

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairman**
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright

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

DOCKET NO. C-4389

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 online activities, including information such as the content of advertisements that a consumer views or the pages a consumer visits within a particular website.
8. In March 2010, Epic merged with Connexus Corporation. One of Connexus’ subsidiaries, Traffic Marketplace, engaged in “history sniffing,” which is the practice of determining whether a consumer has previously visited a webpage by checking how a user’s browser styles the display of a hyperlink. For example, if a consumer has previously visited a webpage, the hyperlink to that webpage may appear in purple, and if the consumer has not previously visited a webpage, the hyperlink may appear in blue. History-sniffing code would sniff whether the consumer’s hyperlinks to specific webpages appeared in blue or purple.
9. Through its merger with Connexus, Epic acquired Traffic Marketplace and continued to engage in history sniffing until August 2011. Epic included the history-sniffing code within advertisements it served to visitors on at least 24,000 webpages within the Epic Marketplace Network including, but not limited to, cnn.com, papajohns.com, redcross.com, and orbitz.com. The code exploited a feature of consumers’ web browsers that displays hyperlinks in different styles, depending on whether the consumer has previously visited the link. The code allowed Epic to determine whether a consumer had visited any of over 54,000 domains. Among the domains that Epic “sniffed” were pages relating to fertility issues, impotence, menopause, incontinence, disability insurance, credit repair, debt relief, and personal bankruptcy.
10. Based upon its knowledge of which domains a consumer had visited, Epic assigned the consumer an interest segment. Epic’s interest segments included sensitive categories such as “Incontinence,” “Arthritis,” “Memory Improvement,” and “Pregnancy-Fertility Getting Pregnant.” Epic used this history-sniffing data for behavioral targeting purposes.
11. History sniffing circumvents the most common and widely known method consumers use to prevent online tracking: deleting cookies. Deleting cookies does not prevent a website from querying a consumer’s browsing history. Consumers could only protect against history 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 thirteenth day of March 2013, has issued this complaint against respondents.

By the Commission, Commissioner Wright not participating.

Donald S. Clark
Secretary

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