

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of:

Intuit Inc., a corporation.

Docket No. 9408

REDACTED PUBLIC VERSION

ANSWER AND AFFIRMATIVE DEFENSES OF RESPONDENT INTUIT INC.

Pursuant to Rule 3.12 of the Commission’s Rules of Practice, 16 C.F.R. § 3.12, Respondent Intuit Inc. by and through its attorneys, hereby answers the Administrative Complaint (served by the Federal Trade Commission on March 31, 2022), in the above-captioned matter and asserts affirmative and other defenses:

RESPONSE TO THE SPECIFIC ALLEGATIONS IN THE COMPLAINT

Except to the extent specifically admitted herein, Intuit denies each and every allegation contained in the Complaint.¹

1. Intuit admits the allegations in Paragraph 1.
2. Intuit admits that it has advertised, marketed, promoted, distributed, and sold TurboTax, which is an online tax preparation service. Intuit otherwise denies the allegations in Paragraph 2.
3. Paragraph 3 sets forth legal conclusions as to which no response is required. To the extent a response is required, Intuit denies the allegations in Paragraph 3.

¹ The Complaint contains section titles and organizational headings to which no response is required. To the extent that the headings may be construed to contain allegations of fact as to which a response is required, Intuit denies all such allegations.

Summary of the Case

4. Intuit admits the allegations in Paragraph 4.

5. Paragraph 5 purports to describe Intuit’s television advertisements, the contents of which speak for themselves and as to which no response is required. Intuit otherwise denies the allegations in Paragraph 5.

6. Intuit admits that TurboTax is free for the approximately 14 million taxpayers who file their taxes using TurboTax Free Edition. Intuit further admits that some taxpayers, those without simple tax returns, are not eligible to file for free using TurboTax Free Edition. In all other respects, Intuit denies the allegations in Paragraph 6.

7. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 7 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit admits that the IRS Free File program was a public-private partnership with the IRS. Intuit otherwise denies the allegations in Paragraph 7.

8. Paragraph 8 sets forth legal conclusions as to which no response is required. To the extent a response is required, Intuit denies the allegations in Paragraph 8.

Respondent’s Business Activities

I. TurboTax’s “Freemium” Version: TurboTax Free Edition

9. Intuit admits that [REDACTED]

[REDACTED] Intuit otherwise denies the allegations in Paragraph 9.

10. Intuit admits the allegations in Paragraph 10.

11. Intuit denies the allegations in Paragraph 11.

12. Intuit is without knowledge of what constitutes the “freemium version of TurboTax” and on that basis denies the allegations in Paragraph 12. Intuit otherwise denies the allegations in Paragraph 12.

13. Intuit admits that the free version of TurboTax has been called Free Edition since 2017. Intuit further admits that in 2016 a free version of TurboTax was called Federal Free Edition. Intuit otherwise denies the allegations in Paragraph 13.

14. Intuit is without knowledge of what constitutes the “freemium version of TurboTax” and on that basis denies the allegations in Paragraph 14. Intuit admits that consumers with simple tax returns are eligible to prepare and file their taxes for free using TurboTax Free Edition. Intuit otherwise denies the allegations in Paragraph 14.

15. Intuit admits the allegations in Paragraph 15.

16. Intuit admits the allegations in Paragraph 16.

17. Intuit admits the allegations in Paragraph 17.

18. Intuit admits that it defines a simple tax return as including a return that can be filed on Form 1040; Intuit further admits that its definition of simple tax returns includes certain attached schedules. Intuit otherwise denies the allegations in Paragraph 18.

19. Intuit is without knowledge of what constitutes the “freemium version of TurboTax” and on that basis denies the allegations in the first sentence of Paragraph 19. Intuit otherwise denies the allegations in Paragraph 19.

20. Intuit is without knowledge of what constitutes the “freemium version of TurboTax” and on that basis denies the allegations in Paragraph 20. Intuit otherwise denies the allegations in Paragraph 20.

II. Advertising Practices: Intuit’s Ads Misrepresent that Consumers Can File Their Taxes for Free Using TurboTax

21. Intuit admits that since 2016 it has promoted TurboTax through advertising.

Intuit further admits that since 2016 it has promoted TurboTax Free Edition. Intuit otherwise denies the allegations in Paragraph 21.

22. Intuit admits that [REDACTED]

[REDACTED]. Intuit otherwise denies the allegations in Paragraph 22.

23. Intuit is without knowledge of what constitutes the “freemium version of TurboTax” and on that basis denies the allegations in Paragraph 23. Intuit otherwise denies the allegations in Paragraph 23.

24. Paragraph 24 purports to describe Intuit’s advertisements, the contents of which speak for themselves and as to which no response is required. Intuit otherwise denies the allegations in Paragraph 24.

25. Intuit denies the allegations in Paragraph 25.

26. Paragraph 26 purports to describe Intuit’s advertisements, the contents of which speak for themselves and as to which no response is required. Intuit otherwise denies the allegations in Paragraph 26.

27. Paragraph 27 purports to describe Intuit’s advertisements, the contents of which speak for themselves and as to which no response is required. Intuit otherwise denies the allegations in Paragraph 27.

28. Intuit admits that its ads disclose that Free Edition is available to consumers with simple tax returns or “simple U.S. returns only.” Intuit otherwise denies the allegations in Paragraph 28.

29. Paragraph 29 does not provide sufficient information to identify the ad being discussed, which would speak for itself, and thus Intuit is without knowledge of the facts alleged in Paragraph 29 and on that basis denies the allegations in Paragraph 29.

30. Paragraph 30 does not provide sufficient information to identify the ad being discussed, which would speak for itself, and thus Intuit is without knowledge of the facts alleged in Paragraph 30 and on that basis denies the allegations in Paragraph 30.

31. Intuit denies the allegations in Paragraph 31.

32. Intuit admits that it has never offered a product called “TurboTax Free.” Paragraph 32 does not provide sufficient information to identify the ad being discussed, which would speak for itself, and thus Intuit is without knowledge of the remainder of the facts alleged in Paragraph 32 and on that basis denies the allegations in Paragraph 32.

33. Paragraph 33 does not provide sufficient information to identify the ad being discussed, which would speak for itself, and thus Intuit is without knowledge of the facts alleged in Paragraph 33 and on that basis denies the allegations in Paragraph 33.

34. Paragraph 34 does not provide sufficient information to identify the ad being discussed, which would speak for itself, and thus Intuit is without knowledge of the facts alleged in Paragraph 34 and on that basis denies the allegations in Paragraph 34.

35. The first sentence of Paragraph 35 sets forth a legal conclusion as to which no response is required. To the extent a response is required, Intuit denies the allegation in the first sentence of Paragraph 35. Intuit admits that at least one company has offered a free online tax preparation and filing service to all customers for five years. Intuit is without knowledge of the facts alleged in the third sentence of Paragraph 35 and on that basis denies the allegations in Paragraph 35.

III. Website Practices

A. Intuit's TurboTax Home Page Misleads Consumers into Believe They Can File Their Taxes for Free Using TurboTax

36. Intuit is without knowledge of what constitutes the “freemium version of TurboTax” and on that basis denies the allegations in Paragraph 36. Intuit otherwise denies the allegations in Paragraph 36.

37. Paragraph 37 purports to describe Intuit's website, the content of which speaks for itself and as to which no response is required. Intuit otherwise denies the allegations in Paragraph 37.

38. The first sentence of Paragraph 38 sets forth a legal conclusion as to which no response is required. To the extent a response is required, Intuit denies the allegations in the first sentence of Paragraph 38. Intuit otherwise denies the allegations in Paragraph 38.

39. Intuit is without knowledge of what constitutes the “freemium version of TurboTax” and on that basis denies the allegations in Paragraph 39. Intuit otherwise denies the allegations in Paragraph 39.

40. The first sentence of Paragraph 40 purports to describe Intuit's website, the content of which speaks for itself and as to which no response is required. Intuit otherwise denies the allegations in Paragraph 40. Intuit is without knowledge of what constitutes the “freemium version of TurboTax” and on that basis too denies the allegations in Paragraph 40.

41. Intuit is without knowledge of what constitutes the “freemium version of TurboTax” and on that basis denies the allegations in Paragraph 41. Intuit otherwise denies the allegations in Paragraph 41.

42. Paragraph 42 purports to describe Intuit’s website, the content of which speaks for itself and as to which no response is required. Intuit otherwise denies the allegations in Paragraph 42.

43. Paragraph 43 purports to describe Intuit’s website, the content of which speaks for itself and as to which no response is required. Intuit otherwise denies the allegations in Paragraph 43.

44. Intuit denies the allegations in the first sentence of Paragraph 44. The second sentence of Paragraph 44 sets forth a legal conclusion as to which no response is required. To the extent a response is required, Intuit denies the allegations in the second sentence of Paragraph 44.

B. The TurboTax Interview Process Uses Required Upgrades Called “Hard Stops” to Induce Consumers to Upgrade from Free to Paid Versions of TurboTax

45. Intuit is without knowledge of what constitutes the “freemium version of TurboTax” and on that basis denies the allegations in the first sentence of Paragraph 45. Intuit admits that it informs consumers of required upgrades. Intuit otherwise denies the allegations in Paragraph 45.

46. Intuit is without knowledge of what constitutes the “freemium version of TurboTax” and on that basis denies the allegations in Paragraph 46.

47. Intuit denies the allegations in the first sentence of Paragraph 47. Intuit is without knowledge of what constitutes the “freemium version of TurboTax” and on that basis denies the allegations in the second sentence of Paragraph 47. The third and fourth sentences of Paragraph 47 purport to describe certain aspects of Intuit’s website, the content of which speaks for itself and as to which no response is required. Intuit otherwise denies the allegations in the third and

fourth sentence of Paragraph 47. Intuit admits the allegations in the fifth sentence of Paragraph 47.

48. Paragraph 48 purports to describe a webpage, the content of which speaks for itself and as to which no response is required. Intuit otherwise denies the allegations in Paragraph 48.

49. Paragraph 49 purports to describe a webpage, the content of which speaks for itself and as to which no response is required. Intuit otherwise denies the allegations in Paragraph 49. Intuit is also without knowledge of what constitutes the “freemium version of TurboTax” and on that basis too denies the allegations in Paragraph 49.

50. Paragraph 50 purports to describe a webpage, the content of which speaks for itself and as to which no response is required. Intuit otherwise denies the allegations in Paragraph 50.

51. Paragraph 51 purports to describe a webpage, the content of which speaks for itself and as to which no response is required. Intuit otherwise denies the allegations in Paragraph 51.

52. Paragraph 52 purports to describe a webpage, the content of which speaks for itself and as to which no response is required. Intuit otherwise denies the allegations in Paragraph 52.

53. Paragraph 53 purports to describe a webpage, the content of which speaks for itself and as to which no response is required. Intuit otherwise denies the allegations in Paragraph 53.

54. Paragraph 54 purports to describe a webpage, the content of which speaks for itself and as to which no response is required. Intuit otherwise denies the allegations in

Paragraph 54. Intuit is without knowledge of what constitutes the “freemium version of TurboTax” and on that basis too denies the allegations in Paragraph 54.

55. Paragraph 55 purports to describe a webpage, the contents of which speak for itself and as to which no response is required. Intuit otherwise denies the allegations in Paragraph 55. Intuit is without knowledge of what constitutes the “freemium version of TurboTax” and on that basis too denies the allegations in Paragraph 55.

56. Intuit is without knowledge of what constitutes the “freemium version of TurboTax” and on that basis denies the allegations in Paragraph 56. Intuit otherwise denies the allegations in Paragraph 56.

57. Paragraph 57 sets forth a legal conclusion as to which no response is required. To the extent a response is required, Intuit denies the allegations in Paragraph 57.

58. Paragraph 58 purports to describe a webpage, the contents of which speak for itself and as to which no response is required. Intuit otherwise denies the allegations in Paragraph 58.

IV. Intuit’s Truly Free Version of TurboTax: The Free File Version

59. Intuit denies the allegations in Paragraph 59.

60. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 60 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit denies the allegations in Paragraph 60.

61. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no

response to Paragraph 61 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit admits that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. Intuit otherwise denies the allegations in Paragraph 61.

62. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 62 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit admits that the software it previously donated to the IRS Free File program included all IRS tax forms, so long as consumers fell within the prescribed adjusted gross income threshold. Intuit otherwise denies the allegations in Paragraph 62.

A. The IRS Free File Program

63. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 63 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit denies the allegations in Paragraph 63.

64. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no

response to Paragraph 65 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit is without knowledge of the allegations in Paragraph 64 and on that basis the allegations are denied.

65. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 65 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit admits the first three sentences of allegations in Paragraph 65. Intuit otherwise denies the allegations in Paragraph 65.

B. The Free File Version of TurboTax

66. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 66 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit denies the allegations in Paragraph 66.

67. Intuit is without knowledge of what constitutes the “freemium version of TurboTax” and on that basis denies the allegations in Paragraph 67. Intuit admits that the IRS Free File program is a competitor of TurboTax commercial software and that Intuit employees acknowledged this fact. Intuit otherwise denies the allegations in Paragraph 67.

68. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 68 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant

... evidence shall be excluded.”). To the extent a response is required, Intuit admits the allegations in Paragraph 68.

69. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 69 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit admits the allegations in Paragraph 69.

70. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 70 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit admits the allegations in Paragraph 70.

71. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 71 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit is without knowledge of what constitutes the “freemium version of TurboTax” and on that basis denies the allegations in Paragraph 71. Intuit otherwise denies the allegations in Paragraph 71.

72. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 72 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit denies the allegations in Paragraph 72.

73. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 73 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit admits the allegations in the first sentence of Paragraph 73. Intuit is without knowledge of what constitutes the “internet landing page for TurboTax Freedom Edition” and on that basis denies the allegations in the second sentence of Paragraph 73.

74. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 74 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit admits the allegations in the first sentence of Paragraph 74. Intuit is without knowledge of what constitutes the “internet landing page for TurboTax Freedom Edition” and on that basis denies the allegations in the second sentence of Paragraph 74.

75. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 75 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit denies the allegations in Paragraph 75.

76. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 76 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b)

(“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit admits the allegations in Paragraph 76.

77. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 77 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit denies the allegations in the first sentence of Paragraph 77. Intuit admits the allegations in the second sentence of Paragraph 77. Intuit is without knowledge of what constitutes the “internet landing page for the IRS Free File Program Delivered by TurboTax,” and on that basis denies the allegations in the third sentence of Paragraph 77.

C. The Tension Between the Free File and “Freemium” Versions of TurboTax

78. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 78 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit denies the allegations in Paragraph 78.

79. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 79 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). To the extent that a response is required, Paragraph 79 purports to describe testimony, the content of which speaks for itself. Intuit otherwise denies the allegations in Paragraph 79.

80. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC's claim, and thus no response to Paragraph 80 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) ("Irrelevant ... evidence shall be excluded."). To the extent a response is required, Intuit denies the allegations in the first sentence of Paragraph 80. The second and third sentences of Paragraph 80 purport to describe publicly filed documents, the contents of which speak for themselves and as to which no response is required. Intuit otherwise denies the allegations in Paragraph 80.

81. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC's claim, and thus no response to Paragraph 81 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) ("Irrelevant ... evidence shall be excluded."). Paragraph 81 purports to describe a publicly filed document, the content of which speaks for itself and as to which no response is required. Intuit otherwise denies the allegations in Paragraph 81.

82. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC's claim, and thus no response to Paragraph 82 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) ("Irrelevant ... evidence shall be excluded."). To the extent a response is required, Intuit denies the allegations in Paragraph 82.

83. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC's claim, and thus no response to Paragraph 83 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b)

(“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit denies the allegations in Paragraph 83.

84. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 84 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b)

(“Irrelevant ... evidence shall be excluded.”). Paragraph 84 purports to describe a document, the content of which speaks for itself and as to which no response is required. Intuit otherwise denies the allegations in Paragraph 84.

D. Consumer Confusion About the Names of the Free File and “Freemium” Versions of TurboTax and Intuit’s Decision to Change the Name of the Free File Version of TurboTax

85. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 85 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b)

(“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit is without knowledge of what constitutes the “freemium version of TurboTax” and on that basis denies the allegations in Paragraph 85.

86. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 86 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b)

(“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit denies the allegations in Paragraph 86.

87. Intuit is without knowledge of what constitutes the “freemium version of TurboTax” and on that basis denies the allegations in Paragraph 87.

88. Intuit is without knowledge of what constitutes the “freemium version of TurboTax” and on that basis denies the allegations in Paragraph 88.

89. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 89 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit admits that from TY 2015 through TY 2017, the name of the software that Intuit donated to the IRS Free File Program was Freedom Edition. Intuit otherwise denies the allegations in Paragraph 89.

90. Paragraph 90 purports to describe a document, the content of which speaks for itself and as to which no response is required. Intuit otherwise denies the allegations in Paragraph 90.

91. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 91 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit denies the allegations in Paragraph 91.

92. Paragraph 92 purports to describe online stories about Intuit, the contents of which speak for themselves and as to which no response is required. Intuit otherwise denies the allegations in Paragraph 92.

93. Allegations regarding the IRS Free File program and the software Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 93 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b)

(“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit denies the allegations in Paragraph 93.

94. Intuit is without knowledge as to what constitutes the “freemium version of TurboTax” and on that basis denies the allegations in Paragraph 94. Paragraph 94 also purports to describe a document, the content of which speaks for itself and as to which no response is required. Intuit otherwise denies the allegations in Paragraph 94.

95. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 95 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit admits that in TY 2018, the name of the software it donated to the IRS Free File Program changed to TurboTax Free File Program. Intuit otherwise denies the allegations in Paragraph 95.

96. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 96 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit admits that in 2019, the name of the software it previously donated to the IRS Free File program was changed to IRS Free File Program Delivered by TurboTax, as required by the IRS. Intuit otherwise denies the allegations in Paragraph 96.

E. For TY 2018, Intuit Hid Its Free File Landing Page from Search Engines for Approximately Five Months During the Peak of Tax Season

97. Intuit is without knowledge of what constitutes the “freemium version of TurboTax” and on that basis denies the allegations in Paragraph 97. Intuit otherwise denies the allegations in Paragraph 97.

98. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 98 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit is without knowledge of what constitutes the “freemium version of TurboTax” and on that basis denies the allegations in Paragraph 98. Intuit otherwise denies the allegations in Paragraph 98.

99. Paragraph 99 purports to describe a document, the content of which speaks for itself and as to which no response is required. Intuit is otherwise without knowledge of what constitutes the “freemium version of TurboTax” and on that basis denies the allegations in Paragraph 99.

100. The first sentence of Paragraph 100 purports to describe a document, the content of which speaks for itself and as to which no response is required. Intuit otherwise denies the allegations in Paragraph 100.

101. Paragraph 101 purports to describe a document, the content of which speaks for itself and as to which no response is required. Intuit otherwise denies the allegations in Paragraph 101.

102. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and on thus no response to Paragraph 102 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit is without knowledge of what constitutes the “freemium version of TurboTax” and on that basis denies the allegations in the first sentence of Paragraph 102. Intuit otherwise denies the allegations in Paragraph 102.

103. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 103 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit admits that [REDACTED]. [REDACTED]. Intuit otherwise denies the allegations in Paragraph 103.

F. Intuit Used Paid Search Terms to Direct Consumers Searching for the IRS Free File Program to the “Freemium” and Paid Versions of TurboTax

104. Intuit admits the allegations in the first sentence of Paragraph 104. Intuit otherwise denies the allegations in Paragraph 104.

105. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 105 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit is without knowledge of the allegations in Paragraph 105 because it does not know what it means for “search terms” to be “relevant to the IRS Free File Program,” and on that basis denies the allegations in Paragraph 105. Intuit otherwise denies the allegations in Paragraph 105.

106. Intuit is without knowledge of the allegations in Paragraph 106 because it does not know what it means for “search terms” to be “relevant to the IRS Free File Program,” nor does it know whether consumers were “searching for information about, or links to reach the website for, the IRS Free File Program,” and on that basis denies the allegations in Paragraph 106.

107. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no

response to Paragraph 107 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit is without knowledge of what constitutes the “freemium version of TurboTax” and on that basis denies the allegations in Paragraph 107. Intuit otherwise denies the allegations in Paragraph 107.

108. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 108 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit is without knowledge of what constitutes the “freemium version of TurboTax” and on that basis denies the allegations in Paragraph 108. Intuit otherwise denies the allegations in Paragraph 108.

109. Intuit denies the allegations in Paragraph 109.

G. Intuit’s TurboTax Website Does Not Mention the Free File Version of TurboTax and Funnels Customers to the Paid and “Freemium” Versions of TurboTax

110. Intuit admits that the TurboTax website includes a “Products and Pricing Screen”, which speaks for itself and as to which no response is required. To the extent a response is required, Intuit denies the allegations in Paragraph 110.

111. Paragraph 111 purports to describe a webpage, the contents of which speak for itself and as to which no response is required. To the extent a response is required, Intuit denies the allegations in Paragraph 111.

112. Paragraph 112 purports to describe a webpage, the contents of which speak for itself and as to which no response is required. Intuit otherwise denies the allegations in Paragraph 112. Intuit is without knowledge of what constitutes the “freemium version of TurboTax” and on that basis too denies the allegations in Paragraph 112.

113. Intuit is without knowledge of what “These screens” refers to, and on that basis denies the allegations in Paragraph 113.

114. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 114 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). Paragraph 114 purports to describe a webpage, the contents of which speak for itself and as to which no response is required. To the extent a response is required, Intuit denies the allegations in Paragraph 114.

H. Summary

115. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 115 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit admits that the product it formerly donated to the IRS Free File program covered all tax situations, forms, and deductions. Intuit otherwise denies the allegations in Paragraph 115.

116. Intuit is without knowledge of what constitutes the “freemium version of TurboTax” and on that basis denies the allegations in Paragraph 116.

117. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 117 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit denies the allegations in the first sentence of Paragraph 117. Intuit admits that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Intuit otherwise denies the allegations in Paragraph 117.

118. Allegations regarding the IRS Free File program and the software that Intuit previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus no response to Paragraph 118 is required. *See* FTC Rules of Practice, 16 C.F.R. § 3.43(b) (“Irrelevant ... evidence shall be excluded.”). To the extent a response is required, Intuit admits that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Intuit is without knowledge of the allegations in the last sentence of Paragraph 118.

Intuit otherwise denies the allegations in Paragraph 118.

**Count I
Deceptive Advertisements**

119. Intuit denies the allegations in Paragraph 119.

120. Intuit denies the allegations in Paragraph 120.

121. Paragraph 121 sets forth a legal conclusion as to which no response is required.

To the extent a response is required, Intuit denies the allegations in Paragraph 121.

Violations of Section 5

122. Paragraph 122 sets forth a legal conclusion as to which no response is required.

To the extent a response is required, Intuit denies the allegations in Paragraph 122.

NOTICE OF CONTEMPLATED RELIEF

Intuit denies that any of the relief set forth in the Complaint's Notice of Contemplated Relief, or the subparts thereto, is justified by fact or law, or in equity.

FURTHER DEFENSES

The inclusion of any defense within this section does not constitute an admission that Intuit bears the burden of proof on each or any of the issues, nor does it excuse complaint counsel for establishing each element of its purported claim for relief.

First Defense

The allegations of the Complaint are moot insofar as Intuit has discontinued the purportedly unfair and deceptive advertising campaigns before the institution of the current proceeding.

Second Defense

The requested injunctive relief is overbroad and impermissibly vague because it exceeds the scope of the allegations in the Complaint, does not provide guidance as to permissible representations regarding free products, and because it generically prohibits misrepresentation of any material facts.

Third Defense

The Complaint is invalid because the Commission did not vote in favor of the final Complaint.

Fourth Defense

The Complaint is barred in whole or part by laches and/or estoppel, based on the Commission's prior investigations of the same conduct alleged in the Complaint and its decisions not to take action.

Fifth Defense

To the extent the complaint seeks to impose liability for conduct that occurred before March 31, 2018, it is barred by the applicable statute of limitations.

Sixth Defense

These administrative proceedings violate Intuit's Fifth Amendment Due Process right to adjudication before a neutral arbiter because of prejudgment on the merits.

Seventh Defense

The FTC administrative proceedings are invalid because the structure of the Commission as an independent agency that wields significant executive power, and the associated constraints on the removal of the Commissioners and other FTC officials, violates the doctrine of separation of powers.

Eighth Defense

The structure of these administrative proceedings, in which the Commission both initiates and finally adjudicates the Complaint against Intuit, violates Intuit's Fifth Amendment Due Process right to adjudication before a neutral arbiter.

Ninth Defense

The Commission's procedures violate Intuit's right to procedural due process under the Due Process Clause of the Fifth Amendment.

Tenth Defense

The Commission's procedures arbitrarily subject Intuit to administrative proceedings rather than to proceedings before an Article III judge in violation of Intuit's right to Equal Protection under the Fifth Amendment.

OTHER DEFENSES

Intuit reserves the right to assert other defenses as discovery and the proceedings continue.

* * *

Wherefore, Intuit respectfully requests that the Commission (i) dismiss the Complaint in its entirety with prejudice, (ii) award its costs of suit, including attorneys' fees, and (iii) award such other and further relief as the Commission may deem proper.

Dated: April 14, 2022

Respectfully submitted,

By: *s/ David Z. Gringer*

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Counsel for Respondent Intuit Inc.

CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2022, I filed the foregoing document electronically using the FTC's E-Filing system, which will send notification of such filing to:

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ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580
OALJ@ftc.gov

I further certify that on April 14, 2022, I caused the foregoing document to be served via email to:

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Dated: April 14, 2022

Respectfully submitted,

/s/ David Z. Gringer
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