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**FILED**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

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**BY FAX**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF ORANGE 30-2010**

**00338298**

MARIAM YUSUF, individually, and on behalf of Case No.  
all others similarly situated,

Plaintiff,

vs.

THE WALT DISNEY COMPANY, a Delaware  
corporation; WALT DISNEY STUDIOS HOME  
ENTERTAINMENT, INC., a corporation; THE  
BABY EINSTEIN COMPANY, LLC, a Colorado  
limited liability company; and DOES 1-250,  
Inclusive,

Defendants.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

**JUDGE GAILA. ANDLER  
DEPT. CX102**

THIS CASE IS SUBJECT TO  
MANDATORY ELECTRONIC FILING  
PURSUANT TO RULE 308 OF THE LOCAL RULES  
OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

**I. INTRODUCTION**

Defendants have defrauded parents of small children throughout the United States by claiming that a line of videos had educational benefits that it did and does not have, and then by instituting a "refund program" that is misleading, unfair, and completely inadequate.

1 Specifically, Defendants marketed the "Baby Einstein" line of baby videos as having  
2 significant and substantial educational value. Indeed, Defendants implied that the "Baby Einstein"  
3 materials could in fact transform their children into "Baby Einsteins," increasing their intellectual  
4 capacity and inculcating in them significant levels of knowledge and education without any effort on  
5 the part of their parents or other adults. These claims were, and are, absolutely and completely false;  
6 indeed, rather than expanding the intellects of the toddlers, the "Baby Einstein" media instead were,  
7 and are, nothing more than mind-numbing electronic babysitters that induce torpor rather than produce  
8 genius.

9 When threatened with legal action, Defendants stopped marketing the merchandise and  
10 promised a "full refund" to those customers who had purchased the products. But this offer was  
11 illusory at best: Instead of a "full refund," the actual refund program: (1) is limited to four videos per  
12 household at a price of \$15.99 per DVD unit (even though most households bought more than four  
13 videos and most retailers charged more than \$15.99), (2) covers only the period from June 5, 2004  
14 through September 5, 2009, and (3) does not include reimbursement for shipping and handling.

15 In sum, Defendants have made false and misleading claims both for the products and for the  
16 promised refund. Plaintiff brings this lawsuit to enjoin these ongoing deceptions and to recover the  
17 many millions of dollars of profits generated by these false and misleading claims.

## 18 19 II. THE PARTIES

20 1. Plaintiff MARIAM YUSUF ("Plaintiff") is a resident of California who has purchased  
21 "Baby Einstein" products in California and who lives in Orange County, California.

22 2. Plaintiff is informed and believes that Defendant THE WALT DISNEY COMPANY  
23 ("Disney") is a corporation organized and existing under the laws of the state of Delaware with its  
24 principal place of business in Burbank, Los Angeles County, California.

25 3. Plaintiff is informed and believes that Defendant WALT DISNEY STUDIOS HOME  
26 ENTERTAINMENT, INC. ("Disney Home Entertainment"), including its Disney Consumer Products  
27 unit, is a corporation that is wholly owned by Disney and has its principal place of business in  
28 Burbank, Los Angeles County, California.

1           4.     Plaintiff is informed and believes that Defendant THE BABY EINSTEIN COMPANY,  
2 LLC ("BEC") is a limited liability company organized and existing under the laws of the state of  
3 Colorado with its principal place of business in Burbank, Los Angeles County, California. Plaintiff is  
4 informed and believes that BEC is wholly owned by Disney, and is operated as a unit of Disney Home  
5 Entertainment. Disney, Disney Home Entertainment, and BEC are referred hereinafter collectively as  
6 "Defendants."

7           5.     Plaintiff does not know the true names or capacities of the persons or entities sued  
8 herein as DOES 1 to 250, inclusive, and therefore sues such defendants by such fictitious names.  
9 Plaintiff is informed and believes and thereon alleges that each of the DOE defendants is in some  
10 manner legally responsible for the damages suffered by Plaintiff and the members of the class as  
11 alleged herein. Plaintiff will amend this Complaint to set forth the true names and capacities of these  
12 defendants when they have been ascertained, along with appropriate charging allegations, as may be  
13 necessary.

### 14 15                               III.     JURISDICTION AND VENUE

16           6.     This Court has jurisdiction over all causes of action asserted herein.

17           7.     Venue is proper in this Court because a substantial portion of the events giving rise to  
18 this lawsuit took place in this County. Plaintiff has filed concurrently herewith the declaration of  
19 venue required by Civil Code Section 1780(d).

### 20 21                               IV.     FACTS

22           8.     BEC was founded in or about 1997, and began marketing a number of products for  
23 infants and toddlers, including the "Baby Einstein" home videos. Disney acquired BEC in or about  
24 2001, and commenced a saturative marketing campaign for the "Baby Einstein" videos, DVDs, and  
25 related materials, claiming that the products were educational and beneficial for early childhood  
26 development.

27           9.     For several years, the entire Baby Einstein advertising campaign revolved around the  
28 theme that Baby Einstein videos were "educational." Defendants knew that naming their products

1 Baby Einstein, Baby Mozart, Baby Galileo and Baby Shakespeare would directly communicate an  
2 irresistible message to parents: "Your babies will become smarter if you use our products."

3 10. Defendants' clever marketing campaign worked. By the end of 2003, one-third of all  
4 American children from the ages of six months to two years had at least one "Baby Einstein" video or  
5 DVD. The campaign also conveyed its intended message. For example, the Kaiser Family  
6 Foundation included in a study of media directed at very young children in a December 2005 report  
7 entitled *A Teacher in the Living Room? Educational Media for Babies, Toddlers and Preschoolers*. In  
8 that report, one parent marveled that "My 9-month old watches the screen very intently. It's as if he  
9 really understands it and is getting smarter as he watches."

10 11. The advertising was part of a broader campaign by Disney to put profits ahead of  
11 consumers. Indeed, in an internal memo, Disney's then CEO Michael Eisner opined: "We have no  
12 obligation to make history. We have no obligation to make art. We have no obligation to make a  
13 statement. *To make money is our only objective.*"

14 12. The claims made for the "Baby Einstein" materials are entirely false and misleading.  
15 Contrary to those claims, the materials do nothing that would enhance the brain function or increase  
16 the intellectual capacity of infants and toddlers. Instead, the materials actually are quite harmful;  
17 television viewing by the very young children for whom the products are designed is associated with  
18 attention problems at later ages, and the promotion of the products thus may contribute not to the  
19 intellectual development of the infants and toddlers, but to attention and learning problems later on.  
20 On information and belief, Plaintiff alleges that Defendants at all times knew that the "Baby Einstein"  
21 videos and related materials did not have the properties claimed for them, but nevertheless  
22 manufactured and marketed the product as set forth herein.

23 13. In August 2007, the *Journal of Pediatrics* published a study by prominent researchers at  
24 the University of Washington regarding the effects of television and DVD/video viewing on language  
25 development in children under two years of age. The study authors, Drs. Frederick Zimmerman,  
26 Andrew Meltzoff, and Dimitri Christakis, concluded that exposure to "baby DVDs/videos" such as  
27 Baby Einstein resulted in *lower* scores on language development tests. Indeed, the study found that  
28

1 parental reading and storytelling was much more productive in leading toward higher language scores  
2 for toddlers and young children.

3 14. The University of Washington study recommended that parents limit their childrens'  
4 exposure to Baby Einstein products, stating: "There is no clear evidence of a benefit coming from baby  
5 DVDs and videos and there is some suggestion of harm...Parents should limit their exposure as much  
6 as possible."

7 15. In response, Defendants first tried to discredit the University of Washington study,  
8 issuing a statement expressing "serious concerns about the many contradictions between the study's  
9 conclusions and the content of its press release." Defendants also tried to bully the study's authors  
10 into retracting publication of the study. Unbelievably, the Defendants are still trying to convince  
11 parents to disregard expert recommendations as "unrealistic." Indeed, as of today, their website notes  
12 that: "While we respect the American Academy of Pediatrics, we do not believe that their  
13 recommendation of no television for children under the age of two reflects the reality of today's  
14 parents, families and households." A copy of the website page is attached hereto as Exhibit 1.

15 16. Finally, after its efforts to discredit the study and bully its authors failed, in October of  
16 2009 Defendants promised to offer a "full refund" to purchasers of Baby Einstein videos. One  
17 consumer group characterized the refund as "an acknowledgment that baby videos are not  
18 educational."

19 17. Going from bad to worse, the claims made by Defendants for the "full refund" policy  
20 are themselves false and misleading, however. Instead of being a "full refund" to all purchasers of the  
21 "Baby Einstein" DVDs and videos, the refund, as ultimately offered by Defendants, is limited as  
22 follows:

- 23 (a) The refund is limited to those who purchased the products between June 5, 2004 and  
24 September 4, 2009, preventing participation by individuals who purchased the product  
25 on June 4, 2004, or before;
- 26 (b) The refund limits the refund amount to \$15.99 per DVD, when in reality many retailers  
27 charged more for the product;
- 28

1 (c) The refund limits participation to four redemptions per household, when many parents  
2 of small children were encouraged to purchase the entire collection, which includes  
3 many more than four DVDs or videos:

4 (d) The refund does not provide for the shipping and handling expenses incurred by  
5 customers in returning the products to Defendants.

6 18. Before filing this lawsuit, Plaintiff purchased "Baby Einstein" DVDs and videos in  
7 California for her own personal and family use, specifically, for the use of her young children. In so  
8 doing, Plaintiff believed and relied specifically on the representations contained in the marketing  
9 materials and brochures attached as exhibits hereto, which she saw consistently between 2001 and  
10 September of 2009. Like all parents, she believed that children would receive significant intellectual  
11 and developmental benefits from viewing the videos and DVDs. Based on these representations,  
12 Plaintiff believed that her children would in fact learn basic information, and even experience  
13 expanded intellects and increased brain capacity. Plaintiff has just recently learned that the claims  
14 made for the "Baby Einstein" products are in fact false, and that her children, who have been viewing  
15 the products for some years, could be in danger of developing attention problems at a later age.

16 19. Plaintiff thus has been anxious to participate in the "full refund" promised by  
17 Defendants. She recently learned, however, that in her case the "refund" would be far from "full."  
18 Indeed, she would not be able to receive any refund for any "Baby Einstein" materials she purchased  
19 prior to June 5, 2004; she would not be able to receive a refund greater than \$15.99 per DVD, even  
20 though she paid more than that for a number of the "Baby Einstein" DVDs; she also would be limited  
21 only to receiving a refund for four products, even though she has more than four of the "Baby  
22 Einstein" products; and finally, she would not be reimbursed for the cost of shipping the products back  
23 to Defendants. Plaintiff has thus suffered significant injury and damage because she purchased a  
24 product based on false advertising and because the promised "full refund" for the product is likewise  
25 false, misleading, and illusory. A true and correct copy of the limitations on the Baby Einstein  
26 "refund" program is attached hereto as Exhibit 2.

27 ///

28 ///



1           20. Plaintiff is informed and believes that Defendants have sold the "Baby Einstein"  
2 products in the United States based on the representations set forth above, and that as a result,  
3 Defendants have wrongfully made hundreds of millions of dollars in profits from American  
4 consumers.

5  
6                                   **V. CLASS ACTION ALLEGATIONS**

7           21. Plaintiff brings this class action for damages and other monetary relief on behalf of the  
8 following class:

9                       All persons located within the United States who purchased "Baby  
10 Einstein" products from November 6, 2001 to the present ("Class").

11          22. Excluded from the Class are governmental entities, Defendants, any entity in which  
12 defendants have a controlling interest, and Defendants' officers, directors, affiliates, legal  
13 representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also excluded from  
14 the Class is any judge, justice, or judicial officer presiding over this matter and the members of their  
15 immediate families and judicial staff.

16          23. The proposed Class is so numerous that individual joinder of all its members is  
17 impracticable. Due to the nature of the trade and commerce involved, however, Plaintiff believes that  
18 the total number of Class members is at least in the tens of thousands and members of the Class as  
19 numerous and geographically dispersed across the United States. While the exact number and  
20 identities of the Class members are unknown at this time, such information can be ascertained through  
21 appropriate investigation and discovery. The disposition of the claims of the Class members in a  
22 single class action will provide substantial benefits to all parties and to the Court.

23          24. There is a well-defined community of interest in the questions of law and fact involved  
24 affecting the plaintiff class and these common questions predominate over any questions that may  
25 affect individual Class members. Common questions of fact and law include, but are not limited to,  
26 the following:

27

28

- 1 a. Whether Defendants expressly or impliedly claimed that the "Baby Einstein"
- 2 products would enhance the brain function or increase the intellectual capacity
- 3 of infants and toddlers;
- 4 b. Whether Defendants' claimed that they would provide a "full refund" to
- 5 purchasers of the "Baby Einstein" products;
- 6 c. Whether Defendants' claims are accurate;
- 7 d. Whether Defendants falsely represented that the "Baby Einstein" products have
- 8 characteristics, ingredients, uses, benefits, or quantities which they do not have;
- 9 e. Whether Defendants falsely represented that the "Baby Einstein" products are of
- 10 a particular standard, quality, or grade;
- 11 f. Whether Defendants fraudulently induced customers to purchase the "Baby
- 12 Einstein" products;
- 13 g. Whether Defendants labeled the "Baby Einstein" products in a way that is
- 14 misleading in a material respect;
- 15 h. Whether Defendants' representations concerning the "full refund" policy
- 16 regarding the "Baby Einstein" products were false or misleading in any respect;
- 17 and
- 18 i. Whether Defendants continued to sell the "Baby Einstein" products and purport
- 19 to offer a "full refund" to consumers after knowing the preceding facts.

20 25. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all  
21 members of the Class have been similarly affected by Defendants' common course of conduct since  
22 Defendant's representations were uniform.

23 26. Plaintiff will fairly and adequately represent and protect the interests of the Class.  
24 Plaintiff has retained counsel with substantial experience in handling complex class action litigation.  
25 Plaintiff and her counsel are committed to vigorously prosecuting this action on behalf of the Class  
26 and have the financial resources to do so. Plaintiffs' counsel has been certified as lead counsel in  
27 previous class action cases.

28



28. Adjudication of individual class members' claims with respect to the Defendants would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication, and could substantially impair or impede the ability of other class members to protect their interests.

(By Plaintiff and on Behalf of the Class against all Defendants)

30. As alleged hereinabove, Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact and has lost money or property as a result of Defendants' actions as set forth herein. Specifically, Plaintiff purchased "Baby Einstein" DVDs and videos in California for her own personal and family use and to give as gifts to friends. Defendants' uniform representations left a

1 misleading overall net impression that children would receive significant intellectual and  
2 developmental benefits from viewing the videos and DVDs. These claims were false.

3 31. Plaintiff thus has been anxious to participate in the "full refund" promised by  
4 Defendants. She has learned, however, that in her case the "refund" would be far from "full", for the  
5 reasons set forth above.

6 32. On November 25, 2009, Plaintiff's counsel mailed to Defendants, by certified mail,  
7 return receipt requested, the written notice required by Civil Code Section 1782(a). A true and correct  
8 copy of this letter is attached hereto as Exhibit 3 and incorporated herein by this reference.

9 33. Plaintiff has filed concurrently herewith the declaration of venue required by Civil  
10 Code Section 1780(d).

11 34. This cause of action is brought on behalf of all people of the State of California and the  
12 people of the United States in accordance with the provisions of the California Consumer Legal  
13 Remedies Act (California Civil Code section 1770). Application of California law to all class  
14 members claim is consistent with traditional notions of fair play and substantial justice because the  
15 advertisements at issue were conceived, approved, and disseminated from California.

16 35. Defendants' wrongful business practices constituted, and constitute, a continuing  
17 course of conduct in violation of the California Consumer Legal Remedies Act since Defendants are  
18 still representing that their products have characteristics and abilities which are false and misleading,  
19 and made claims regarding their "full refund" policy that are false and misleading.

20 36. Defendants' wrongful business practices have caused injury to Plaintiff and the Class.

21 37. Pursuant to Section 1770 of the California Civil Code, Plaintiff and the Class seek an  
22 order of this court enjoining Defendants from continuing to engage in unlawful, unfair, or deceptive  
23 business practices and any other act prohibited by law, including those set forth in the complaint.  
24 Plaintiff and the Class seek an order requiring Defendants to make full restitution of all moneys it  
25 wrongfully obtained from Plaintiffs and the Class. Plaintiff and the Class also seek punitive damages  
26 since Defendant was put on notice of its violation of the California Consumer Legal Remedies Act and  
27 took no remedial actions.

28 ///

## SECOND CAUSE OF ACTION

## VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS

CODE SECTIONS 17200 AND 17500 ET SEQ.

(By Plaintiff and on Behalf of the Class against all Defendants)

38. Plaintiff incorporates by this reference the allegations set forth at paragraphs 1 through 33 as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

39. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact and has lost money or property as a result of Defendants' actions as set forth herein. Specifically, she purchased "Baby Einstein" DVDs and videos in California for her own personal and family use. In so doing, Plaintiff believed and relied specifically on the representations contained in the marketing materials and brochures for the product, which left reasonable consumers with the overall net impression that children would receive significant intellectual and developmental benefits from viewing the videos and DVDs. Based on these representations, Plaintiff believed that her children would in fact learn basic information, and even experience expanded intellects and increased brain capacity. Plaintiff has just recently learned that the claims made for the "Baby Einstein" products are in fact false, and that her children, who have been viewing the products for some years, could be in danger of developing attention problems at a later age.

40. Plaintiff thus has been anxious to participate in the "full refund" promised by Defendants. She has learned, however, that in her case the "refund" would be far from "full", as described above. Defendants' promise of a "full refund" for the product is likewise false, misleading, and illusory.

41. Defendants' actions as alleged in this Complaint constitute an unfair or deceptive business practice within the meaning of California Business and Professions Code section 17200 in that Defendants' actions are unfair, unlawful, and fraudulent, and because Defendants have made unfair, deceptive, untrue or misleading statements in advertising media, including the Internet, within the meaning of California Business and Professions Code sections 17500, et seq.

42. Defendants' business practices, as alleged herein, are unfair because they offend established public policy and/or are immoral, unethical, oppressive, unscrupulous and/or substantially

1 injurious to consumers in that consumers are potentially misled by the claims made with respect to  
2 the "Baby Einstein" products and the purported "full refund" policy as set forth herein.

3 43. Defendants' business practices as alleged herein are unlawful because the conduct  
4 constitutes false marketing and advertising and other causes of action alleged herein.

5 44. Defendants' business practices as alleged herein are fraudulent because they are likely  
6 to deceive customers into believing that the "Baby Einstein" products have properties that they in fact  
7 do not have, and that the purported "full refund" policy constitutes a "full refund" when in fact it does  
8 not.

9 45. Defendants' wrongful business practices constituted, and constitute, a continuing  
10 course of conduct of unfair competition since Defendants are marketing and selling their products in a  
11 manner likely to deceive the public.

12 46. Defendants' wrongful business practices have caused injury to Plaintiff and the Class.

13 47. Pursuant to section 17203 of the California Business and Professions Code, Plaintiff  
14 and the Class seek an order of this court enjoining Defendants from continuing to engage in unlawful,  
15 unfair, or deceptive business practices and any other act prohibited by law, including those set forth in  
16 the complaint. Plaintiff and the Class also seek an order requiring Defendants to make full restitution  
17 of all moneys it wrongfully obtained from Plaintiff and the Class.

18

19 PRAYER FOR RELIEF

20 Wherefore, Plaintiff and members of the Class request that the Court enter an order or  
21 judgment against Defendants as follows:

- 22 1. Certification of the proposed classes and notice thereto to be paid by Defendants;  
23 2. Adjudge and decree that Defendants have engaged in the conduct alleged herein;  
24 3. For restitution and disgorgement on certain causes of action;  
25 4. For an injunction ordering Defendants to cease and desist from engaging in the unfair,  
26 unlawful, and/or fraudulent practices alleged in the Complaint;  
27 5. For compensatory and general damages according to proof on certain causes of action;  
28

- 1           6.     For both pre and post-judgment interest at the maximum allowable rate on any amounts  
2 awarded;  
3           7.     Costs of the proceedings herein;  
4           8.     Reasonable attorneys' fees as allowed by statute; and  
5           9.     Any and all such other and further relief that this Court may deem just and proper,  
6 including but not limited to punitive damages.  
7

8 Dated: January 22, 2010

NEWPORT TRIAL GROUP  
A Professional Corporation  
Scott J. Ferrell  
Roger E. Bore

10  
11  
12 By: 

Scott J. Ferrell

13 Attorneys for Plaintiff and the Class  
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1 I, Mariam Yusuf, declare as follows:

2 1. I am a Plaintiff in this action, and am a citizen of the State of California. I have  
3 personal knowledge of the facts herein and, if called as a witness, I could and would testify  
4 competently thereto.

5  
6 2. The Complaint in this action, filed concurrently with this Declaration, is filed in the  
7 proper place for trial under Civil Code Section 1780(d) in that Orange County is a county in which  
8 Defendants are doing business.

9  
10 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
11 true and correct, and that this Declaration was executed on January 22 2010, at Newport Beach  
12 California.

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14 Mariam Yusuf  
15 Mariam Yusuf  
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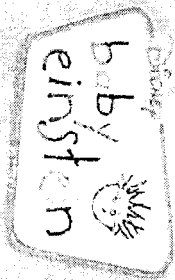
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Baby Einstein - About Us



## About Baby Einstein

### Our Philosophy

Over a decade ago, Baby Einstein was founded by Jilka Clark, a mom who wanted to share her love of humanities with her baby. Her intent was to create products that offered interactive experiences for her, and her daughter to discover the world together. While Baby Einstein has grown over the years, the same philosophy is at the heart of everything that we do. All of our products are designed to encourage discovery and inspire new ways for parents and little ones to interact.

Baby Einstein offers a wide range of developmentally appropriate products for babies and toddlers. What makes Baby Einstein products unlike any other is that they are created from a baby's point-of-view and incorporate a unique combination of real world objects, music, art, language, poetry and nature — providing you an opportunity to introduce your baby to the world around them in playful and enriching ways. This simple principle is the foundation for The Baby Einstein Company and its products.

### Children and Electronic Media

All Baby Einstein products, including its video line, are designed as interactive tools for parents to use with their babies. Since the debut of the very first title, Baby Einstein videos/DVDs were developed with the idea of creating a "digital board book" allowing a parent to have two free hands while enjoying and experiencing the video with their little one — leaving their hands free to clap, point to objects and interact with their baby.

The Baby Einstein Company believes, along with the child development experts with whom we have consulted, that parent-child interaction is one of the most critical elements to the development of a healthy and happy baby during the first three years of life. Baby Einstein products are not designed to make babies smarter. Rather, Baby Einstein products are specifically designed to engage babies and provide parents with tools to help expose their little ones to the world around them in playful and engaging

[http://www.babyeinstein.com/for\\_parents/about\\_us/](http://www.babyeinstein.com/for_parents/about_us/) (1 of 3) [12/27/2010 11:06:41 AM]



EXHIBIT 1

ways — inspiring a baby's natural curiosity.

That being said, The Baby Einstein Company is aware of the ongoing discussions regarding children and television viewing, particularly as it pertains to infants under the age of two years old. And, while we respect the American Academy of Pediatrics' we do not believe that their recommendation of no television for children under the age of two reflects the reality of today's parents, families and households — for example, a recent Kaiser Family Foundation study found that 68% of all babies under two years old watch screen media on any given day. The Baby Einstein Company believes that when used properly, developmentally-appropriate video content can be a useful tool for parents and little ones to enjoy together.

Key to our perspective is our belief that parents/caregivers play a critical role in defining the "appropriate use of television." The Baby Einstein Company has built its reputation on creating developmentally appropriate content that parents/caregivers know they can trust to use with their little ones, and it is our responsibility to continue providing them with superior products they can feel good about using with their children. Alternatively, we believe it is up to parents/caregivers to make decisions on what they feel is appropriate for their children — and that includes whether or not they choose to use television; how much television their child is allowed to watch, what they are allowed to watch, etc. Baby Einstein respects the decisions parents make for their children and believes its videos and other products are just one of many tools and activities parents can use throughout the day to interact and bond with their child.

Privacy Policy | Terms of Use | Legal Notices | Edit Account



© The Baby Einstein Company, LLC. All Rights Reserved. Baby Einstein, Einstein Pals and Little Einsteins are trademarks of The Baby Einstein Company, LLC. EINSTEIN is a trademark of The Hebrew University of Jerusalem.

**The Baby Einstein™ DVD Upgrade / Moneyback Guarantee****Participation Guidelines**

To participate, you must have purchased a *Baby Einstein* DVD between June 5, 2004 and September 4, 2009.

If you are not satisfied with the *Baby Einstein* DVD you purchased during the period mentioned above, for a limited time beginning on September 4, 2009 and ending on March 4, 2010, you may exchange it for one of the following:

- One (1) Baby Einstein Book of your choice
- One (1) Baby Einstein music CD of your choice
- Or -
- One (1) coupon for 25% off the purchase of one Little Einsteins™ product. Redeemable with promotion code only at DisneyStore.com.

or you may return it, and we will refund the current retail value of the DVD (\$15.99).

To request your DVD exchange or refund (limited to four (4) per household), you must follow the steps below for each DVD returned (**note:** you may return more than one DVD in the same mailing envelope, but you **MUST** include a completed mail-in certificate or completed 8½x11 sheet of paper for each DVD you are returning) :

1. Package the DVD, in its original DVD case (if available), into a suitable mailing envelope or package.
2. Include the completed (hand-printed) request form below or an 8½x11 sheet of paper with your signature, name, address, telephone number and email address.
3. Indicate the DVD title you are returning and date of purchase.
4. Check the appropriate box on the exchange/refund request form found below or write in on your sheet of paper your choice of :
  - (a) An exchange for one (1) Baby Einstein Book OR one (1) Baby Einstein music CD. Please write in the product name or title in the appropriate space found on the refund request form below OR on your sheet of paper;
  - (b) A coupon for 25% off one (1) Little Einsteins™ product purchased online at DisneyStore.com; or
  - (c) A refund.
5. Submissions must be postmarked by March 4, 2010.
6. Mail to:

The **Baby Einstein** DVD Guarantee/Upgrade Offer  
P.O. Box 3200  
Neenah, WI 54957-3200

Please allow 6-8 weeks for delivery of your exchange or refund check. Returns must be sent in a suitable envelope or package with the necessary postage. Limit four (4) exchanges (including upgrades and discounts) or refunds per household or address during the return period ending March 4, 2010. Group submissions are void. Exchanges and refunds will not be mailed to P.O. Boxes. Check with your local post office for a street address. Exchange or refund rights may not be assigned or transferred. Requests not in compliance with all the terms of this offer will not be acknowledged or returned. All submissions are subject to verification. Walt Disney Studios Home Entertainment reserves the right to review questionable submissions. Any requests sent to the above P.O. Box for anything other than a legitimate product exchange or refund will not be acknowledged. Void where prohibited, restricted or taxed by law. Inquiries to this offer received later than 30 days after the expiration date of March 4, 2010 will not be acknowledged. Walt Disney Studios Home Entertainment assumes no responsibility for lost, late, damaged, misdirected, mutilated, illegible, incomplete or postage-due mail. For inquiries, including if you believe you purchased your Baby Einstein DVD(s) for a different amount, please call our Customer Service Department toll free at 1-800-793-1454 (Prompt #5) or e-mail us at [customerservice@babyeinstein.com](mailto:customerservice@babyeinstein.com).

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## The Baby Einstein™ DVD Upgrade / Moneyback Guarantee

OFFICIAL MAIL-IN CERTIFICATE

Signature: \_\_\_\_\_

Name (print): \_\_\_\_\_

Address (No P.O. Boxes):  
\_\_\_\_\_  
\_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: (      ) \_\_\_\_\_

Email \*: \_\_\_\_\_

I am enclosing the DVD entitled \_\_\_\_\_

which I purchased on \_\_\_\_\_

Select One Offer: \_\_\_\_\_

☐ Please exchange my DVD for  
(select one (1) product from the list below):

• Baby Einstein CD\*\*: (specify title) \_\_\_\_\_

• Baby Einstein BOOK\*\*: (specify title) \_\_\_\_\_

☐ Please email me the Little Einsteins 25% Off promotion code  
valid at DisneyStore.com

☐ A refund of \$15.99

Mail To:

The Baby Einstein™  
DVD Guarantee / Upgrade Offer  
PO Box 3200  
Neenah, WI 54957-3200

\* Please provide your email address to receive  
special offers and information via email from  
Walt Disney Home Entertainment and the  
Walt Disney Family of Companies.

\*\* Items requested are subject to availability.

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## NEWPORT TRIAL GROUP

A PROFESSIONAL CORPORATION

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NEWPORT BEACH, CALIFORNIA 92660

TELEPHONE (949) 306-6464

FACSIMILE (949) 306-6469

November 25, 2009

**BY CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

The Walt Disney Company  
500 S. Buena Vista St.  
Burbank, CA 91521  
Attn: Chief Executive Officer

Walt Disney Studio Entertainment  
Disney Consumer Products  
A Division of The Walt Disney Company  
500 S. Buena Vista St.  
Burbank, CA 91521  
Attn: Chief Executive Officer

*Re: Ongoing Violations of California Consumer Legal Remedies Act*

Ladies and Gentlemen:

**Please give this letter your complete and immediate attention.**

**I. Introduction**

I am writing on behalf of Mariam Yusuf, as well as a class of similarly situated persons, to advise you that the above-referenced parties ("Defendants") have violated and continue to violate the California Consumer Legal Remedies Act.

LITIGATION

**EXHIBIT 3**

November 25, 2009

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## **II. Factual Background**

For several years, Defendants have profited from the marketing, advertising, and distribution of the "Baby Einstein" products. In that regard, Defendants have made well-documented false and misleading claims regarding the educational value of the Baby Einstein product.

In response to threatened litigation, Defendants instituted a purported "full refund" policy. However, that policy itself is unfair, and Defendants' assertions that said policy constitutes a "full refund" are themselves false and misleading. Specifically, Defendants have imposed unreasonable, unfair, misleading, and unlawful limitations on the purported "full refund" policy, including:

- a) Preventing participation by individuals who purchased the product June 4, 2004 or before;
- b) Limiting the maximum refund per DVD to \$15.99, when in reality many retailers charged more;
- c) Limiting participation to four redemptions per household, when many families were encouraged to buy the entire collection;
- d) Failing to pay for reasonable mailing expenses incurred by participants in the return process.

## **III. Summary of Violations**

Defendants' conduct violates the California Consumer Legal Remedies Act by, without limitation:

- 1. Falsely representing that the Baby Einstein products and the refund policy have characteristics, uses and benefits which it does not have;
- 2. Falsely representing that the Baby Einstein products are of a particular standard, quality, or grade;



November 25, 2009

Page 3

3. Fraudulently inducing consumers to purchase Baby Einstein products and to participate in the refund program;
4. Placing Baby Einstein products for sale to the general public when it does not materially conform to the product's advertisements;
6. Labeling Baby Einstein products and describing the refund policy in a way that is misleading in a material respect;
7. Creating a likelihood of confusion regarding the Baby Einstein products and the attendant refund policy; and
8. Imposing unfair, unreasonable, misleading, and unconscionable terms on the purported refund policy.

#### **IV. Demand for Relief**

We intend to file suit seeking individual, representative, and class relief unless, within the time frame referenced above, Defendants:

1. Extend participation in the refund program to individuals who purchased June 4, 2004 or before;
2. Refund up to the actual purchase price, including tax, even when said price exceeds \$15.99;
3. Eliminate the limit of four refunds per household; and
4. Pay the reasonable mailing expenses of \$6.00 per participant.

#### **V. Offer of Compromise**

**If Defendants will promptly agree to the preceding requests, we will agree to take no further action in this matter and will not make any claim for non-catalyst attorneys' fees or any other relief. As to any Defendants that will not so agree, we will file suit and therein will seek all requested relief, including monetary**

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FIRST LEGAL SUPPORT

714 541 8182

November 25, 2009

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damages, injunctive relief, statutory penalties, restitution, and attorneys' fees. Please contact me at any time if you would like to discuss this matter.

Very truly yours,

NEWPORT TRIAL GROUP

Scott J. Ferrell

SJF/lb