



Office of Commissioner
Andrew N. Ferguson

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Concurring Statement of Commissioner Andrew N. Ferguson
In the Matter of H&R Block
Matter Number 2023027

November 8, 2024

Today, the Commission votes to accept for public comment the stipulated Decision and Order in *In re H&R Block Inc., HRB Digital LLC, and HRB Tax Group, Inc* (collectively, “H&R Block”). H&R Block offers tax preparation and filing services to assist consumers in filing their taxes. The complaint accuses H&R Block of engaging in unfair and deceptive business practices relating to its customer-service-contact requirements, data-wiping practices, and marketing practices.¹

The Commission alleges that H&R Block designed its online products to increase the burden on consumers who wanted to downgrade from a more expensive version of its tax-preparation product to a less expensive version.² H&R Block allegedly required consumers to contact its customer service department either by phone or online chat to downgrade their products. H&R Block also allegedly deleted all the information a consumer previously entered if the consumer decided to downgrade to a less expensive product.³ Finally, the complaint alleges that H&R Block misleadingly marketed a free version of its online tax preparation product while knowing that very few consumers were eligible to use the free version.⁴

I concur in the Commission’s order accepting for public comment the stipulated Decision and Order against H&R Block. But I have serious reservations about the merits of Count III—the deceptive marketing of H&R Block’s free version of its online tax preparation products. The U.S. Court of Appeals for the Fifth Circuit is currently reviewing a very similar claim in a different case.⁵ The Fifth Circuit is also considering the constitutionality of dual-layer removal protections for the Commission’s Administrative Law Judges, a question presented in this case that has divided the Commission.⁶ I withhold my final judgment on the lawfulness of the stipulated Decision and Order until I have reviewed public comments and the Fifth Circuit’s decision, if it issues in time.

¹ *In re H&R Block Inc., HRB Digital LLC, and HRB Tax Group*, No. 9427, Complaint at ¶¶ 56-62.

² *Id.* at ¶ 7.

³ *Ibid.*

⁴ *Id.* at ¶¶ 60-61.

⁵ Petition for Review, *Intuit v. FTC*, No. 24-60040 (5th Cir. Jan. 24, 2024), ECF No. 1; Br. for Pet’r at 34–54, *Intuit v. FTC*, No. 24-60040 (5th Cir. Apr. 15, 2024), ECF No. 56.

⁶ See Br. for Pet’r at 27–30, *Intuit v. FTC*, No. 24-60040 (5th Cir. Apr. 15, 2024), ECF No. 56; compare Order Denying Resp’ts’ Mot. To Disqualify the Admin. Law Judge, *In the Matter of H&R Block Inc., et al.*, FTC Docket No. 9427 (Oct. 18, 2024) and Statement of Chair Lina M. Khan, Joined by Comm’r Alvaro Bedoya, Concurring in the Denial of the Motion, *In the Matter of H&R Block, Inc., et al.*, FTC Docket No. 9427 (Oct. 18, 2024), with Statement of Comm’r Andrew N. Ferguson, *In the Matter of H&R Block, Inc., et al.*, Dissenting in Part and Concurring in the Denial of the Motion, FTC Docket No. 9427 (Oct. 18, 2024).