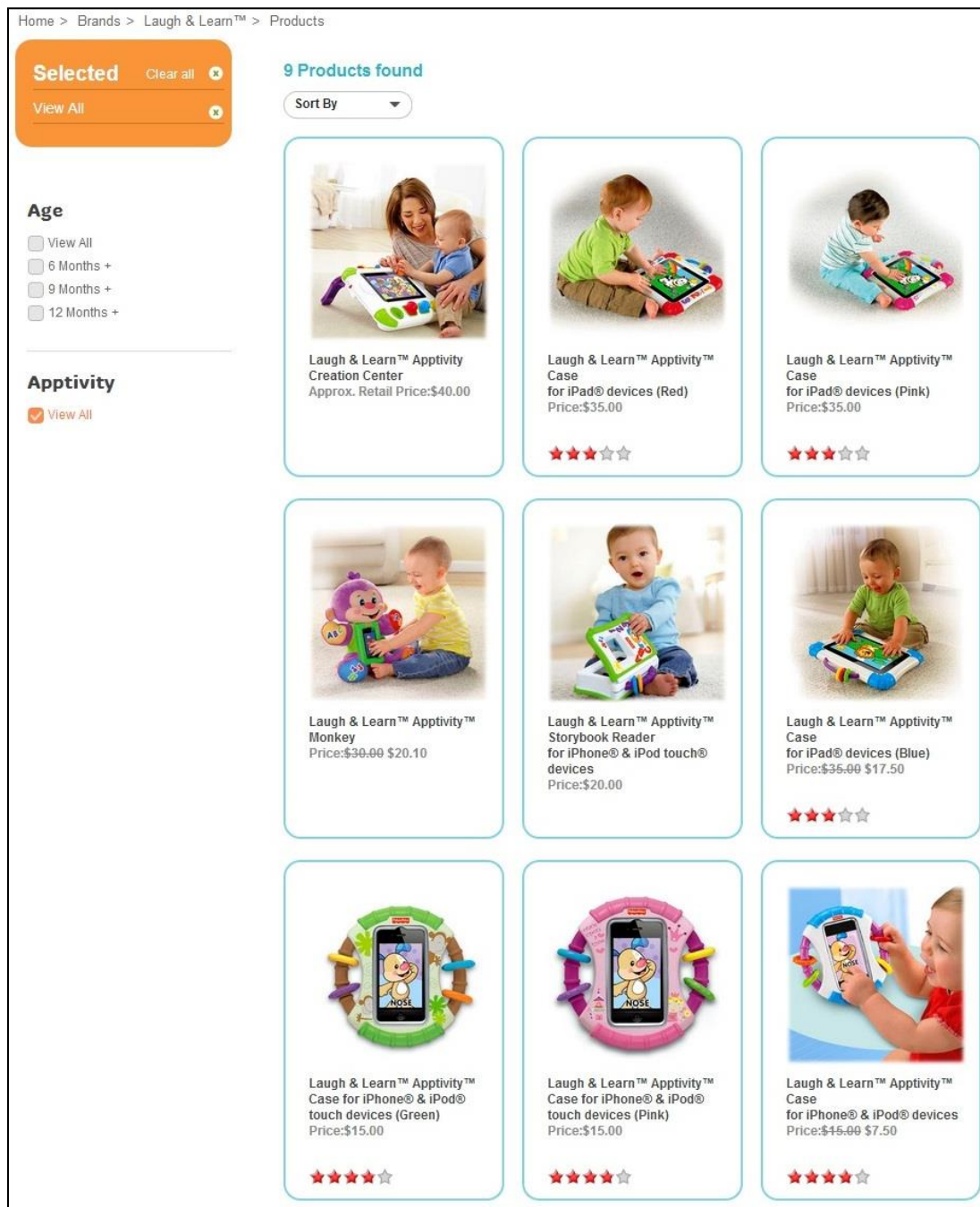


Figure 9

A search on Fisher-Price.com for Laugh & Learn Apptivity products yields nine results.⁴⁶

⁴⁶ *Laugh & Learn Apptivity Products*, Fisher-Price, http://www.fisher-price.com/en_US/brands/laugh-and-learn/products/index.html#col=Apptivity_LAL (last visited Aug. 5, 2013).

These products, designed to be used with the Fisher-Price Laugh & Learn Apptivity apps, range in price from \$7.50 for an iPhone/iPod case to \$40 for the “Apptivity Creation Center.” Many of the products are depicted in photographs that include a baby playing alone with the product, implying that a baby can learn from Laugh & Learn Apptivity apps independently, without parental guidance and interaction.

Descriptions of these products clearly encourage parents to purchase them for use with apps that Fisher-Price markets as educational. For example, the description on Amazon.com of the Laugh & Learn Apptivity Case for iPhone and iPad explains how the product can be used with “baby-appropriate” Laugh & Learn apps that will teach babies about animals and counting, parts of the body, and animal sounds, then touts the “developmental benefits” of using apps for babies.

Free Apps to Download

Don't just protect your device, make it truly baby-appropriate with free Laugh & Learn apps. Your baby will love learning about animals and counting (Let's Count Animals™), parts of the body (Where's Puppy's Nose?™) and Animal Sounds, all with fun music, sing-along songs and games. The apps were created following the popular Laugh & Learn approach of bringing learning to life through everyday play. These three apps can be downloaded at no charge from the App StoreSM. App Store is a service mark of Apple Inc.

Developmental Benefits

The Laugh & Learn Apptivity Case is a great way to foster development of basic skills, helping baby practice eye-hand coordination with fun hands-on activities. There are easy-to-grasp, textured handles and beads to slide and rattle, enhancing fine motor skills. And, because babies love to look at themselves, it features a high-quality mirror that encourages self-awareness and discovery. Adding free Laugh & Learn apps to your device offers additional benefits with learning games and songs.

Figure 10

Excerpt from Amazon.com description of Laugh & Learn Apptivity Case for iPhone/iPad⁴⁷

Moreover, reviews of Fisher-Price’s physical Laugh & Learn Apptivity products confirm that many parents are purchasing these products because they believe in the educational value of the apps. For example, in a review for the Laugh & Learn Apptivity Case for iPhone and iPad,

⁴⁷ *Fisher-Price Laugh & Learn Apptivity Case: iPhone/iPod Edition*, Amazon, <http://www.amazon.com/Fisher-Price-Laugh-Learn-Apptivity-Case/dp/B004UU9W78> (last visited Aug. 5, 2013).

one parent of a child younger than two years old says, “[t]he fisher price free apps that were developed with this provide good entertaining and educational content,” adding, “we like this so much as a learning tool that . . . we have kept one of our ipods to be permanently used in this case.”



Figure 11

Review on Amazon.com of Laugh & Learn Apptivity Case for iPhone/iPad⁴⁸

Another parent notes that “the apps fisher price has are educational,” even though the case by itself is not.

⁴⁸ *User Review: Allows Great Access to Educational Content!*, Amazon (Nov. 4, 2012), <http://www.amazon.com/review/R3QITY4J0KDRM5>.



Figure 12

Review on Amazon.com of Laugh & Learn Apptivity Case for iPhone/iPad⁴⁹

One parent reviewing the Laugh & Learn Apptivity Monkey refers to “alllll of these fantastic educational apps out there geared for the under 2 set.”

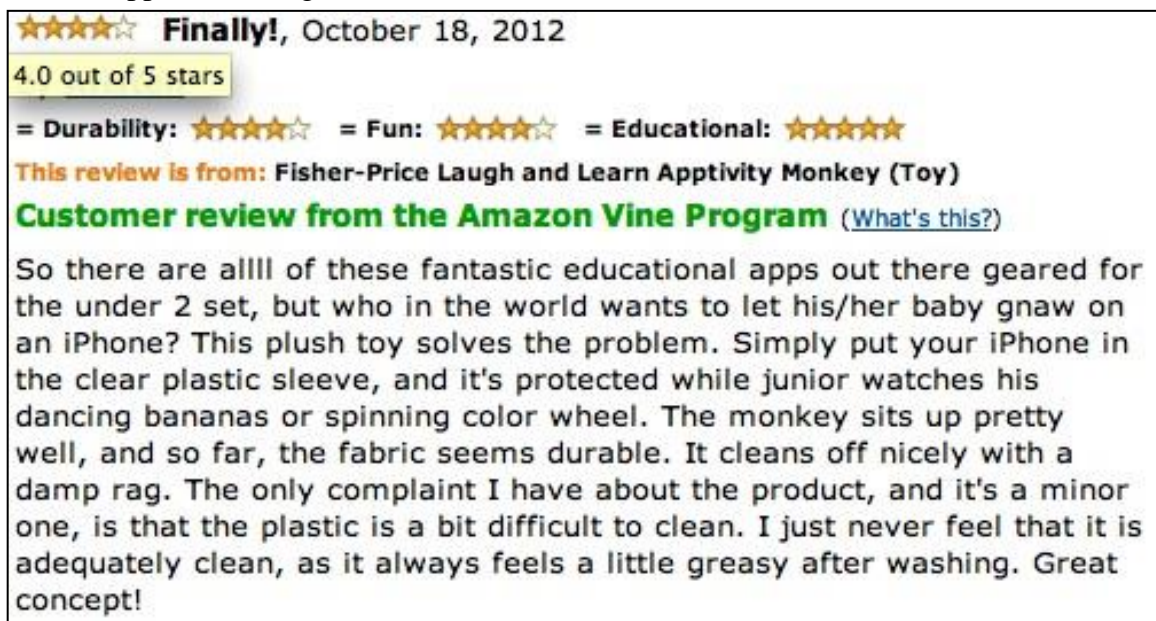


Figure 13

Review on Amazon.com of Laugh & Learn Apptivity Monkey⁵⁰

⁴⁹ User Review: *Such a Great Toy!*, Amazon (Apr. 10, 2013), <http://www.amazon.com/review/R2VBYXX5J9PSJF>.

⁵⁰ User Review: *Finally!*, Amazon (Oct. 18, 2012), <http://www.amazon.com/review/R68ULARF2FGAN>.

3. Fisher-Price's Apps May Be Harmful to Very Young Children

In addition to deceiving consumers into spending money on its products, Fisher-Price's 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 Fisher-Price 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.⁵¹

Apps that are designed to teach factual information, such as those marketed by Fisher-Price, 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.⁵²

⁵¹ *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).

⁵² 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 34, 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.").

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 being a learning and evolving experience. “There is little positive that comes out of that experience,” Dr. Rich says.⁵³

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,⁵⁴ 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.”⁵⁵

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.⁵⁶

⁵³ 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.

⁵⁴ 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>.

⁵⁵ Hayley Dixon, *Kids Who Grow Up Using iPads Have Restricted Vocabularies*, Bus. Insider, (July 23, 2013), <http://www.businessinsider.com/kids-who-grow-up-using-ipads-have-restricted-vocabularies-2013-7>.

⁵⁶ Ben Worthen, *What Happens When Toddlers Zone Out With an iPad*, Wall St. J. (May 22, 2012), <http://online.wsj.com/article/SB10001424052702304363104577391813961853988.html>; 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.”).

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 babies must do in order to learn.⁵⁷ 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.”⁵⁸

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 Fisher-Price’s claims material.

III. Conclusion

Fisher-Price’s misleading claims violate Section 5’s prohibition against unfair and deceptive trade practices. The company makes false and unsubstantiated claims that mislead parents into downloading and using its apps for babies and very young children, and purchasing its complementary Laugh & Learn Apptivity physical products. Not only do purchases based on these false claims harm consumers economically, but the use of apps with babies and very young children potentially puts infants and toddlers at risk of harm. For these reasons, CCFC requests that the Commission promptly initiate an investigation of Fisher-Price’s advertising and bring appropriate actions to remedy these violations and prevent further unfair and deceptive conduct.

⁵⁷ Richert, *supra* note 34, 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.”).

⁵⁸ 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>.

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Appendix A: Complete List of Fisher-Price’s “Educational” Baby Apps

Name of App	Target Age	Claims
Puppy’s Player ⁵⁹	None given in iTunes store	<ul style="list-style-type: none"> • “easy for baby to find and select entertaining & educational videos from Laugh & Learn!” • “The app includes three animated episodes and five animated music videos that teach baby all about letters, numbers, colors, shapes, animals, opposites, body parts and more!”
Learning Letters Monkey ⁶⁰	None given in iTunes store	<ul style="list-style-type: none"> • “A fun-filled learning app” • “Babies are encouraged to interact with engaging animations, sing-along songs & sound effects.” • “Teaches letters A-Z, numbers & counting 1-10, shapes, colors, and action/re-action.”
Learning Letters Puppy ⁶¹	None given in iTunes store	<ul style="list-style-type: none"> • “A fun-filled learning app” • “Babies are encouraged to interact with engaging animations, sing-along songs & sound effects.” • “Teaches letters A-Z, numbers & counting 1-10, shapes, colors, and action/re-action.”
Let’s Count Animals for Baby ⁶²	“Designed for babies 6 mos. & up”	<ul style="list-style-type: none"> • “Babies are encouraged to learn about numbers and animals through interaction with engaging animations and sound effects!” • “Baby can tap or tilt the screen to set a learning world in motion!” • “Teaches numbers & counting 1-10, animals, first words

⁵⁹ *iTunes Preview: Laugh & Learn Puppy’s Player*, Apple iTunes, <https://itunes.apple.com/us/app/laugh-learn-puppys-player/id598983207> (last visited Aug. 5, 2013).

⁶⁰ *iTunes Preview: Laugh & Learn Learning Letters Monkey App*, Apple iTunes, <https://itunes.apple.com/us/app/laugh-learn-learning-letters/id525811595> (last visited Aug. 5, 2013).

⁶¹ *iTunes Preview: Laugh & Learn Learning Letters Puppy*, Apple iTunes, <https://itunes.apple.com/us/app/laugh-learn-learning-letters/id545715077> (last visited Aug. 5, 2013).

⁶² *iTunes Preview: Laugh & Learn Let’s Count Animals for Baby for iPad*, Apple iTunes, <https://itunes.apple.com/us/app/laugh-learn-lets-count-animals/id480735351> (last visited Aug. 5, 2013).

		and action/reaction.”
Where’s Puppy’s Nose? for Baby ⁶³	“Designed for babies 6 mos. & up”	<ul style="list-style-type: none"> • “Babies are immersed in an animated learning environment where their little finger taps & screen tilts teach all about body parts with two fun characters & music!” • “Puppy and Kitty will teach baby about nose, ear, eyes, mouth, foot, tummy, hand & head!” • “Tapping the screen activates learning content.” • “In level one, baby can tap anywhere on the screen to activate the fun learning content.” • “Teaches body parts, body movements, first words, greetings, and action/reaction.”
Shapes and Colors Music Show for Baby ⁶⁴	“Designed for babies 6 months & up”	<ul style="list-style-type: none"> • “Babies are encouraged to learn about shapes and colors through interactions with engaging animations, sound and sing along songs!” • “Baby can tap or tilt the screen to set a learning world in motion!” • “Teaches shapes, colors, first words and action/reaction.”
Animal Sounds for Baby ⁶⁵	“Designed for babies 6 mos. & up”	<ul style="list-style-type: none"> • “Babies are encouraged to learn animal names and the sounds animals make through interacting with engaging animations and sound effects!” • “Baby can tap or tilt the screen to set a learning world in motion!” • “In level one [b]aby can tap anywhere on the screen to activate the fun learning content.” • “In level two [b]aby can tap a specific animal to choose the learning content.” • “Teaches animals, animal sounds, first words, and action/reaction.”

⁶³ *iTunes Preview: Laugh & Learn Where’s Puppy’s Nose? for Baby for iPad*, Apple iTunes, <https://itunes.apple.com/us/app/laugh-learn-wheres-puppys/id480734094> (last visited Aug. 5, 2013).

⁶⁴ *iTunes Preview: Laugh & Learn Shapes & Colors Music Show for Baby*, Apple iTunes, <https://itunes.apple.com/us/app/laugh-learn-shapes-colors/id490650819> (last visited Aug. 5, 2013).

⁶⁵ *iTunes Preview: Laugh & Learn Animals Sounds for Baby for iPad*, Apple iTunes, <https://itunes.apple.com/us/app/laugh-learn-animal-sounds/id480737092> (last visited Aug. 5, 2013).