Office of the Secretary

March 13, 2013

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> Re: *In the Matter of Epic Marketplace, Inc., and Epic Media Group, LLC*
> *File No. 112 3182, Docket No. C-4389*

Dear Mr. Bellemare and Mr. Masse:

Thank you for your comment on behalf of Steerads Inc. regarding the Federal Trade Commission's proposed consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

We appreciate Steerads' support for the order's requirement that Epic delete all data acquired via history sniffing and that it provide a sworn statement verifying that is has done so. Your comment also urges the Commission to reconsider obtaining civil penalties only in the case of noncompliance with a Commission consent order.

By statute, the Commission does not have authority to seek civil penalties in this matter that alleges violations of Section 5 of the FTC Act. As you note, if Epic were to violate any provision of the consent order once it becomes final, it would risk civil penalties of up to $16,000 per violation or up to $16,000 per day in the case of a continuing violation, under Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 CFR 1.98(c).

Your comment expresses concern that the proposed order is a "naked" cease and desist order that will have no deterrent effect and states that "only compensation to victims would send

a clear message that the law must be obeyed." Your comment urges the Commission to include an "asphalt clause" in the order, which, as you describe is "a waiver of all statutory limitations set forth in the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(a)) ('Tunney Act'), specifically the provision preventing consent judgment and decrees from having *prima facie* effect in civil actions for damages pursuant to the Clayton Act Section 4 (15 U.S.C. § 15)." However, this action stems from Epic's violations of Section 5 of the FTC Act relating to unfair and deceptive trade practices and not a violation of the Sherman or Clayton Acts. Therefore, an asphalt waiver would not apply to this matter.[1]

To the extent that your comment is concerned with the strength of the proposed order's deterrent effect, the Commission believes that the proposed order's provisions are designed to provide strong protection for consumers. The proposed order bans Epic Marketplace, Inc. and Epic Media Group, LLC (collectively, "Epic") from history sniffing and, as discussed above, requires Epic to destroy all information obtained from history sniffing. It also prohibits Epic from misrepresenting the extent to which it maintains the privacy and confidentiality of data about particular consumers, and the extent to which software code on a webpage determines whether a user has previously visited a webpage. As noted above, once the order becomes final, Epic will risk substantial civil penalties should it violate any of these terms.

Having considered all the facts of this case and all of the comments submitted in response to the proposed order, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at http://www.ftc.gov. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Wright not participating.

Donald S. Clark
Secretary

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[1] The Commission also notes that the Tunney Act does not apply to the Commission, but only to the Department of Justice.