

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

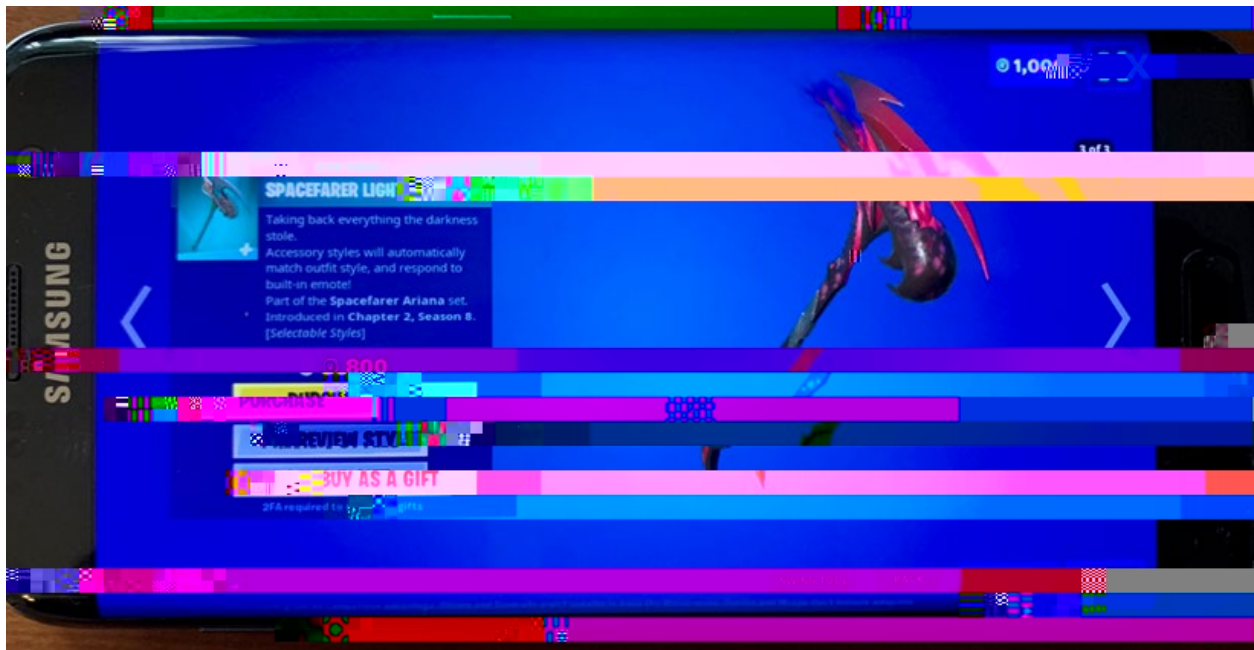
COMMISSIONERS: Lina M. Khan, Chair
Rebecca Kelly Slaughter
Christine S. Wilson
Alvaro M. Bedoya





_____, having reason to believe that Epic Games, Inc., a corporation Respondent'br Epic)has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest,alleges:

Summary of Case

1. Epic is patterns” – has charged consumers for such items without first obtaining their express informed consent, and then has banned consumers from accessing previously paid-for content when they have disputed unauthorized charges with their credit card providers.
2. Millions of consumers have complained to Epic about these unfair practices and disputed Epic’s unauthorized charges with their credit card providers. Epic’s own employees also have repeatedly raised concerns about these practices and recommended measures to

5.



29. On video game controllers, the button to purchase items is located immediately adjacent to the buttons for other common game actions. For example, on the standard PlayStation controller (pictured below), the button to purchase an item ('Square' or ) is located next to the buttons to take other common actions, such as to play a game again ('Triangle' or ) go back to the previous screen ('Circle' or ) or preview different outfit styles ('Cross' or ) all of which are pressed using the same thumb. If while browsing a player accidentally bumps the 'Square' button with their thumb, Epic immediately deducts the price of the item from their V-Bucks balance.



30. The button to purchase items on video game consoles is also the same as the button associated with other actions that do not result in the user incurring a charge. For

example, the square button is used to change the style of an already purchased outfit in the Fortnite Locker. If a player wishes to preview different styles in the Item Shop and uses the same

- x “This was an accident made by a 9 year old, who immediately said, ‘Oh no Dad, I clicked the wrong button.’ But because of your One-Click purchasing, and no ability to turn on purchase confirmation or parental blocks for the item store, and a little promoted unobtrusive limited time button to cancel, you are going to say that we are stuck with it.”
- x “I accidentally purchased a skin using my V-Bucks when I just meant to rotate it and check it out. Fat-fingered the ‘Square’ button on the PS4.”

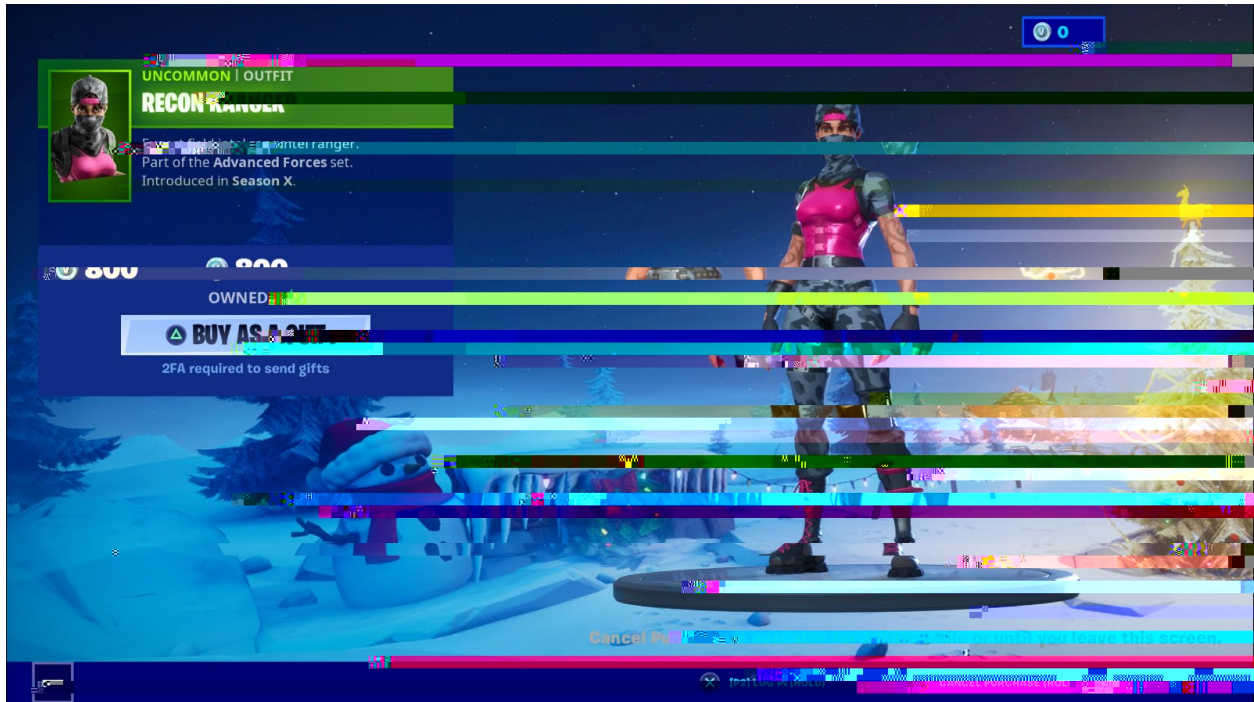
35. Epic’s employees also have raised concerns about unwanted charges and repeatedly recommended measures to address them.

- x In Spring 2018, Epic executives and managers discussed adding a confirm purchase button to prevent accidental purchases. Though employees were concerned that “it is a bit of a dark UX [user experience] pattern to not have confirmation on (once you hit [the refund] limit) ‘destructive’ actions,” Epic feared that adding a confirmation button would add “friction,” “result in a decent number of people second guessing their purchase,” and reduce the number of “impulse purchases.”
- x On May 4, 2018, an Epic UX designer working on the refund feature recommended that Epic “also implement a split-second ‘Hold to Purchase’ mechanic when buying an item[,]” which he believed “would reduce accidental purchases without adding friction.”
- x On June 23, 2018, Epic’s Director of Player Support circulated a Player Support Status Update that included a list of “Top Ticket Issues.” Number four on the list is: “Accidental Purchase Claims - (around 6-7%) players are able to purchase items and battle pass tiers without confirmation screens on PC and console. If we added confirmation screens for these platforms, it would bring additional clarity and provide more safeguards for all.”
- x On July 2, 2018, Epic’s Director of Player Support circulated another Player Support Status Update that included a list of “Top Ticket Issues.” Number 5 on the list is: “Accidental Purchase Claims – same as previously mentioned. Additional confirmation screens with the ability to bypass with a 1-click option that you must explicitly setup the first time could be a solution. [Player Support] recommends offering players both options, similar to Amazon before setting up 1-click.”
- x On July 20, 2018, an Epic Community Coordinator asked if there were any plans to add a confirmation step for in-game purchases, noting: “This is actually a huge complaints on our side and could remove most of the ‘excuses’ about accidental purchase: ‘I wanted to press Replay, my PS4 was in sleep mode’, etc. This is something I wanted to push forward but didn’t have time to build a real case around, has this already been discussed in the past?”
- x On October 10, 2018, the same Community Coordinator emailed Epic’s Lead of Online Gameplay Systems “to check if anything is happening around this topic.” He further stated: “We still have regular complaints that we are not asking for confirmation before

purchasing and that players have to use refund tickets or are out of tickets because of a button push. It's especially the case on controllers when getting the console out of sleep



39. However, after numerous players used the “Undo” button to cancel unwanted charges – “I accidentally purchased an item I did not want’ was the number one ‘reason’ for using the ‘Undo’ button[.]” according to an Epic customer survey – Epic took steps to reduce its prominence. Specifically, as shown below, Epic changed the name of the button to “Cancel Purchase,” reduced the size of the button, moved it to the bottom of the screen, and required consumers to push and hold a button on their controller (even though Epic does not require consumers to do so to purchase items in the first place).



40. After making these changes, Epic “observed a roughly 35% decline in the net undo-rate (% of undo-eligible purchases that result in an undo that is not followed by a re-purchase),” according to an email from a Senior Product Manager.

41. Consumers have complained that they did not see the option to cancel due to Epic’s efforts to obscure it. For example, in September 2019, a parent emailed Epic Player Support to complain about an unauthorized charge incurred while his 9-year-old was playing Fortnite and to request a refund. After Player Support responded by explaining Epic’s refund policy (discussed below), he responded: “I have already used my refund tokens, I used them before you implemented the cancel purchase button. You know the button that I never saw any big announcement about, the button that is small and unobtrusive, that because of your refund tokens I didn’t know was there.”

42.

millions of dollars. In fact, Epic received so many chargebacks from consumers that Visa and Mastercard placed Epic in their respective chargeback monitoring programs, threatening Epic's ability to process consumer payments through the networks going forward.

47. Since at least February 2018, when consumers have disputed Epic's unauthorized charges with their credit card companies and asked that they be charged back, Epic has deactivated their Fortnite accounts regardless of the reason for the dispute or whether it was upheld.

48. Consumers' Fortnite accounts store all Fortnite content they have ever purchased. Thus, consumers whose accounts Epic has banned have not only lost access to the Fortnite content that was the subject of the billing dispute, but also all content they have ever purchased on that account. Epic has not refunded consumers for this previously paid-for content, which for some consumers has totaled hundreds or even thousands of dollars. Only if consumers have contacted Epic, and Epic has determined that there is no risk of fraud, has Epic agreed to reactivate consumers' accounts. Even then, they have only agreed to do so one time. If consumers dispute another fraudulent or unauthorized charge, Epic permanently bans them without refunding them for their paid-for content.

49. Consumers have been unaware of Epic's practice of denying them access to paid-for content for initiating chargebacks. To the extent Epic mentions depriving consumers of content, it buries such information in its Terms of Service, End User License Agreement, or on its website, and even then, makes no mention of depriving access to paid-for content for disputing unauthorized charges with their bank or credit card provider.

50. Epic has received at least thousands of complaints from consumers whose accounts were banned due to chargebacks.

51. Despite these complaints, Epic continues to deactivate the accounts of consumers who dispute Epic's unauthorized charges with their credit card companies.

52. Based on the facts and violations of law alleged in this Complaint, the FTC has reason to believe that Respondent is violating or is about to violate laws enforced by the Commission.

VIOLATIONS OF THE FTC ACT

53. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

54. Acts or practices are unfair under Section 5 of the FTC Act if they cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

Count I

Unfair Billing

55. In numerous instances, Respondent has charged consumers without having obtained consumers' express informed consent.

56. Respondent's actions as described in Paragraph 55 have caused or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

57. Therefore, Respondent's acts or practices as set forth in Paragraph 55 constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a) and (n).

Count II Unfair Denial of Account Access

58. In numerous instances, Respondent has denied consumers access to their Fortnite accounts for disputing unauthorized charges.

59. Respondent's actions as described in Paragraph 58 have caused or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

60. Therefore, Respondent's acts or practices as set forth in Paragraph 58 constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a) and (n).

61. The acts and practices of Respondent as alleged in this Complaint constitute unfair or 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 _____, 20__, has issued this Complaint against Respondent.

By the Commission.

April J. Tabor
Secretary

SEAL: