

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

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

_____ )	
<i>In the Matter of</i> )	
)	
)	<b>DECISION AND ORDER</b>
<b>EPIC MARKETPLACE, INC.,</b> )	
<i>a corporation; and</i> )	
)	
<b>EPIC MEDIA GROUP, LLC,</b> )	
<i>a corporation.</i> )	<b>DOCKET NO. C-4389</b>
_____ )	

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents, and the respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violations of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 *et seq*;

The respondents, their attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that the respondents have violated the Federal Trade Commission Act, and that a Complaint should issue stating its charges in that respect, and having thereupon accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having carefully considered the comments filed by interested persons, now in further conformity with the procedure described in Section 2.34 of its Rules, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and enters the following Order:

1. Epic Marketplace, Inc. and Epic Media Group, LLC are Delaware corporations with their principal offices or places of business at 512 7<sup>th</sup> Ave, 12<sup>th</sup> Floor, New York, NY, 10018.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

## **ORDER**

### **DEFINITIONS**

For purposes of this Order, the following definitions shall apply:

1. Unless otherwise specified, “proposed respondents” or “respondents” shall mean: Epic Marketplace, Inc.; Epic Media Group, LLC; and their parent company, FAS Labs, Inc.; including each of their subsidiaries, successors, and assigns.
2. “Commerce” shall be defined as it is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
3. “Computer” or “device” shall mean any desktop or laptop computer, handheld device, telephone, tablet, or other product or device, through which the consumer accesses the Internet.
4. “History sniffing” shall mean running software code on a webpage that determines whether a user has previously visited a webpage by checking how a user’s browser styles the display of a link to a specific URL or by accessing a user’s browser cache.

### **I.**

**IT IS ORDERED** that respondents and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the online advertising, marketing, promotion, offering for sale, sale, or dissemination of any product or service, in or affecting commerce, shall not misrepresent 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.

## II.

**IT IS FURTHER ORDERED** that respondents and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with online advertising, marketing, promotion, offering for sale, sale, or dissemination of any product or service, in or affecting commerce, are prohibited from collecting any data through history sniffing or using any data obtained by history sniffing.

## III.

**IT IS FURTHER ORDERED** that respondents and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, shall not use, disclose, sell, rent, lease, or transfer any information that was collected using history sniffing. Within five (5) days after the date of service of this order, respondents shall permanently delete or destroy all information collected using history sniffing, and shall provide a written statement to the Commission, sworn under penalty of perjury, confirming that all such information has been deleted or destroyed. *Provided that*, if respondents are prohibited from deleting or destroying such information by law, regulation, or court order, respondents shall provide a written statement to the Commission, sworn under penalty of perjury, identifying any information that has not been deleted or destroyed and the specific law, regulation, or court order that prohibits respondents from deleting or destroying such information. Unless otherwise directed by a representative of the Commission, all statements required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, with the subject line *In the matter of Epic Marketplace, Inc. and Epic Media Group, LLC*. *Provided, however*, that, in lieu of overnight courier, statements may be sent by first-class mail, but only if an electronic version of such statements is contemporaneously sent to the Commission at [Debrief@ftc.gov](mailto:Debrief@ftc.gov).

## IV.

**IT IS FURTHER ORDERED** that respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying a print or electronic copy of:

- A. For a period of three (3) years from the date of service of this order or from the date of preparation, whichever is later:
  1. Consumer complaints or inquiries directed to respondents or forwarded to respondents by a third party concerning: (a) any collection of data by respondents; (b) the use, disclosure, or sharing of such data by respondents; or (c) opt-out practices or any other mechanism to limit or prevent such collection of data or the use, disclosure, or sharing of data collected by respondents, as well as any responses to such complaints or inquiries;

2. All records necessary to demonstrate full compliance with each provision of this order, including all submissions to the Commission; and
- B. For a period of three (3) years after the last public dissemination thereof by respondents, respondents' terms of use, form network contracts, marketing materials, frequently asked questions, privacy policies, and other documents publicly disseminated by respondents relating to: (a) collection of data by respondents; (b) the use, disclosure or sharing of such data by respondents; (c) opt-out practices and other mechanisms to limit or prevent such collection of data by respondents or the use, disclosure, or sharing of data collected by respondents; (d) respondents' membership in any self-regulatory body; and (e) respondents' participation in and compliance with any privacy, security, or other compliance program sponsored by the government or other third party.

## V.

**IT IS FURTHER ORDERED** that, for three (3) years after the date of service of this order, respondents shall deliver a copy of this order to: (1) all current and future principals, officers, directors, and managers; and (2) 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, and shall secure from each such person a signed and dated statement acknowledging receipt of the order, with any electronic signatures complying with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.* Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of the order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

## VI.

**IT IS FURTHER ORDERED** that respondents shall notify the Commission at least thirty (30) days prior to any change in respondents that may affect compliance obligations arising under this order, including but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in respondents' name or address. *Provided, however,* that with respect to any proposed change about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, with the subject line: In the Matter of Epic Marketplace, Inc. and Epic Media Group, LLC. *Provided, however,* that, in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of such notices is contemporaneously sent to the Commission at [Debrief@ftc.gov](mailto:Debrief@ftc.gov).

## VII.

**IT IS FURTHER ORDERED** that respondents shall, within ninety (90) days after the date of service of this order, file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form in which respondents have complied with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, respondents shall submit additional true and accurate written reports.

## VIII.

This order will terminate on March 13, 2033, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part of this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

*Provided, further*, that if such complaint is dismissed or a federal court rules that the respondents did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that this order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Commissioner Wright not participating.

Donald S. Clark  
Secretary

SEAL  
ISSUED: March 13, 2013