

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**      **Lina M. Khan, Chair**  
                                 **Rebecca Kelly Slaughter**  
                                 **Christine S. Wilson**  
                                 **Alvaro M. Bedoya**

**In the Matter of:**

**Intuit Inc.**, a corporation.

**Docket No. 9408**

**RESPONDENT INTUIT’S  
SUPPLEMENTAL FILING CONCERNING ORAL ARGUMENT**

Intuit submits this supplemental filing in response to two questions posed by the Commissioners during oral argument.

*First*, Commissioner Wilson asked whether the three television advertisements shown by Complaint Counsel during the hearing—specifically, the Tax Year 2014 “Boston Tea Party,” Tax Year 2018 “Lawyer,” and Tax Year 2021 “Auctioneer” advertisements—aired on television. The versions submitted by Complaint Counsel through the declaration of Diana Shiller, taken from third-party websites, are shown with a lower video quality than the actual ads that ran. The versions of those three advertisements submitted along with this filing aired on television in Tax Years 2014, 2018, and 2021, respectively. *See* RX 200, 201, 202. Each (including the Boston Tea Party ad) included disclosures that they pertained only to a single product, TurboTax Free Edition (or what it was called at that time), and that there were qualifications to use that product. *See* RX 203, 204, 205. Pursuant to Intuit’s settlement with the attorneys general of all 50 states and the District of Columbia, none of these ads can or will run again.

*Second*, Commissioner Bedoya asked Complaint Counsel what relief would be appropriate if the Commission granted “partial” summary decision based on the Boston Tea Party advertisement that aired in Tax Year 2014 and the two other ads that were shown. Although Intuit was not asked that question, it believes the Commission would benefit from considering Intuit’s response. As an initial matter, the Tax Year 2014 Boston Tea Party advertisement was run before the allegations in the Complaint begin, which involve only ads “since at least 2016.” Compl. ¶¶ 9, 21. For that matter, the advertisement was not even part of the FTC’s three-year-long investigation, which requested only television ads from after June 2016 that used the word free. *See* Gringer Decl. ¶¶ 9-10. It is contrary to the FTC’s rules to grant relief based on a seven-year-old ad that is outside the time period made part of these proceedings. *See* 16 C.F.R. § 3.11(b)(2) (“The Commission’s complaint shall contain ... [a] clear and concise factual statement sufficient to inform each respondent with reasonable definiteness of the type of acts or practices alleged to be in violation of the law[.]”). At the very least, Intuit should be provided the opportunity to offer expert testimony and develop evidence regarding consumer impressions pertaining to that seven-year-old advertisement. The evidence Intuit submitted with regard to all of the other advertisements identified in the summary decision motion “must be considered,” *Thompson Med. Co.*, 1984 FTC LEXIS 6, at \*324-325 (holding that because Thompson offered extrinsic evidence, the Commission was “obliged to consider it”), and necessarily precludes summary decision.

Further, Intuit is still uncertain which advertisements are alleged to be deceptive even during the relevant time period. Complaint Counsel failed to provide a complete response to Intuit’s first Interrogatory, which sought to learn each advertisement Complaint Counsel contend is deceptive. Chief Judge Chappell granted Intuit’s motion to compel this information moments after the hearing concluded, and we await Complaint Counsel’s identification of the ads at issue.

Chief Judge Chappell’s ruling was not the only recent development highlighting the unfairness of not allowing Intuit its day in Court: Despite months of requests that they do so, Complaint Counsel waited until the Friday before oral argument to produce the data underlying the surveys conducted by their putative expert, Nathan Novemsky. It turns out that data shows that a substantial number of consumers understood, apart from any advertisements that Intuit ran, both that TurboTax Free Edition is available only for consumers who qualify and the nature of those qualifications, and therefore could not have been deceived by Intuit’s advertisements. The Commission should consider that evidence (and a complete factual record) before deciding whether Intuit’s advertisements were deceptive.

To the extent that “partial” summary decision remains under consideration—and to be very clear, it should not—the Part 3 rules do not allow for the grant of summary decision on something less than a full claim along the lines of Commissioner Bedoya’s question about Intuit’s television advertisements. If, contrary to the rules, the Commission were to split Complaint Counsel’s single claim and decide now that the Boston Tea Party ad and any other advertisement (or category of advertisement) was deceptive, the appropriate step would not be to enter an order but instead hold a hearing to determine the appropriate scope of relief, if any. *See* 16 C.F.R. § 3.24(a)(2), (5). Intuit updated its television advertisement disclosures significantly since Tax Year 2014 to convey Free Edition’s qualifications more prominently to consumers, including by changing the disclosure’s color and font to make the text easier to read. *See* Intuit’s Statement of Material Facts as to Which There Exists a Genuine Issue for Trial (SOF) ¶ 29. And, as already noted, the settlement with the attorneys general of all 50 states and the District of Columbia prohibits Intuit from publishing any of the prior free television advertisements going forward, rendering any prospective relief inappropriate because there is no “cognizable danger” of those ads recurring. Intuit’s SOF ¶¶ 125-129.

Dated: November 2, 2022

Respectfully submitted,

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**DECLARATION OF DAVID GRINGER IN SUPPORT OF RESPONDENT’S  
SUPPLEMENTAL FILING CONCERNING ORAL ARGUMENT**

I, David Z. Gringer, declare as follows:

1. I am a partner at Wilmer Cutler Pickering Hale and Dorr LLP. I represent the respondent, Intuit Inc., in the above-captioned proceeding.
2. I submit this declaration in support of Respondent Intuit’s Supplemental Filing Concerning Oral Argument, filed herewith on November 2, 2022.
3. A true and correct copy of the “Boston Tea Party” advertisement that aired on television in Tax Year 2014 has been filed along with this declaration as RX 200.
4. A true and correct copy of the “Lawyer” advertisement that aired on television during Tax Year 2018 has been filed along with this declaration as RX 201.
5. A true and correct copy of the “Auctioneer” advertisement that aired on television during Tax Year 2021 has been filed along with this declaration as RX 202.
6. Attached hereto as RX 203 is a true and correct screenshot of the disclosure shown during the Tax Year 2014 “Boston Tea Party” advertisement.

7. Attached hereto as RX 204 is a true and correct screenshot of the disclosure shown during the Tax Year 2018 “Lawyer” advertisement.

8. Attached hereto as RX 205 is a true and correct screenshot of the disclosure shown during the Tax Year 2021 “Auctioneer” advertisement.

9. The June 28, 2019 Civil Investigative Demand issued by the FTC to Intuit requested that Intuit produce and provide information concerning only certain advertisements from after June 24, 2016 that included the term “free.”

10. The May 18, 2020 Civil Investigative Demand issued by the FTC to Intuit requested that Intuit produce and provide information concerning only those television ads from after June 24, 2016 that used the word “free.”

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 2nd day of November, 2022, in New York, NY.

By: /s/ David Z. Gringer  
David Z. Gringer

# **RX 200**

**“Boston Tea Party” advertisement  
that aired on television in  
Tax Year 2014**

**(Electronic Filename: RX 200 - 2015 TY14  
Boston Tea Party 60.mp4)**

# **RX 201**

**“Lawyer” advertisement  
that aired on television during  
Tax Year 2018**

**(Electronic Filename: RX 201 -  
QTTX12273H\_Free\_Lawyer\_HD\_30\_1920x1080.  
mp4)**



# **RX 202**

**“Auctioneer” advertisement  
that aired on television during  
Tax Year 2021**

**(Electronic Filename: RX 202 - 5278628.MP4)**

**RX 203**

intuit  
**TurboTax**  
Federal Free Edition

# AbsoluteZero

\$0 Fed   \$0 State   \$0 To File

Start

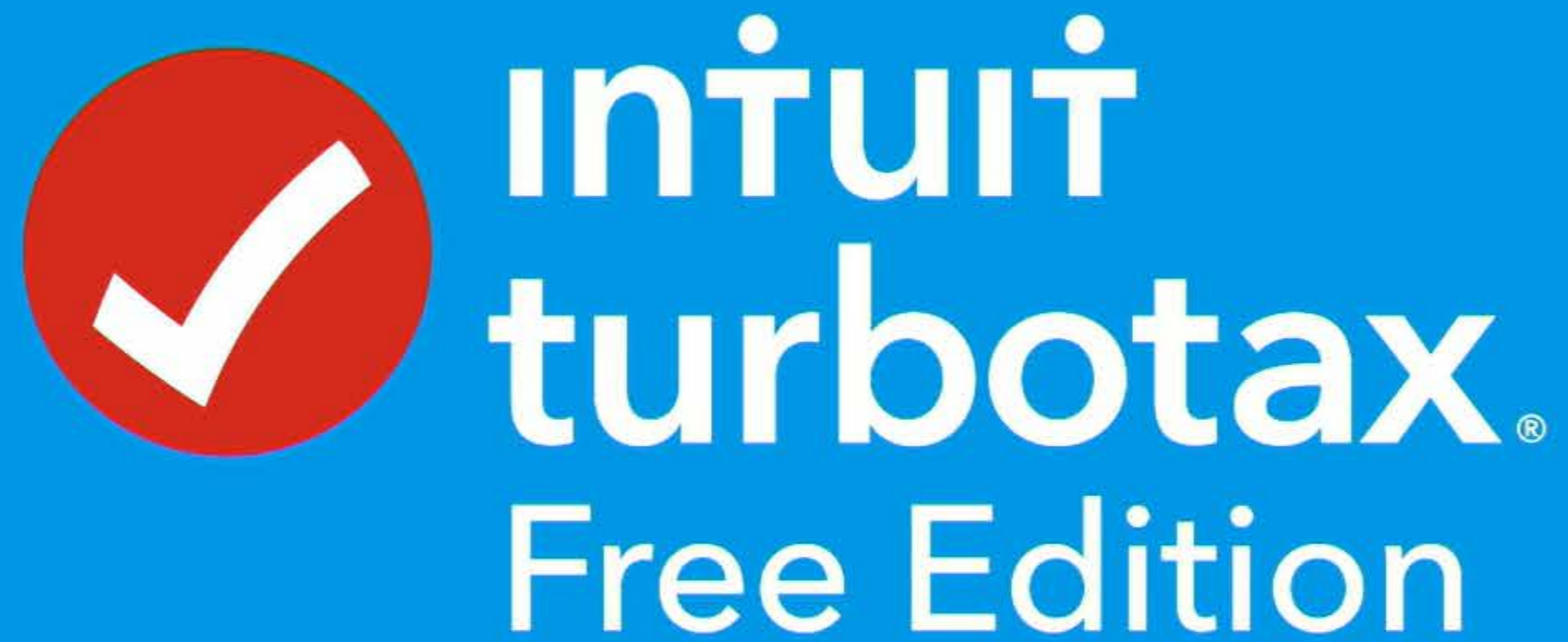
TurboTax Federal Free Edition is for simple U.S. returns only. Offer may end without notice.  
See offer details at [TurboTax.com](https://turbotax.com). Screen image simulated.

**RX 204**



Free Edition product only. For simple U.S. returns. Offer subject to change. See details at [turbotax.com](https://turbotax.com).

**RX 205**



TurboTax Free Edition is for simple U.S. returns only. See if you qualify at [turbotax.com](https://turbotax.com). Offer subject to change.

**CERTIFICATE OF SERVICE**

I hereby certify that on November 2, 2022, I caused the foregoing document to be filed electronically using the FTC's E-Filing system, which will send notification of such filing to:

April Tabor  
Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
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Washington, DC 20580  
ElectronicFilings@ftc.gov

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

I further certify that on November 2, 2022, I caused the foregoing document to be served via email to:

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The Honorable D. Michael Chappell  
Administrative Law Judge  
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Washington, DC 20580

Dated: November 2, 2022

Respectfully submitted,

/s/ Molly Dillaway  
Molly Dillaway  
*Counsel for Intuit Inc.*