

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Jon Leibowitz, Chairman**
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill
 Maureen K. Ohlhausen

In the Matter of)
)
EPIC MARKETPLACE, INC.,)
a corporation; and)
)
EPIC MEDIA GROUP, LLC,)
a corporation.)
_____)

DOCKET NO. C-

COMPLAINT

The Federal Trade Commission, having reason to believe that Epic Marketplace, Inc., a corporation, and Epic Media Group, LLC, a corporation, have violated the Federal Trade Commission Act (“FTC Act”), and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Epic Marketplace, Inc. (“Epic”) is a Delaware corporation with its principal office or place of business at 512 7th Ave., 12th Floor, New York, NY 10018.
2. Respondent Epic Media Group, LLC (“EMG”) is a Delaware corporation with its principal office or place of business at 512 7th Ave., 12th Floor, New York, NY 10018.
3. The acts and practices of Epic and EMG (collectively “respondents”) as alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act.

RESPONDENTS’ BUSINESS PRACTICES

4. EMG is a global digital marketing company. Epic is a wholly-owned subsidiary of EMG, and EMG controls Epic’s operations.

5. Epic is an advertising company that engages in online behavioral advertising, which is the practice of tracking a consumer's online activities in order to deliver advertising targeted to the consumer's interests.
6. Epic acts as an intermediary between website owners who publish advertisements on their website for a fee ("publishers") and advertisers who wish to have their advertisements placed on websites. Epic purchases advertising space on publishers' websites and contracts with advertisers to place their advertisements on the websites. Epic refers to the network of websites on which it purchases advertising space as the "Epic Marketplace [N]etwork." The Epic Marketplace Network includes over 45,000 publishers.
7. Epic collects data on consumers who visit the websites within the Epic Marketplace Network. When a consumer visits a website within the Epic Marketplace Network, Epic sets a new cookie in the consumer's browser or automatically receives a cookie it previously set. Cookies are small text files that are commonly used to store information about a consumer's

sniffing by deleting their browsing history and using private browsing mode, or, with regard to Epic's history sniffing, opting out of receiving targeted advertisements from Epic. Once major browser vendors began to implement protections against history sniffing in 2010 and 2011, consumers could also avoid having their browser history sniffed by using updated versions of those browsers.

12. History sniffing allowed Epic to determine whether consumers had visited webpages that were outside the Epic Marketplace Network, information it would not otherwise have been able to obtain.
13. Epic's history sniffing was revealed in July 2011, when researchers at the Center for Internet and Society at Stanford Law School uncovered the practice and posted their findings online.

**RESPONDENTS' STATEMENTS RELATING TO THE COLLECTION AND USE
OF CONSUMER INFORMATION
(Counts 1 and 2)**

14. Respondents have disseminated or caused to be disseminated statements on Epic's website regarding respondents' privacy practices, including but not limited to the following statement in the Epic "Web User Privacy Policy," from approximately March 2010 until at least August 2011, about respondents' collection of consumer information:

Epic Marketplace automatically receives and records anonymous information that your browser sends whenever you visit a website which is part of the Epic Marketplace Network. We use log files to collect Internet protocol (IP) addresses, browser type, Internet service providers (ISP), referring/exit pages, platform type, date/time stamp, one or more cookies that may uniquely identify your browser, and responses by a web surfer to an advertisement delivered by us.

15. Respondents' statement describing their privacy and online behavioral targeting practices did not disclose that Epic was engaged in history sniffing.

Count 1

16. As described in paragraph 14, respondents represented, expressly or by implication, that Epic collected information on consumers' visits to websites only within the Epic Marketplace Network.
17. In truth and in fact, Epic did not collect only information on consumers' visits to websites within the Epic Marketplace Network. Epic used history sniffing to collect information on whether consumers had visited websites outside of the Epic Marketplace Network. Therefore, the representation made in paragraph 16 was false or misleading and constitutes a deceptive act or practice.

Count 2

18. As described in paragraphs 14-15, respondents failed to disclose that they were engaged in history sniffing. This fact would be material to consumers in deciding whether to use Epic's opt-out mechanism. Therefore, in light of the representations made, respondents' failure to disclose this fact constitutes a deceptive act or practice.

19. The acts and practices of respondents as alleged in this complaint constitute deceptive acts or practices, in or affecting commerce, in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this ___ day of _____, _____, has issued this complaint against respondents.