



**[BILLING CODE: 6750-01S]**

**FEDERAL TRADE COMMISSION**

**[File No. 112 3182]**

**Epic Marketplace, Inc., and Epic Media Group, LLC; Analysis of Proposed Consent Order to Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

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**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

**DATES:** Comments must be received on or before January 7, 2013.

**ADDRESSES:** Interested parties may file a comment at

<https://ftcpublic.commentworks.com/ftc/epicmarketplaceconsent> online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "Epic, File No. 112 3182" on your comment and file your comment online at <https://ftcpublic.commentworks.com/ftc/epicmarketplaceconsent> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Kate White (202-326-2878), FTC, Bureau of

Consumer Protection, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 5, 2012), on the World Wide Web, at <http://www.ftc.gov/os/actions.shtm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 7, 2013. Write "Epic, File No. 112 3182" on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any

sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential,” as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).<sup>1</sup> Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/epicmarketplaceconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!/home>, you also may file a comment through that website.

If you file your comment on paper, write “Epic, File No. 112 3182” on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, NW, Washington,

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<sup>1</sup> In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 7, 2013. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

### **Analysis of Agreement Containing Consent Order to Aid Public Comment**

The Federal Trade Commission has accepted, subject to final approval, a consent agreement from Epic Marketplace, Inc. and Epic Media Group, LLC.

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

Epic Marketplace, Inc. ("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. Epic is a wholly-owned subsidiary of Epic Media Group, LLC ("EMG"). 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 Network, which includes over 45,000 publishers.

The Commission's complaint alleges that, from March 2010 through August 2011, Epic engaged in "history sniffing" – running software code on a webpage to determine whether a user has previously visited a webpage – by checking how a user's browser styles the display of a hyperlink. This practice allegedly allowed Epic to determine whether a consumer had visited any of over 54,000 domains, including pages relating to fertility issues, impotence, menopause, incontinence, disability insurance, credit repair, debt relief, and personal bankruptcy. According to the complaint, 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, and Epic used this history-sniffing data for behavioral targeting purposes.

The FTC's complaint charges that Epic and EMG violated Section 5(a) of the FTC Act by falsely representing to consumers that respondents only collected information on consumers' visits to websites within the Epic Marketplace Network. The complaint also alleges that the companies failed to disclose to consumers that they were engaged in history sniffing.

The proposed order contains provisions designed to prevent Epic; EMG; their parent company FAS Labs, Inc.; and any of their subsidiaries, successors, and assigns (collectively, "respondents") from engaging in practices similar to those alleged in the complaint in the future.

Part I of the proposed order prohibits respondents from misrepresenting in any manner, expressly or by implication: (A) the extent to which they maintain the privacy or confidentiality of data from or about a particular consumer, computer, or device, including but not limited to the extent to which that data is collected, used, disclosed, or shared; or (B) the extent to which

software code on a webpage determines whether a user has previously visited a webpage.

Part II of the proposed order prohibits respondents from collecting any data through history sniffing – running software code on a webpage to determine whether a user has previously visited a webpage by checking how a user’s browser styles the display of a hyperlink or by accessing a user’s browser cache – or using any data obtained by history sniffing.

Part III of the proposed order prohibits respondents from using, disclosing, selling, renting, leasing, or transferring any information that was collected using history sniffing. In addition, within five (5) days after the date of service of the order, respondents must permanently delete or destroy all information collected using history sniffing.

Parts IV through VIII of the proposed order are reporting and compliance provisions. Part IV requires that respondents retain, for a period of three (3) years, documents relating to its compliance with the order. Part V requires dissemination of the order to all current and future principals, officers, directors, and managers; and all current and future managers, employees, agents, and representatives who have responsibilities on behalf of respondents with respect to the subject matter of this order. Part VI ensures notification to the FTC of changes in corporate status. Part VII mandates that respondents submit an initial compliance report to the FTC and make available to the FTC subsequent reports. Part VIII is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

The purpose of the analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order’s terms in any way.

By direction of the Commission.

Donald S. Clark  
Secretary.

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