

More Than Child's Play: \$520 Million FTC Settlement Signals Risks for Digital Platforms

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For years, one of the world's most popular online video games, Fortnite, profited from in-game purchases (or "microtransactions") that, according to the Federal Trade Commission ("FTC"), were unlawful and deceptive. [1] Although Fortnite is "free-to-play," individuals playing Fortnite—many of whom, the FTC says, are minors—use real-life money to buy in-game currency. But the game's interface and controls make it easy to accidentally make purchases using in-game currency. And the game did not make clear when users' payment information was being saved or require additional authentication when purchases were made with saved payment information. This allowed children playing the game to make purchases without parental permission. Then, Fortnite employed what the FTC calls "dark patterns" to discourage or prevent users from cancelling transactions, requesting a refund, or issuing a charge-back on their credit card.

Those practices, along with game setting that the FTC claimed violated the Children's Online Privacy Protection Act, were the basis of the FTC's settlement with Epic Games, Inc. ("Epic"), the creator of Fortnite. Epic agreed to pay \$275 million in penalties related to the privacy violations—the largest monetary penalty ever obtained for violating an FTC rule—and \$245 million in refunds. Epic also agreed to make specific changes to Fortnite's microtransaction system. Specifically, Epic agreed to obtain "express, informed consent" coupled with "clear and conspicuous disclosures" meeting specific criteria before billing users. It also agreed to provide users with "a simple mechanism to revoke consent at any time." The FTC intends this settlement to be "a message to all online providers" that "protecting the public, and especially children, from online privacy invasions and dark patterns is a top priority for the Commission." [2]

The FTC's strong statement on billing practices and "dark patterns" impacts more than just video games; it potentially touches on all online platforms that store payment information to allow users to periodically purchase services or products. Online content providers should consider whether their own billing practices satisfy the requirements of the Consent Agreement or otherwise sufficiently inform users of when, how, and for what they are being charged.

If you have concerns about how the FTC's enforcement activities impact your business or online services, contact the authors of this article or a member of Miller Canfield's **Advertising and Marketing Industry Team**.

[1] Fortnite Video Game Maker Epic Games to Pay More Than Half a Billion Dollars over FTC Allegations of Privacy Violations and Unwanted Charges | Federal Trade Commission

[2] The full Consent Order can be viewed here: Epic Games: Agreement Containing Consent Order