

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

In the Matter of)	
)	AGREEMENT CONTAINING
)	CONSENT ORDER
EPIC MARKETPLACE, INC., a corporation; and)	
)	
EPIC MEDIA GROUP, LLC, a corporation.)	FILE NO. 112 3182
)	

The Federal Trade Commission has conducted an investigation of certain acts and practices of proposed respondents. Proposed respondents, having been represented by counsel, are willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between proposed respondents, by their duly authorized officer, and counsel for the Federal Trade Commission that:

1. Epic Marketplace, Inc. and Epic Media Group, LLC are Delaware corporations with their principal offices or places of business at 512 7th Ave, 12th Floor, New York, NY, 10018.
2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint.
3. Proposed respondents waive:
 - A. Any further procedural steps;
 - B. The requirement that the Commission’s decision contain a statement of findings of fact and conclusions of law; and
 - C. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.
4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed

respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.
6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondents' address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed respondents waive any right they may have to any other means of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.
7. Proposed respondents have read the draft complaint and consent order. They understand that they may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

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.

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.

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 twenty (20) years from the date of its issuance, 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.

Dated: _____

EPIC MARKETPLACE, INC.

By: _____

David A. Graff, President

EPIC MEDIA GROUP, LLC

Dated: _____

By: _____

David A. Graff, President

Dated: _____

By: _____

Donald H. Mathis, CEO

Dated: _____

By: _____

Charulata B. Pagar
VLP Law Group LLP
Attorney for Respondents

FEDERAL TRADE COMMISSION

Dated: _____

By: _____

Katherine White
Kristen Anderson
Jonathan Zimmerman
Counsel for the Federal Trade Commission

APPROVED:

MANEESHA MITHAL
Associate Director
Division of Privacy and Identity Protection

MARK EICHORN
Assistant Director
Division of Privacy and Identity Protection

DAVID C. VLADECK
Director
Bureau of Consumer Protection