

# Respondent Intuit's Materials For Oral Argument Before The Federal Trade Commission

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*In the Matter of Intuit Inc.*, Docket No. 9408

November 20, 2023

1

## **Preliminary Considerations That Counsel In Favor Of Finding No Deception**

2

## **The Evidence Does Not Show That Reasonable Consumers Were Likely Deceived**

- Complaint Counsel tested only consumer’s general awareness
- The challenged ads are not deceptive
- The website should be considered
- No consumer confusion by point of sale

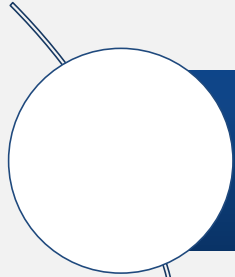
3

## **The Proposed Cease-And-Desist Order Is Unwarranted**

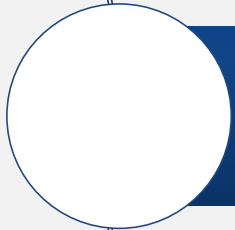
- AG Consent Order ensures no deception going forward
- Proposed order fails to address space-constrained ads
- No basis for extending order beyond TurboTax

# **Preliminary Considerations That Counsel In Favor Of Finding No Deception**

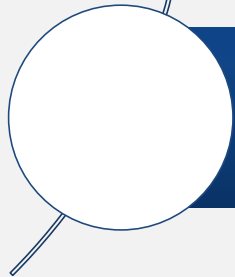
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TurboTax Free Edition is a **truly free, high-quality** product that **benefits consumers.**



The characteristics of the tax-preparation industry and Intuit's business model give Intuit an **incentive not to deceive consumers.**



The FTC's process has **not been fair.**

# TurboTax Free Edition Is An Exceptional, Truly Free Product

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TurboTax Free Edition is a **truly free** product. Consumers cannot pay to use it.

RPF ¶169 (Rubin (Intuit) Tr. 1524, 1528, 1539; Johnson (Intuit) Tr. 573, 614, 617, 622)

Each year, over **10 million consumers** file their taxes **completely for free** using Free Edition.

RPF ¶113 (RX820; RX821)

Between Tax Years 2014 and 2021, **more TurboTax customers filed with Free Edition** than with **any** other TurboTax product.

RPF ¶115 (RX820; RX821)

More than **60 million** taxpayers each year **have simple returns** and qualify to file for free with Free Edition.

RPF ¶1127 (Rubin (Intuit) Tr. 1594-1596; RX814 at -6784).

TurboTax maintains an industry-leading **customer-retention rate** of approximately **80%**.

RPF ¶191 (RX704 at 8; RX59)

Third-parties and reviewers recognize TurboTax as the **“best online tax software.”**

RPF ¶148 (RX505 at 3; RX80 at 2; RX1497 at 2)

Complaint Counsel's case boils down to claiming the challenged advertisements said:

*"TurboTax is free for them"*

CCB.19; Tr. 19

*"TurboTax is free"*

CC Pre-Trial Br. 48; CCB.6, 72

*"TurboTax is free for you"*

Tr. 50

# Motive Matters Under The FTC's Policy Statement

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FTC POLICY STATEMENT ON DECEPTION

## FTC POLICY STATEMENT ON DECEPTION

FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

October 14, 1983

The Honorable John D. Dingell  
Chairman  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, D.C.

Dear Mr. Dingell:

This letter sets forth the FTC's policy on deceptive practices under the public interest standard.

Section 16 of the FTC Act prohibits specific deceptive practices, including "misleading or deceptive acts or practices" defined in Section 16.1 and 16.2 of its authority under the public interest standard.

We have identified a number of general areas in which deceptive practices are most likely to occur and address them in this statement.

Certain elements of deceptive practices, such as omission or partial disclosure, are misleading or deceptive in specific cases include false oral or written representations, misleading price claims, sales of hazardous or systematically defective products or services without adequate disclosures, failure to disclose information regarding pyramid sales, use of bait and switch techniques, failure to perform promised services, and failure to meet

Businesses that “seek to encourage repeat purchases” have “**little incentive ... to misrepresent** (either by an explicit false statement or a deliberate false implied statement)” what they are selling.

“Where, as here, market incentives place strong constraints on the likelihood of deception, the **Commission will examine a practice closely before proceeding.**”

*FTC Policy Statement on Deception,  
103 F.T.C. 174, 181 (Oct. 14, 1983).*

## To Grow And Maintain Market Share

Deception is economically irrational for Intuit due to **characteristics of the tax-preparation industry:**

“[T]he **conditions** in the tax preparation industry are not consistent with conditions for deception and are consistent with conditions where **incentives are for self-discipline and reputation-building.**”

RX1027 (Deal Expert Rep.) ¶127

### Fixed Customer Base

The tax-preparation industry customer base grew by an average of only 1.1% annually over the last ten years.

### Intense Competition

Approximately 20% of taxpayers use a different tax-preparation method than the year before.

### Low Switching Costs

Consumers can freely browse offerings and import and export their tax documents to and from competitors' product websites.

### Consumer Transparency

Consumers readily communicate about and review tax-preparation products. Consumers also understand when they have been deceived.

### Repeat Interactions

Consumers are generally required to prepare and file a tax return each year, and repeatedly interact with tax-preparation providers.



## Frequently asked questions

### How does TurboTax make money?

We want our customers to love our products and services. Because we have customers who pay for our premium products and services, we can offer [simple tax filing](#). We offer additional paid benefits that go beyond filing your simple taxes for free, but they're optional.

When financial situations aren't simple anymore (like owning a home, having a child, or managing investments), we hope our customers will choose to pay to prepare and file their returns with TurboTax.

# Deceiving Customers Destroys The Business

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FEDERAL TRADE COMMISSION OFFICE OF THE SECRETARY FILED 10/13/23 CONSUMER PROTECTION DIVISION Page 10 of 114 \* -PUBLIC

## Rationale For Offering Free Products

“[I]f when Intuit was marketing TurboTax Free Edition, it was creating an expectation among consumers who did not qualify to file for free that they could, in fact, do so,” then **consumers would have been “incredibly disappoint[ed],” and “would leave” TurboTax to find “another way of filing.”**

**Greg Johnson,**  
Intuit Executive

Johnson (Intuit) Tr. 575

**“Repeat customers are the foundation of our business and business model.** [Intuit] count[s] on every year over 80% of our business starting with returning customers from the prior year, and so **repeat business**, the trust that we earn with customers, the **great experience** that they have is the starting point, the foundation for our entire business.”

**Jack Rubin,**  
Intuit Executive

Rubin (Intuit) Tr.  
1525-1526, 1529

“If we were to tell people that they could file for free ... and then have them come and have to pay, they would—they wouldn’t like that .... [I]t would be a **bad product experience, a bad customer experience. We would have very negative reviews, and we wouldn't have the repeat business that we count on.**”

“Having millions of short-term, dissatisfied customers who became victims of a ‘bait and switch’ program ... would **eliminate future revenue streams** from the deceived customers, would **spread negative perceptions** of Intuit, and would **not be economically rational.**”

**Bruce Deal,**  
Economist

RX1027 (Deal Expert  
Rep.) ¶165

Representative  
**Pramila Jayapal**

“I just want to go to **evil actors** because there’s one more I really want to talk about, and that is tax preparation companies. For years, Intuit, the maker of TurboTax, flooded consumers with ads promising ‘free free free’ tax-filing services only to trick and trap them into paying, which is why taxpayers pay \$250 on average each year just for the privilege of filing their taxes. So state attorney generals have won taxpayers money from Intuit and the FTC has also taken action. Can you just speak about that?”

“**Absolutely**, so last year the FTC brought a lawsuit against Intuit for those very types of **deceptive practices** that are laid out in **our complaint**. That is still pending, but **I couldn’t agree more** that claims of something being free but then ultimately it not being so really hurts people.”

FTC Chair  
**Lina Khan**

“[M]any of Intuit’s television ads, on their face, expressly or by strong implication convey that consumers viewing the ads can file their taxes for free with TurboTax.” SD Order at 11.

The Commission’s own designee conceded that the ads do not state that TurboTax is free.



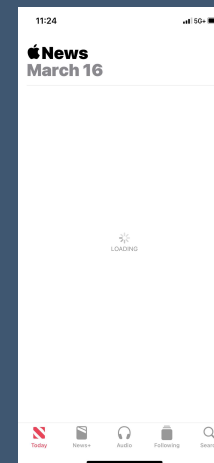
**William T.  
Maxson**

Assistant Director,  
Division of Marketing  
Practices  
FTC’s Bureau of  
Consumer Protection

“I do not recall an advertisement saying TurboTax is free.”

“[M]ost of the ads at issue ... never even mention Free Edition.”  
SD Order 11.

That is absolutely not correct, as established  
by the evidence presented.



Intuit “has not put forward ... evidence regarding common usage of language.” SD Order at 12.

Intuit did present that evidence.

## IRS



**Simple Return:** Form 1040, 1040A, or 1040EZ, without any schedules.

## CA Franchise Tax Board

ReadyReturn is a free direct-to-government filing option that uses wage and withholding data that we already have in our databases to provide a pre-filled state income tax return to taxpayers who file simple returns.

## Government Accountability Office

Note: IRS defines the categories by accompanying schedules or additional forms associated with specific tax credits. Simple returns are without any schedules. Intermediate returns are with schedules A, B, D, and forms associated with the Additional Child Tax Credit, Educational Credit,

### Simple

Simple returns include income from a limited number of sources, such as wages, Social Security, pensions, or investments up to \$1,500.



# Complaint Counsel's Theories Have Been Rebuffed By A Federal Judge

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“They don’t say it is free to everybody, and nobody thinks it is free to everybody.”

RX73 (TRO Hearing Tr.) 17:4 5



**Hon.  
Charles R. Breyer**  
U.S. District Judge  
for the  
Northern District  
of California

“[L]ooking at this one as an example ... It says ‘TurboTax free edition, for simple tax returns only\*’[.] That’s what it is.”

RX73 (TRO Hearing Tr.) 36:18 22

“[T]his ad ... tells me that it is limited to simple tax returns[.]”

RX73 (TRO Hearing Tr.) 37:8 9

“I mean, it is right there; isn’t it? I mean, it is right under the word ‘free, free, free’ or ‘zero, zero, zero,’ it says ‘TurboTax free edition, for simple tax returns only.’”

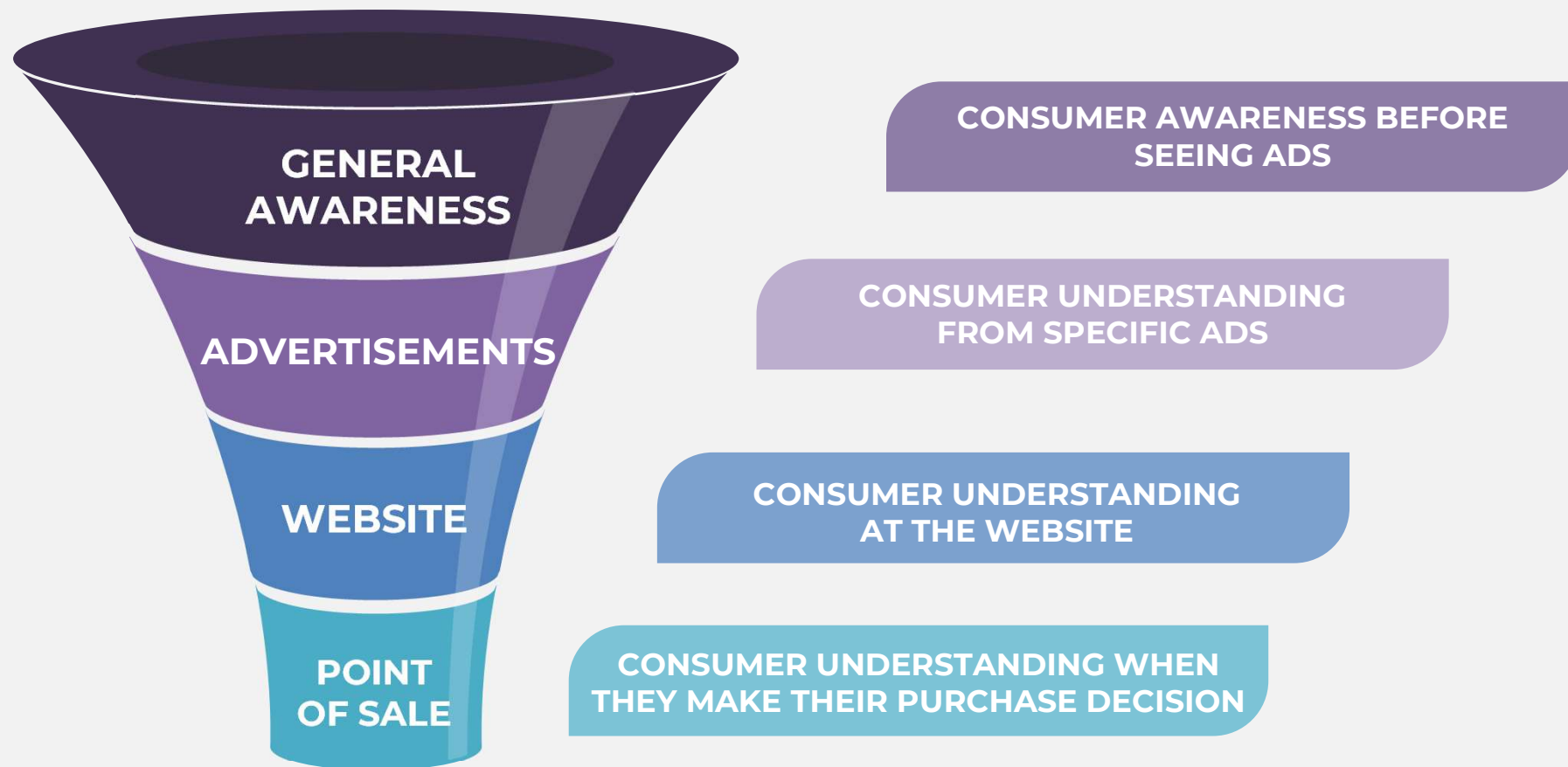
RX73 (TRO Hearing Tr.) 40:3 6

# **The Evidence Does Not Show That Reasonable Consumers Were Likely Deceived**

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## In The Context Of Consumers' Experiences



Complaint Counsel's case boils down to claiming the challenged advertisements said:

*"TurboTax is free for them"*

CCB.19; Tr. 19

*"TurboTax is free"*

CC Pre-Trial Br. 48; CCB.6, 72

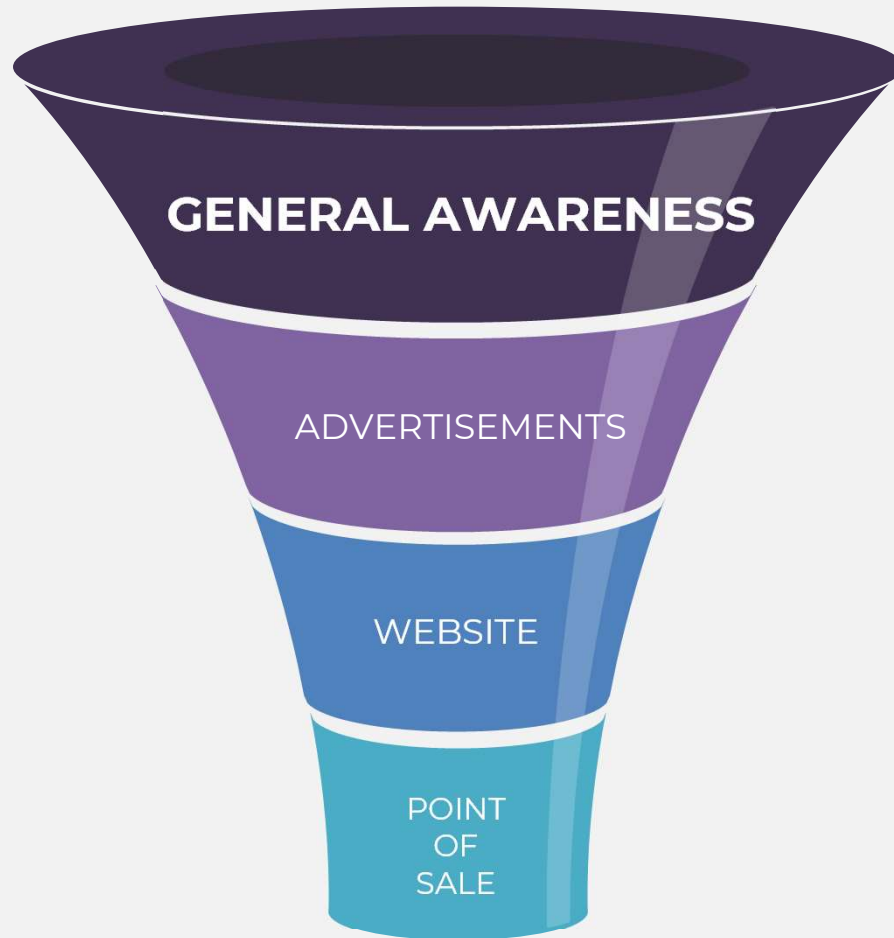
*"TurboTax is free for you"*

Tr. 50

# Complaint Counsel's Flawed Questionnaire Did Not Test Ads

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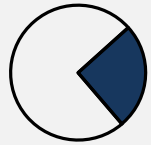
## NOVEMSKY QUESTIONNAIRE

Complaint Counsel's primary evidence of deception only tested consumer's general awareness and perception, without seeing any ads or the TurboTax website.

# The Results From Novemsky's Questionnaire Are A Clear Outlier

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Base: Subset of taxpayers not eligible to file with Free Edition and did not use TurboTax in last three years.



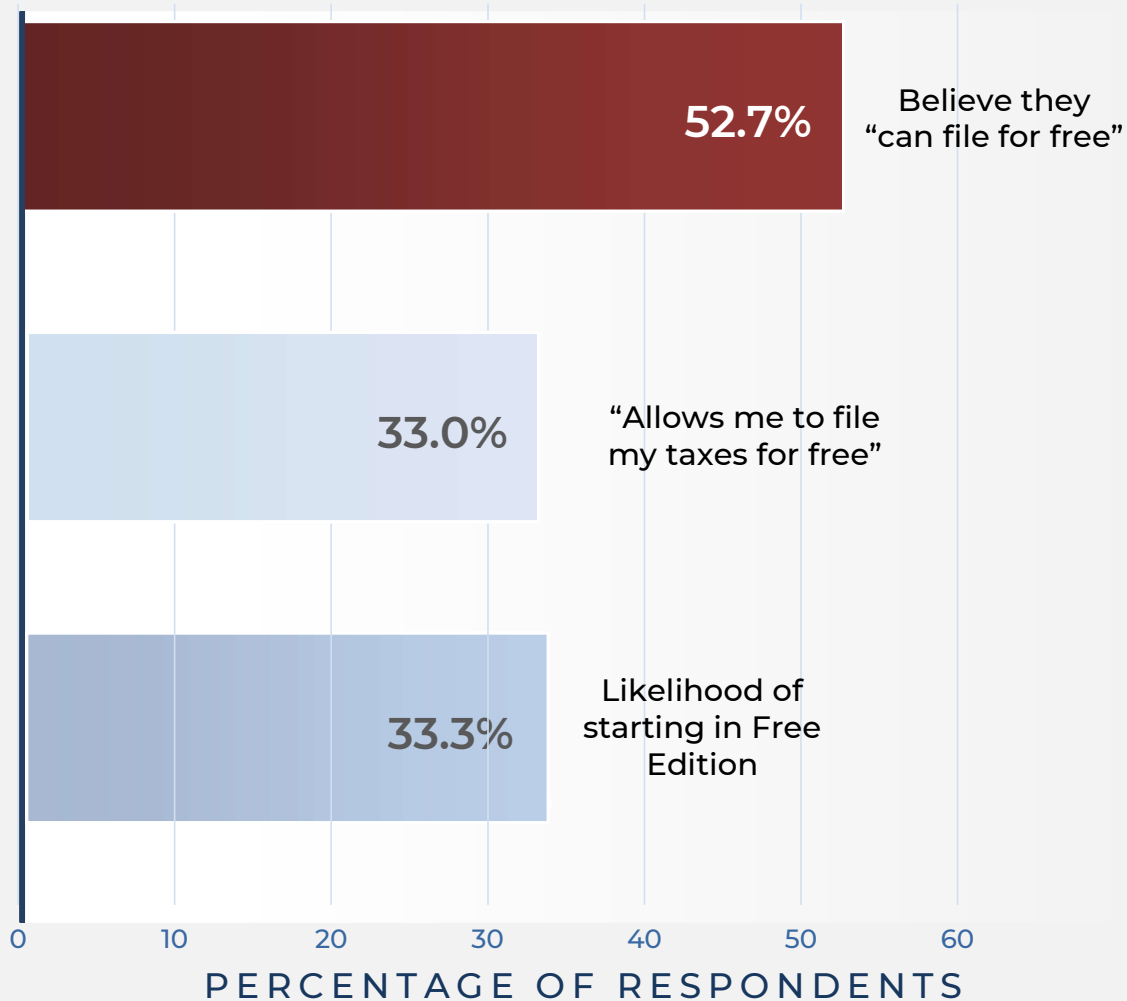
Base: All taxpayers



Novemsky Survey Results (Group A)

TurboTax TY20 Study

Disclosure Efficacy Survey Original Disclosure Group



PERCENTAGE OF RESPONDENTS

“[T]he purpose of ad interpretation is to determine the claims that consumers—particularly the **target audience**—take away from an ad.”

*Telebrands*, 140 F.T.C. 278, 291-292 (2005).

Rather than analyze Intuit's target audience, Novemsky:

- Excluded the 60% of taxpayers who had **already filed**.
- Excluded the targeted consumers—taxpayers **eligible for Free Edition**.
- Over 20% of respondents **opted out** when they learned the questionnaire would be used against Intuit.
- Included respondents aware of **well-publicized, ongoing litigation**.

# Novemsky Reports Responses From Consumers

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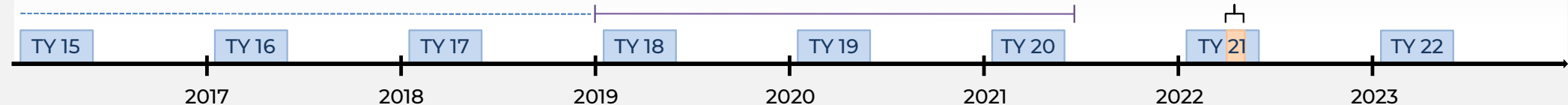
FEDERAL TRADE COMMISSION OFFICE OF THE SECRETARY FILE NO. 13-37 OSCAR, 16-6089-2 PUBLIC Page 22 of 22 \* -PUBLIC

## Who Had Not Used TurboTax For Three Years

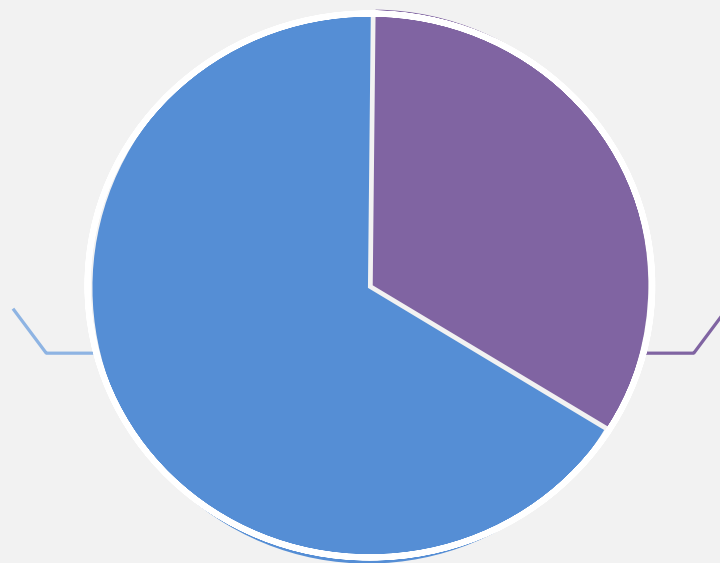
**Group A:** Respondents who have not used a TurboTax product in past 3 years

**Group B:** Used a paid TurboTax product within the past 3 years

**Novemsky Survey**  
(3/11 – 3/24)



**67% (404)**  
Group A  
No TurboTax Use in Past 3 Years

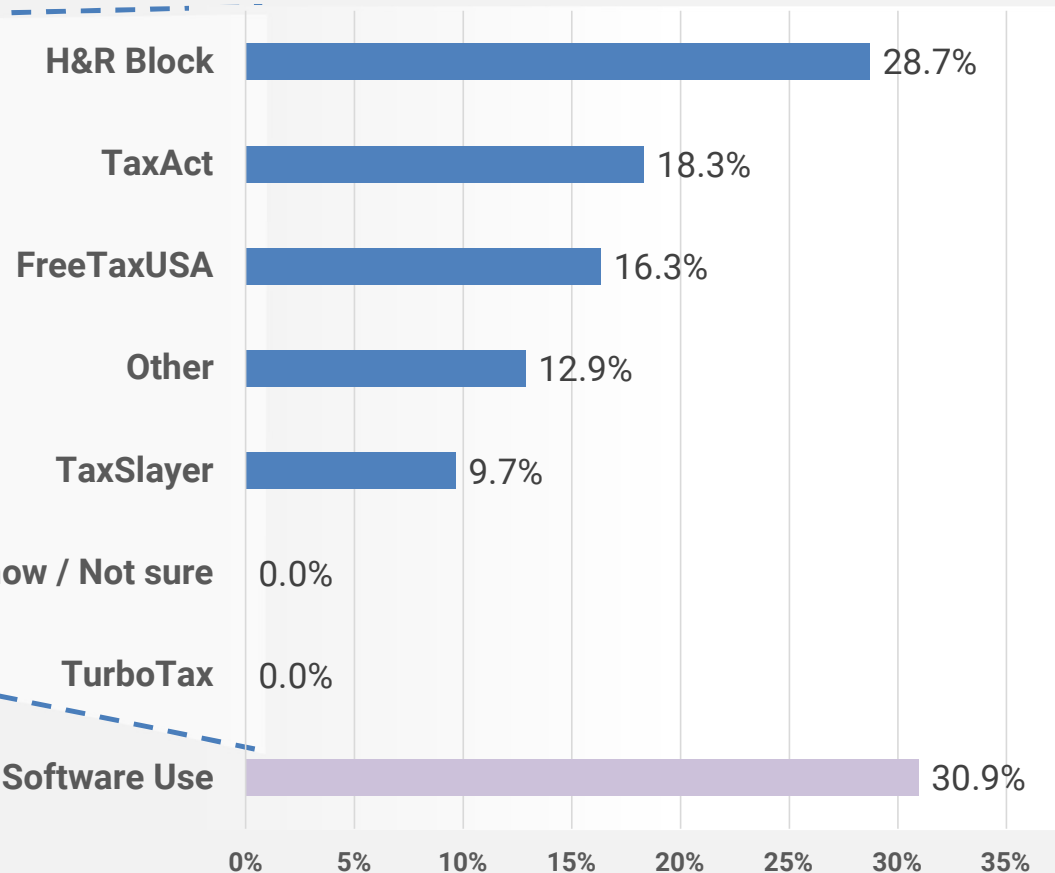
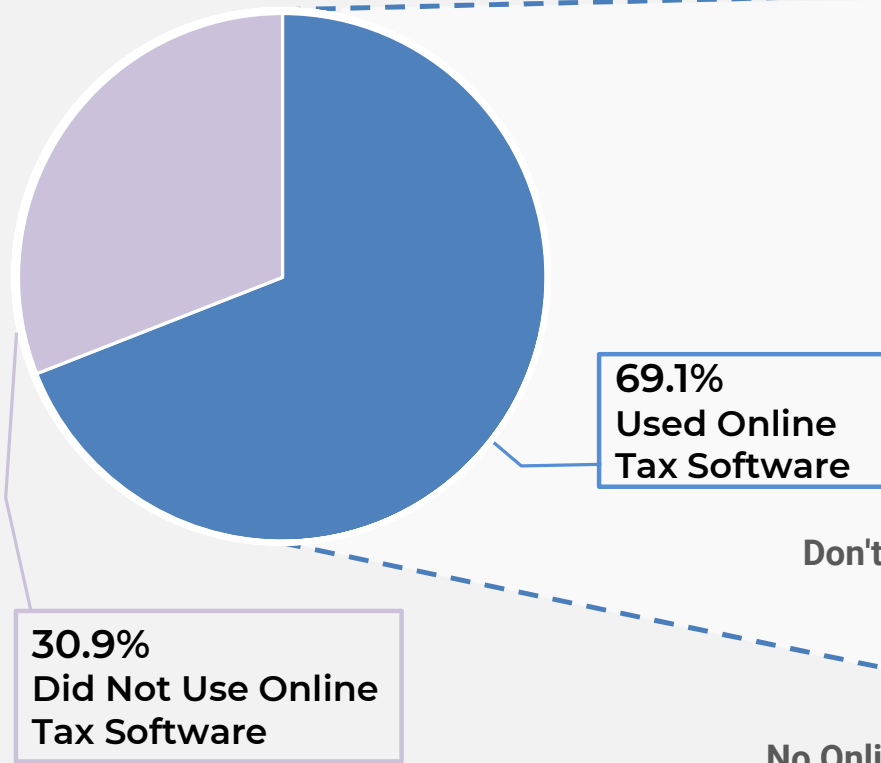


**33% (203)**  
Group B  
Paid TurboTax Use in Past 3 Years

607

## Who Used Competitor Products Or No Online Tax Software

Group A



## That Calls For Speculation

TAT240. You may have already said this above, but please tell us again, which of the following best describes your understanding of filing your 2021 income taxes for free using TurboTax online software?

*Select one only.*

[PROGRAMMER: RANDOMIZE ASCENDING / DESCENDING 1 to 3. KEEP 4 LAST.]

[IF RESPONDENT SELECTS 1, GO TO TAT250]

[IF RESPONDENT SELECTS 2, GO TO TAT260]

[IF RESPONDENT SELECTS 3, GO TO TAT270]

[OTHERWISE GO TO TAT290]

1. I think I can file my 2021 income taxes for free using TurboTax online software
2. I don't think I can file my 2021 income taxes for free using TurboTax online software
3. I do not have enough information to say whether or not I can file my 2021 income taxes for free using TurboTax online software
4. I'm not sure

**"I think"**

**"I don't think"**



# That Leading Question Followed Three Others That

FEDERAL TRADE COMMISSION OFFICE OF PUBLIC AFFAIRS FILED 11/20/23 CAROLINA 11/20/23 WGT Page 1 of 114 \*-PUBLIC

## Suggested The Answer Novemsky Wanted

S140. You indicated that you used TurboTax when filing your income tax returns in the past 3 years.

In the past 3 years, have you ever filed your income tax returns using a TurboTax product that was **free**?

Select one only.

1. Yes, I have
2. No, I have not
3. Don't know / Not sure

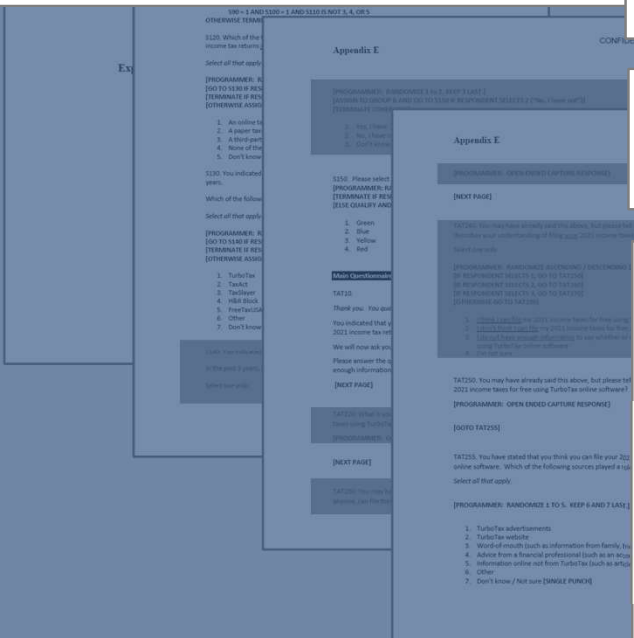
TAT220. What is your understanding about whether or not there is a cost to filing your own income taxes using TurboTax online software?

TAT230. You may have already said this above, but please tell us again, in your understanding, who, if anyone, can file their taxes for **free** using TurboTax online software?

TAT240. You may have already said this above, but please tell us again, which of the following best describes your understanding of filing your 2021 income taxes for **free** using TurboTax online software?

Select one only.

1. I think I can file my 2021 income taxes for **free** using TurboTax online software
2. I don't think I can file my 2021 income taxes for **free** using TurboTax online software
3. I do not have enough information to say whether or not I can file my 2021 income taxes for **free** using TurboTax online software
4. I'm not sure



# The Respondents Told Novemsky The Questionnaire Telegraphed The Answers He Wanted

FEDERAL TRADE COMMISSION OFFICE OF THE SECRETARY FILE # 17-0237 (C) - Line 6 of 22 PAGE 26 of 114 \* -PUBLIC

“It's been said a few times now during survey that you can file for free.”



Respondent ID  
**5708**

“It is evident form [sic] the past questions that it is free.”



Respondent ID  
**1610**

“I think I can file for free because it was mentioned in this survey and I have seen advertising for this product.”



Respondent ID  
**1175**

“Because you keep yelling [sic] me I can.”



Respondent ID  
**5783**

“Becuase [sic] this survey is suggesting that I can file it for free.”



Respondent ID  
**10394**

“Just to be told that I can. I'm assuming since this has been asked 4 times that it must be free.”



Respondent ID  
**1836**

## Provided Inconsistent Answers

### Blind Coders Review Open-ended Data

**TAT220:** What is your understanding about whether or not there is a cost to filing your own income taxes using TurboTax online software?

**TAT230:** You may have already said this above, but please tell us again, in your understanding, who, if anyone, can file their taxes for free using TurboTax online software?

### Blind Coders Categorize Responses

Initial categories given to blind coders =  
Response options in Novemsky TAT240

I think I can file my 2021 income taxes for free with TurboTax

I don't think I can file my 2021 income taxes for free with TurboTax

I do not have enough information

I'm not sure

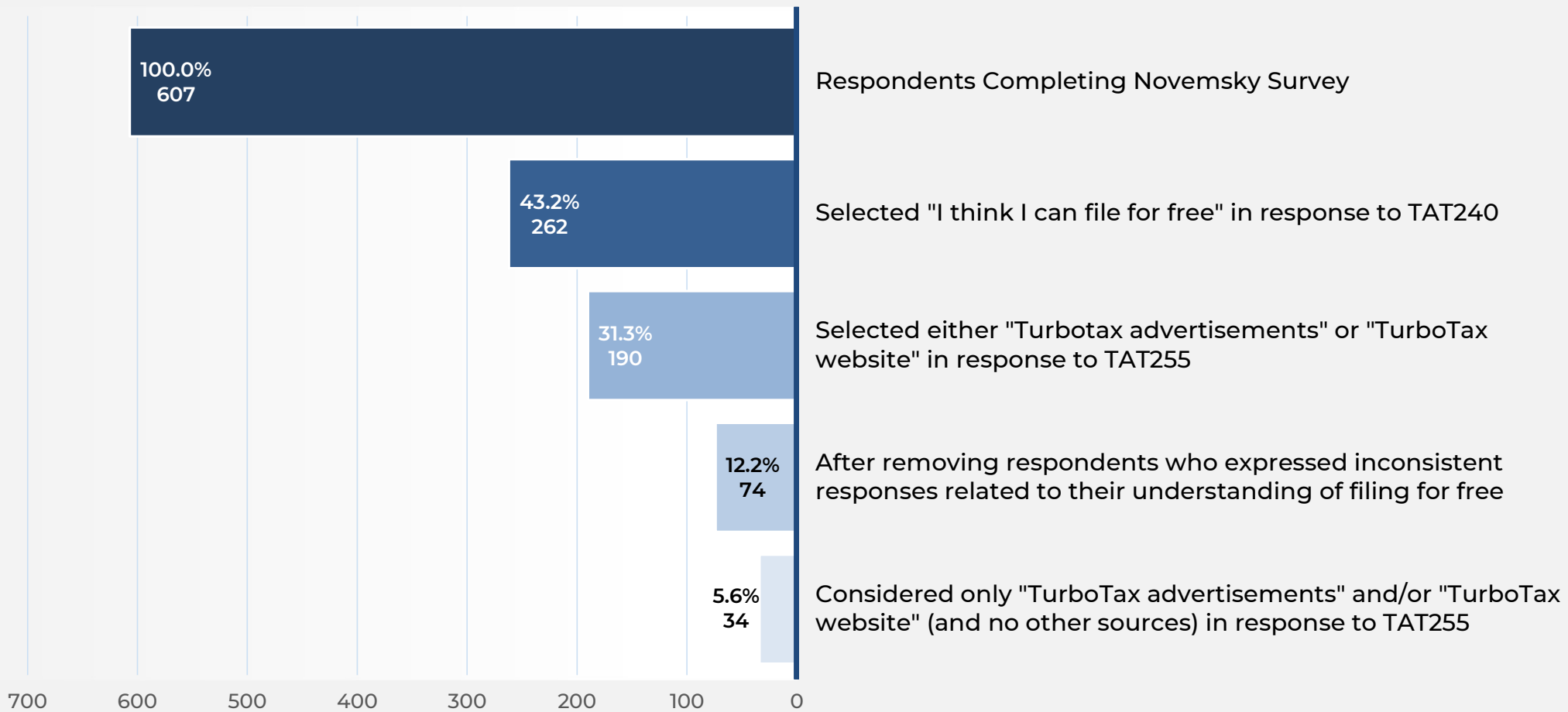
Respondent contradicted themselves across open-ended responses\*

Respondent provided non-responsive open-ended responses\*

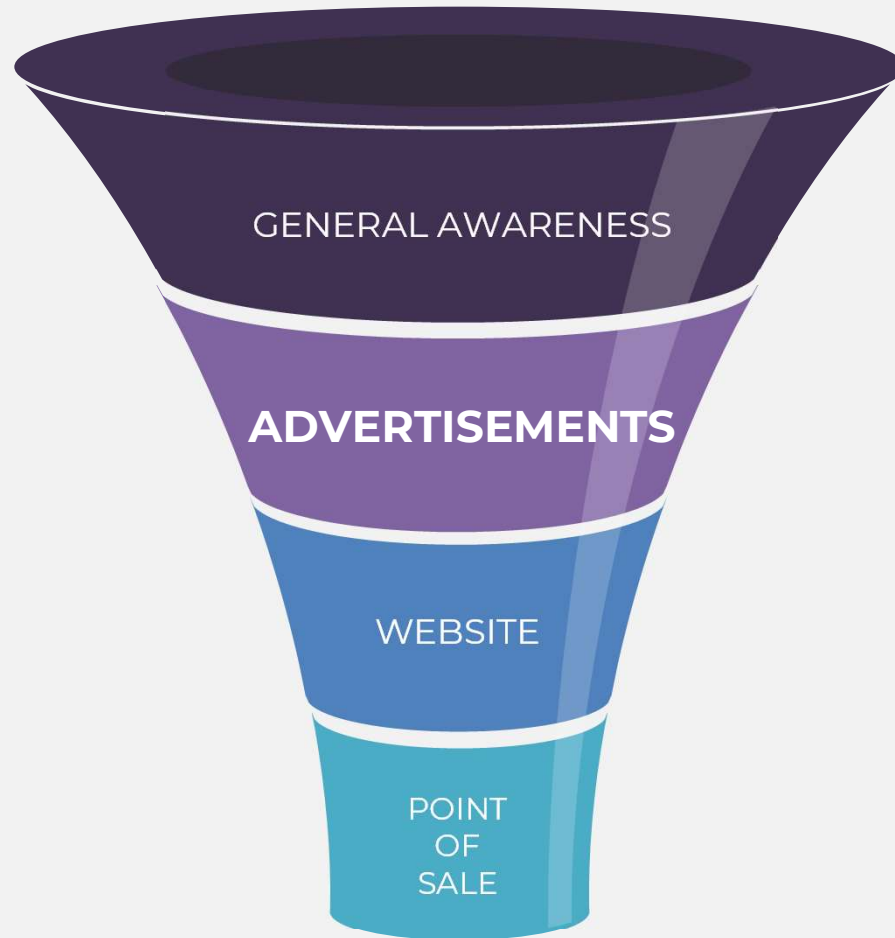
Blind coder open-ended categorizations are then compared to respondents' closed-ended answers used by Novemsky

# Putting Aside Numerous Flaws, The Questionnaire Still Does Not Indicate A Significant Minority of Reasonable Consumers Was Deceived

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## They Were Not Deceptive



### EVIDENCE CONFIRMS THE ADS WERE NOT DECEPTIVE

- TurboTax ads.
- Copy testing and market research.
- Reliable survey evidence.

Complaint Counsel quote snippets from ads, which is not evidence of what consumers actually saw or experienced:

“[T]he Commission looks to the impression made by advertisements as a whole.”  
*American Home Products v. FTC*, 695 F.2d 681, 688 (3d Cir. 1982).

The FTC “must consider the advertisement in its entirety and not ... engage in disputatious dissection.” *S.C. Johnson v. Clorox*, 241 F.3d 232, 238 (2d Cir. 2001).

The FTC must consider “the juxtaposition of various phrases” in “the entire document” of an ad. *FTC Policy Statement on Deception*, 103 F.T.C. 174, 176 (1983).

What an ad conveys can be determined only “after examining the interaction of all of the constituent elements.” *Telebrands Corp.*, 140 F.T.C. 278, 429 (2005).

free. For example, in 2015, Intuit told the television Super Bowl audience: “[Y]ou can file on TurboTax for absolutely nothing.” [RX-200](#); CCFF-66 – CCFF-67. Intuit repeated this messaging in its 2016 Super Bowl ad featuring Sir Anthony Hopkins claiming, “I would never tarnish my name by selling you something. Now, if I were to tell you to go to turbotax.com, it’s because TurboTax Absolute Zero lets you file your taxes for free.” [GX-323](#); CCFF-70 – CCFF-71. In 2018, Intuit told consumers: “At least your taxes are free.” E.g., [RX-1006](#); CCFF-74 – CCFF-75; CCFF-80. In 2019, Intuit’s message to consumers was: “Free free, free. Free. Free! ... That’s right, TurboTax Free is free. Free, free free free.” [RX-1116](#); CCFF-118 – CCFF-119; CCFF-123. In 2020, Intuit told

CCAB.13


Complaint Counsel **disregard** the qualifications that accompanied those quotes.

# The Challenged Display Ads Were Not Deceptive

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u/TurboTaxOfficial • Promoted ...

**\$0 Fed. \$0 State. \$0 to File. TurboTax is FREE for simple tax returns only.**



The advertisement features the Intuit TurboTax logo in the top left corner, with the text "Free Edition" below it. The central image shows a person's hands holding a smartphone. The phone's screen displays the TurboTax app interface, which includes a green checkmark icon and the text "Great refund! \$2,766". The person is wearing blue denim jeans with a tear at the knee.

turbotax.intuit.com Download

↑ Vote ↓      💬 0      ↑ Share      📁 +



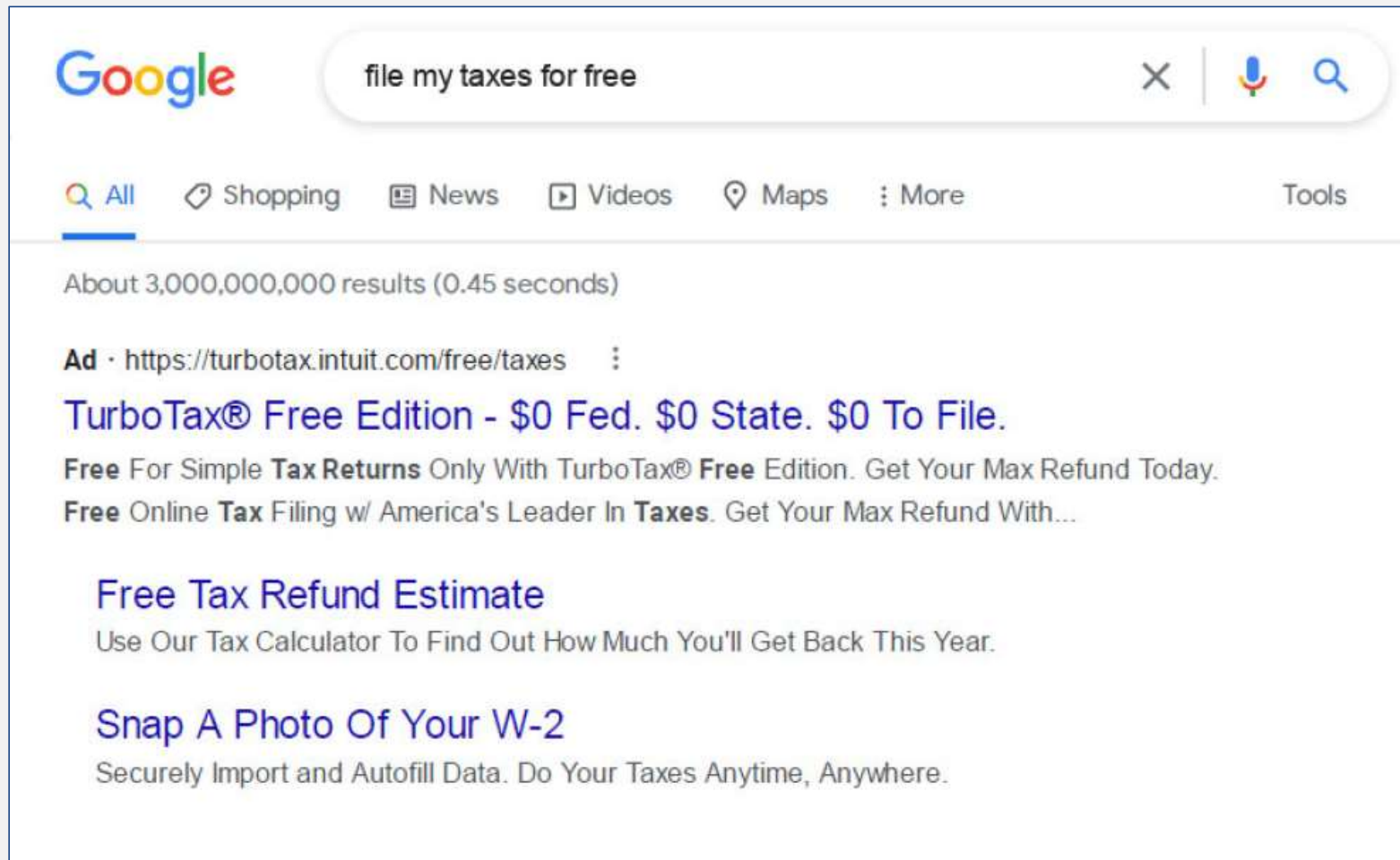
# The Challenged Video Ads Were Not Deceptive

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intuit  
turbotax®  
Free Edition

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



The screenshot shows a Google search interface. At the top left is the Google logo. The search bar contains the text "file my taxes for free" and includes a clear button (X), a microphone icon, and a search icon. Below the search bar are navigation links for "All", "Shopping", "News", "Videos", "Maps", "More", and "Tools". The search results indicate "About 3,000,000,000 results (0.45 seconds)". The first result is an advertisement for TurboTax, with the headline "TurboTax® Free Edition - \$0 Fed. \$0 State. \$0 To File." and subtext "Free For Simple Tax Returns Only With TurboTax® Free Edition. Get Your Max Refund Today. Free Online Tax Filing w/ America's Leader In Taxes. Get Your Max Refund With...". Below the ad are two additional links: "Free Tax Refund Estimate" and "Snap A Photo Of Your W-2", each with a brief description of the service.

Google

file my taxes for free

All Shopping News Videos Maps More Tools

About 3,000,000,000 results (0.45 seconds)

Ad · <https://turbotax.intuit.com/free/taxes>

**TurboTax® Free Edition - \$0 Fed. \$0 State. \$0 To File.**


**Free** For Simple **Tax Returns** Only With TurboTax® **Free** Edition. Get Your Max Refund Today.  
**Free** Online **Tax** Filing w/ America's Leader In **Taxes**. Get Your Max Refund With...

**Free Tax Refund Estimate**  
Use Our Tax Calculator To Find Out How Much You'll Get Back This Year.

**Snap A Photo Of Your W-2**  
Securely Import and Autofill Data. Do Your Taxes Anytime, Anywhere.

# The Challenged Email Ads Were Not Deceptive

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 Gmail Rohit Bansal [REDACTED]


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**File your taxes for \$0 with TurboTax Free Edition**  
1 message

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**Chase** <Chase@e.chase.com> Wed, Apr 11, 2018 at 10:30 AM  
 Reply-To: "Chase@e.chase.com" <Chase-HP2v400000162b5c2445c98fd1c6e9666b528214@e.chase.com>  
 To: [REDACTED]


Pay \$0 to file your simple federal taxes with TurboTax.  
[View in browser](#) | [Email Security Information](#)

**SAVING FEELS GOOD**  
 REACHING YOUR GOALS FEELS EVEN BETTER  
 #SavingIt  


**File by the April 17th tax deadline and save**

**FILE YOUR SIMPLE  
FED RETURN FOR \$0**

TurboTax Free Edition, 1040EZ/1040A



**File Now**

**PREPARE AND FILE YOUR TAXES**  
with TurboTax®, the #1 Best-Selling Brand.

**PAY \$0 TO PREPARE AND FILE YOUR SIMPLE FEDERAL TAXES**  
with TurboTax Free Edition (1040EZ/1040A returns).

**REACH YOUR SAVINGS GOALS FASTER AND EASIER**  
when you e-file and direct deposit your refund.

## IMPORTANT INFORMATION

TurboTax Free Edition: \$0 federal (forms 1040EZ/1040A) offer only available with TurboTax Free Edition; State filing charges apply. TurboTax online and mobile pricing is based on your tax situation and varies by product. Actual prices are determined at the time of print or e-file and are subject to change without notice.

#1 Best-Selling Brand: Based on aggregated sales data for all tax year 2016 TurboTax products.

Fastest tax refund with e-file and direct deposit; tax refund times will vary.

Visit <https://turbotax.intuit.com/lp/yoy/guarantees.jsp> for TurboTax product guarantees and other important information. Intuit, TurboTax and TurboTax Online, among others, are registered trademarks and/or service marks of Intuit Inc. in the United States and other countries.

“That’s right, TurboTax Free is free. Free, free, free, free. Free Edition product only for simple U.S. returns. Offer subject to change. See details at [TurboTax.com](https://turbotax.com).”



## Consumers Understand That Free Offers Are Qualified

### Complaint Counsel Rely On The FTC's "Free Guides"

Complaint Counsel have argued that this case would **"vindicate"** the Free Guides.

CCB.68

### The FTC's Guidance Supports Finding No Deception

The Free Guides recognize that the **"public understands"** that free offers are usually coupled with the requirement to purchase paid products at full price.

16 C.F.R. §251.1(b)(1)

### The ALJ's Flawed Response

The ALJ **did not address** this guidance.

ID.227

## Even Without Disclosures



Reasonable consumers regularly encounter “free product offers across a whole range of product categories” that “most commonly come with terms and conditions.”

Golder (Intuit) Tr. 1092, 1094

They expect free offers to be accompanied by certain limitations, even “without ... the existence of a disclosure,” and “even without reading all the words.”

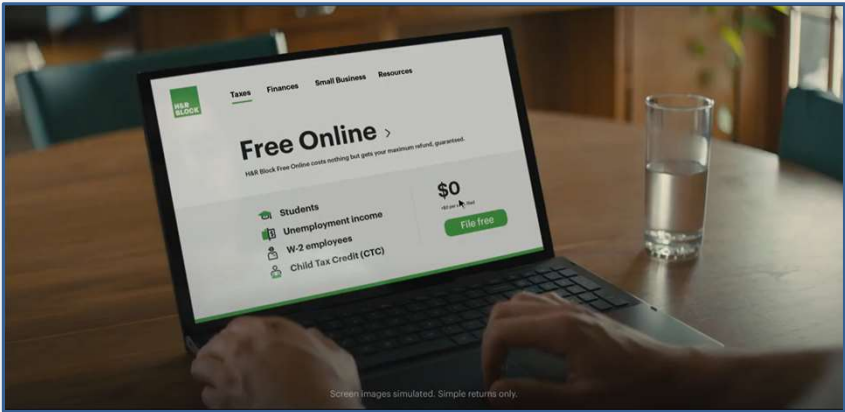
Golder (Intuit) Tr. 1104, 1112



# Reasonable Consumers Understand That Free Tax-Prep Offers Are Qualified <sup>PUBLIC</sup>

FEDERAL TRADE COMMISSION | OFFICE OF THE SECRETARY | FILED 11/13/23 OSCAR NO 608912 | PAGE Page 39 of 114 \* -PUBLIC

Reasonable consumers are familiar with free online tax-preparation offers available only to taxpayers with simple returns. (Golder (Intuit) Tr. 1091, 1095-1096.)



H&R Block Website, TY 2021

Free Online	Deluxe	Premium	Self-Employed
<ul style="list-style-type: none"> <li>Simple returns</li> <li>Students</li> <li>Unemployment income</li> <li>W-2 employees</li> <li>Child Tax Credit (CTC)</li> </ul>	<ul style="list-style-type: none"> <li>HSA contributors</li> <li>Child and dependent care expenses</li> <li>Itemize deductions</li> </ul>	<ul style="list-style-type: none"> <li>Rental income</li> <li>Investments</li> <li>Sold cryptocurrency</li> </ul>	<ul style="list-style-type: none"> <li>Contractors, gig workers, and other self-employed work</li> <li>Asset depreciation</li> <li>Vehicle and home office expenses</li> </ul>
<b>\$0</b> <small>+ \$0 per state filed</small>	<b>\$54.99</b> <small>+ \$44.99 per state filed</small>	<b>\$74.99</b> <small>+ \$44.99 per state filed</small>	<b>\$114.99</b> <small>+ \$44.99 per state filed</small>
<b>File for free</b>	Start for free	Start for free	Start for free

## TaxSlayer

Simply Free

### File Fearlessly

File for free at TaxSlayer.com

Simply Free (includes federal and one state return for \$0) is not available for all tax situations. Eligibility is limited to qualifying simple tax situations and is determined at the time of e-file. See site for full details.

TaxSlayer Website, TY 2022

Simply Free	Classic <small>Best Value</small>	Premium	Self-Employed
Simple tax situations (basic 1040). Includes one free federal and one state return.	All forms, deductions and credits. The best value for any tax situation.	Ask a Tax Pro and live chat, plus skip-the-line phone & email support.	Personal and business income and expenses, 1099, and Schedule C.
<b>\$0</b> <small>✓ State included</small>	<b>\$29.95</b> <small>+ State additional</small>	<b>\$49.95</b> <small>+ State additional</small>	<b>\$59.95</b> <small>+ State additional</small>
<b>FILE FOR FREE</b>	<b>START FOR FREE</b>	<b>START FOR FREE</b>	<b>START FOR FREE</b>
<ul style="list-style-type: none"> <li>Prepare, print, and e-file</li> <li>Includes W-2 income</li> <li>Student loan interest and education expenses</li> <li>Free phone and email support</li> </ul>	<p>Everything in <i>Simply Free</i> plus all the forms:</p> <ul style="list-style-type: none"> <li>Includes all credits like Earned Income Tax Credit and Child Tax Credit</li> <li>Includes all deductions and adjustments to income</li> </ul>	<p>Everything in <i>Classic</i> plus extra support:</p> <ul style="list-style-type: none"> <li>Skip the line with priority phone and email support</li> <li>IRS Audit Assistance for 3 full years</li> <li>Ask a tax pro your most difficult questions</li> </ul>	<p>Everything in <i>Premium</i> plus self-employed help:</p> <ul style="list-style-type: none"> <li>Access to a tax pro with self-employed expertise</li> <li>Guidance with 1099 income</li> <li>Maximize work expense deductions on your Schedule C</li> </ul>

"[T]here's already a **great deal of skepticism about free products** or offerings that [Intuit has] to overcome."

**Jack Rubin**  
Intuit Executive

RPF ¶486 (Rubin  
(Intuit) Tr. 1524)

"[O]ne of the key pieces to this is because consumers are **exposed to all these free offers with terms and conditions** ... they will naturally be skeptical of a free offer."

**Peter Golder**  
Expert

RPF ¶487 (Golder  
(Intuit) Tr. 1095-1097)

"[C]onsumers would not necessarily think that a free offer is free to everyone. They wouldn't necessarily think that it's free for them ... there will be some terms and conditions."

"[C]onsumer skepticism is ... really important and another manifestation really of that **lifetime of experience** that consumers bring to them when they view a free product ad in this context, but in any context."

The "skepticism associated with ... the word 'free'" prevents consumers from "believing that you could get it for free."

**Greg Johnson**  
Intuit Executive

Johnson (Intuit) Tr. 574



## A Large Portion of TurboTax Customers Demonstrated Skepticism Around Free Product Offers

Intuit research in TY 2018 showed that only **22 percent of respondents** were confident that TurboTax Free Edition was actually free.

Even though it is a free product.

Source: Intuit Brand Sentiment Metrics Mid-Season TY 18

<b>Confident TT Free is free</b>	Mid	<b>22%</b>
<i>(Top 2 Box)</i>	Pre	21%

Other Intuit research has also found this skepticism among consumers:

*“How good can it be?”*

*“What’s in it for them?”*

*“Will they upsell me?”*

*“I find it hard to believe that it is in fact free”*

*“It is NEVER truly free. There is always some fee”*

Professor Golder considered TurboTax advertising as a whole, as the law requires, and showed that the challenged ads effectively communicated qualifications, including:

- 1) The specific TurboTax **product** being advertised;
- 2) That eligibility was based on the **complexity** of one's tax return;
- 3) Exactly where consumers could find additional eligibility information—**TurboTax.com**.



Professor Golder analyzed each component of the disclosures in TurboTax ads and showed that they effectively prevented consumer confusion:

By identifying the specific TurboTax **product**:

The ads informed consumers that the offer does not apply to all TurboTax products, rather only the specific product being advertised.

RPF ¶1317; Golder (Intuit) Tr. 1118-1120

By stating that the product was for **“simple tax returns only”**:

The ads informed consumers that the specific TurboTax product is not free for everyone, and that eligibility is contingent on the complexity of a consumer’s tax return.

RPF ¶1322; Golder (Intuit) Tr. 1113-1115, 1118-1120

By instructing consumers to **“see if you qualify”** or **“see details at TurboTax.com”**:

The ads informed consumers that not every taxpayer qualifies for the TurboTax product, and that consumers can find more information about qualifications on the TurboTax website.

RPF ¶1323; Golder (Intuit) Tr. 1123-1124

Professor Golder showed that TurboTax ads effectively disclosed the qualifications for free TurboTax offers in the form, location, and with the amount of detail reasonable consumers expect and comprehend.

“[C]onsumers from their own experience are entirely used to seeing disclosures in a TV ad typically towards the **bottom** of the screen.”

Golder (Intuit) Tr. 1112

“[W]ith the **TV** ads, consumers are more likely to process a **shorter** disclosure. On the **website**, they are more likely to process a **longer** disclosure, and they can control that information.”

Golder (Intuit) Tr. 1115-1116

“They may process the idea of **simple** without reading all the words in a disclosure.”

Golder (Intuit) Tr. 1112

“[C]onsumers understand how to process disclosures like this because they see them **in the context** of their lives as consumers.”

Golder (Intuit) Tr. 1155

# Expert Analysis Established That The Disclosures

FEDERAL TRADE COMMISSION DISCLOSURE BENCHMARKING ANALYSIS FILED IN 772003 CARING 00851111014 \* -PUBLIC

## Were Consistent With Advertising Standards

Professor Golder’s disclosure-benchmarking analysis showed that the disclosures in Intuit’s ads were comparable or superior to benchmark disclosures on every metric based on FTC guidelines:

	PROXIMITY AND PLACEMENT		PROMINENCE		DISTRACTING FACTORS	REPETITION		DURATION
	Disclosure Placement	Disclosure on the screen the same time the claim is made?	Average Disclosure Height (as a % of total screen height)	Color of Disclosure Text / Color of Background	Total Time Disclosure is on a Solid Screen in Seconds (as a % of total time disclosure is on the screen)	Is there a voiceover of complete disclosure text?	Is the disclosure on the company website?	Total Time Disclosure is on the Screen in Seconds (as a % of total time of ad)
<b>TurboTax Free Ads Comparable or Superior to Benchmark Companies?</b>	✓	✓	✓	✓	✓	✓	✓	✓

## Are Based on FTC Guidelines



RX96

**FTC's .com Disclosure Guidelines**

What Are Clear and Conspicuous Disclosures? ..... 7

Proximity and Placement ..... 8

Prominence ..... 17

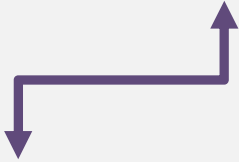
Distracting Factors in Ads ..... 19

Repetition ..... 19

Multimedia Messages and Campaigns ..... 20

Understandable Language ..... 21

**Golder's TV Ad Disclosure Benchmarking Metrics**



PROXIMITY AND PLACEMENT		PROMINENCE		DISTRACTING FACTORS	REPETITION		DURATION
Disclosure Placement	Disclosure on the screen the same time the claim is made?	Average Disclosure Height (as a % of total screen height)	Color of Disclosure Text / Color of Background	Total Time Disclosure is on a Solid Screen in Seconds (as a % of total time disclosure is on the screen)	Is there a voiceover of complete disclosure text?	Is the disclosure on the company website?	Total Time Disclosure is on the Screen in Seconds (as a % of total time of ad)

The survey asked for the brand advertised.  
 It is unremarkable that more than 60% of consumers gave the correct answer: TurboTax.

Most viewers can recall TurboTax, but only a handful mention the specific product name

Unaided Branding

%	Compensating
65	Turbotax
7	Turbotax live
3	H&r block
2	Intuit
1	Turbo tax intuit

%	Spelling Bee
72	Turbotax
4	Turbotax free
3	Hr block
1	Intuit turbo tax
	250 x All

%	Keynote
62	Turbotax
5	Turbotaxlive
2	Turbo
2	Intuit
1	Intuit turbotax

Which brand do you think this ad was for?

Which brand do you think this ad was for?








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Confidential Treatment Requested by Intuit Inc.

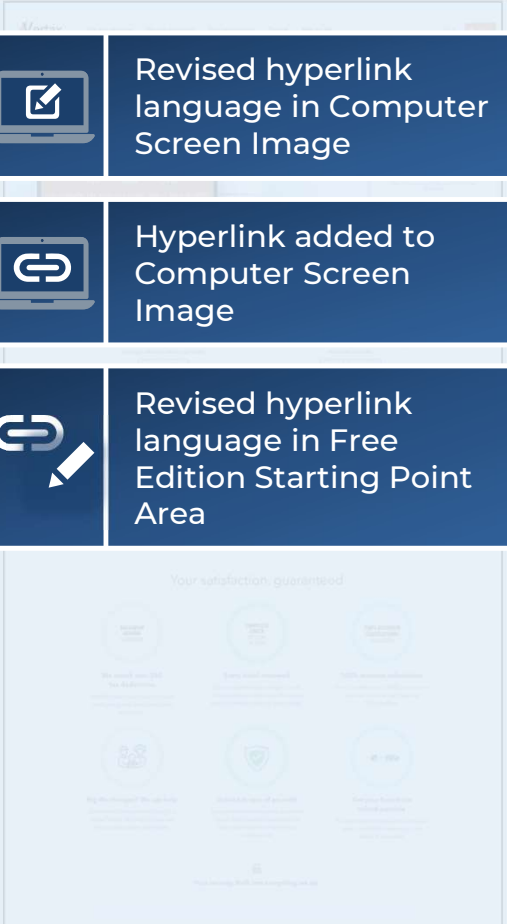
INTUIT-FFA-FTC-000169659  
 CC-00006856

## Revised Vertax "Free" Video Advertisement




-  Modified "free" content in advertisement
-  Modified written disclosure
-  Increased disclosure prominence
-  Extended duration for written disclosure
-  Modified verbal disclosure

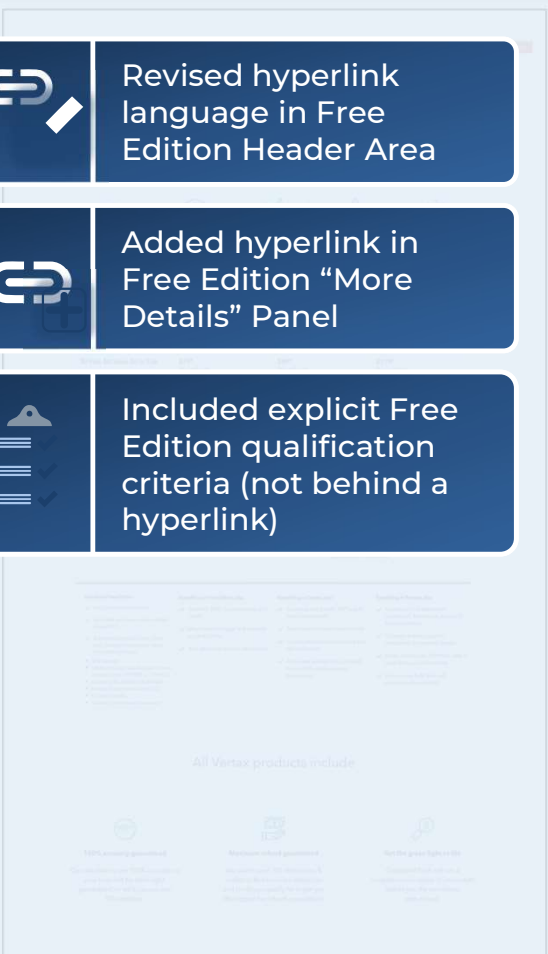
## Revised Vertax Homepage/Free Edition Page

-  Revised hyperlink language in Computer Screen Image
-  Hyperlink added to Computer Screen Image
-  Revised hyperlink language in Free Edition Starting Point Area



## Revised Vertax Products & Pricing Page

-  Revised hyperlink language in Free Edition Header Area
-  Added hyperlink in Free Edition "More Details" Panel
-  Included explicit Free Edition qualification criteria (not behind a hyperlink)





# Hauser's Survey Results Showed Consumers Were Not Deceived

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PUBLIC

## ORIGINAL DISCLOSURES

## REVISED DISCLOSURES

Consider Using  
Vertax

77.7%

75.9%

Most Likely to Start  
in Free Edition

43.6%

48.8%

Likelihood of Starting  
in Free Edition

33.4%

36.8%

“The results are ... not consistent with complaint counsel’s hypotheses. There is no statistical difference between the revised disclosures group and the original disclosures group.”

Approximately 33% of respondents indicated they were likely to start in Free Edition, roughly the same percentage as the general population that qualifies to file for free with TurboTax Free Edition. Again, “this end result is just not consistent with the complaint counsel’s hypothesis.”



**Dr. John Hauser,**  
Professor of Marketing





Participants watched one of four near-final Tax Year 2022 ads for either Free Edition or a free TurboTax Live Basic offer.



They then answered a series of questions about the ads, including relating to whether they believed they could file for free.



The results show that the ads **were not misleading consumers** into incorrectly believing that they could file for free.

# The ALJ Improperly Shifted The Burden And Applied Incorrect Standards

PUBLIC

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Claimed it was insufficient for Intuit's ads "to disclose 'the existence and category' of the applicable limitations" on eligibility for its free offers while hyperlinking to full eligibility details, ID 220.

Existing FTC guidance provides that an ad need only disclose the "nature and relevance" of limitations; if details (including regarding "price") "are **too complex** to describe adjacent to the [relevant] claim, those details may be **provided by using a hyperlink.**" GX316 at 10, A-8 (FTC .com Disclosures (Mar. 2013)).

Declared that Intuit must "avoid" describing its free products as free, ID 224.

No case or other authority forbids advertising a free product as free merely because the offer has **qualifications.**

Improperly held that Intuit's evidence "fails to prove" the lack of deception, ID 203.

**CC has the burden of proof**; there is no exception for cases involving free claims.

- Complaint Counsel assert that “express claims” encompass “the **functional equivalent** of express claims.” (CCAB.12).
- But “[e]xpress claims are ones that **directly state** the representation at issue.” *Thompson Medical Co.*, 104 F.T.C. 648, 788 (1984).

Complaint Counsel conceded that the ads did not directly state the express claim asserted.

While Intuit’s Free Edition advertisements do not expressly contain the phrase “all consumers can file their taxes for free with TurboTax,”

Confidential

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Lisa M. Khan, Chair  
Nash Joshua Phillips  
Rebecca Kate Stender  
Christina Presentation last saved: Just now  
Alvaro B.

In the matter of:  
Intuit Inc.,  
a corporation,  
Respondent.

Docket No. 9408

REPLY IN SUPPORT OF COMPLAINT COUNSEL'S  
MOTION FOR SUMMARY DECISION

## Free Edition Is Free

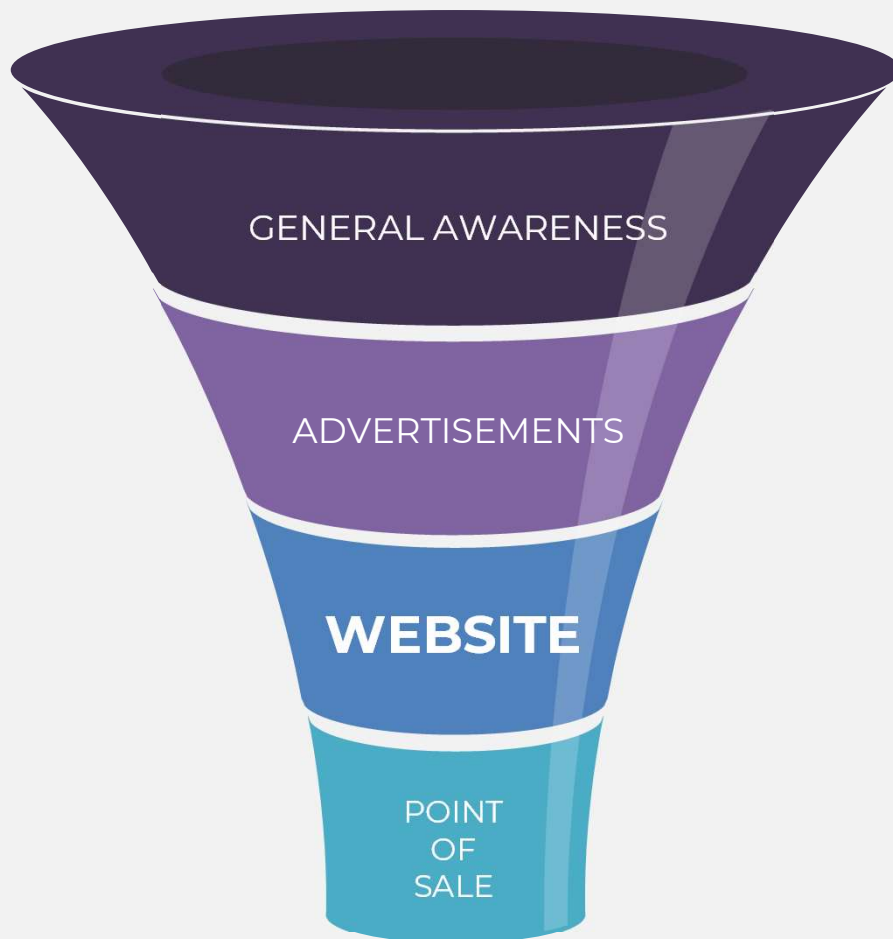
**Response:** Complaint Counsel admits that Intuit advertises that it has a free product – TurboTax Free Edition. Complaint Counsel further admits that TurboTax Free Edition is available for consumers who qualify. Complaint Counsel further admits that Intuit’s ads communicate that the TurboTax Free Edition is free. Complaint

CC Response to Intuit SD SOF ¶18

. Intuit advertises TurboTax Free Edition as free,

CCAB.3

## Conveyed By The Challenged Ads

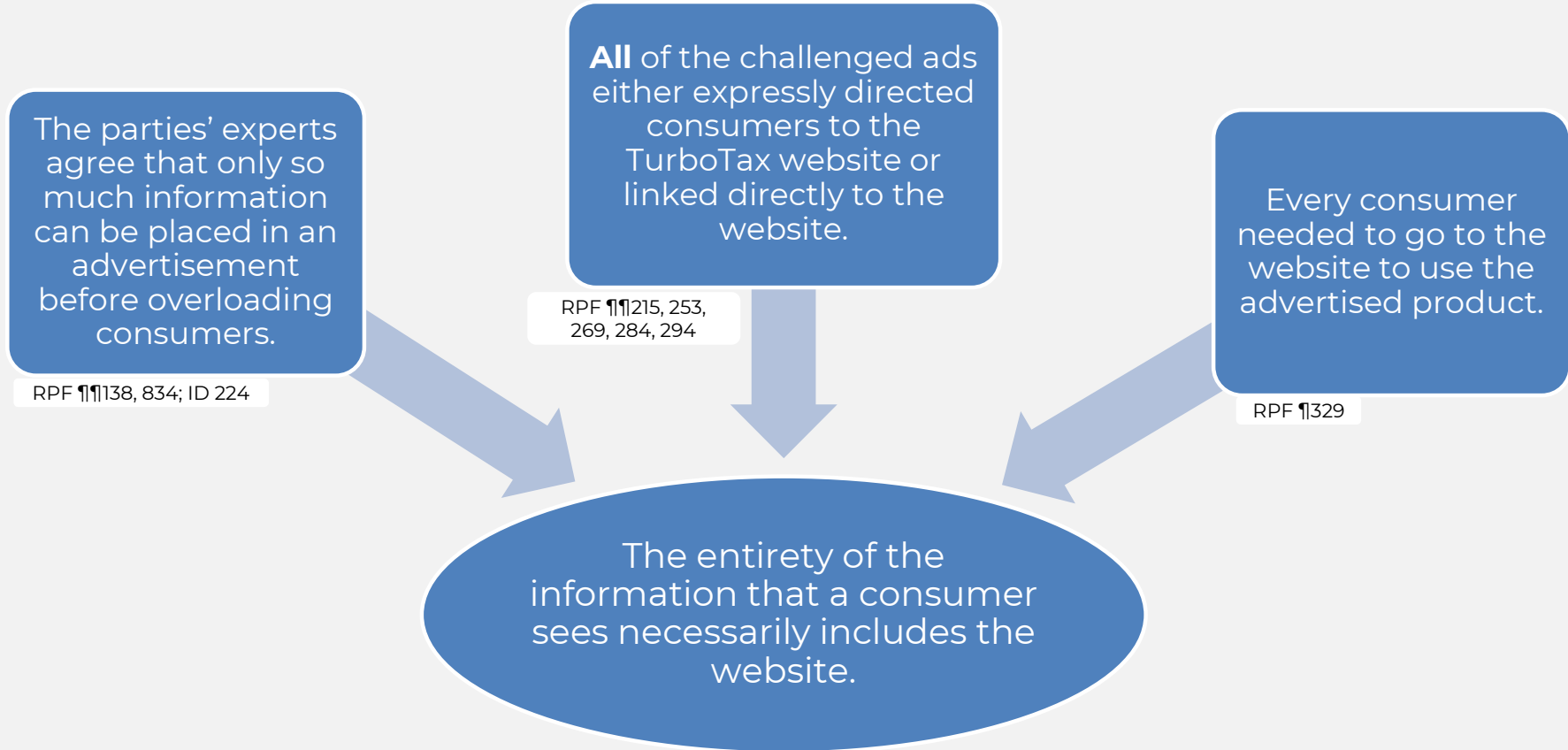


### No Reasonable Consumer Visiting The Website Would Be Deceived

- The TurboTax website clearly and repeatedly disclosed free offers' qualifications.
- Complaint Counsel cannot render those disclosures irrelevant through their deceptive-door-opener theory.

# The TurboTax Website Is Integrated Into Ads

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## TurboTax Homepage

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## Your taxes, your way

Hand off your taxes, get expert help, or do it yourself all with our **Maximum Refund Guarantee.**

File with an expert

File on your own

Kitty, Tax Expert 33yrs

Neil, CPA 18yrs



INTUIT

turbotax  credit karma  quickbooks

Use your Intuit Account to sign in. [Learn more](#)

Phone number, email or user ID

Remember me

Sign in

By selecting Sign in, you agree to our [Terms and have read and acknowledge our Global Privacy Statement.](#)  
Updated on January 1, 2023

New to Intuit? [Create an account](#)

\$



Claudell,  
Tax Expert  
24yrs

**LIVE** Assisted | Basic

File 100% FREE with expert help

Get live help from tax experts, plus a final review before you file - all free

Simple tax returns only. [See if you qualify.](#)  
Must file by 3/31.

Get started

# Simple Returns Pop-Up

## What qualifies as a simple tax return?

If you have a simple tax return, you can file for free with TurboTax Free Edition or TurboTax Live Assisted Basic. You can also file with TurboTax Live Full Service Basic at the listed price. A simple tax return is one that's filed using IRS Form 1040 only, without having to attach any forms or schedules. Only certain taxpayers are eligible.

### Situations covered (assuming no added tax complexity):

- W-2 income
- Limited interest and dividend income reported on a 1099-INT or 1099-DIV
- IRS standard deduction
- Earned Income Tax Credit (EITC)
- Child tax credits
- Student loan interest deduction

### Situations not covered:

- Itemized deductions
- Unemployment income reported on a 1099-G
- Business or 1099-NEC income
- Stock sales
- Rental property income
- Credits, deductions and income reported on other forms or schedules (for example, income related to crypto investments)

If you don't have a simple tax return, we have other paid options to file using TurboTax.

## Your taxes, your way

Hand off your taxes, get expert help, or do it yourself all with our Maximum Refund Guarantee.

File with an expert

File on your own

INTUIT

turbotax credit karma quickbooks

Use your Intuit Account to sign in. [Learn more](#)

Phone number, email or user ID

Remember me

Sign in

By selecting Sign in, you agree to our [Terms and have read and acknowledge our Global Privacy Statement](#).  
Updated on January 1, 2023

New to Intuit? [Create an account](#)

See if you qualify

RX1499

# Free Edition Webpage

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File your own taxes

File with expert help

Tools and resources

Support

After you file

TurboTax / Personal Taxes / TurboTax Free Edition



## TurboTax Free Edition

For simple tax returns only

★★★★★ (4.8/5 | 64,514 reviews)

\$0 Fed. \$0 State. \$0 to File.\*

File for \$0

## Why use TurboTax Free Edition?

If you have a [simple tax return](#), you can file your taxes online for free with TurboTax Free Edition. Just import your W-2, answer basic questions about your life, and we'll get you your maximum refund, [guaranteed](#).



File your 2021 federal & state taxes for free



Ideal for W-2 income



Maximize tax credits for dependents



Get the green light to file



Get your maximum tax refund, [guaranteed](#)

RX1530

Sort By Product

Sort By Form

Search forms

Commonly Filed Tax Forms and Schedules		Free Edition - Basic Live	Deluxe - Deluxe Live	Premier - Premier Live	Self-Employed - Self-Employed Live
1040	U.S. Individual Income Tax Return	●	●	●	●
Schedule EIC	Earned Income Credit	●	●	●	●
Schedule 1	Additional Income and Adjustments to Income		●	●	●
Schedule 2	Additional Taxes		●	●	●
Schedule 3	Additional Credits and Payments		●	●	●
Schedule A	Itemized Deductions		●	●	●
Schedule B	Interest and Dividend Income		●	●	●
Schedule C	Profit or Loss from Business (Income)		●	●	●
Schedule SE	Self-Employment Tax		●	●	●
Schedule D	Capital Gains and Losses			●	●
Schedule E	Supplemental Income and Loss, including rental property			●	●
Schedule C	Profit or Loss from Business (Expenses)				●

# Products & Pricing Page

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## Let's find the right tax solution for you

Select all that apply for a recommendation:

 I want to maximize deductions and credits	 I want a tax expert to do my taxes for me	 I have a job (received W-2)	 I paid rent	 I own a home	 I have children or dependents
 I want a tax expert to review my return	 I donated over \$300 to charity	 I'm paying off student loans	 I sold stock, crypto, or own rental property	 I'm self-employed/an independent contractor	 I own a small business

[Am I self-employed?](#)

You can do it



Real experts help or do it for you

## America's #1 brand of tax software

### Free Edition

Simple tax returns only  
See if you qualify

\$0 Fed. \$0 State. \$0 to File.

File for \$0



(4.9) 68,836 reviews

### Deluxe

Maximize tax deductions and credits

\$59\*

State additional

Start for free

Pay only when you file



(4.5) 63,252 reviews

### Premier

Investments and rental property

\$89\*

State additional

Start for free

Pay only when you file



(4.4) 16,466 reviews

### Self-Employed

Personal & business income and expenses

\$119\*

State additional

Start for free

Pay only when you file



(4.7) 18,888 reviews

Hide Details ^

More Details v

More Details v

More Details v

## File for \$0 with Free Edition

You'll pay absolutely nothing to file your federal and state taxes if you have a simple tax return only. Start by easily importing your W-2, answer simple non-tax questions about your life, and we'll get you your maximum refund.

**FREE**  
\$0 Fed. \$0 State. \$0 To File

For simple tax returns only.  
Not all taxpayers qualify.

- ✓ Free filing of your simple federal and state tax returns only. See if you qualify
- ✓ Covers W-2 income, Earned Income Tax Credit (EIC) and child tax credits
- ✓ Jumpstart your return with last year's TurboTax info or import a PDF of your return from another tax software
- ✓ Guidance in case of an audit, backed by our Audit Support Guarantee
- ✓ Get answers 24/7 from our online community of TurboTax specialists and customers

### Included in Free Edition

- ✓ Easy prep, print, and e-file
- ✓ Jumpstart your taxes, snap a photo of your W-2

[Learn more](#)

### Everything in Free Edition, plus

- ✓ Searches 350+ tax deductions and credits
- ✓ Maximizes mortgage and property tax deductions
- ✓ Turn donations into big deductions

[Learn more](#)

### Everything in Deluxe, plus

- ✓ Covers stocks, bonds, ESPPs, and other investments
- ✓ Auto import of investment income
- ✓ Covers rental property income and tax deductions
- ✓ Accurately account for gains and losses from cryptocurrency transactions

[Learn more](#)

### Everything in Premier, plus

- ✓ Guidance for independent contractors, freelancers, and small business owners
- ✓ Uncovers industry-specific deductions for more tax breaks
- ✓ Easily upload your 1099-NEC with a snap from your smartphone
- ✓ One-on-one help from self-employment specialists

[Learn more](#)

RX9

Complaint Counsel's own expert conceded that it took only "a few seconds" to access the TurboTax website, and that once on the website it took only "five to ten seconds" to encounter full eligibility information for the free TurboTax offers.

**Erez Yoeli,**  
CC's Expert

RX1396 (Yoeli (FTC)  
Dep.) at 34-35

**Greg Johnson,**  
Intuit Executive

Johnson (Intuit) Tr. 595

"[O]n [o]ur home page, there will be multiple references where we define simple tax returns only in blue that is designed to draw your attention."

The TurboTax Free Edition landing page—which contains the qualifications to use the free product—can be reached by "clicking on the TurboTax display ad[s]," "through search results," and even "through multiple places on the TurboTax.com website, through TurboTax Blog [c]ontent, over press releases, and even from links in other articles."

**Jack Rubin,**  
Intuit Executive

Rubin (Intuit) Tr.  
1564-1565

Google search results for "what is a simple tax return turbotax". The search bar shows the query and navigation icons. Below the search bar, there are tabs for "All", "Images", "Books", "News", "Shopping", and "More". The results show "About 1,220,000 results (0.46 seconds)". A featured snippet from Intuit is displayed, stating: "A simple tax return is one that's filed using IRS Form 1040 only, without having to attach any forms or schedules. Only certain taxpayers are eligible. Situations covered (assuming no added tax complexity): W-2 income. Limited interest and dividend income reported on a 1099-INT or 1099-DIV." Below the snippet, the Intuit logo and URL "https://turbotax.intuit.com/why-its-free" are visible, along with the title "Simple tax return? You could file for free - TurboTax - Intuit".

Nerdwallet article titled "TurboTax Review 2022". The page features the Nerdwallet logo, a search icon, and "SIGN IN" and "SIGN UP" buttons. A "TAXES" breadcrumb is visible. Below the breadcrumb is an "Advertiser disclosure" link. The main title is "TurboTax Review 2022". The text reads: "TurboTax is one of the more expensive online filing products, but its ease of use and human help options are noteworthy." The author is "Sabrina Parys, Tina Orem" and the date is "Mar 3, 2022".

SmartAsset article titled "TurboTax Review 2022". The page features the SmartAsset logo and a navigation menu with categories: HOME BUYING, TAXES, RETIREMENT, FINANCIAL ADVISORS, BANKING, INVESTING, SMARTTRENDS, and MORE. The main title is "TurboTax Review 2022". The author is "Emily Zhu" and the date is "Updated February 06, 2023". A disclaimer states: "We maintain strict editorial integrity in our writing and assessments. This post contains links from our advertisers, and we may receive compensation when you click these links. Any opinions, analyses, reviews or recommendations expressed in this article are those of the author's alone. | Advertiser Disclosure". Below the text is a featured snippet for Intuit TurboTax, showing the Intuit TurboTax logo, a rating of "Our Rating: 4.2/5" with five stars, and a table of pricing:

TurboTax Free - Federal	TurboTax Free - State
\$0	\$0

How we calculated this rating

## REASONABLE CONSUMERS ARE NOT LIKELY TO:

- See a TurboTax free product ad and immediately assume that:
  - There are no terms and conditions.
  - The offer definitely applies to them.

## REASONABLE CONSUMERS ARE LIKELY TO:

- Consider TurboTax free product ads in the context of their prior experiences and their personalized buying process.
- Expect that free offers come with terms and conditions → especially those with disclosures.
- Seek more information if they are interested in the product → especially when encouraged to do so by ads.

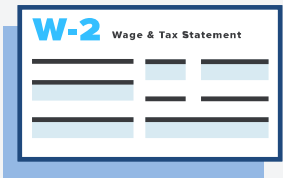


## A High-Involvement Consumer Buying Process

Consumers engage in a high-involvement consumer buying process in a “thoughtful, deliberative manner,” which involves conducting research, consulting a variety of sources, and evaluating alternatives. (Golder (Intuit) Tr. 1065-1076; RPF ¶¶502-509.)

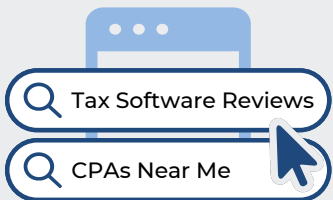
### PROBLEM RECOGNITION

Consumer is reminded that she must file taxes.



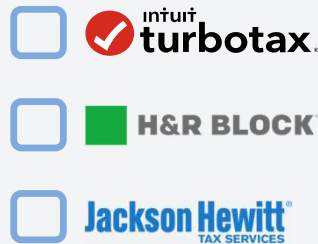
### INFORMATION SEARCH

Consumer seeks information on tax preparation options.



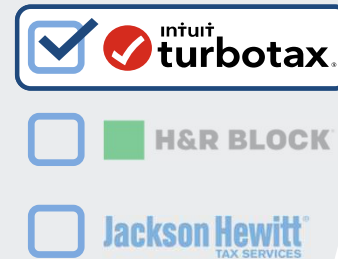
### EVALUATION OF ALTERNATIVES

Consumer assesses tax-preparation providers.



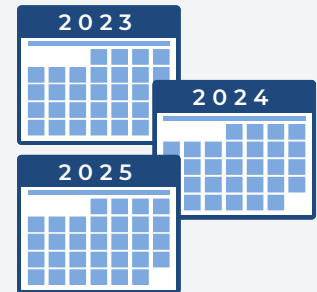
### PURCHASE DECISION

Consumer decides on tax-preparation method.



### POST-PURCHASE BEHAVIOR

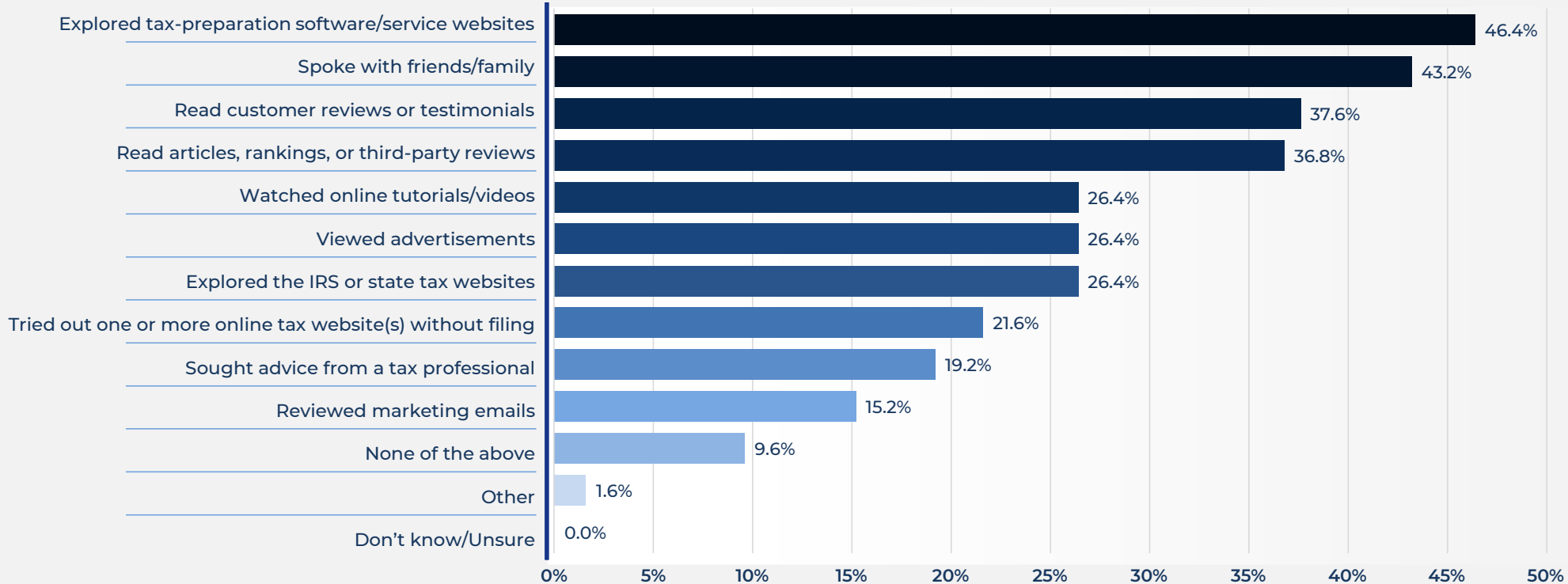
Consumer makes purchase decision in subsequent years.



# Reasonable Consumers Refer To Multiple Sources

FEDERAL TRADE COMMISSION PUBLIC AFFAIRS SECRETARY | TEL: 312.328.3000 | FAX: 312.328.3002 | Page 66 of 114 \* -PUBLIC

## Before Making A Purchase Decision



HAUSER PURCHASE DRIVER SURVEY

PERCENTAGE OF RESPONDENTS WHO SWITCHED OR CONSIDERED SWITCHING PROVIDERS

Average Number of Sources: 3

Respondents Who Said They Only Reviewed Ads: **2%**

# This Case Does Not Fit The “Deceptive Door Opener” Theory




FEDERAL TRADE COMMISSION | OFFICE OF THE SECRETARY | FILED 11/13/23 OSCAR NO 608912 | PAGE Page 67 of 114 \* -PUBLIC

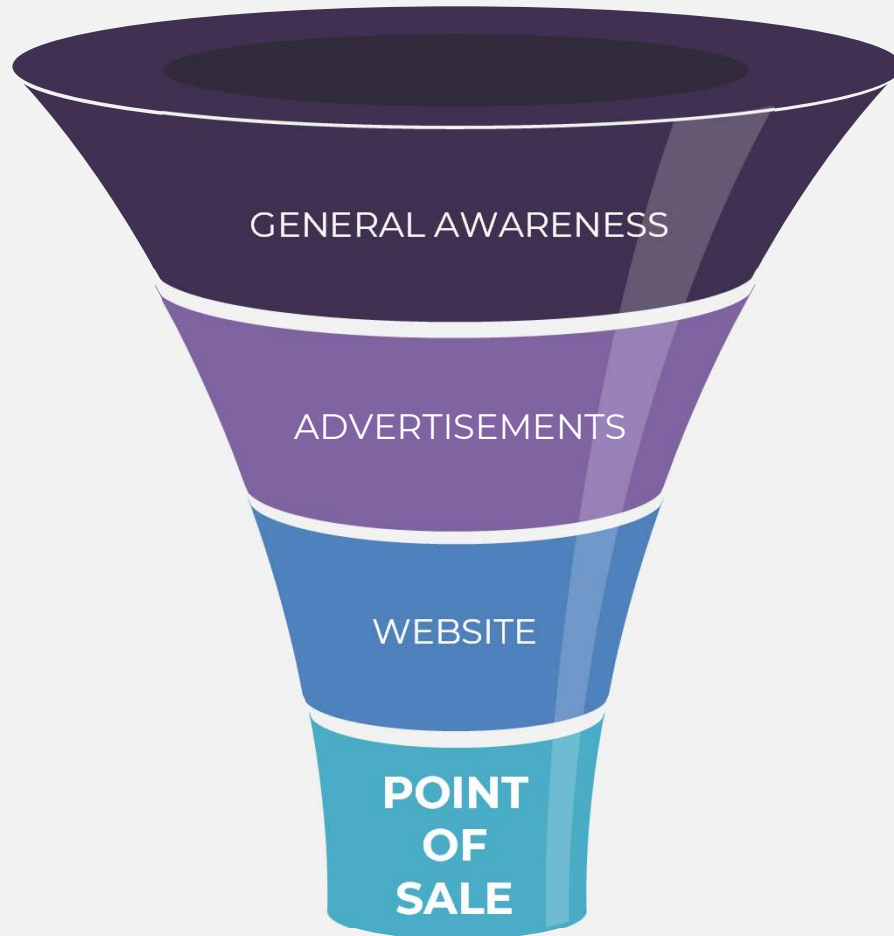
PUBLIC

Online tax preparation is done on a website from your home with easy access to all information on the internet.

No case has ever applied this theory to modern internet commerce.

DirecTV Is Indistinguishable: The door-opener theory “is inapplicable here, because (1) the Court has found that nothing in [the challenged ads] contradicts the true terms of DIRECTV’s provision of services; and (2) for a complex product like subscription satellite television services, a reasonable consumer would understand the limitations of how information is presented in a one- or two-page flyer.” *FTC v. DIRECTV, Inc.*, 2018 WL 3911196, at \*15 (N.D. Cal. Aug. 16, 2018).

Point and click to the website, competitors’ websites, and all other online information	
Complex product	
Nothing contradicts the true terms	

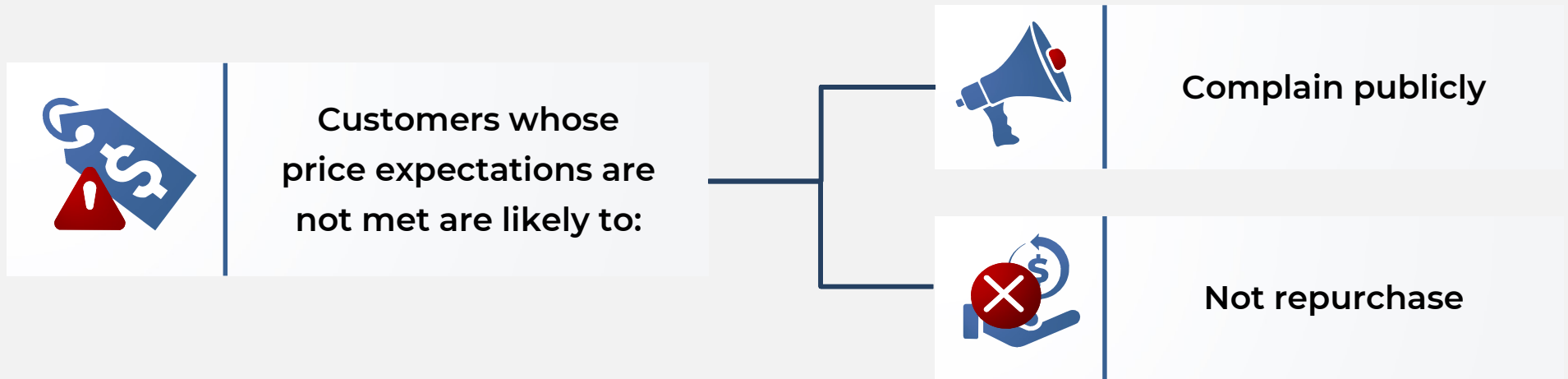


## CONSUMER COMPLAINTS AND FEEDBACK DO NOT REFLECT DECEPTION

- Complaint rates belie deception.
- Golder's complaint-benchmarking is inconsistent with deception.
- Customers' actual experiences disprove deception theory.

If consumers were misled into believing they could file for free, they would express frustration once they were ultimately told to pay.

That frustration would manifest in a significant number of complaints, negative reviews, and low customer retention.



RX542, Golder, Peter N., Mitra, Debanjan, and Moorman, Christine, "What Is Quality? An Integrated Framework of Processes and States," *Journal of Marketing*, Vol. 76, No. 4, 2012, pp. 1-23

RX554, Perreault, W., Joseph P. Cannon, and Edmund Jerome McCarthy, *Essentials of Marketing*, McGraw-Hill Education, New York, New York, 2019



**Jack Rubin,**  
VP of Marketing

Q. What would you expect to see if Intuit had run a multiyear, multi-ad, multichannel, multimodal, integrated marketing campaign that was deceptive?

A. That would be a nightmare. ... **[W]e would be overwhelmed with complaints, in every channel,** in social media. The PRS and NPS scores would tank. Just the inbound phone calls to the customer success lines, I don't know how we would pay for that. We would go out of business trying to pay to handle all of the complaints about that. That would be a nightmare. We would never do that.

Q. Okay. And has Intuit been overwhelmed with complaints since 2018?

A. No.

# Consumer Feedback Would Point To Deception, If It Existed

FEDERAL TRADE COMMISSION | OFFICE OF THE SECRETARY | FILED 11/13/23 OSCAR NO 608912 | PAGE Page 71 of 114 \* -PUBLIC

PUBLIC

- Complaint Counsel’s expert, Erez Yoeli, confirmed that brand names, like TurboTax, provide consumers with “a means of retaliation if the quality does not meet expectations,” including by “curtail[ing] future purchases.” (RX1370 (FTC) at 499-500; Yoeli (FTC) Tr. 1739-1740.)
- One of those “means of retaliation” is consumer complaints—it is well-established that complaints are a “major source of information on the quality of products and companies.” (RX1552 (FTC) at 168.)
- The methods for filing a complaint are both **well-known** and **easy** for consumers to find. To file a complaint with the FTC, for example, consumers can:



Submit a complaint online



Contact a state attorney general’s office



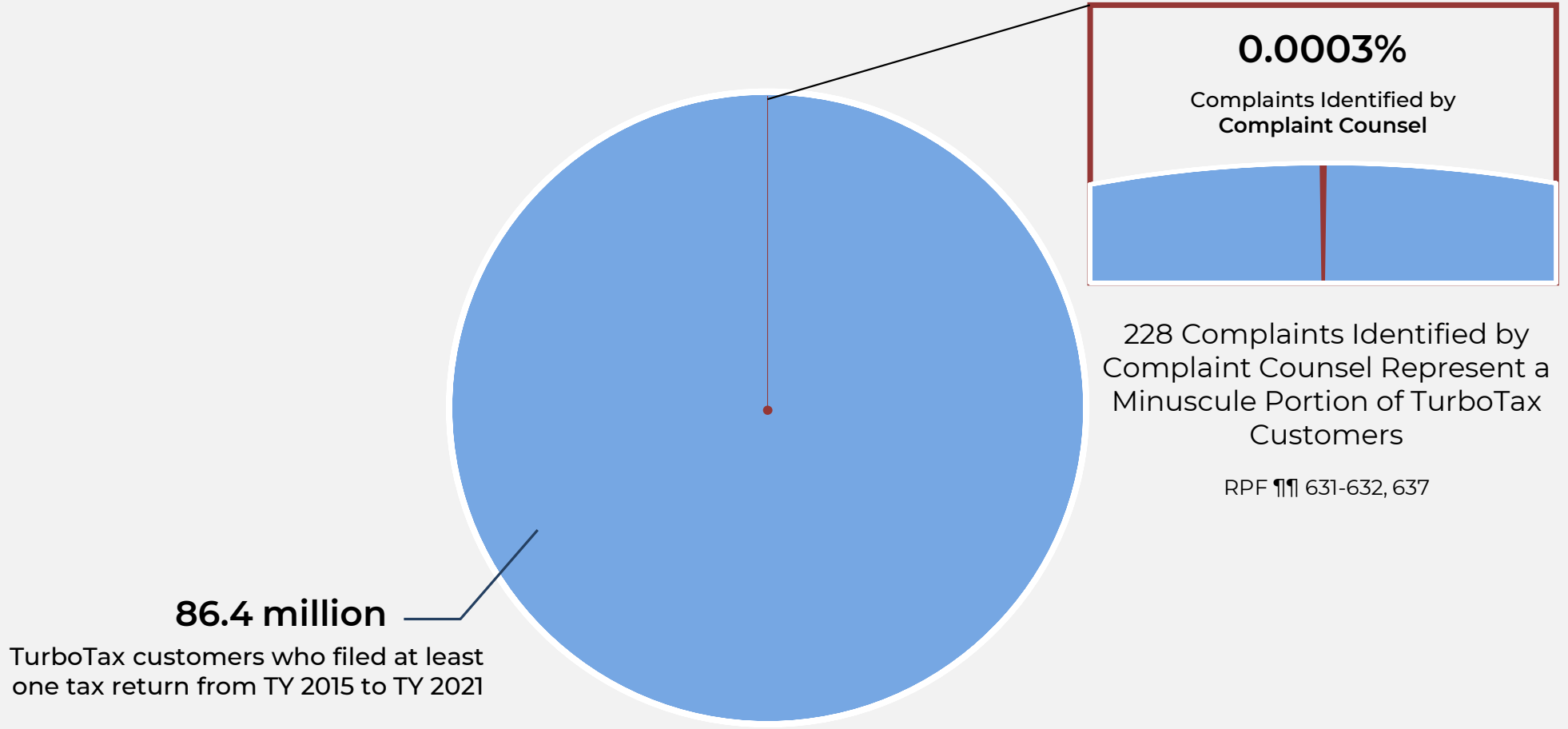
Call the FTC directly



Visit the Better Business Bureau website

# After Four Years Of Investigation And Expansive Discovery, Complaint Counsel Identified Only A Miniscule Number Of Complaints

FEDERAL TRADE COMMISSION, OFFICE OF SECRETARY, FILED 4/13/23, 2023-0048, RPF 631-637 of 1117 - PUBLIC



RPF ¶¶ 631-632, 637



## Are Out of Step With Other Deception Cases

### Whose Voice Do We Hear in the Marketplace? Evidence from Consumer Complaining Behavior

Devesh Raval<sup>a</sup>

<sup>a</sup>Bureau of Economics, Federal Trade Commission, Washington, District of Columbia 20580

**Table 1.** Cases with Victim Lists

Case	Number of victims	Number of complaints	Complaints per 1,000 victims
Case B	12,311,307	4,271	0.35
Ideal	2,010,169	1,403	0.70
Platinum	69,576	510	7.3
WinFixer	304,493	1,062	3.5
SimplePure	681,124	650	0.95
AdvStrategy	11,361	322	28.3
Guidance	6,696	193	28.8
MoneyNow	1,801	259	143.8
PHLG	2,641	289	109.4

RX1552 at 171

Q. ... [F]or tax year 2021, you said there are about ... **100 million people who could have been deceived**, right?

A.... I don't think that I want to constrain the number just to those folks.

Q. Okay, fine. 100 million or more. If you're right about that -- well, neither of us could calculate in our heads a complaint rate that low. Am I right, Mr. Yoeli?

A. You're right, **I can't keep track of the zeros**.

Yoeli Tr. (Complaint Counsel) 1750-1752

## “Ample Reports” From Consumers Indicating Deception

The “ample reports” that, according to the ALJ, indicate that consumers were deceived consist of only:

TY2020

- **6 customer reviews.**
- This accounts for **substantially less than 0.0001%** of all consumers who filed with TurboTax in TY2020.

TY2021

- **45 customer reviews or complaints.**
- This accounts for **substantially less than 0.001%** of all consumers who filed with TurboTax in TY2021.

Complaint Counsel identify just 3,831 customer reviews—through an improperly admitted expert exhibit—that purportedly indicate deception in Tax Year 2021.

## Insignificant Portion of Consumers

- These reviews represent just 0.0001% of the more than 35 million returns filed using TurboTax in TY21.

## Overcounts Reviews

- 1,911 of these reviews were left by customers who paid to file their taxes with TurboTax in prior years.
- 1,009 reviews were left by customers who could have filed for free but chose not to do so.
- 56 of these reviews were filed by customers who did file their taxes for free in TY21.

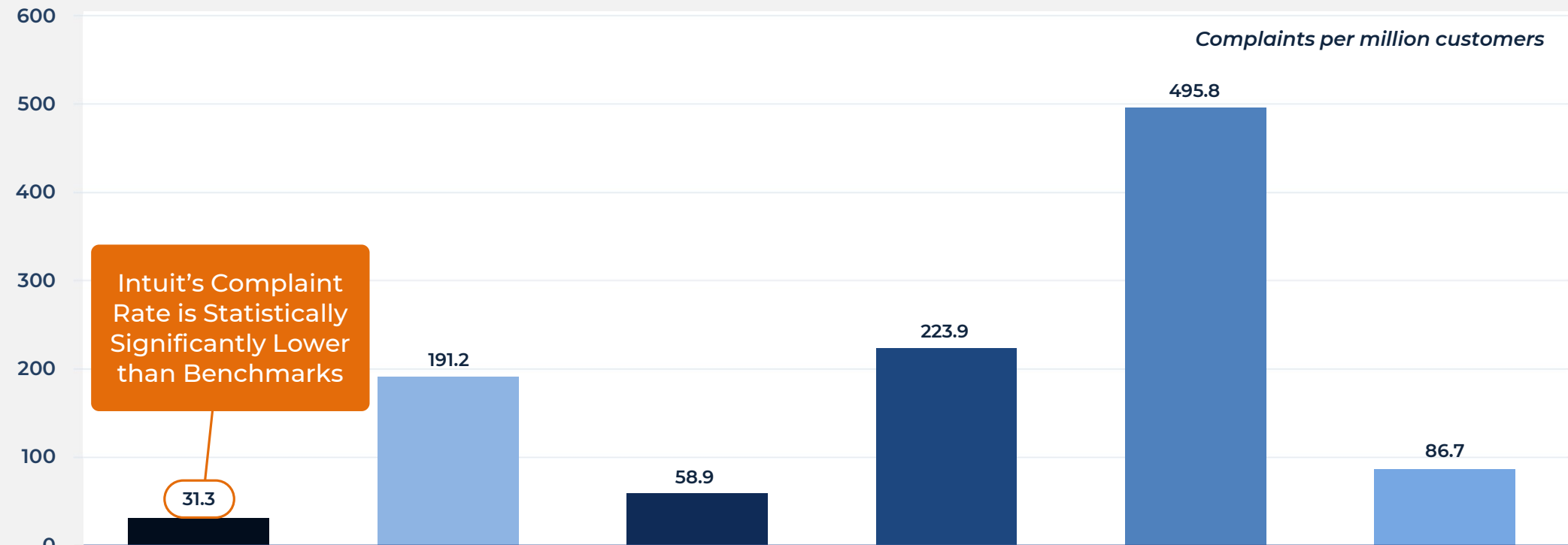
## Includes Positive Reviews

- Review ID #201709861: “TurboTax is so easy and reliable” and “the premier way to file [in my humble opinion]... I will always use TurboTax even if it’s not free.”
- Review ID #199748719: The customer noted that he “started to file with a different online tax preparer, but it [the other software] wasn’t free this year,” and therefore switched to TurboTax to file his taxes.

# Intuit's BBB Complaint Rate Is Lower Than Benchmark Companies

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FEDERAL TRADE COMMISSION | OFFICE OF THE SECRETARY | FILED 11/13/23 OSCAR NO 608912 | PAGE Page 76 of 114 \* -PUBLIC



Intuit's Complaint Rate is Statistically Significantly Lower than Benchmarks

31.3

191.2

58.9

223.9

495.8

86.7

Intuit

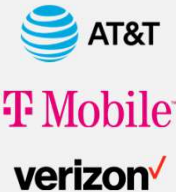
Benchmark Companies Average

Direct Intuit Competitors

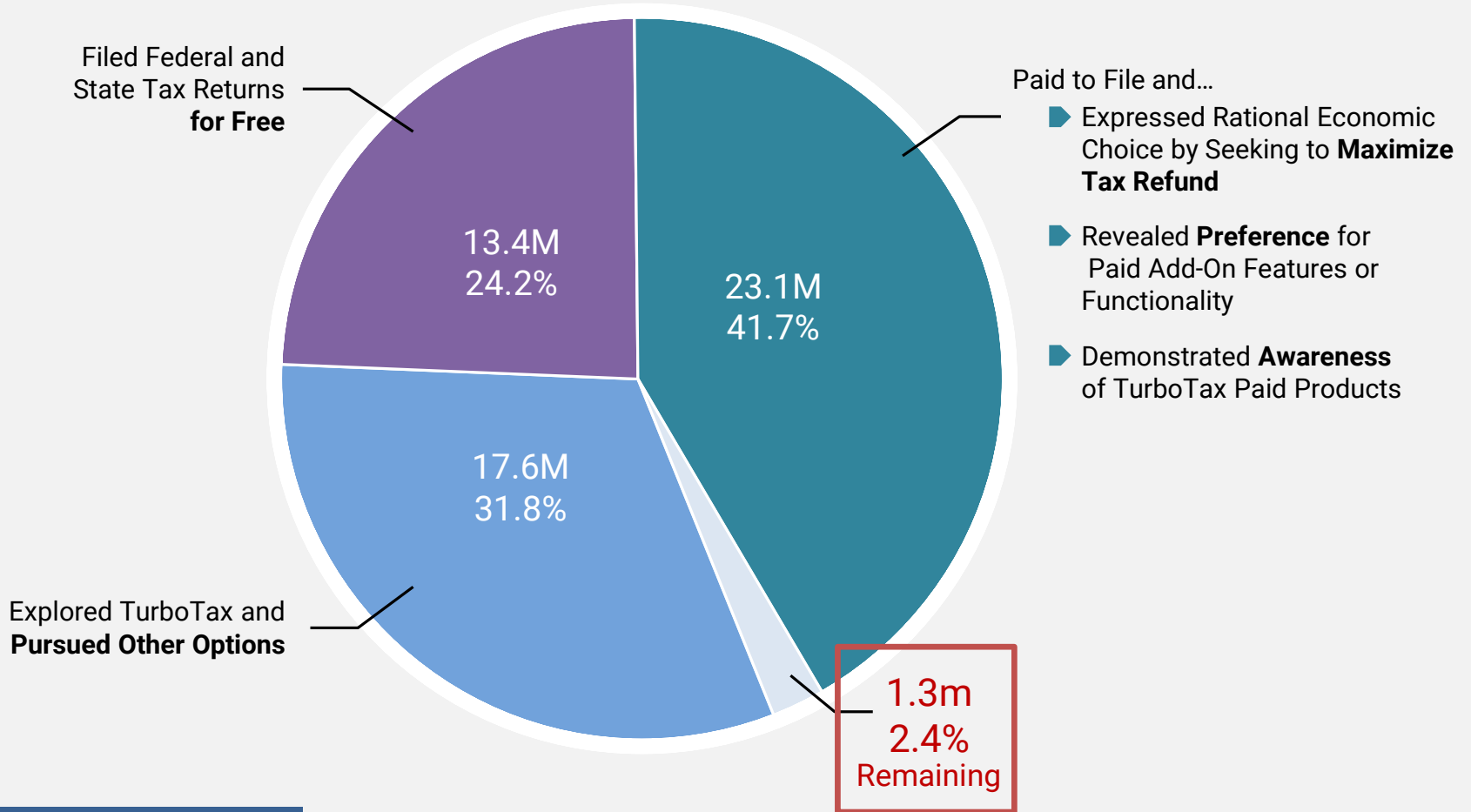
Wireless Carriers

TV Service Providers

Auto Insurance Providers

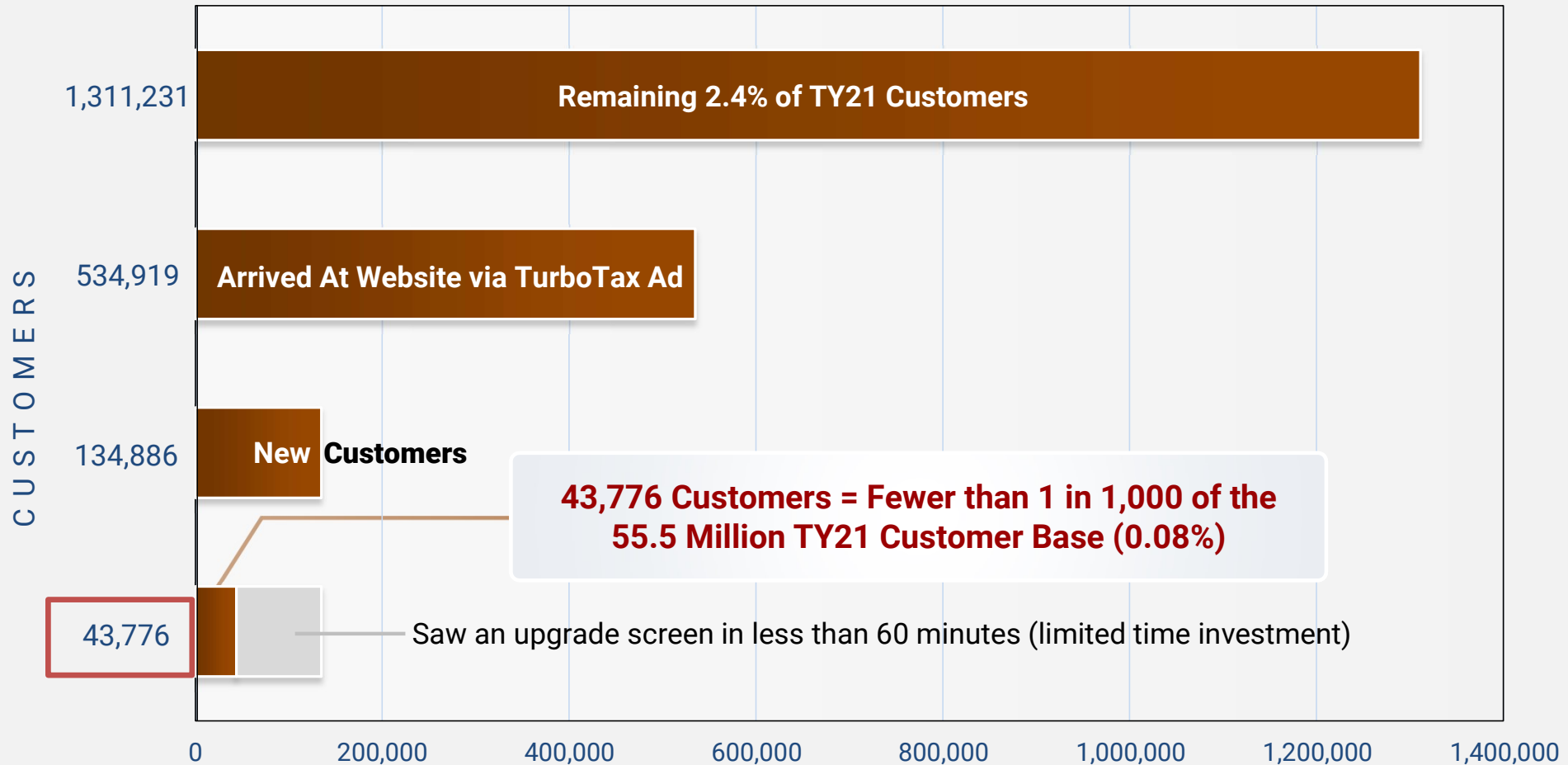


# Actual Consumer Experiences From Tax Year 2021 Are Inconsistent With Complaint Counsel's Theory Of Deception



# Actual Consumer Experiences From Tax Year 2021 Are Inconsistent With Complaint Counsel's Theory Of Deception

SPECIAL INQUIRY COMMISSION OFFICE OF THE SECRETARY FILED UNDER SCAs NO. 008-20 PAGE 78 of 100



**43,776 Customers = Fewer than 1 in 1,000 of the 55.5 Million TY21 Customer Base (0.08%)**

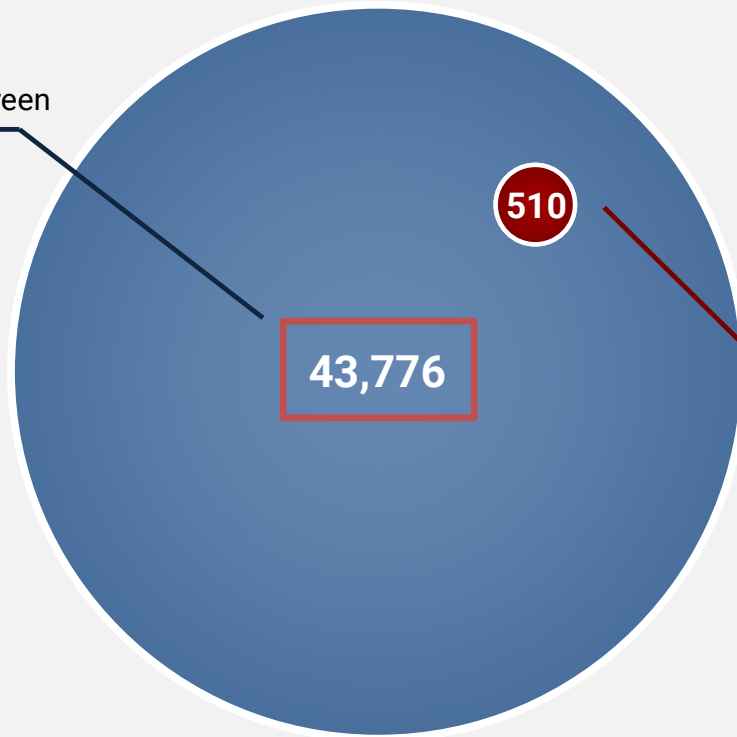
Saw an upgrade screen in less than 60 minutes (limited time investment)

# Actual Consumer Experiences From Tax Year 2021 Are Inconsistent With Complaint Counsel's Theory Of Deception

OFFICE OF THE SECRETARY OF THE MASSACHUSETTS DEPARTMENT OF REVENUE AND TAXATION | 12/15/2022 | PAGE 79 OF 114

## Remaining TY21 Customers

- Arrived via TurboTax ad
- + New to TurboTax
- + More than 60 min to upgrade screen



## Direct Evidence Potentially Consistent With Deception Or Frustration

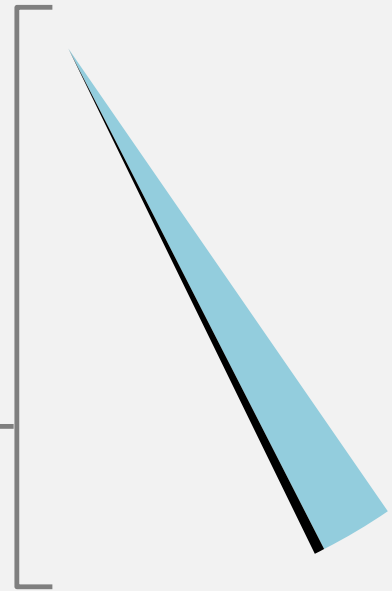
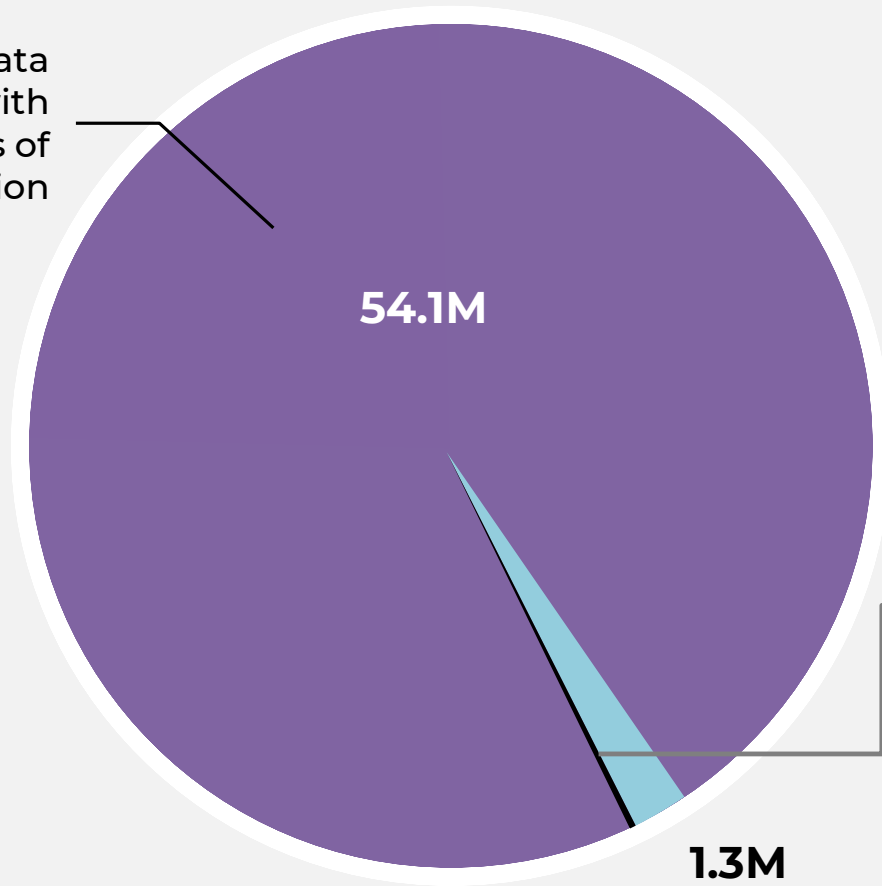
1. Complaints identified by Complaint Counsel . . . or . . .
2. Low "likely to recommend" score after purchase . . . or . . .
3. Low customer rating after purchase

**510 Customers = Fewer than 1 in 100,000 of the 55.5 Million TY21 Customer Base**

Could Have Been Deceived Under Complaint Counsel's Theory Of Deception

FEDERAL TRADE COMMISSION OFFICE OF THE SECRETARY FILED 12/31/20 SCARNOLOPOULOS, L.A. Ge. Pate, et al. v. PUBLIC

TY21 Customer Data  
Inconsistent with  
Allegations of  
Deception



510

(less than 1 in 100,000)  
May Be at Risk of Deception



FEDERAL TRADE COMMISSION OFFICE OF PUBLIC INFORMATION WASHINGTON, DC 20540-1121 Case Page 8 of 11

# That Reasonable Consumers Were Not Likely Deceived

## TurboTax Online TY20 NPS Study

Complaint Counsel’s theory that consumers mistakenly believed they could file for free is contradicted by a Net Promoter Score survey of TurboTax customers.

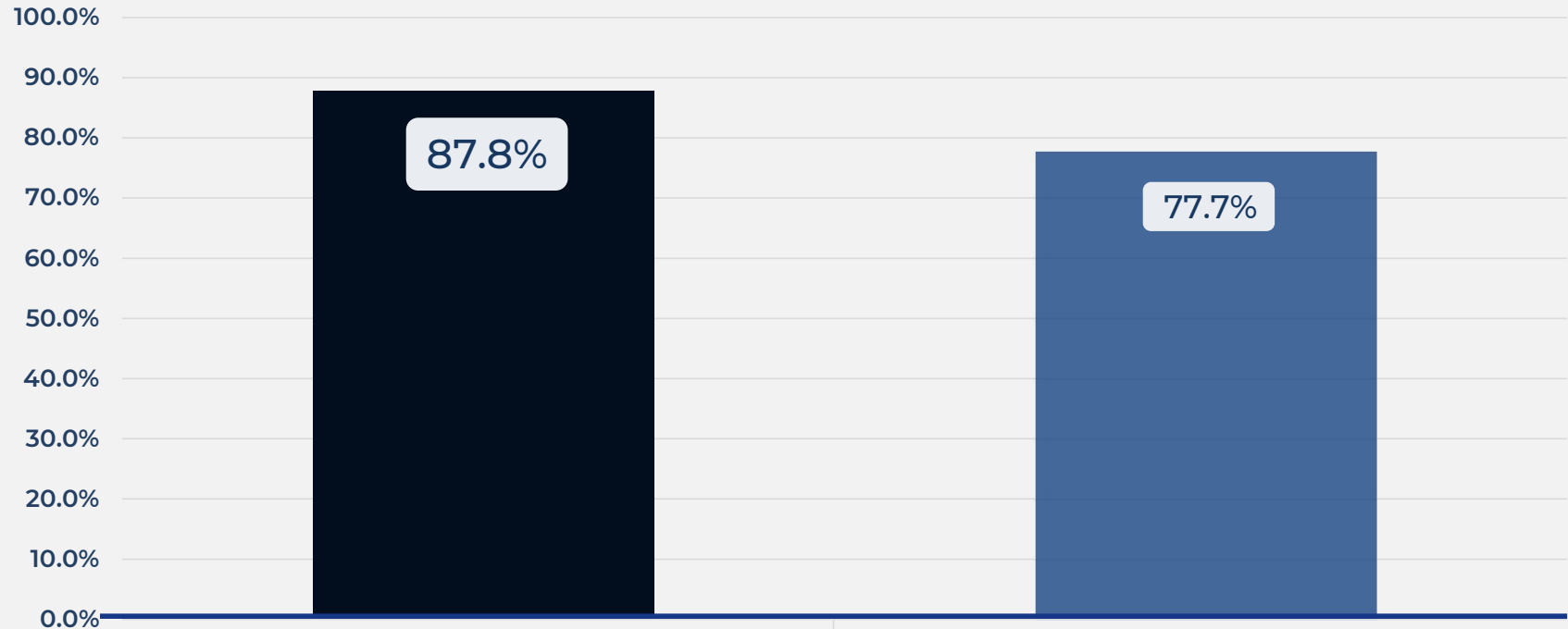
Only 48% of respondents were even aware they could file for free, which is barely more than the 44% who actually did file for free using TurboTax.

August 2021	Aware/Prepare/File Taxes for free (Q15C)^	
	Yes	48%
	No	41% ef
	Not sure	11% ef

That “tells me that we’re reaching simple filers who are eligible for TurboTax Free Edition with ... the message that we have a Free Edition for simple tax returns.”

**Jack Rubin,**  
Intuit Executive

## TY 2017 Annual Customer Retention Rates



TurboTax Paid Products



TurboTax Free Products



# The Proposed Cease-And-Desist Order Is Unwarranted

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# The ALJ's Proposed Cease-And-Desist Order Is Unwarranted

FEDERAL TRADE COMMISSION | OFFICE OF THE SECRETARY | FILED 11/13/23 OSCAR NO 608912 | PAGE Page 84 of 114 \* -PUBLIC

PUBLIC

Under a consent order **agreed to by all 51 state attorneys general**, the following requirements **already** govern advertisements for free TurboTax products:

No “Free, Free, Free” ads or substantially similar ads.

All ads must disclose qualifications, with tailored requirements depending on ad type.

All disclosures must be “Clear and Conspicuous.”

All disclosures must be in “Close Proximity” to the free claim.

Prohibits misrepresenting any material fact concerning tax-preparation products.

Includes numerous compliance measures.

## The Allegedly Deceptive Ads Are No Longer Running

A cease-and-desist order is only permitted “to prevent illegal practices in the future.” *FTC v. Ruberoid Co.*, 343 U.S. 470, 473 (1952).

None of the challenged ads are running, including the “free, free, free” ads at the center of Complaint Counsel’s claim.

Complaint Counsel focus on ads that are as much as 8-years old.

## The Ads That Are Running Are Demonstrably Improved

Complaint Counsel bear the burden to prove there is “some cognizable danger of recurrent violation.” *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953).

Intuit lessened the prominence of its “free” claims, increased the size and contrast of its visual disclosures, and added and strengthened its verbal disclosures.

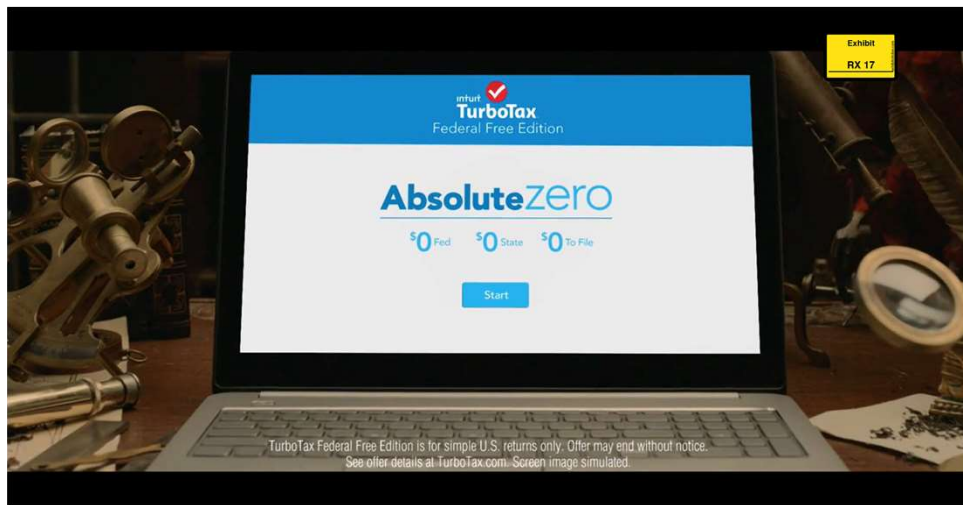
Copy testing of TY22 ads established that the ads were not deceptive.

## There Is Already A Consent Order In Place Against Future Deception

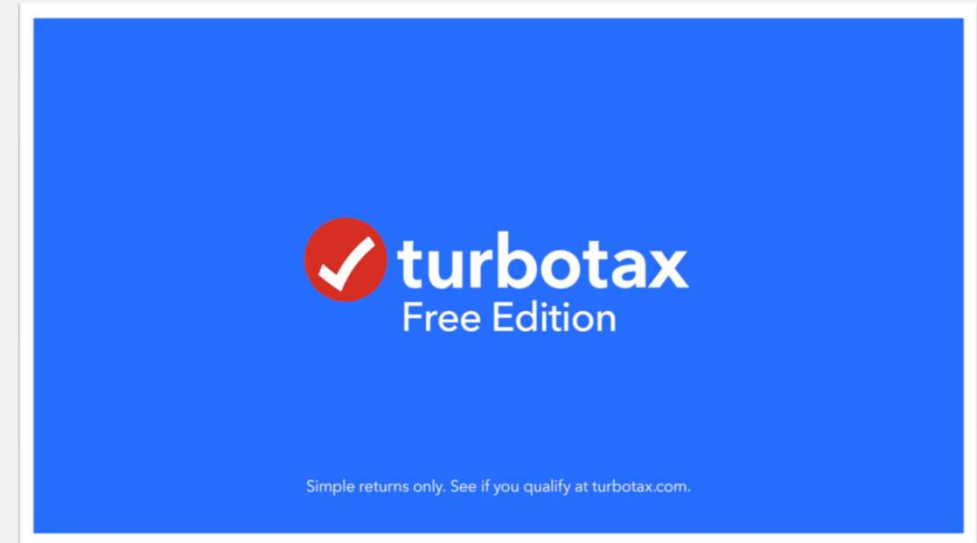
The case is moot if there is “nothing for this court to enjoin.” *Wold v. Robart*, 2018 WL 1135396, at \*5 (E.D. Wis. Feb. 28, 2018).

Complaint Counsel presented no evidence that last year’s ads were deceptive.

## Tax Year 2014



## Tax Year 2022







Simple returns only. See if you qualify at [turbotax.com](https://turbotax.com).



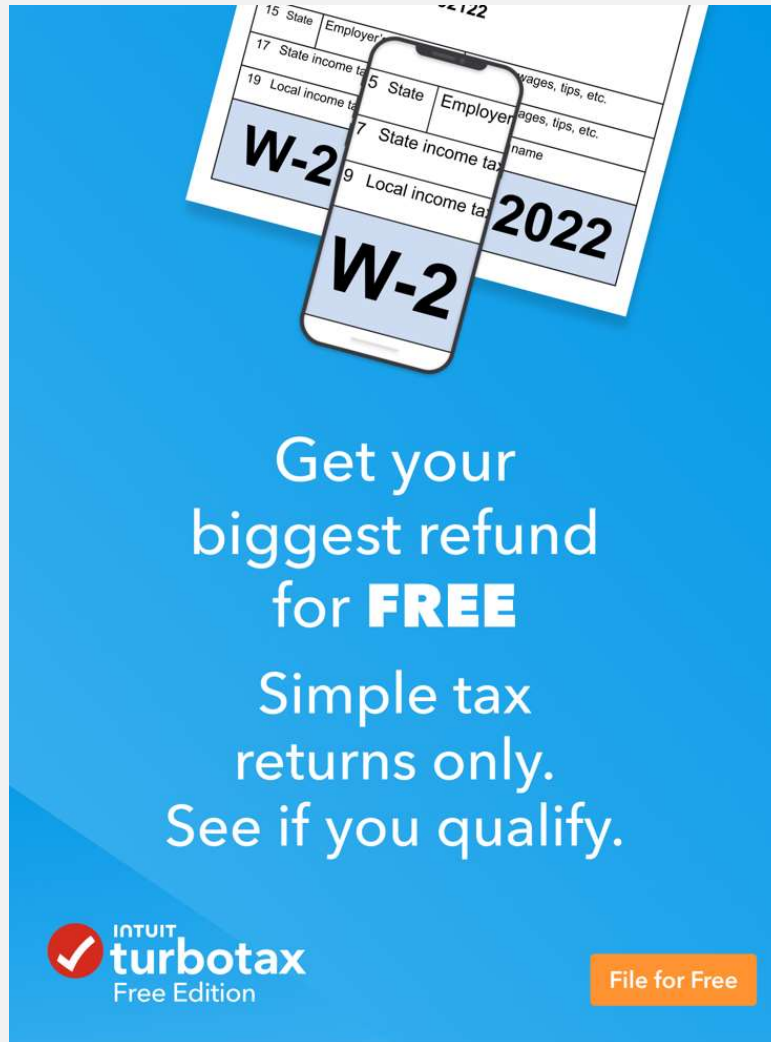


Simple returns only. See if you qualify at TurboTax.com.




The ad also included a voiceover stating:

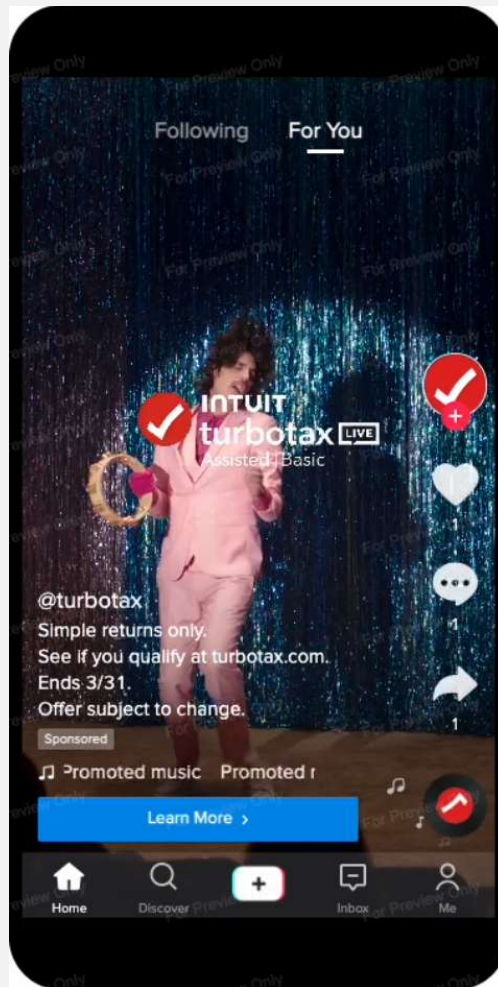
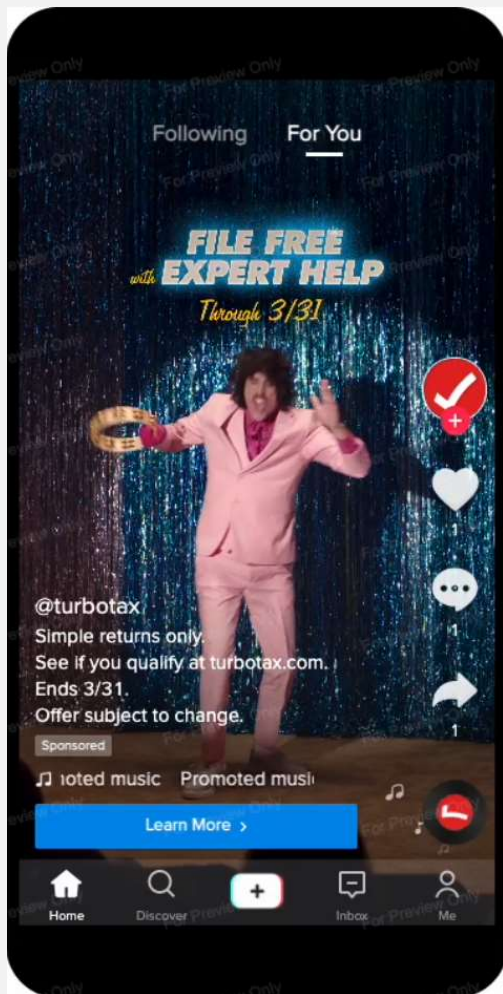
“Filing a simple return for free with TurboTax?  
See if you qualify at TurboTax.com.”



Get your biggest refund for **FREE** Simple tax returns only. See if you qualify.

 **INTUIT**  
**turbotax**  
Free Edition

[File for Free](#)



“Simple returns only. See if you qualify at turbotax.com” language was on the screen for the entire ad.

Ad · <https://turbotax.intuit.com/free/taxes> ⋮

## TurboTax® Official Site - Free Simple Tax Filing Online

**Filing Taxes** Is Fast And Easy With TurboTax® **Free** Edition. See If You Qualify Today. Get A Jumpstart On Your **Taxes**. Import Your **Tax Form** And **File** For Your Max Refund Today.

### Free Tax Refund Estimate

Use Our Tax Calculator To Find Out How Much You'll Get Back This Year.

### TurboTax Live®

Connect With A Live Tax Expert For Tax Advice And A Final Review.

INTUIT **turbotax.** [Sign in](#)

File for

# FREE

TurboTax Free Edition,  
for simple tax returns only  
See if you qualify\*

#1 TAX PREP BRAND

\$0 Fed    \$0 State    \$0 to File

INTUIT

### We're looking out for you

We'll never ask for personal information in an email. When you click on a link, the address should always contain "intuit.com/".

\*For simple tax returns only. Not all taxpayers qualify.

A simple tax return is Form 1040 only. Situations covered by TurboTax Free Edition, TurboTax Live Basic, and TurboTax Live Full Service Basic:

- W-2 income
- Limited interest and dividend income reported on a 1099-INT or 1099-DIV
- IRS standard deduction
- Earned Income Tax Credit (EIC)
- Child tax credits
- Student Loan Interest deduction

Prices ultimately determined at time of print or e-file. Terms, conditions, features, availability, pricing, fees, service and support options subject to change without notice.

Q. Has Intuit **followed** the settlement requirements as to the display ads?

A. **Yes**, we have.

Q. And does Intuit plan to **continue following** those requirements?

A. **Yes**.

**Cathleen Ryan,**  
Intuit Executive

RPF 11864 (Ryan  
(Intuit) Tr. 757)

Q. What, if anything, has Intuit done to ensure that it's in compliance with the terms of [the State AG] agreement?

A. Well, we have an **entire compliance team**, compliance office ... that is checking and making sure that our advertising and marketing are all consistent with the terms of that agreement, and everybody in TurboTax marketing and leadership roles took **training on the agreement and the terms**, and who's new ... has to take that training as well.

**Jack Rubin,**  
Intuit  
Executive

RPF 11875 (Rubin  
(Intuit) Tr. 1600)

# The AG Consent Order Was Modeled On The FTC's Prior Proposal

FEDERAL TRADE COMMISSION | OFFICE OF THE SECRETARY | FILED 11/13/23 OSCAR NO 608912 | PAGE Page 95 of 114 \* -PUBLIC

Category	FTC's November 10, 2021 Proposal	State AG Settlement
<b>Non-Space Constrained Ads</b>	“(1) the existence of material limitations on a consumer’s ability to use that free product; (2) the general nature, category, or type of those limitations; and (3) that not all taxpayers qualify for the free product.”	“(1) the existence and category of material limitations on a consumer’s ability to use that free product; and (2) that not all taxpayers qualify for the free product.”
<b>Space Constrained Ads</b>	“that eligibility requirements apply.”	“that eligibility requirements apply.”
<b>Space Constrained Online Ads</b>	“must also include a hyperlink to a landing page or webpage on a TurboTax Website that contains full disclosure of all material eligibility restrictions.”	“(1) Clearly and Conspicuously include a hyperlink to a landing page or webpage on a TurboTax Website that Clearly and Conspicuously contains full disclosure of all material eligibility restrictions or (2) link by clicking on the Advertisement itself to a landing page or webpage on a TurboTax Website that Clearly and Conspicuously sets forth full disclosure of all material eligibility restrictions.”
<b>Space Constrained Video Ads</b>	“must [also] verbally disclose ... that eligibility limitations apply and not all taxpayers qualify.”	“except for such Advertisements that are 8 seconds or shorter, Intuit must [also] verbally disclose ... that not all taxpayers qualify.”
<b>TurboTax Website</b>	“must disclose ... very near to the representation or through a hyperlink that is very near to the representation, all material limitations on a consumer’s ability to use that free product, including, but not limited to, eligibility criteria for that free product.”	“must disclose (1) ... all material limitations on a consumer’s ability to use that free product, including, but not limited to, eligibility criteria for that free product, or (2) through a hyperlink (i) that is very near to the representation, (ii) that indicates that there are material limitations on a consumer’s ability to use that free product, and (iii) that links to a landing page or webpage that Clearly and Conspicuously sets forth all material limitations on a consumer’s ability to use that free product, including, but not limited to, eligibility criteria for that free product.”

# Complaint Counsel Failed To Provide Evidence That Additional Prescriptions Are Necessary Improvements To The AG Order

FEDERAL TRADE COMMISSION DOCUMENTS - PUBLIC RELEASE | https://www.ftc.gov/opa/2019/10/20191015benco.html | Page 14 of 14

Complaint Counsel bear the burden of “satisfy[ing] the court that **relief [for any deception] is needed.**”

*Benco Dental Supply Co.*, 2019 WL 5419393, at \*75 (F.T.C. Oct. 15, 2019).

The ALJ explained that he “want[ed] to see **legal support for ... the proposed remedy.** This includes complaint counsel providing a proposed order for relief together with supporting law and argument for all sections and parts of the proposed order[.]”

ALJ, Tr. 1835

But Complaint Counsel **failed to present any evidence or legal support** establishing that the proposed order is needed to prevent deception or would benefit consumers.





# The Proposed Order Should Not Demand Incomprehensible Disclosures

FEDERAL TRADE COMMISSION | OFFICE OF THE SECRETARY | FILED 11/13/23 OSCAR NO 608912 | PAGE Page 98 of 114 \* -PUBLIC

## Tax Year 2022 Display Ad

## Revised Disclosures???



Situations covered (assuming no added tax complexity):	Situations not covered:
<ul style="list-style-type: none"> <li>*W-2 income</li> <li>*Interest or dividends (1099-INT/1099-DIV)</li> <li>*This ad does not cover filing a Schedule B</li> <li>*IRS standard deduction</li> <li>*Earned Income Tax Credit (EIC)</li> <li>*Child Tax Credit (CTC)</li> <li>*Student loan interest deduction</li> </ul>	<ul style="list-style-type: none"> <li>*Itemized deductions</li> <li>*Unemployment income reported on a 1099-G</li> <li>*Business or 1099-NEC income</li> <li>*Stock sales</li> <li>*Rental property income</li> <li>*Credits, deductions and income reported on other forms or schedules (for example, income related to crypto investments)</li> </ul>

## By A Disclosure Referring To Specific Tax Forms

“[C]onsumers don’t really understand tax speak,” so listing all the covered forms and schedules would be “**terribly confusing**.”

**Greg Johnson &  
Cathleen Ryan,**  
Intuit Executives

Johnson (Intuit) Tr. 599; Ryan (Intuit) Tr. 777

### Consumer Testimony

Consumers specifically testified that “simple tax returns” is easy to understand and **more comprehensible** than references to specific IRS forms.

GX138 (Adamson (Consumer) Dep.) at 72-73;  
RX369 (Goldstein (Consumer) Dep.) at 90);  
RPF ¶1635; RRF ¶1670

# Testing Confirms Consumers Understand The Phrase “Simple Tax Returns”

FEDERAL TRADE COMMISSION | OFFICE OF THE SECRETARY | FILED 11/13/23 OSCAR NO 608912 | PAGE Page 100 of 114 \* -PUBLIC

PUBLIC

## Card Sort 1 - Understanding

- File your simple tax return - very easy to understand,

- File your simple tax return - very easy, not complicated

- File your simple tax return - very easy

- File your simple tax return - very easy to understand, one of the top ones

- File your simple tax return - same as the others, very easy to understand

- File your simple tax return - somewhat easy

RX304

**Jack Rubin,**  
VP of Marketing

“[A]ll of the Respondents said that they could understand the phrase ‘simple tax returns.’” That result “was consistent with our overall experience.”

Rubin (Intuit) Tr. 1546

Even Novemsky’s flawed questionnaire showed that “simple tax returns” caused consumers to “understand[] their eligibility as being about the level of simplicity or complexity of their return.”

**Nathan Novemsky,**  
CC’s Expert

# Consumers Testified That They Understood “Simple Tax Returns”

FEDERAL TRADE COMMISSION | OFFICE OF THE SECRETARY | FILED 11/13/23 OSCAR NO 608912 | PAGE Page 101 of 114 \* -PUBLIC

PUBLIC

Q. What does **simple returns** mean to you?

A. ... I would imagine it's just a tax return that's fairly straightforward. You have your income tax and you have nothing else that you need to really have adjusted or worked with.

GX138 (Adamson  
(Consumer) Dep.)  
at 58 59

GX130 (Tew  
(Consumer)  
Dep.) at 21

Q. Do you happen to remember why you didn't qualify?

A. [B]ecause my taxes were **too complex** for what it was doing.

Q. [W]hat was that understanding [of what was meant by the term “simple returns”]?

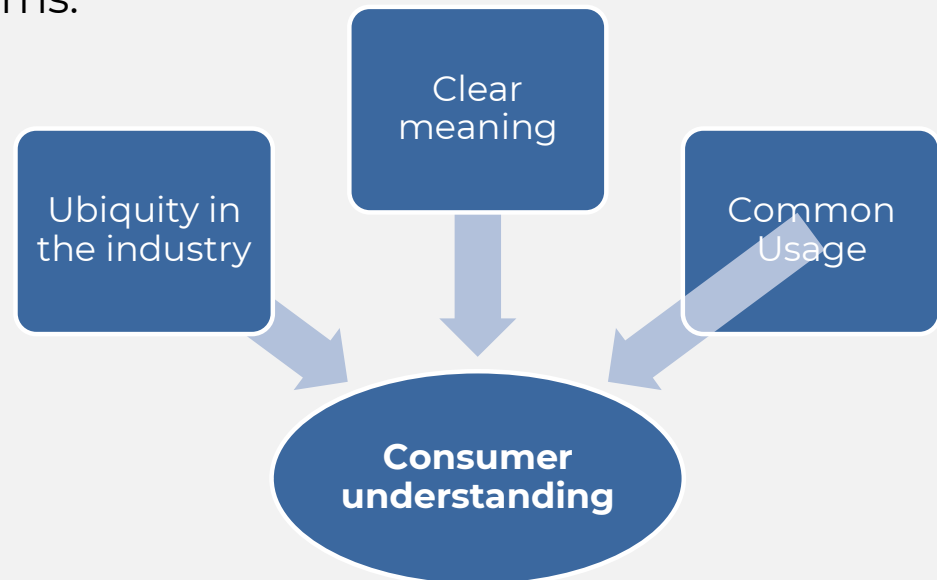
A. [T]hat you don't have student loan interest and only one source of income and you're not claiming any deductions.

GX135 (Phyfer  
(Consumer)  
Dep.) at 87

## Confirms Consumer Understanding



- Intuit aligns the qualifications for TurboTax Free Edition to the IRS’s definition of a “simple tax return.”
- All of Intuit’s major competitors in the online tax-prep market offer a free online tax-preparation product and describe that product as being for taxpayers with “simple returns.”





File

Pay

Refunds

Credits &amp; Deductions

Forms &amp; Instructions

Search



## IRS Direct File Update: Free, secure, IRS-run, electronic filing option on track to be available in 2024 as a limited pilot



### 2024 Direct File pilot eligibility will be limited by tax scope

For the 2024 filing season, Direct File will serve as a pilot with a goal to learn both about the Direct File service itself and the needs of taxpayers who use it. The tax scope for the pilot is still being finalized.

Eligibility to participate in the pilot will be limited to filers with relatively **simple tax returns** reporting only certain types of income and claiming limited credits and deductions. The pilot scope is subject to change, but the IRS currently anticipates it will include:

<https://www.irs.gov/newsroom/irs-direct-file-update-free-secure-irs-run-electronic-filing-option-on-track-to-be-available-in-2024-as-a-limited-pilot>



## VITA and TCE

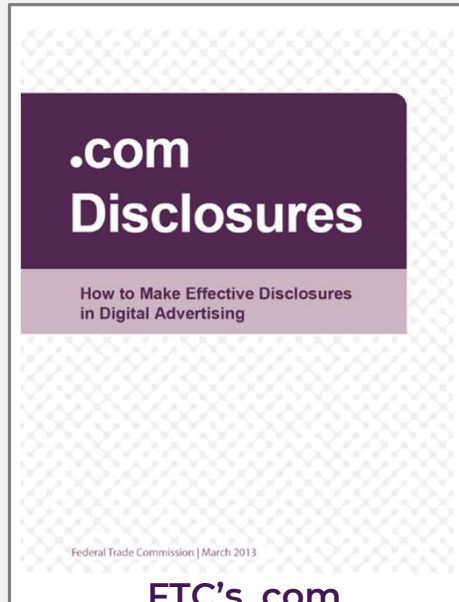
### Be aware of what VITA and TCE volunteers can and can't do

These services help you with **simple tax returns**. **Publication 3676-B**, IRS Certified Volunteers Providing Free Tax Preparation, can help you determine what types of returns that VITA and TCE can and can't help prepare.

<https://www.taxpayeradvocate.irs.gov/get-help/filing-returns/vita-and-tce/>

The FTC Has Accounted For Space-Constrained Ads In Other Cases

The FTC's own guidance contemplates that **different disclosures are appropriate in space-constrained ads:**



- Disclose required information in the space-constrained ad itself or clearly and conspicuously on the website to which it links. In some cases, a required disclosure can easily be incorporated into a space-constrained ad. [Example 15](#) In other instances, the disclosures may be too detailed to be disclosed effectively in the ad itself. These disclosures may sometimes be communicated effectively to consumers if they are made clearly and conspicuously on the website to which the ad links. In determining whether the disclosure should be placed in the

FTC's .com  
Disclosure  
Guidelines

GX316 at 15



## Purchase Decisions Based On A Six-Second Ad

**No evidence** consumers are deceived by short video ads without verbal disclosures.

RPF ¶1255; RRF ¶1938

Consumers **understand** that six-second ads do **not include all offer details**, and that they can find additional information on the **webpage**.

RPF ¶¶254, 262, 522

Novemsky recognized that detailed information in a short ad would lead to information overload and “**poor consumer decision-making.**”

RX1392 (Novemsky (FTC) Dep.) at 317

*In contrast to the proposed cease-and-desist order, the **consent order** outlines the required disclosures considering space limitations:*

## Non-Space-Constrained Ads

- (1) The existence and category of material limitations on a consumer's ability to use that free product; and
- (2) That not all taxpayers qualify for the free product.

## Space-Constrained Video Ads

- (1) The existence and category of material limitations on a consumer's ability to use that free product; and
- (2) That not all taxpayers qualify for the free product.
- (3) If longer than 8 seconds, a verbal disclosure that not all taxpayers qualify.

## All Other Space-Constrained Ads

- (1) Eligibility requirements apply.
- (2) If online, include a hyperlink or link the ad itself to a TurboTax landing page that sets forth full disclosure of all material eligibility restrictions.

The FTC Has Accounted For Space-Constrained Ads In Other Cases

In other cases, the FTC itself has imposed **specific disclosure requirements for space-constrained ads**. Those disclosures closely mirror the requirements already mandated by the AG Consent Order.

2. For a Space-Constrained Advertisement, a disclosure will be deemed to be compliant with Section I.A. of this Order as long as:
  - a. The disclosure indicates the type of restriction and the amount of data usage, if any, triggering the restriction; and
  - b. The disclosure is made Clearly and Conspicuously and in Close Proximity to at least one prominent representation of the triggering term; and

Stipulated Order at 4-5, *FTC v. AT&T Mobility LLC*, No. 14-cv-04785-EMC (N.D. Cal. Nov. 5, 2019).

- B. *Provided, however*, that for a space-constrained advertisement, a disclosure will be deemed compliant with Paragraph A(3) of this Section as long as: (i) the disclosure specifies the types of requirements and medical conditions (e.g., prescriptions, nearsightedness) necessary to obtain the promoted price or discount; (ii) the disclosure is made Clearly and Conspicuously and in Close Proximity to at least one prominent representation of such promoted price or discount; (iii) the space-constrained advertisement includes a hyperlink in Close Proximity to the disclosure that leads to a webpage that Clearly and Conspicuously discloses all of the information required by this Section, including the disclosures required by Paragraph A(3); (iv) any other hyperlink contained in the space-constrained advertisement leads to a webpage that Clearly and Conspicuously discloses all of the information required by this Section, including the disclosures required by Paragraph A(3); and (v) to the extent that any telephone number or short code/short number is included in such space-constrained advertisement, before any consumer who calls or sends a text message to such telephone number or short code/short number is scheduled for an appointment at Respondent's vision centers, all of the information required by this Section, including the disclosures required by Paragraph A(3), is disclosed Clearly and Conspicuously to such consumer.

Decision at 4-5, *LCA-Vision*, Docket No. C-4789 (Jan. 19, 2023)

“Some fencing in” may be appropriate, *FTC v. Grant Connect, LLC*, 763 F.3d 1094, 1105 (9th Cir. 2014), when **reasonably tethered** to the challenged practice, *American Home Products Corp. v. FTC*, 695 F.2d 681, 710-711 (3d Cir. 1982).

There is no evidence concerning the business model of any of these product line or how they advertise.

Several products are easily distinguishable from TurboTax:

- CreditKarma is free **for all consumers**.
- Quickbooks **does not offer** a free tier at all.

Complaint Counsel point to only **two draft documents** relating to one product, and even that draft only purported to be **considering** offering a free version of that product.

Those two draft documents, relating to one product, posing a hypothetical, does not justify the order's sweeping fencing in.

 creditkarma



 mint



 mailchimp



 quickbooks



If a stakeholder involved in creative review believe an ad was deceptive or misleading, Intuit “would immediately address it.” The ad would “[a]bsolutely not” make it on the air.



**Cathleen Ryan,**  
SVP of Marketing

Ryan (Intuit) Tr. 701-702



**Jack Rubin,**  
VP of Marketing

“Those ads are not deceptive or [Intuit] wouldn’t run them, and ... we believe that.”

Rubin (Intuit) Tr. 1599



**Greg Johnson,**  
Former General  
Manager, 2018-2022

If Intuit at any point believed that a free advertisement was misleading consumers, Intuit “would have stopped the ad.”

Johnson (Intuit) Tr. 615, 622-624

The ALJ did not question “the **sincerity** of Intuit’s witnesses testifying to **Intuit’s commitment not to deceive its consumers.**” ID 221.

# **The Proceeding Is Unconstitutional And Untimely**

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# The FTC Proceeding Is Unconstitutional

FEDERAL TRADE COMMISSION | OFFICE OF THE SECRETARY | FILED 11/13/23 OSCAR NO 608912 | PAGE Page 111 of 114 \* -PUBLIC

## The FTC's Combination Of Functions Violates Due Process

The Commissioners' combined exercise of **accusatory and adjudicative** functions violates due process and is therefore unlawful.

*Williams v. Pennsylvania*,  
579 U.S. 1, 4, 8 (2016).

## Chair Khan's Continued Participation Violates Due Process

Chair Khan should have been disqualified because “a disinterested observer may conclude that [she] has in some measure” prejudged the case.

*Fast Food Workers Committee v. NLRB*, 31 F.4th 807, 815 (D.C. Cir. 2022).

## Intuit's Private Rights Must Be Adjudicated In An Article III Court

This case involves Intuit's right to advertise, which is a “**core private right**”— such claims must therefore be decided in Article III courts.

*Axon Enterprise v. FTC*,  
598 U.S. 175, 198 202 (2023)  
(Thomas, J., concurring).

### FTC's Structure Violates Separation Of Powers

FTC Commissioners and ALJs are impermissibly insulated from presidential **removal**, in violation of Article II.

*Seila Law v. CFPB*, 140 S.Ct. 2183, 2191 (2020);  
*Jarkesy v. SEC*, 34 F.4th 446, 464 (5th Cir. 2022), cert.  
granted, 143 S.Ct. 2688 (2023).

### Congress Unconstitutionally Delegated Legislative Power To The FTC

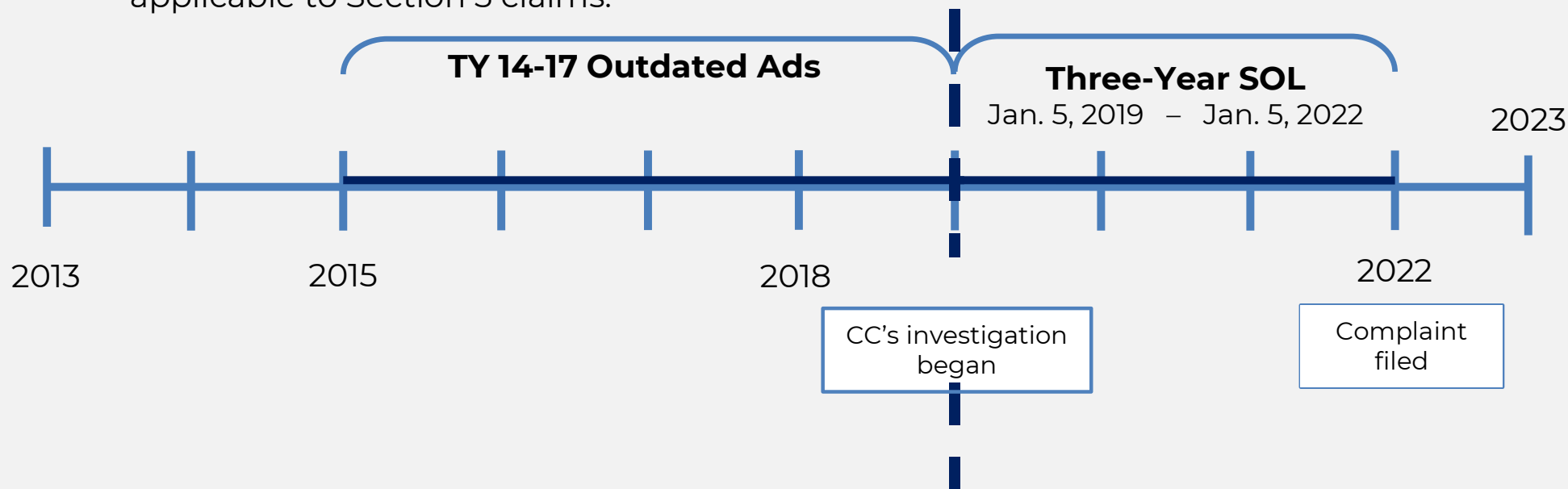
The Commission's unfettered discretion to proceed before an administrative or an Article III tribunal violates the **non-delegation doctrine**.

*Jarkesy*, 34 F.4th at 461.



The FTC unreasonably delayed taking action, allowing nearly three whole tax seasons to pass before initiating an action in 2022, challenging ads that ran as early as 2015.

- **Laches** precludes the FTC from punishing Intuit for past ads, which it had known about for years before filing suit.
- Ads from TY 2014-2017 are outside the borrowed three-year **statute of limitations** applicable to Section 5 claims.



**CERTIFICATE OF SERVICE**

On November 13, 2023, I caused the foregoing document to be filed electronically using the FTC's E-Filing system, which will send notification of such filing to:

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Suite CC-5610  
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ElectronicFilings@ftc.gov

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

Also on November 13, 2023, I caused the foregoing document to be served via email on:

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Administrative Law Judge  
600 Pennsylvania Ave. NW, Rm. H-110  
Washington, DC 20580

/s/ Derek Woodman  
Derek Woodman  
*Counsel for Intuit Inc.*