

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

In the Matter of:

Intuit Inc., a corporation.

Docket No. 9408

**INTUIT INC.’S OPPOSITION TO COMPLAINT COUNSEL’S MOTION FOR
IN CAMERA TREATMENT OF SENSITIVE PERSONAL
AND FINANCIAL INFORMATION**

Intuit opposes Complaint Counsel’s (CC) motion for full *in camera* treatment of thirteen exhibits that CC say contain “sensitive personal and financial information” (SPI). Contrary to CC’s position, the thirteen exhibits are not solely or even mostly comprised of SPI, such that redaction would be impractical. CC’s request for full *in camera* treatment of those exhibits—as opposed to redaction of SPI, which Intuit does not oppose—is therefore improper. Indeed, CC’s request to shield the entirety of these exhibits from public view appears to be an attempt to hide the paucity of the evidence supporting CC’s deception claim. That request should be denied.

I. BACKGROUND

CC seek full *in camera* treatment of thirteen exhibits on the basis that those exhibits, which generally include consumer complaints and related information, contain SPI and are impractical to redact. Specifically, CC seek *in camera* treatment for the following documents:

GX 502–504. These are Consumer Sentinel complaints that include consumer names, addresses, email addresses, phone numbers, the date of the complaint, complaint narratives (many already made public through the Better Business Bureau), and complaint dispositions. Although most of the complaints in the exhibit include email addresses, postal addresses, and

phone numbers, more sensitive SPI like social security numbers and partial financial account numbers appear only approximately once every 380 pages.

RX 264, 277, and 357 attachments. These exhibits are CC's responses to interrogatories that Intuit served during this proceeding and CC's supplemental filing related to their summary decision motion. The attachments for which CC seek *in camera* treatment are consumer complaints that CC identified as relevant to the allegations against Intuit. Unlike the Consumer Sentinel complaints, these entries are largely limited to consumer names, complaint numbers, and the complaint text—postal addresses, email addresses, or phone numbers are not associated with each complaint. Sensitive SPI such as social security numbers and partial financial account numbers appear only approximately once every 130 pages.

RX 256 and 269. These are spreadsheets of consumer complaints provided by CC as part of their initial disclosures or during discovery. The spreadsheets include information related to complaints received by the FTC, including the complaint text, the date the complaint was received, the business or product the complaint relates to, and certain consumer contact information, including consumers' addresses and phone numbers.

RX 231 attachment. CC seek *in camera* treatment for an email attachment that lists consumer information, including contact information such as phone numbers and email addresses. The email itself is between CC and a plaintiffs' firm representing consumers bringing arbitration claims against Intuit. The email reflects that the FTC was soliciting potential complainants from the firm. The attachment to the email reflects that the firm sent the FTC a list of 227 consumers.

RX 266. This exhibit is Diana Shiller's handwritten notes, which reflect her work related to this proceeding. The 79-page document includes consumer phone numbers or email addresses

on only seven pages. *See* CC-DFS-00000012 (phone number), 019 (email address), 020 (email address and phone number), 028 (phone number), 071 (phone numbers), 073 (phone numbers), 077 (phone number). The remaining 72 pages—or over 90 percent of the document—contain no SPI, but only Ms. Shiller’s notes concerning other aspects of the FTC’s investigation or this proceeding.

RX 278, 279, and 280. These are spreadsheets that CC say are Ms. Shiller’s call logs. The spreadsheets appear to identify the consumers that Ms. Shiller attempted to contact during the FTC’s investigation. They also contain notes concerning Ms. Shiller’s limited attempts to call twenty-five consumers. The spreadsheets also include consumer names, phone numbers, addresses, and email addresses.

II. LEGAL STANDARD

Commission Rule 3.45(b) authorizes *in camera* treatment of material that “constitutes sensitive personal information.” 16 C.F.R. §3.45(b). “Sensitive personal information” is defined to include “an individual’s Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver’s license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual’s medical records.” *Id.* Courts have sometimes also treated telephone numbers, addresses, and email addresses as sensitive personal information, allowing for redaction of such information. *See, e.g., Illumina*, 2021 WL 3701608, at *3 (F.T.C. Aug. 12, 2021); *see also LabMD, Inc.*, 2014 FTC LEXIS 127, at *1 (May 6, 2014) (granting parties’ joint motion to keep addresses, dates of birth, social security numbers, and other information confidential).

III. ARGUMENT

Intuit has no objection to redaction of the eight categories of consumer information that CC identify as SPI and seek to keep *in camera*, namely, “(1) phone numbers, (2) addresses, (3) email addresses; (4) financial account numbers, (5) credit card or debit card numbers, (6) financial transaction numbers, (7) tax identification numbers (including Social Security Numbers), and (8) dates of birth,” Mot 2.

This is no basis, however, for full *in camera* treatment of any of the exhibits in question. CC contend, without elaboration, that “due to the volume of material, the number of consumer records, and the sensitivity of the information contained therein, redaction would not be practical.” Mot. 3. But the reality, as explained, is that the exhibits each contain relatively small quantities of SPI, such that redactions of that information is entirely feasible. And that is the proper approach, as it balances the need to protect SPI from disclosure with the strong presumption in favor of public access to administrative and judicial proceedings (including evidence submitted). Again, CC offer no reasonable justification whatsoever for its overbroad request.

For example, in three of the exhibits (the attachments to RX 264, 277, and 357), SPI appears only once every approximately 130 pages across the 822 combined pages. Indeed, Intuit’s review has identified only a few isolated instances of SPI in the complaint text (i.e., social security numbers or partial financial account numbers). Those exhibits instead primarily recite consumer complaints that are not confidential, and most of which are already publicly available through the BBB website. CC have offered no justification for withholding an average of 130 pages based on a single occurrence of SPI.

The same is true with respect to RX 266, Diana Shiller’s handwritten notes. SPI, in the form of consumer email addresses and phone numbers, appears on only seven pages. The

remaining 72 pages (of 79 total in the document) contain no SPI—and are critical to understanding Ms. Shiller’s work related to this proceeding, and in particular the extent to which she investigated the consumer complaints that CC now contend are evidence of deception. CC fail to explain how redacting the consumer phone numbers and email addresses on those seven pages is impractical, or why the remaining 72 pages, which CC do not assert is confidential, warrant *in camera* treatment.

Even with respect to exhibits in which SPI is somewhat more common, withholding the exhibits in full is unwarranted. For instance, CC have asked the Court to give the entirety of GX 502–504 *in camera* treatment. But those exhibits mostly contain consumer complaints that are already publicly available. Within those complaints, Intuit has identified only a few instances of SPI: a consumer’s social security number in one complaint, a date of birth in a second complaint, and partial credit card numbers in four other complaints. *See* GX 502 (Sentinel Ref. Nos. 117127376, 145899368, 105456956, 106622405, 117289653, and 132310869). And although consumer telephone numbers, addresses, and email addresses are often included with a complaint, redacting only that information would be relatively straightforward, and would leave the substantial quantity of non-SPI in the complaints visible to the public—and hence subject to public scrutiny.

Email addresses, postal addresses, and phone numbers of consumers that appear in the spreadsheet exhibits can likewise easily be redacted. And again, the remaining information *should* be public, consistent with the strong presumption of public access to judicial and administrative proceedings—a presumption that is obviously not overcome given CC’s complete failure to offer *any* argument for *in camera* treatment of non-SPI.

Put simply, CC cannot have *thousands* of pages withheld from the public based on the presence in documents of limited—and easily redactable—SPI. Not one of the cases CC cite supports such a sweeping approach, one that gives far too little weight to the presumption in favor of openness and public access in judicial and administrative proceedings. Indeed, relevant case law is to the contrary, regularly providing for redaction of SPI rather than complete *in camera* treatment of exhibits. *See Illumina*, 2021 WL 3701608, at *5; *Basic Research*, 2006 FTC LEXIS 14, at *5; *LabMD*, 2014 FTC LEXIS 127, at *3. This Court has in fact ordered redaction of SPI rather than full *in camera* treatment even with SPI far more voluminous than here. *See Illumina*, 2021 WL 3701608, at *5.

The only apparent reason for CC's request to keep the entirety of the exhibits from the public is to hide the paucity of evidence supporting CC's deception claim. Indeed, the exhibits starkly undermine that claim. The 396 complaints that are at most potentially relevant—CC originally identified 739 but have since conceded that almost half of those are irrelevant—represent only 0.0005 percent of the 86.4 million TurboTax customers who filed a tax return from TY 2015 to TY 2021. *See* RX1018 ¶68. And even those complaints do not reflect that consumers were deceived by Intuit's advertising. *See* Intuit's Motion *In Limine* to Exclude or Limit Complaint Counsel's Evidence of Consumer Complaints (Feb. 10, 2023). Ms. Shiller's call logs, meanwhile, reflect that CC did almost nothing to verify any of the complaints or determine whether they provide evidence of the alleged deception. The "potential embarrassment" (Mot. 4) that will result from the exhibits being made public, therefore, is not to consumers but to CC. CC should not be allowed to evade accountability for its shoddy case by asking that the documents evincing that shoddiness be shielded from public view.

IV. CONCLUSION

Complaint Counsel's motion for *in camera* treatment of exhibits should be denied.

February 24, 2023

Respectfully submitted,

Jonathan E. Paikin
Jennifer Milici
Derek A. Woodman
Wilmer Cutler Pickering
Hale and Dorr LLP
2100 Pennsylvania Ave NW
Washington, DC 20037
Telephone: (202) 663-6000
Facsimile: (202) 663-6363
Jonathan.Paikin@wilmerhale.com
Jennifer.Milici@wilmerhale.com
Derek.Woodman@wilmerhale.com

/s/ David Z. Gringer
David Z. Gringer
Wilmer Cutler Pickering
Hale and Dorr LLP
7 World Trade Center
250 Greenwich St.
New York, NY 10007
Telephone: (212) 230-8800
Facsimile: (212) 230-8888
David.Gringer@wilmerhale.com

Attorneys for Respondent Intuit Inc.

RX 1018

Exhibit

RX 1018

exhibitsticker.com

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

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

In the Matter of:

Intuit Inc., a corporation.

Docket No. 9408

**EXPERT REPORT OF PROFESSOR PETER N. GOLDER, PH.D.
JANUARY 13, 2023**

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I. INTRODUCTION

A. Qualifications

1. My name is Peter Golder. I am a professor of marketing at the Tuck School of Business at Dartmouth College in Hanover, New Hampshire. In 2014, I was appointed by Dartmouth's president to be one of seven founding faculty members in Dartmouth's Society of Fellows. From 2015 to 2018, I served as area coordinator of the Tuck School's marketing faculty group. From 2015 to 2020, I was co-editor-in-chief of the academic journal *Marketing Letters*. From 2017 to 2020, I was faculty director of the Tuck School's First-Year Project course and, from 2018 to 2020, I was faculty director of the Tuck School's global experiential courses. In 2020, I was named an Academic Fellow of the Marketing Science Institute. I previously served as professor of marketing and coordinator of the marketing department doctoral program at the Stern School of Business at New York University in New York, New York.
2. I hold a Ph.D. in Business Administration (Marketing) from the University of Southern California and a B.S. in Mechanical Engineering from the University of Pennsylvania.
3. My research experience and interests include branding, historical analysis of markets, sources of market leadership, product features and customer perceptions associated with quality, innovation, market entry strategies, new product development and marketing, and global marketing. I have employed a variety of research methods in addressing these topics, including the historical research method, surveys, case studies, and econometric analysis. In 2000, I published a paper on the historical research method in the *Journal of Marketing Research*, one of the leading journals in the marketing discipline, providing a comprehensive description of the method and explaining its usefulness for generating

knowledge about marketing phenomena, including via the review of archival sources.¹ As a result of this paper and many of my other publications, I was awarded the Elsevier Distinguished Scholar Award from Society for Marketing Advances.²

4. I teach or have taught classes for MBA candidates including marketing, new product marketing, creativity and design, and global marketing. Topics that I cover in these classes include branding, the historical research method, and survey design. I regularly present to academic and professional audiences on marketing-related topics. I have written more than forty publications appearing in academic journals, as book chapters, and in media and trade publications, including publications in leading marketing and business journals such as *Journal of Marketing*, *Journal of Marketing Research*, *Marketing Science*, and *Harvard Business Review*. I am currently an associate editor at *Journal of Product Innovation Management*, serve on the editorial board of *Journal of Marketing*, and serve as a peer reviewer of articles submitted to these journals and other academic journals. My research and contributions to the field of marketing have been recognized with many best paper and best book awards, and my research has been featured in the media, including *The Wall Street Journal*, *The Economist*, and *Advertising Age*. I have also consulted on several marketing-related topics for litigation, including trademark and trade dress issues, advertising, warning labels, and transfer pricing. These consulting engagements have involved review of archival materials as well as evaluation of survey designs and results.

¹ Golder, Peter N., “Historical Method in Marketing Research with New Evidence on Long-Term Market Share Stability,” *Journal of Marketing Research*, Vol. 37, May 2000, pp. 156-172 (“Historical Method in Marketing Research with New Evidence on Long-Term Market Share Stability”), INTUIT-FTC-PART3-000595299.

² See **Appendix A**, p. A-2; Kardashian, Kirk, “Golder Wins Distinguished Scholar Award,” *Tuck School of Business*, November 2, 2012, <https://www.tuck.dartmouth.edu/news/articles/golder-wins-distinguished-scholar-award> (“Golder Wins Distinguished Scholar Award”), INTUIT-FTC-PART3-000600865.

5. A copy of my curriculum vitae, which provides additional detail on my education, qualifications, and professional affiliations, as well as a list of the publications I have authored, is attached to this report as **Appendix A**. A list of cases in which I have provided expert testimony during the past four years is included as **Appendix B**.

B. Case Background

6. I understand that Complaint Counsel have issued an administrative complaint against Intuit, which offers online tax preparation products and services under its TurboTax brand.³ Intuit offers four do-it-yourself (“DIY”) online TurboTax products for personal tax returns at varying price points (“Free Edition,” “TurboTax Deluxe,” “TurboTax Premier,” and “TurboTax Self-Employed”). TurboTax Free Edition covers simple tax returns (i.e., Form 1040 without having to attach any schedules or forms), while paid editions (i.e., TurboTax Deluxe, TurboTax Premier and TurboTax Self-Employed) include schedules and forms.
7. Detailed lists of the forms supported by each version of TurboTax are readily accessible on the TurboTax website, including commonly filed forms and schedules, with hyperlinks that potential customers can click on for more information about each tax form and schedule.⁴ In addition to the DIY products, Intuit offers additional paid services such as expert review (“TurboTax Live Assisted”) and expert preparation (“TurboTax Live Full

³ Complaint, *In the Matter of: Intuit Inc., A Corporation*, Docket No. 9408, March 28, 2022 (“FTC Administrative Complaint”).

⁴ See e.g. “TurboTax Deluxe,” *Intuit*, <https://turbotax.intuit.com/personal-taxes/online/deluxe.jsp#tax-forms> (“TurboTax Deluxe”), accessed August 25, 2022, INTUIT-FTC-PART3-000599625. See also “Personal Taxes Online,” *Intuit*, <https://turbotax.intuit.com/personal-taxes/online/> (“Personal Taxes Online,” *Intuit*), accessed July 20, 2022. A full list of the schedules supported by each TurboTax product can be found on this same webpage.

Service”), each with differentiated pricing based on tax return complexity.⁵ In Tax Year (“TY”) 2021, Intuit offered TurboTax Live Assisted Basic and TurboTax Live Full Service Basic for free to customers with simple returns who filed before March 31 and February 15, respectively.⁶

8. Intuit advertises its TurboTax products, including its free products, in a number of ways, including through TV ads, social media/display ads, paid search, and email campaigns to prior customers. Complaint Counsel take issue with Intuit’s advertising of its free products, including ad campaigns for Free Edition from TY 2015 to TY 2021 and ad campaigns for the limited time free offers for TurboTax Live Assisted Basic and TurboTax Live Full Service Basic. I refer to these ads collectively as “Intuit’s Free Ads.”
9. Complaint Counsel allege that Intuit “represents, directly or indirectly, expressly or by implication, that consumers can file their tax returns for free using TurboTax” when “in numerous instances [Intuit] does not permit consumers to file their tax returns for free using TurboTax.”⁷ Complaint Counsel allege that Intuit’s Free Ads and corresponding website design collectively lure “reasonable” consumers to the TurboTax website with the promise of free tax filing and then require payment once consumers have invested “significant time and effort” preparing their returns with TurboTax.⁸ Complaint Counsel further allege that

⁵ These versions combine elements of assisted tax preparation products. For example, customers have the option of accessing expert help while doing their own tax returns or have the option of having an expert review their returns before they file. *See e.g.*, “TurboTax Live,” *Intuit*, <https://turbotax.intuit.com/personal-taxes/online/live/how-it-works.htm> (“TurboTax Live”), accessed August 24, 2022, INTUIT-FTC-PART3-000599629; “Live Full Service,” *Intuit*, <https://turbotax.intuit.com/personal-taxes/online/live/full-service/> (“Live Full Service”), accessed April 24, 2022, INTUIT-FTC-PART3-000599613.

⁶ *See* “Products & Pricing Page in Tax Year 2021, as of February 1, 2022,” *TurboTax*, <https://web.archive.org/web/20220201023105/https://turbotax.intuit.com/personal-taxes/online/> (“Products & Pricing Page in Tax Year 2021, as of February 1, 2022”).

⁷ FTC Administrative Complaint, ¶¶ 119-120.

⁸ FTC Administrative Complaint, ¶¶ 35, 39.

the TurboTax website design provides insufficient disclosures regarding eligibility for free offers, further reinforcing the notion that all customers can file their tax returns for free with TurboTax.⁹

10. Complaint Counsel argue that “Intuit’s deceptive door-opener ads [...] bring consumers to the TurboTax website representing that consumers can file their tax returns for free using TurboTax, but once there, many consumers encounter screens that inform them that they cannot complete and file their tax returns for free. In the case of the Hard Stop [upgrade] screens, this confrontation comes after consumers have already created a TurboTax account and expended substantial time inputting sensitive personal and financial information into Intuit’s user interface.”¹⁰
11. I understand that Complaint Counsel are seeking certain requirements concerning Intuit’s free offers and additional disclosures to be adjudicated at a hearing in front of the ALJ.¹¹ Specifically, Complaint Counsel are seeking a finding that Intuit’s marketing of Free Edition was deceptive and ask for an order to be issued, including a provision that Intuit must not represent that a good or service is “Free” “in connection with the advertising, marketing, promoting, or offering for sale of any goods or services” unless:
 - a. Intuit “offers the good or service for Free to all consumers; or”
 - b. “All the terms, conditions, and obligations upon which receipt and retention of the “Free” good or service are contingent are set forth Clearly and Conspicuously at

⁹ FTC Administrative Complaint, ¶¶ 36–44.

¹⁰ FTC Administrative Complaint, ¶¶ 57–58.

¹¹ See [Proposed] Decision and Order, *In the Matter of: Intuit Inc., A Corporation, Respondent*, Docket No. 9408, August 22, 2022, pp. 5, 6.

the outset of the offer so as to leave no reasonable probability that the terms of the offer might be misunderstood.”

- c. “Further, if the goods or services are not Free for a majority of U.S. taxpayers, such a fact is disclosed Clearly and Conspicuously at the outset of any disclosures.”¹²

12. I have been asked to assume by counsel for Intuit that as a legal matter such additional disclosures would require Intuit to include a voiceover (or text when the ad format does not include audio): (1) stating that Free Edition is not available for the majority of taxpayers; and (2) including the contents of its Simple Returns Pop-up (including specific tax situations covered and not covered under Free Edition) in all of its ads.
13. I also understand that Complaint Counsel have retained Dr. Nathan Novemsky to opine on certain issues to do with Intuit’s advertising. Dr. Novemsky provided a report in this matter on December 9, 2022 (“Novemsky Report”).¹³ Dr. Novemsky also provided two previous declarations in federal court during a preliminary injunction phase: an affirmative declaration on March 28, 2022 and a rebuttal declaration on April 8, 2022.¹⁴ The Novemsky Report conducts what he calls a “TurboTax Perception Survey,” and concludes that his

¹² See [Proposed] Decision and Order, *In the Matter of: Intuit Inc., A Corporation, Respondent*, Docket No. 9408, August 22, 2022, pp. 5, 6. The [Proposed] Decision and Order includes an additional provision, that Intuit “in connection with the advertising, marketing, promoting, or offering for sale of any goods or services must not misrepresent or assist others in misrepresenting ... any material fact, including:” the cost of Intuit’s “goods or services, including any TurboTax product or service;” “[t]hat consumers can only file their taxes online accurately if they use a paid TurboTax product or service;” “[t]hat consumers can only claim a tax credit or deduction if they use a paid TurboTax product or service;” and “[a]ny other fact material to consumers concerning any good or service, such as: the total costs; any refund policy; any material restrictions, limitations, or conditions; or any material aspect of its performance, efficacy, nature, or central characteristics.”

¹³ Expert Report of Nathan Novemsky, Ph.D., *In the Matter of: Intuit Inc., a corporation*, No. 9408, December 9, 2022 (“Novemsky Report”), 303.

¹⁴ Declaration of Nathan Novemsky, *Federal Trade Commission v. Intuit Inc.*, Docket No. 3:22-cv-1973, March 28, 2022 (“Novemsky Declaration”). Second Declaration of Nathan Novemsky, *Federal Trade Commission v. Intuit Inc.*, No. 3:22-cv-1973, April 8, 2022 (“Second Novemsky Declaration”), GX 313.

survey, produced documents, and case facts provide evidence for his opinions that (1) “A substantial portion of the taxpayers who do not qualify to use TurboTax Free Edition [...] have the misimpression that they can file their income taxes for free using TurboTax”; (2) “A vast majority of the mistaken taxpayers identified at least one of [two sources: that is, TurboTax advertisements or the TurboTax website] as playing a role in forming their misimpression”; and (3) “A substantial portion of the taxpayers who are not eligible to use TurboTax Free Edition [...] have the misimpression that their returns meet TurboTax’s definition of a ‘simple U.S. return.’”¹⁵

C. Assignment

14. I have been asked by counsel for Intuit to evaluate Intuit’s marketing practices with regard to its commercial tax filing products, including Free Edition and its paid commercial products (collectively, “TurboTax Suite”) and its website design in the context of Complaint Counsel’s allegations and Dr. Novemsky’s opinions (including in his prior declarations where he more directly responds to my opinions). In addition, I have been asked to evaluate the likely impact on the marketplace if the additional disclosures sought by Complaint Counsel were required.
15. I previously submitted a declaration in response to the FTC’s motion for a preliminary injunction in federal court on April 4, 2022.¹⁶ I submitted a second declaration in this matter on August 30, 2022.¹⁷

¹⁵ Novemsky Report, p.25.

¹⁶ Declaration of Peter Golder, Ph.D., *Federal Trade Commission v. Intuit Inc.*, No. 3:22-cv-1973-CRB, April 4, 2022 (“April Golder Declaration”).

¹⁷ Declaration of Peter Golder, Ph.D., *In the Matter of: Intuit Inc., a corporation*, No. 9408, August 30, 2022 (“August Golder Declaration”).

16. In undertaking my assignment, I utilized the academic principles of archival and historical research. As described in my article, “Historical Method in Marketing Research with New Evidence on Long-Term Market Share Stability,” the historical method involves selecting a topic, collecting, evaluating, analyzing, and interpreting data and information related to the topic, and presenting the data gathered and conclusions from the analyses of these data.¹⁸ In the course of my review in this matter, I collected and analyzed relevant data and information from numerous sources including:
- a. Academic literature, including studies on branding, consumer purchase processes, consumer satisfaction, customer retention, customer lifetime value, deception, and disclosures;
 - b. Consumer data, including complaints, product reviews and ratings, Net Promoter Scores (“NPS”), survey responses, TurboTax filing behavior, and testimony;
 - c. Intuit materials, including at-issue advertisements, the TurboTax website, marketing and strategy documents, and testimony from Intuit fact witnesses;
 - d. Data on third-party firms, including customer ratings, complaints, and advertisements for benchmark companies;
 - e. Publicly available information about tax preparation, including websites and advertisements of tax preparation companies, consumer-facing articles and buying guides, and IRS materials; and
 - f. FTC documents, including the FTC guidelines on disclosures and Complaint Counsel’s submitted declarations and reports.

¹⁸ Historical Method in Marketing Research with New Evidence on Long-Term Market Share Stability, p. 158.

17. A complete listing of the materials I have considered in the preparation of this report is included as **Appendix C**. My report is based on information available to me as of the date of this report. I reserve the right to supplement this report in the event that new information relevant to my opinions is produced by the parties.

18. For my work in this matter, I am being compensated at my standard consulting rate of \$1,000 per hour plus any associated work or travel expenses. Working under my direction and guidance, personnel at Analysis Group, Inc. (“Analysis Group”), a consulting firm, have assisted me in the preparation of this report. I also receive compensation based on fees charged by Analysis Group. In preparing my report, Analysis Group and I used the following commercially-available computer programs: Adobe Acrobat Pro, DeepL Translator, Google Chrome (including the GoFullPage and Loom extensions), Microsoft Edge Web Capture, Microsoft Office (Excel, PowerPoint, Word), Python, SAS, and Stata.

19. The opinions in this report are my own. Neither my compensation nor that of Analysis Group is contingent upon my findings, the testimony I may give, or the outcome of this litigation.

II. SUMMARY OF OPINIONS

20. *Intuit’s positive customer reviews and high customer retention are inconsistent with the deception alleged.* Complaint Counsel’s theory of consumer deception is unsupported by data and information related to consumer behavior and competition in the marketplace. Far from suggesting that consumers are deceived by Intuit’s marketing, Intuit’s consumer data, including NPS, customer ratings, and customer retention rates that regularly outperform competitors, indicate that TurboTax regularly meets, or exceeds, customers’ expectations.

Complaint Counsel and Dr. Novemsky’s speculation that these positive indicators are driven by various cognitive biases or high switching costs is unsupported and inconsistent with decades of marketing literature and demonstrably low switching costs in the tax preparation industry. (*See Section III*).

21. ***Intuit’s rate of complaints is low.*** If consumers were deceived by a large-scale marketing campaign like the one at issue, academic literature would predict Intuit would experience higher rates of customer complaints relative to benchmark companies. To the contrary, Complaint Counsel have identified complaints representing only 0.0005 percent of the 86.4 million TurboTax customers who completed at least one return over that same time period (TY 2015 – TY 2021). In addition, a comparison of the rate of complaints about TurboTax on the Better Business Bureau website indicates that Intuit’s complaint rate is statistically significantly *lower* than the complaint rates for benchmark companies (including direct competitors, wireless carriers, TV service providers, and automobile insurance providers). (*See Section IV*).

22. ***Intuit’s ads for its free tax preparation products include industry standard disclosures.*** Intuit’s marketing communications consistently included disclosures that indicate to consumers that: (1) TurboTax Free Edition is not applicable to all tax situations, through the use of the words “only” or “for”; and (2) the complexity of a consumer’s individual tax situation impacts whether they qualify to file for free through the use of the phrase “simple returns.” Intuit’s more recent Free Ads also include the phrase “see if you qualify,” which further reinforces that only some people qualify. The concept of a simple return is common

throughout the tax industry, and is even used by the IRS,¹⁹ reflecting a recognition of varying levels of complexity across individual tax situations. Analyses of the proximity and prominence of these disclosures using metrics based on FTC guidelines and academic literature indicate that Intuit’s disclosures are comparable to those of benchmark companies. (*See Section V*).

23. ***Consumers in this industry make involved purchase decisions and do not rely solely on ads.*** Ads are encountered in the context of the broader Consumer Buying Process (i.e., the typical series of activities that precede purchase and post-purchase consumption) and reflect only one source of information considered by consumers. In particular, reasonable consumers of high-involvement products like tax preparation make informed purchase decisions using considered information. Complaint Counsel’s argument appears to assume that consumers would see Intuit’s Free Ads or marketing and believe that, regardless of their tax complexity, they could file for free, at which point they would immediately proceed to the TurboTax website to file their tax returns. This argument is inconsistent with the marketing literature and fails to credit the diligence and knowledge reasonable consumers employ when making financial decisions, such as filing tax returns. Data and information in the marketplace indicate that consumers expect terms and conditions associated with free offers²⁰ and engage in information collection and service comparisons before making a tax preparation decision.²¹ [REDACTED]

¹⁹ “IRS Free File Program,” *United States Government Accountability Office Report to Congressional Requesters*, April 2022, <https://www.gao.gov/assets/gao-22-105236.pdf> (“U.S. GAO Report re: IRS Free File Program”), INTUIT-FTC-PART3-000599424, pp. 13-15.

²⁰ *See Section VI.D.*

²¹ *See Section VI.B.*

²² *See Figure 24 in Section VI.C.*

[REDACTED]

[REDACTED]. (See Section VI).

24. ***The TurboTax website assists customers in finding the appropriate product for their tax situation.*** The TurboTax website includes detailed information on qualification requirements for Free Edition and provides tools to assist consumers in selecting the appropriate product for their tax situation. Reasonable consumers shopping for an online financial product like TurboTax would understand and know to look for additional details about whether they qualify to file for free on the TurboTax website, understanding that TV ads are unlikely to contain every detail about the service being offered. Intuit’s Free Ads also inform consumers that additional information is available on the TurboTax website. Consistent with this, Intuit data indicate that [REDACTED] of customers who start in Free Edition do not upgrade: they file for free with Free Edition. Customers who require an upgrade are informed immediately upon the website’s determination that the customer is not eligible to file for free. For such customers, upgrading does not necessarily suggest deception: even if someone does not expect to be able to use Free Edition, there is no downside to starting in Free Edition, and many third-party sources specifically suggest this approach. (See Section VII).
25. ***Reasonable consumers are unlikely to believe that TurboTax is necessarily “free for them.”*** Based on the entirety of my review of Intuit’s Free Ads and the TurboTax website, the academic literature on how consumers make purchase decisions, the paucity of complaints and high number of positive customer ratings, and my benchmarking of both complaints and the ads themselves, it is my opinion that reasonable consumers viewing Intuit’s Free Ads are unlikely to believe that TurboTax is necessarily free for their specific

tax situation. Instead, reasonable consumers are likely to view some of the at-issue ads, understand that there is a free option, and recognize either that they do or do not qualify for the free product, or that they will need additional information to determine whether they qualify and that information is available on the TurboTax website (as directed in the ads themselves). Intuit's marketing of Free Edition through advertising and website representations is consistent with industry practices and clearly discloses the qualifications for filing for free. Given the nature of the purchase process in this product category, research and theory in the marketing literature demonstrate that Intuit's marketing communications are not likely to deceive reasonable consumers into believing that they personally could file for free. Post-purchase data – including low rates of complaints, high customer ratings, and high customer retention coupled with demonstrated willingness to switch providers – demonstrate that TurboTax regularly meets or exceeds the expectations of its customers, which is inconsistent with widespread consumer deception. (*See Section VIII*).

26. *Incorporating non-standard and burdensome disclosures would likely decrease the number of taxpayers filing for free.* The additional disclosures sought by Complaint Counsel are out of step with industry norms (as can be seen in my advertising benchmarking analysis²³). These additional disclosures may lead to cognitive overload and reduced engagement for consumers viewing the ads, would position Intuit unfavorably relative to competitors with the same business models, and would likely reduce the impact of the advertising. As a result, Intuit would need to re-evaluate and would likely reduce, or may even eliminate, advertising of Free Edition and other free offers. Reducing the impact

²³ See *Section V.B.1* and *Section V.C*.

or amount of advertising for TurboTax Free Edition is likely to have the perverse effect of reducing awareness that free tax filing options exist and is likely to decrease free tax filing both with Intuit and with other free providers. Millions of customers file their taxes for free with TurboTax every year, and Intuit’s investment in the availability and marketing of Free Edition likely increased category demand for free online tax preparation options and spurred competitors to offer similar options.²⁴ Consumers who are diverted from using TurboTax by a reduction in free advertising would still have to file their taxes and would likely select from a comparably priced online tax preparation option from a competitor or from a more expensive, professional tax preparer. (*See Section IX*).

III. COMPLAINT COUNSEL’S THEORIES OF DECEPTION AND LOCK-IN ARE INCONSISTENT WITH MARKETING LITERATURE AND PRACTICE

27. Complaint Counsel’s theory of deception appears to be that Intuit deceived consumers into trying TurboTax with Intuit’s Free Ads and that consumers, upon learning they did not qualify for the free product either immediately on the website or during the course of filling out their taxes, were unable or unwilling to choose an alternative tax preparation method and instead chose to continue and pay for TurboTax.
28. Complaint Counsel’s theory is inconsistent with a business approach like Intuit’s²⁵ that seeks to maximize Customer Lifetime Value, a business approach that is well-studied

²⁴ *See Section IX.A.*

²⁵ Senior Vice President of Marketing Mary Ann Somers testified that Intuit’s Free Edition strategy revolves around “provid[ing] simple tax filers a great product, completely free of charge longer term, it’s about developing a relationship with our consumer and growing with them.” She explained that “over their lifetime, people’s taxes get more complicated, and our hope is that we develop a strong relationship with them and that they continue to come back and look to us for more -- for products that solve the more complex tax situations, like a Deluxe, like a Premier, like a Self-employed, like a TurboTax Live if they want an accountant’s help. So that’s a critical part of our strategy to build long-term relationships with our customers and keep them very

throughout marketing literature²⁶ and a central tenet taught in marketing courses in leading business schools including my own course at the Tuck School of Business. Customer Lifetime Value is the total amount of profit a company can expect to earn from a customer over the lifetime of that customer.²⁷ Customer Lifetime Value is not simply the value of one transaction; it is the total value of that customer over the duration of the relationship with the company. Therefore, product categories that rely on repeat business (such as tax preparation services, which are purchased annually) often focus on Customer Lifetime Value, rather than the value of an individual transaction. It is therefore critical that a tax preparation business ensure customers have a good experience and the product satisfies their needs such that they return the following year and recommend the product to friends and family.

29. A strategy based on deception that leaves consumers angry limits the ability for a tax preparation company to maximize Customer Lifetime Value: once a customer feels deceived, they are unlikely to return, and the company loses that revenue and profit in all subsequent years. These consumers may also leave negative reviews or tell friends and family to choose a different product, limiting Intuit's ability to gain new customers through word of mouth. In contrast, if Intuit is successful in meeting or exceeding its customers' expectations by delivering value through its product offerings, those customers' brand

happy along the way.” Deposition of Mary-Ann Somers, *In the Matter of Intuit Inc., A Corporation*, No. 9408, November 22, 2022 (“Somers Deposition”), 88:16-89:5.

²⁶ See e.g., Keller, Kevin, *Strategic Brand Management* 4th Ed., Pearson Education, 2013 (“Strategic Brand Management (2013)”), INTUIT-FTC-PART3-000596068, pp. 134-135; Keller, Kevin and Vanitha Swaminathan, *Strategic Brand Management* 5th Ed., Pearson Education, 2020 (“Strategic Brand Management (2020)”), INTUIT-FTC-PART3-000595446, pp. 104-107; Kotler, Philip and Kevin Keller, *Marketing Management* 15th Ed., Pearson Education, 2016 (“Kotler and Keller (2016)”), INTUIT-FTC-PART3-000597494, pp. 136-146.

²⁷ Kotler and Keller (2016), p. G3.

loyalty increases,²⁸ improving the chances they will return to Intuit in future years and share their positive experience with friends and family.

30. Companies that operate on a Customer Lifetime Value strategy, therefore, are incentivized to ensure that customers have a positive experience with the product and regularly track metrics that reflect the customer experience. Consistent with a Customer Lifetime Value approach, Intuit tracks NPS, customer reviews and ratings, and customer retention. Across each of these metrics, Intuit has high ratings, indicative of customers who feel that the TurboTax product meets or exceeds their expectations.

A. TurboTax Customer Reviews Indicate Customers Receive Benefits from the Service and Do Not Feel Misled

31. Customer ratings and reviews reflect a post-consumption judgment made by customers that compares their experience of a product relative to their expectations.²⁹ Customer sentiment largely reflects the difference between what a customer expected from a product and what he or she received.³⁰ A consumer's expectations about a product may come from various

²⁸ See e.g., Yang, Zhilin and Robin T. Peterson, "Customer Perceived Value, Satisfaction, and Loyalty: The Role of Switching Costs," *Psychology & Marketing*, Vol. 21, No. 10, October 2004, pp. 799-822 ("Yang and Peterson (2004)"), INTUIT-FTC-PART3-000598504, p. 815 ("Perceived value is another key driver of customer loyalty and also significantly influences customer satisfaction. As e-commerce has made cost transparency more feasible, total product/service cost, not solely the list price, has become an increasingly important feature for attracting customers. The total cost constitutes both explicit expenses (i.e., product/service price) and implicit expenses such as shipping costs, return costs, coupon usages, discount rewards, and free services. Additionally, firms should provide the product portfolio and value-added free services that are in demand to increase their competitive advantage.").

²⁹ Golder, Peter N. et al., "What is Quality? An Integrative Framework of Processes and States," *Journal of Marketing*, Vol. 76, No. 4, July 2012, pp. 1-23 ("Golder, Mitra, and Moorman (2012)"), INTUIT-FTC-PART3-000595336, p. 4.

³⁰ Kotler, Philip and Kevin Keller, *Marketing Management* 14th Ed., Pearson Education, 2012 ("Kotler and Keller (2012)"), INTUIT-FTC-PART3-000596682, ("satisfaction is a person's feelings of pleasure or disappointment that result from comparing a product's perceived performance (or outcome) to expectations. If the performance falls short of expectations, the customer is dissatisfied. If it matches expectations, the customer is satisfied. If it exceeds expectations, the customer is highly satisfied or delighted. Customer assessments of product performance depend on many factors, especially the type of loyalty relationship the customer has with the

sources of information including past experiences, third-parties, competitors' offerings, the firm itself (advertising, market share, firm reputation), and product-specific signals.³¹ Thus, both the experience of the product attributes and the customer's expectations regarding the product attributes are key components of whether customers feel their expectations were met.³² Managing expectations regarding both price and product attributes (in particular by not setting expectations unrealistically high) is a key component of improving customer sentiment, and ultimately customer retention.³³

32. Academic literature indicates that feelings of deception lead to negative feelings about a brand, lower probability of recommending the product to a friend, and lower overall satisfaction.³⁴ In contrast, high customer ratings indicate that the customers' expectations were generally matched or exceeded by the customers' experiences with the product. Because meeting or exceeding customer expectations leads to customer loyalty, it is critical

brand.”) p. 128. *See also*, Golder, Mitra, and Moorman (2012); Mitra, Debanjan and Peter N. Golder, “How Does Objective Quality Affect Perceived Quality? Short-Term Effects, Long-Term Effects, and Asymmetries,” *Marketing Science*, Vol. 25, No. 3, May-June 2006, pp. 230-247 (“Mitra and Golder (2006)”), INTUIT-FTC-PART3-000595317.

³¹ Golder, Mitra, and Moorman (2012), p. 10.

³² Golder, Mitra, and Moorman (2012), p. 10.

³³ Golder, Mitra, and Moorman (2012), p. 15; *See also*, Kerin, Roger and Steven Hartley, *Marketing* 15th Ed., New York, NY, McGraw-Hill Education, 2020 (“Kerin and Hartley (2020)”), INTUIT-FTC-PART3-000596659; Perreault, William et al., *Essentials of Marketing*, New York, NY, McGraw-Hill Education, 2019 (“Perreault, et al. (2019)”), INTUIT-FTC-PART3-000598454.

³⁴ *See e.g.*, Xie, Guang-Xin et al., “Disentangling the Effects of Perceived Deception and Anticipated Harm on Consumer Responses to Deceptive Advertising,” *Journal of Business Ethics*, Vol. 29, April 1, 2014, pp. 281-293 (“Xie, Madrigal, and Boush (2014)”), INTUIT-FTC-PART3-000598490; Craig, Adam et al., “Suspicious Minds: Exploring Neural Processes During Exposure to Deceptive Advertising,” *Journal of Marketing Research*, Vol. 49, No. 3, June 2012, pp. 361-372 (“Craig, et al. (2012)”), INTUIT-FTC-PART3-000595267; Román, Sergio, “Relational Consequences of Perceived Deception in Online Shopping: The Moderating Roles of Type of Product, Consumer’s Attitude Toward the Internet and Consumer’s Demographics,” *Journal of Business Ethics*, Vol. 95, No. 3, September 2012, pp. 373-391 (“Román (2012)”), INTUIT-FTC-PART3-000598459; Held, Johanna and Claas Christian Germelmann, “Deception in Consumer Behavior Research: A Literature Review on Objective and Perceived Deception,” *Cairn.Info*, Vol. 3, No. 21, 2018, pp. 119-145 (“Held and Germelmann (2018)”), INTUIT-FTC-PART3-000595396.

that companies do so, especially in the case of product categories reliant on repeat purchasers.³⁵

33. Meeting or exceeding customer expectations is also essential to brand reputation and long-term growth.³⁶ Intuit has every incentive to cultivate and maintain a strong reputation and to meet customers’ expectations to both secure new customers and to retain existing ones.^{37,38} Meeting or exceeding customer expectations is especially critical in the tax preparation industry where there is low overall industry growth, relatively low barriers to switching, and renewed competition for each and every customer each year.³⁹

³⁵ Kotler and Keller (2016), p. 152 (“A buyer’s satisfaction is a function of the product’s perceived performance and the buyer’s expectations. Recognizing that high satisfaction leads to high customer loyalty, companies must ensure that they meet and exceed customer expectations.”).

³⁶ Kerin and Hartley (2020), p. 128 (“Studies show that satisfaction or dissatisfaction affects consumer communications and repeat-purchase behavior. Satisfied buyers tell three other people about their experience. In contrast, about 90 percent of dissatisfied buyers will not buy a product again and will complain to nine people. Satisfied buyers also tend to buy from the same seller each time a purchase occasion arises. The financial implications of repeat-purchase behavior are significant”). *See also*, Perreault., et al. (2019), p. 133.

³⁷ Intuit’s Senior Vice President of Marketing Cathleen Ryan testified to the importance of meeting or exceeding customer expectations including in Intuit’s advertising, stating “it is in our best interest to ensure clarity in our advertising. We want the right customers to find the right products. We do not want the wrong customers to find products that aren’t right for them. We want people to start in the right SKU. It is best for our business. It is best for our customers, and that is what we strive for,” Deposition of Cathleen Ryan (as Intuit 3.33(c) Designee), *In the Matter of: Intuit Inc., A Corporation*, Docket No. 9408, November 28, 2022 (“Ryan 3.33c Deposition (2022)”), 47:6-15.

³⁸ Greg Johnson, Intuit’s Executive Vice President and General Manager of Intuit’s Consumer Group at the time of his deposition, also testified to the importance of meeting or exceeding customer expectations in respect to long term growth, that Intuit’s “guiding approach is to grow customers that pay us nothing, and so that is our focus to build relationships and grow our business and grow those relationships,” Examination of Greg Johnson via Zoom, *Federal Trade Commission in the Matter of: TurboTax, Inc., A Corporation*, Docket No. 1923119, September 29, 2020 (“Johnson Deposition”) at 124:17-23.

³⁹ Intuit, “[REDACTED],” November 18, 2022, INTUIT-FFA-FTC-000153389 (GX 448-B), p. 26. (“[REDACTED]”). Intuit, “[REDACTED] INTUIT-FTC-PART3-000489527 ([REDACTED])”).

[REDACTED]. Expert Report of Rebecca Kirk Fair, *In the Matter of: Intuit Inc., a corporation*, No. 9408, January 13, 2023 (“Kirk Fair Report”), Section V.C (“Many Respondents Demonstrate a Willingness to Consider Alternatives and To Identify and Use the Appropriate Product for Their Specific Situation”).

34. High customer retention rates are also strong evidence that customers appreciate and value a product or service. In fact, one reason firms regularly measure whether they have met or exceeded customer expectations is because it is one key to customer retention.⁴⁰ Intuit itself tracks customer retention as a key metric.⁴¹ Maintaining repeat customers is critical to successfully maximizing Customer Lifetime Value.
35. This is indeed the case for Intuit’s business strategy for TurboTax. According to Cathy Goode, Director of Marketing Strategy, “[The goal is] to give customers a better customer experience. And ultimately by doing so, it does help us grow revenue. But our No. 1 [goal] is to meet our customers’ needs.”⁴² Positive experiences from customers are acknowledged by Intuit as the main way to drive business. Jack Rubin, then-Vice President of Marketing Services at TurboTax, highlights, “We see eight out of ten customers coming back year over year. And we want them to be net promoters of our brand [...] That’s the primary – actually, the most important primary way that we hope people come to our site every year is their repeat business.”⁴³ The business sense behind offering a free version of Intuit’s products is highlighted by Cathleen Ryan, Vice President of Marketing: “by offering a

⁴⁰ Kotler and Keller (2012), p. 128 (“a highly satisfied customer generally stays loyal longer, buys more as the company introduces new and upgraded products, [and] talks favorably to others about the company and its products.”).

⁴¹ For example, in its September 2022 Investor Day presentation, Intuit reported “active customers, retention,” as one of its performance drivers and reported that improving customer retention was one of its “True North Goals.” See “Investor Day 2022,” *Intuit*, September 2022, https://s23.q4cdn.com/935127502/files/doc_presentations/2022/09/Intuit-Investor-Day-2022_092822_For-Upload_SHIPPED.pdf (“Investor Day (2022)”), pp. 10, 19. I have reviewed other examples in the record. See e.g., Intuit, “[REDACTED],” INTUIT-FTC-PART3-000594591, p. 3.

⁴² Videoconference Examination of Catherine C. Goode, *United States of America before the Federal Trade Commission in the Matter of: TurboTax, Inc., A Corporation*, No. 1923119, October 23, 2020 (“Goode Deposition”), 120:4-7.

⁴³ Videoconference Examination of Jack Rubin, *United States of America before the Federal Trade Commission in the Matter of: TurboTax, Inc., A Corporation*, No. 1923119, October 30, 2020 (“Rubin Deposition”), 175:19-176:1.

great experience with your simple taxes for free, our hope is that a customer grows with us as their life gets more complicated.”⁴⁴

1. TurboTax Customer Reviews Reflect Meeting or Exceeding Consumer Expectations

36. TurboTax customers regularly rate TurboTax highly across metrics. If customers expected to file for free but couldn’t, this would not be the case. TurboTax has demonstrated over a sustained period of time high customer ratings relative to other notable brands, especially when one considers both that TurboTax is selling a product — tax preparation — for an annual event that most consumers do not look forward to and that the nature of the business is not repeated throughout the calendar year.

37. I reviewed three types of data that can be used to measure whether customers’ expectations have been met: NPS, customer reviews on TurboTax’s website, and customer retention rates. All three measures indicate that the majority of TurboTax customers have had their expectations met or exceeded by the TurboTax Suite.

a) NPS Scores

38. Net Promoter Scores (“NPS”) are a standard and well-respected customer rating measure. [REDACTED].⁴⁵ NPS relies on customer ratings of how likely they would be to recommend a product to a friend on a 0–

⁴⁴ Videoconference Examination of Cathleen Ryan, *United States of America before the Federal Trade Commission in the Matter of: TurboTax, Inc., A Corporation*, Docket No. 1923119, October 9, 2020 (“Ryan Deposition (2020)”), 89:21-24.

⁴⁵ Intuit, [REDACTED], August 2021 (“[REDACTED]”), INTUIT-FTC-PART3-000602627, slides 77, 81.

10 scale with 0 being “not at all likely” and 10 being “very likely.”⁴⁶ The NPS is then calculated by subtracting the percentage of detractors (those who rate their likelihood of recommending the product between 0 and 6) from the percentage of promoters (those who rate their likelihood of recommending the product as a 9 or 10). Detractors are categorized as “unhappy, can damage brand by word of mouth” whereas promoters are described as “loyal enthusiasts.”⁴⁷

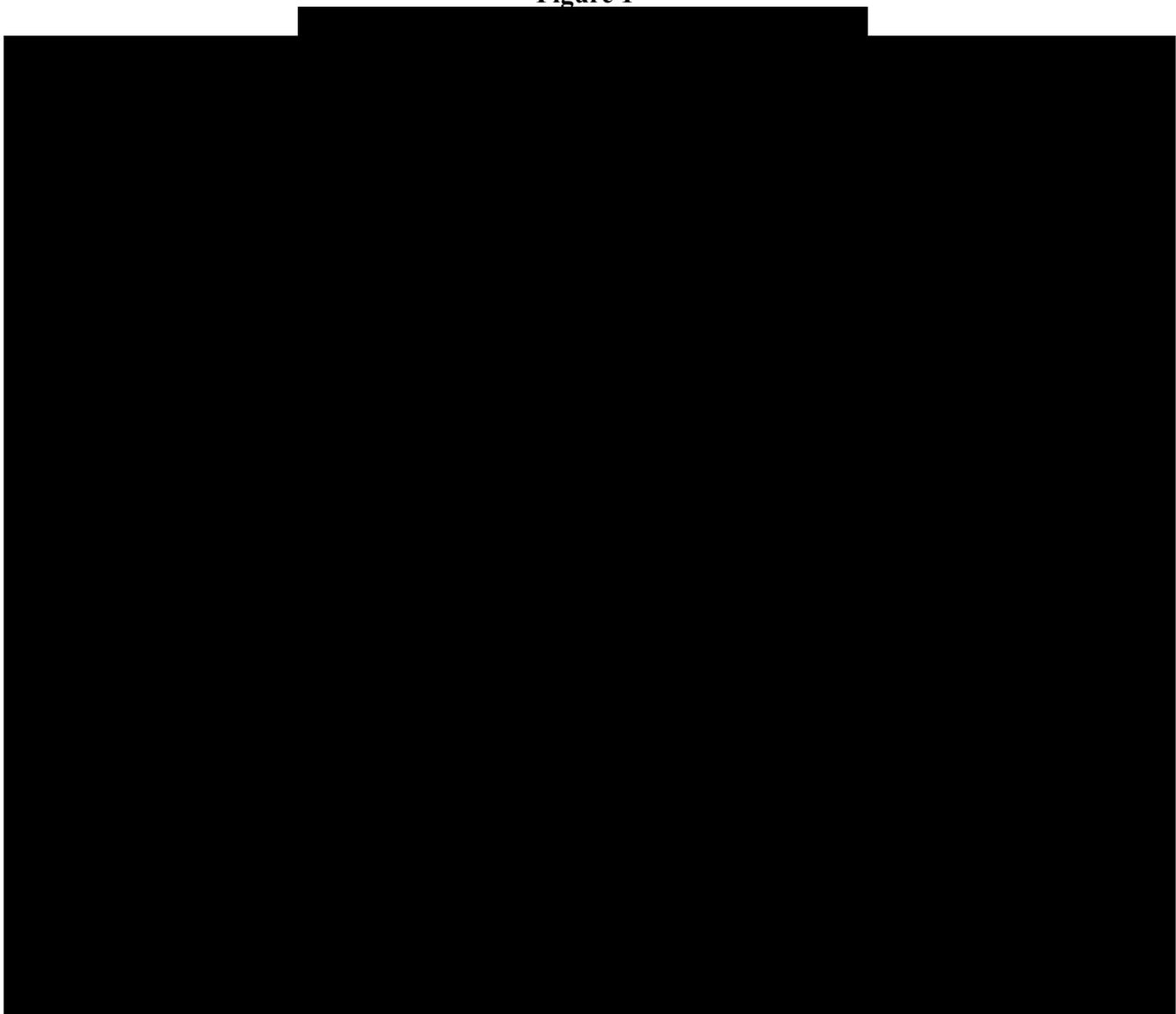
39. As **Figure 1** shows, TurboTax’s NPS has been higher than competitors’ online products in most years. From TY 2012 to TY 2020, Intuit’s paid TurboTax products consistently received comparable (and frequently higher) NPS scores as compared with H&R Block and TaxAct. Similarly, from TY 2012 to TY 2020, TurboTax Free Edition received comparable (and frequently higher) NPS scores as compared with H&R Block, TaxAct, and Cash App Taxes.⁴⁸

⁴⁶ U.S. Consumer 2016 Net Promoter Benchmarks.

⁴⁷ Chen, Elaine, “What Is the Net Promoter Score (NPS)?,” *MIT Orbit*, <https://orbit-kb.mit.edu/hc/en-us/articles/206440723-What-is-the-Net-Promoter-Score-NPS-> (“What Is the Net Promoter Score (NPS)?”), INTUIT-FTC-PART3-000600984.

⁴⁸ Cash App Taxes was formerly known as Credit Karma Tax. Intuit, Intuit Completes Acquisition of Credit Karma, <https://investors.intuit.com/news/news-details/2020/Intuit-Completes-Acquisition-of-Credit-Karma/default.aspx>, INTUIT-FTC-PART3-000600851.

Figure 1



40.

[Redacted text block]

⁴⁹ Unlike other NPS metrics reported in this section, on this slide Intuit reports its NPS using a top 2 box score methodology. See “How To Use A Top 2 Box Score In Your Survey Analysis,” *SurveyMonkey*, <https://www.surveymonkey.com/mp/top-2-box-scores/> (“How To Use A Top 2 Box Score In Your Survey Analysis”), INTUIT-FTC-PART3-000600830.

[REDACTED] (see Figure 2).⁵⁰ [REDACTED]

[REDACTED] 51

Figure 2



- 41. [REDACTED]
- [REDACTED] 53 [REDACTED]
- [REDACTED]
- [REDACTED]

⁵⁰ Intuit, “[REDACTED],” February 2021, INTUIT-FTC-PART3-000602321, slide 36.

⁵¹ Intuit, “[REDACTED],” February 2021, INTUIT-FTC-PART3-000602321, slide 36.

⁵² Intuit, “[REDACTED],” February 2021, INTUIT-FTC-PART3-000602321, slide 36.

⁵³ Intuit, [REDACTED] INTUIT-FTC-PART3-000602782. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].⁵⁵ Satmetrix named Intuit an industry leader in the “Software & Apps” industry each year from 2016 through 2020.⁵⁶

42. In contrast to Intuit, Satmetrix reports negative average NPS for both the internet telecommunications industry (-3) and the cable telecommunications industry (-2).⁵⁷ Comparably, a website that lists company-specific NPS by brand, reports that TurboTax has an NPS of 43, in comparison to numerous well-known brands with negative scores such as DirecTV (-44), Geico (-31), and Sprint (-73).⁵⁸

⁵⁴ Intuit, “[REDACTED]” INTUIT-FTC-PART3-000602782.

⁵⁵ Intuit, “[REDACTED]” INTUIT-FTC-PART3-000602782.

⁵⁶ “U.S. Consumer 2020 Net Promoter Benchmarks,” *Satmetrix*, 2020, https://cincysc.com/wp-content/uploads/2020/10/2020_benchmarks.pdf (“U.S. Consumer 2020 Net Promoter Benchmarks”), INTUIT-FTC-PART3-000598532; “U.S. Consumer 2019 Net Promoter Benchmarks,” *Satmetrix*, 2019, https://mlgsupport.zendesk.com/hc/en-us/article_attachments/360029651591/NICE-Satmetrix-infographic-2019-b2c-nps-benchmarks-042619.pdf (“U.S. Consumer 2019 Net Promoter Benchmarks”), INTUIT-FTC-PART3-000598531; “U.S. Consumer 2018 Net Promoter Benchmarks,” *Satmetrix*, 2018, <https://info.nice.com/rs/338-EJP-431/images/NICE-Satmetrix-infographic-2018-b2c-nps-benchmarks-050418.pdf> (“U.S. Consumer 2018 Net Promoter Benchmarks”), INTUIT-FTC-PART3-000598530; “U.S. Consumer 2017 Net Promoter Benchmarks,” *Satmetrix*, 2017, <https://info.nice.com/rs/338-EJP-431/images/satmetrix-infographic-2017-b2c-nps-benchmarks-glance-061217.pdf> (“U.S. Consumer 2017 Net Promoter Benchmarks”), INTUIT-FTC-PART3-000598529; “U.S. Consumer 2016 Net Promoter Benchmarks,” *Satmetrix*, 2016, <https://www.netpromoter.com/satmetrix-infographic-2016-consumer-np-benchmarks/> (“U.S. Consumer 2016 Net Promoter Benchmarks”), INTUIT-FTC-PART3-000600269.

⁵⁷ “U.S. Consumer 2021 Net Promoter Benchmarks,” *Satmetrix*, 2021, https://www.satmetrix.com/wp-content/uploads/2021/05/2021_benchmarks.pdf (“U.S. Consumer 2021 Net Promoter Benchmarks”), INTUIT-FTC-PART3-000598533.

⁵⁸ NPS scores were found at Comparably.com. See “Brand Page TurboTax,” *Comparably*, July 20, 2022, comparably.com/brands/turbotax (“Brand Page TurboTax”), accessed July 20, 2022, INTUIT-FTC-PART3-000600973; “Brand Page DirecTV,” *Comparably*, July 20, 2022, comparably.com/brands/directv (“Brand Page DirecTV”), accessed July 20, 2022, INTUIT-FTC-PART3-000600961; “Brand Page GEICO,” *Comparably*, July 20, 2022, comparably.com/brands/geico (“Brand Page GEICO”), accessed July 20, 2022, INTUIT-FTC-PART3-000599375; “Brand Page Sprint,” *Comparably*, July 20, 2022, comparably.com/brands/sprint (“Brand Page Sprint”), accessed July 20, 2022.

b) Customer Reviews and Ratings

43. The TurboTax website includes thousands of customer reviews, including both positive and negative reviews, with functionality to sort by date and rating, to limit by product, and to identify reviewers with particular tax situations (e.g., homeowners, business owners, students, etc.). This inclusion of comprehensive customer review information is customer-friendly and provides substantial information to potential customers who are considering using TurboTax, consistent with Intuit’s Customer Lifetime Value approach.
44. The customer reviews and product ratings on the TurboTax website also suggest that the products are meeting or exceeding customer expectations, with every product receiving high customer ratings. For example, from October 12, 2021 to December 21, 2022, there were 68,973 customer reviews of TurboTax Free Edition (generating a 4.8 out of 5-stars rating), 63,465 customer reviews of TurboTax Deluxe Edition (generating a 4.5 average rating), 16,545 customer reviews of TurboTax Premier (generating a 4.3 average rating), and 18,644 customer reviews of TurboTax Self Employed (generating a 4.6 average rating) available on the TurboTax website.⁵⁹
45. Customer ratings available on the websites of direct tax competitors reveal TurboTax is comparably rated. TurboTax had a 4.6 average rating out of 5 stars from 294,023 reviews as of December 21, 2022. H&R Block and TaxSlayer had lower ratings, with competitor ratings ranging from a 4.3 average rating (TaxSlayer) to a 4.8 average rating (TaxHawk). See **Figure 3** Notably, while the customer-friendly inclusion of customer reviews appears

⁵⁹ “TurboTax Product Reviews,” *Intuit*, <https://turbotax.intuit.com/reviews/?Sort=Rating:desc,SubmissionTime:desc,Helpfulness:desc> (“TurboTax Product Reviews”), accessed December 21, 2022.

common in the tax preparation industry, I also reviewed the websites of other benchmark companies, but only Geico and Progressive made customer reviews available on their websites.

Figure 3
Customer Ratings on the Websites of TurboTax and Its Direct Tax Competitors



Note:

[1] I also reviewed the websites of the other benchmark companies. Geico and Progressive were the only other benchmark companies with customer reviews on their websites. Geico had an average rating of 4.5 out of 5 stars (13,934 reviews). Progressive had an average rating of 4.1 out of 5 stars (39,568 reviews).

Sources:

- [1] Intuit, TurboTax Product Reviews, <https://turbotax.intuit.com/reviews/?Sort=Rating:desc,SubmissionTime:desc,Helpfulness:desc>, accessed December 21, 2022.
- [2] TaxHawk, Customer Reviews, <https://www.taxhawk.com/reviews.jsp>, accessed December 21, 2022.
- [3] Jackson Hewitt, What Our Customers Are Saying, <https://www.jacksonhewitt.com/file-taxes-options-products/file-taxes-online/reviews/>, accessed December 21, 2022, INTUIT-FTC-PART3-000600018.
- [4] H&R Block, H&R Block Reviews For Tax Preparation Offices, Software And Online Filing, <https://www.hrblock.com/reviews/>, accessed December 21, 2022.
- [5] TaxSlayer, TaxSlayer Customer Reviews, <https://www.taxslayer.com/reviews>, accessed December 21, 2022.
- [6] Geico, Customer Reviews for GEICO Car Insurance, <https://www.geico.com/reviews/car-motorcycle-atv-rv-boat-insurance/car-insurance/>, accessed December 21, 2022. Progressive, Progressive Insurance Reviews, <https://www.progressive.com/insurance-reviews/>, accessed December 21, 2022.

46. On the customer review platform, Influenster, TurboTax has the highest rating for any tax preparation brand with 4.5 out of 5 stars, followed by TaxAct with 4.4 stars, TaxSlayer

with 4.4 stars, and H&R Block with 4.1 stars.⁶⁰ The Auto Insurance Provider benchmark group had an average rating of 4.6 out of 5 stars,⁶¹ followed by the Wireless Carrier benchmark group with 3.7 stars,⁶² and the TV Service Providers benchmark group with 3.1 stars.⁶³

c) Customer Retention Rates

47. Intuit reported an approximately 80 percent customer retention rate in a September 2022 Investor Day presentation, meaning that the vast majority of customers continue to use TurboTax products year-over-year.⁶⁴ [REDACTED]

⁶⁰ Jackson Hewitt did not have a rating available on Influenster. “TurboTax,” *Influenster*, <https://www.influenster.com/reviews/turbo-tax> (“TurboTax”), accessed January 2, 2023; “TaxAct,” *Influenster*, <https://www.influenster.com/reviews/taxact> (“TaxAct”), accessed January 2, 2023; “TaxSlayer,” *Influenster*, <https://www.influenster.com/reviews/taxslayer> (“TaxSlayer”), accessed January 2, 2023; “H&R Block,” *Influenster*, <https://www.influenster.com/reviews/hr-block> (“H&R Block”), accessed January 2, 2023.

⁶¹ I calculate the average rating of the Automobile Insurance Provider benchmark group by taking the average Influenster rating of the following auto insurance providers: Geico (4.5 stars out of 5), State Farm (4.6 out of 5 stars), and Allstate (4.7 out of 5 stars). Progressive and USAA did not have ratings available on Influenster. See “GEICO Reviews 2022,” *Influenster*, <https://www.influenster.com/reviews/geico> (“GEICO Reviews 2022”), accessed January 2, 2023; “StateFarm Insurance Reviews 2022,” *Influenster*, <https://www.influenster.com/reviews/statefarm-insurance> (“StateFarm Insurance Reviews 2022”), accessed January 2, 2023; “Allstate Insurance Reviews 2022,” *Influenster*, <https://www.influenster.com/reviews/allstate-insurance> (“Allstate Insurance Reviews 2022”), accessed January 2, 2023.

⁶² I calculate the average rating of the Wireless Carriers benchmark group by taking the average Influenster rating of the following wireless carriers included in the benchmark company analysis: AT&T (3.8 out of 5 stars), T-Mobile (3.3 out of 5 stars), Verizon Wireless (4.0 out of 5 stars). See “AT&T Insurance Reviews 2022,” *Influenster*, <https://www.influenster.com/reviews/att> (“AT&T Insurance Reviews 2022”), accessed January 2, 2023; “T-Mobile Insurance Reviews 2022,” *Influenster*, <https://www.influenster.com/reviews/t-mobile> (“T-Mobile Insurance Reviews 2022”), accessed January 2, 2023; “Verizon Wireless Insurance Reviews 2022,” *Influenster*, <https://www.influenster.com/reviews/verizon-wireless> (“Verizon Wireless Insurance Reviews 2022”), accessed January 2, 2023.

⁶³ I calculated the average rating of the TV Service Providers benchmark group by taking the average Influenster rating of the following TV service providers included in the benchmark company analysis: Charter Spectrum (3.1 out of 5 stars) and Comcast (3.1 out of 5 stars). Dish Network did not have ratings available on Influenster and I exclude DirecTV because the average rating is based on one customer review. See “Charter Communications Reviews 2022,” *Influenster*, <https://www.influenster.com/reviews/charter-communications> (“Charter Communications Reviews 2022”), accessed January 2, 2023; “Comcast Xfinity Reviews 2022,” *Influenster*, <https://www.influenster.com/reviews/comcast-xfinity> (“Comcast Xfinity Reviews 2022”), accessed January 2, 2023.

⁶⁴ Investor Day (2022), p. 96 (“Excluding stimulus-only filers”).

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. Customers

who feel deceived by their purchase are unlikely to return to the product in the next year, thus TurboTax’s high customer retention rates suggest the absence of an unfulfilled expectation that consumers could file for free, and therefore indicate the opposite of deception among its consumers.

2. TurboTax Customer Reviews and Retention Are Inconsistent with Deception

48. Complaint Counsel disregard the evidence that customers reflect positively on their experience with TurboTax and choose to remain TurboTax customers year-over-year. Dr. Novemsky speculated that customer ratings “could” remain high because of customers’ attempts to decrease cognitive dissonance after paying for TurboTax.⁶⁷ This theory relies on the theory of cognitive dissonance, which refers to the conflict that occurs when a person’s behaviors and beliefs do not align. In this case, such cognitive dissonance would

⁶⁵ Intuit, “[REDACTED],” May 16, 2019, INTUIT-FTC-PART3-000607308, p. 8. [REDACTED]
[REDACTED]. Intuit, “[REDACTED],” May 16, 2019, INTUIT-FTC-PART3-000607308, p. 9.

⁶⁶ Intuit, “[REDACTED],” June 2021, INTUIT-FTC-PART3-000602174, slide 3.

⁶⁷ Second Novemsky Declaration, ¶ 58 (“Professor Golder points to TurboTax’s high customer satisfaction scores and retention rates as evidence that consumers were not misled about TurboTax’s products. However, high customer satisfaction could be in spite of initial confusion rather than indicating a lack of confusion. Dissonance reduction (i.e., ‘I paid to use TurboTax, so I must have valued it’) and high switching costs could contribute to positive scores and retention rates. The action of paying alone causes consumers to like a product more, as does the action of honoring one’s sunk costs and continuing with the product.”). Whether or not Dr. Novemsky offers this opinion in rebuttal, my opinion remains that cognitive dissonance is not driving Intuit’s high customer ratings.

supposedly cause customers that made an apparently illogical choice (i.e., paying for something they thought would be free) to reconcile this choice with their perception of the product (i.e., to rate the product highly, even though they were deceived or dissatisfied).⁶⁸

While cognitive dissonance is a real phenomenon in the literature, I have seen no evidence (and Dr. Novemsky points to no evidence) that, in this case, cognitive dissonance exists, let alone is so strong as to overpower the negative feelings of deception that are hypothesized to exist here. In my opinion, cognitive dissonance cannot explain Intuit's high customer ratings.

49. Under such a theory, customers expressing that they value their purchase of products and services could be seen as an indicator of deception. If this theory is to be believed, it would lead to future FTC investigations into products and services delivering value to tens of millions of customers. This would be absurd, especially in cases such as this one where no evidence of cognitive dissonance has been provided.
50. Thus, if a consumer expected to file for free when they began using the TurboTax product but, in fact, could not do so, we would expect to see that reflected in a customer's report of their experience using the product.
51. As a result, Dr. Novemsky's unsupported assertion that cognitive dissonance is driving Intuit's consistently positive ratings from its customers and high customer retention rate is

⁶⁸ George, Babu P and Manoj Edward, "Cognitive Dissonance and Purchase Involvement in the Consumer Behavior Context," *The IUP Journal of Marketing Management*, Vol. VIII, No. 3 &4, 2009, pp. 7-24 ("Cognitive Dissonance and Purchase Involvement in the Consumer Behavior Context"), INTUIT-FTC-PART3-000595280, p. 7 ("Cognitive dissonance is a psychological phenomenon that occurs when there exists a discrepancy between what a person believes and information that calls this into question (Festinger, 1957). It is psychologically uncomfortable to hold contradictory cognitions. The psychological discomfort triggers a mental recovery process in the affected individual that can lead to: (1) search for information supportive of the held belief coupled with constant attempts to downplay the cognition that resulted in the phenomenon of dissonance, or (2) to a change in belief reflective of the new condition.").

directly at odds with decades of marketing research on customer behavior, including marketplace evidence where actually deceptive or deceitful products tend to have consumer ratings that reflect the mismatch between customer expectations and reality.⁶⁹

B. Customers Are Not Locked-In Once They Have Begun Using TurboTax Free Edition or Filed in Prior Years Using TurboTax Free Edition

52. In apparent recognition that Intuit’s paying customer retention rate is inconsistent with the deception alleged, Dr. Novemsky and Complaint Counsel have previously suggested that Intuit’s customer retention is high because of high switching costs, sunk costs, the status quo bias, and “brand loyalty” (which it appears Complaint Counsel consider to be negative, rather than evidence that disproves their theory).⁷⁰ However, Complaint Counsel and Dr.

⁶⁹ For example, the NPS for Chime Financial, Inc., which was investigated by ProPublica for consumer deception, was -28 in 2022. In another example, the NPS for MoneyGram International, Inc., which was investigated by the FTC for consumer deception, was 25 in 2022. See “Brand Page MoneyGram International,” *Comparably*, July 20, 2022, <https://www.comparably.com/brands/moneygram-international> (“Brand Page MoneyGram International”), accessed July 20, 2022, INTUIT-FTC-PART3-000600989; “Brand Page Chime,” *Comparably*, July 20, 2022, <https://www.comparably.com/brands/chime> (“Brand Page Chime”), accessed July 20, 2022, INTUIT-FTC-PART3-000600996. See also **Appendix F** for more discussion of the investigations into Chime Financial and MoneyGram.

⁷⁰ Second Novemsky Declaration, ¶ 59 (“Professor Golder discusses this point in further detail, including Intuit’s high customer retention rate. He presents this high retention rate as evidence that consumers were never deceived. However, if consumers were deceived but continued with TurboTax so as not to waste their sunk time and effort in entering information, then they might continue to use TurboTax in subsequent years because of the status quo bias, a well-known bias in consumer behavior. Their lack of awareness of this bias will lead them to infer that they are in fact using TurboTax because they like it, not just because it’s the status quo.”); FTC Administrative Complaint; FTC Administrative Complaint, ¶¶ 10-12 (“This ‘freemium’ business strategy involves, in part, growing Intuit’s customer base by offering free services to consumers to whom Intuit sells separate add-on products and services. The ‘freemium’ strategy also involves persuading customers to upgrade from free to paid versions of TurboTax. The ‘freemium’ strategy further involves ‘brand loyalty,’ or retention of consumers who previously filed their taxes for free in the ‘freemium’ version of TurboTax returning to TurboTax in subsequent years when they are no longer eligible for the ‘freemium’ version and paying Intuit for a paid version of TurboTax.”); Batra, Rajeev et al., “Brand Love,” *Journal of Marketing*, Vol. 76, No. 2, March 2012, pp. 1-16 (“Brand Love”), INTUIT-FTC-PART3-000595202, p. 6 (“When consumers described their love of brand to us, they invariably described a broad and long-term consumer-brand relationship, with multiple interrelated cognitive, affective, and behavioral elements.”); Batra, Rajeev et al., “Brand Love: Development and Validation of a Practical Scale,” *Springer Science and Business Media Marketing Letter*, Vol. 28, No. 1, 2017, pp. 1-14 (“Brand Love: Development and Validation of a Practical Scale”), INTUIT-FTC-PART3-000595188. Again, whether or not Dr. Novemsky offers this opinion in rebuttal, or Complaint Counsel actually maintains its suggestion regarding switching costs, my opinion remains that switching costs are *not* driving Intuit’s high retention rates.

Novemsky provide no evidence of high switching costs, instead suggesting vaguely (and without support) that the status quo bias may cause customers to stick with their prior provider. Although status quo bias may cause a customer without strong feelings about a particular product category to return to the same brand out of familiarity or inertia,⁷¹ the literature makes clear that if consumers were deceived, they *would* have strong feelings.⁷²

53. These arguments are inconsistent with my review of the record, and the theory disregards the widely accepted and well-studied marketing literature on customer satisfaction and Customer Lifetime Value and the realities of Intuit’s operation in a competitive industry. The argument that cognitive dissonance and the status quo bias will be strong enough to deliver consistently high retention rates in the face of an effort to mislead consumers at the scale alleged by Complaint Counsel belies common sense and basic principles of marketing.
54. Importantly, Dr. Novemsky’s and Complaint Counsel’s theory is inconsistent with the evidence from Intuit’s ordinary course of business documents discussing the competitive nature of the tax preparation industry and low switching costs, the existence of advertising by Intuit’s competitors emphasizing the ease of switching among different tax providers each year, and evidence of actual customer switching behavior.
55. In fact, consumer deponents highlight multiple avenues they used for filing their taxes after switching from TurboTax, including H&R Block, TaxAct, TaxSlayer, FreeTaxUSA,

⁷¹ Arkes, Hal R. and Catherine Blumer, “The Psychology of Sunk Cost,” *Organizational Behavior and Human Decision Processes*, Vol. 35, 1985, pp. 124-140 (“The Psychology of Sunk Cost”), INTUIT-FTC-PART3-000595136.

⁷² See e.g., Xie, Madrigal, and Boush (2014), Román (2012); Held and Germelmann (2018).

Jackson Hewitt, a personal loan provider, and the IRS Free File program.⁷³ Data from TurboTax indicates that customers are willing to switch tax preparation providers from year to year and are even willing to switch mid-stream, trying out multiple options before making an ultimate selection. Such regular switching behavior in the context of a yearly high-involvement purchase decision is not consistent with Complaint Counsel’s theory that consumers are locked in or otherwise beholden to the status quo.

1. Many Consumers Try Out Multiple Online Tax Preparation Providers in a Given Year

56. Intuit data show customers demonstrate a willingness to try out multiple tax preparation providers in a given year. These data are consistent with Intuit documents and the Hauser Purchase Driver Study, which indicate that consumers are willing to try out multiple online tax preparation providers before making a purchase decision.⁷⁴

57. [REDACTED]
[REDACTED]
[REDACTED],⁷⁵ indicating not only that consumers conduct substantial research (i.e., filling out returns on multiple websites), but also that consumers comparison shop

⁷³ Deposition of [REDACTED], *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, September 30, 2022 (“[REDACTED] Deposition”), 11:10-13; Deposition of [REDACTED], *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, November 29, 2022 (“[REDACTED] Deposition”), 34:18-35:6; Deposition of [REDACTED], *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, October 13, 2022 (“[REDACTED] Deposition”), 40:3-7; Deposition of [REDACTED], *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, September 19, 2022 (“[REDACTED] Deposition”), 23:13-15; Deposition of [REDACTED], *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, October 25, 2022 (“[REDACTED] Deposition”), 19:5-13; Deposition of [REDACTED], *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, November 29, 2022 (“[REDACTED] Deposition”), 14:13-18:5; Deposition of [REDACTED], *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, September 20, 2022 (“[REDACTED] Deposition”), 19:22-20:9.

⁷⁴ Expert Report of John R. Hauser, SC.D, *In the Matter of: Intuit Inc., a corporation*, No. 9408, January 13, 2023 (“Hauser Report”), Section VI.D.

⁷⁵ Intuit, “[REDACTED]”, INTUIT-FTC-PART3-000602289, slide 25.

with multiple tax preparation products and can compare prices and refunds before making a purchase. Similarly, the Hauser Purchase Driver Survey surveyed respondents who chose a new tax preparation provider or considered changing tax preparation providers for their TY 2020 taxes and found that 21.6 percent of respondents tried out one or more online tax website(s) without using that website to file their tax returns.⁷⁶ [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁷

58. In fact, contrary to Complaint Counsel’s implication that consumers feel obligated to file with TurboTax once they have begun to enter their tax information,⁷⁸ [REDACTED]

[REDACTED]
[REDACTED]. An example of this is provided in the deposition of [REDACTED]: while he initiated the tax filing process through TurboTax’s website in April of 2018, he later changed his mind and instead “printed [his taxes] out and mailed [them] in that year.”⁷⁹

59. As shown in **Figure 4**, in TY 2021, [REDACTED]
[REDACTED]
[REDACTED]

⁷⁶ Hauser Report, Exhibit 11a. Respondents included three groups: (1) respondents who changed tax preparation providers in TY 2020; (2) respondents who considered changing tax preparation providers for TY 2020; and (3) respondents who did not file taxes in TY 2019 or did not know if they used the same provider in TY 2019 as they did in TY 2020.

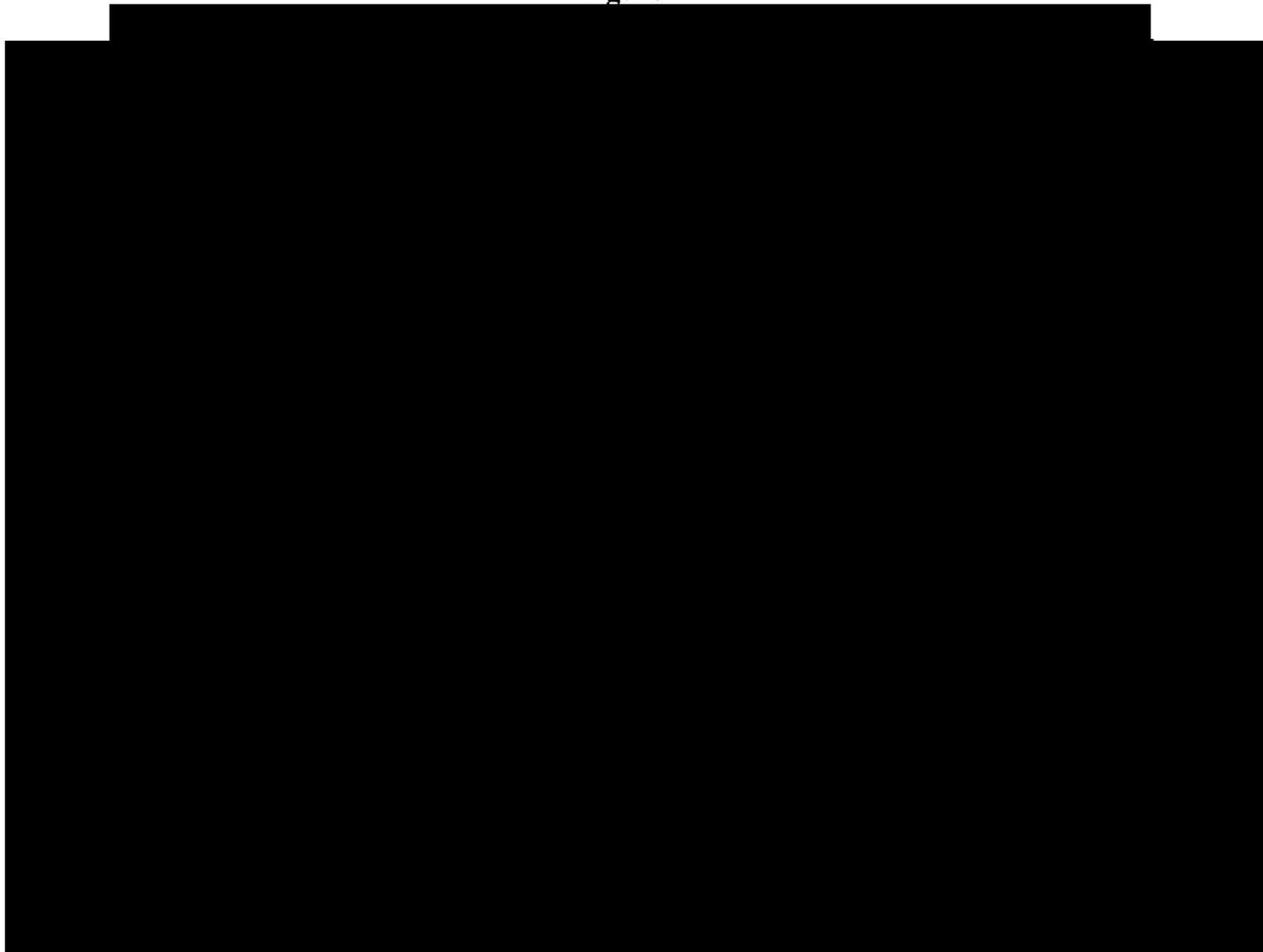
⁷⁷ Intuit, “[REDACTED] INTUIT-FTC-PART3-000608560.

⁷⁸ FTC Administrative Complaint, ¶¶ 6, 41, 52. *See also*, Second Novemsky Declaration, ¶¶ 32-33.

⁷⁹ Deposition of [REDACTED], *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, September 15, 2022 (“[REDACTED] Deposition”), 18:22-19:4.

[REDACTED].⁸⁰ Therefore, there is no evidence that customers are unable or unwilling to seek alternative tax preparation providers when told they cannot file for free with TurboTax.

Figure 4



⁸⁰ [REDACTED]. Intuit, “[REDACTED]” June 2022, INTUIT-FTC-PART3-000602247, slide 4.

⁸¹ Intuit, “[REDACTED],” June 2022, INTUIT-FTC-PART3-000602247, slide 4. I define “exits” as customers who started a return in a given tax year but did not complete it. [REDACTED]

60. Of the 21 percent of customers who started but did not finish tax returns with TurboTax, 30 percent filled out all of their tax information but never filed with TurboTax.⁸² These customers would have been told earlier in the process that they had to pay (see **Section VII**), suggesting that their decision to exit at that point was not driven by an unexpected payment screen at the final review. These statistics indicate that many customers do not act as if they are locked in to using TurboTax due to the desire to recover the sunk cost of entering in their tax information, even if they filled in *all* of their information.

2. Consumers Regularly Switch Tax Preparation Providers Year to Year

61. In addition to a willingness to change tax preparation providers mid-stream during the tax year, consumers demonstrate willingness to change tax providers across years. In fact, because the tax preparation industry has relatively low overall industry growth, tax preparation companies gain new customers primarily by attracting taxpayers who previously used other tax filing solutions. To that end, Intuit's competitors advertise the ease of switching from TurboTax to other providers, and product review websites also discuss the ease of switching among providers. For example, during TY 2021, H&R Block ran a TV ad messaging the ease of switching from TurboTax, stating that consumers can switch to H&R Block in "as little as two clicks."⁸³ H&R Block continued emphasizing the ease of switching in TY 2022 by advertising juxtaposing a holiday season scene with a voiceover that "with H&R Block tax season feels just as good as all those other seasons"

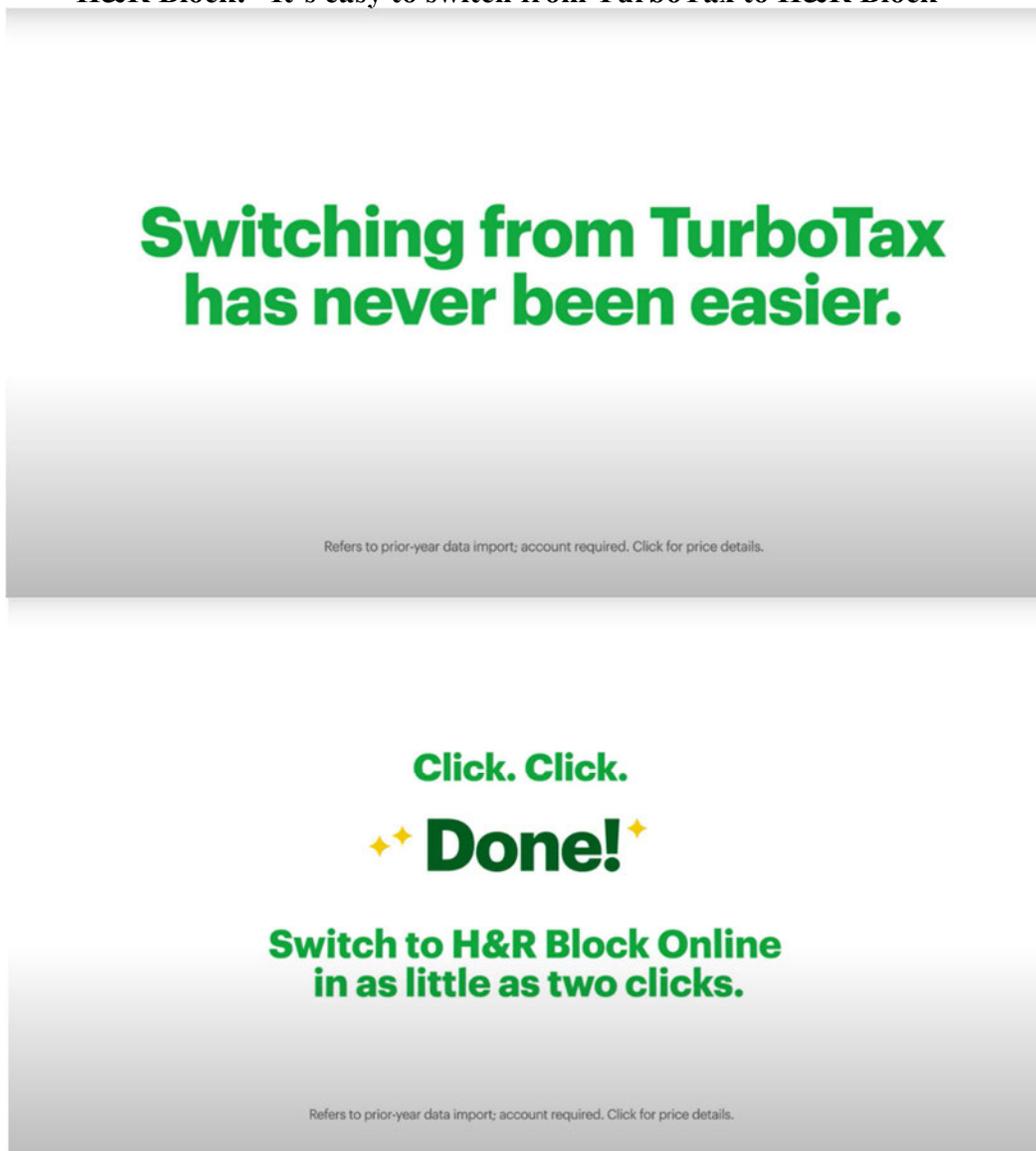
⁸² Intuit, "[REDACTED]," June 2022, INTUIT-FTC-PART3-000602247, slide 4.

⁸³ "It's Easy to Switch from TurboTax to H&R Block," *H&R Block TV Ad*, March 4, 2022, <https://www.youtube.com/watch?v=vxuzp8cRdGE> ("It's Easy to Switch from TurboTax to H&R Block"), accessed August 27, 2022, INTUIT-FTC-PART3-000593230.

if the consumer switched from TurboTax to H&R Block.⁸⁴ The ad also mentioned that consumers would “pay much less than you’d pay with TurboTax” so “don’t use them”.⁸⁵

See **Figure 5**.

Figure 5
H&R Block: “It’s easy to switch from TurboTax to H&R Block”⁸⁶



⁸⁴ “It’s Tax Season | The Holiday Season | Pay Less :15,” *H&R Block TV Ad*, <https://www.youtube.com/watch?v=1Nyj5xs4lRk> (“It’s Tax Season | The Holiday Season | Pay Less :15”), accessed January 3, 2023.

⁸⁵ It’s Tax Season | The Holiday Season | Pay Less :15.

⁸⁶ It’s Easy to Switch from TurboTax to H&R Block.

62. Product review websites also discuss these features and the ability to switch among tax preparation providers. For example, NerdWallet’s 2022 TurboTax Review states: “You can switch from another provider: TurboTax imports electronic PDFs (not scans of hard copies) of tax returns from H&R Block, Cash App Taxes, Liberty Tax, TaxAct and TaxSlayer.”⁸⁷ Similarly, NerdWallet’s 2022 H&R Block review states: “H&R Block can import last year’s return from a TurboTax data file or from a PDF of your tax return from any provider.”⁸⁸

63. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁹¹

⁸⁷ Parys, Sabrina and Tina Orem, “TurboTax Review 2022,” March 3, 2022, <https://www.nerdwallet.com/article/taxes/turbotax-review> (“TurboTax Review 2022”), accessed July 22, 2022, INTUIT-FTC-PART3-000600057.

⁸⁸ “H&R Block Tax Software Review 2022,” *NerdWallet*, March 28, 2021, <https://www.nerdwallet.com/article/taxes/hr-block-review> (“H&R Block Tax Software Review 2022”), accessed July 18, 2022, INTUIT-FTC-PART3-000600046.

⁸⁹ Intuit, “[REDACTED],” INTUIT-FTC-PART3-000601811, p. 271. [REDACTED]
[REDACTED]

⁹⁰ Intuit, “[REDACTED],” July 2020, INTUIT-FTC-PART3-000602376, p. 21.

⁹¹ I provide a detailed description of NPS and its methodology in **Section III.A.1**. Intuit, “[REDACTED]” February 2013, INTUIT-FTC-PART3-000601230.

64. Actual customer switching behavior demonstrates that customers are not locked in once they have filed in prior years, and in fact regularly switch tax providers. [REDACTED]

[REDACTED]

65. [REDACTED] – demonstrating the ability to switch away from and back to TurboTax.⁹³

This statistic likely undercounts the amount of switching since it does not account for customers who switch away from TurboTax and never return, or customers who switch to TurboTax from other providers.

66. Survey evidence also indicates that consumers are open to changing tax preparation providers even if they do not ultimately decide to switch. For example, the Hauser Purchase Driver Survey found that 43.3 percent of respondents either changed providers, or considered changing providers, from the prior year,⁹⁴ and of the respondents that did not consider using a different tax preparation provider, 61.1 percent indicated that their current choice was familiar and 48.4 percent stated that their current choice was satisfactory.⁹⁵

⁹² Intuit, “[REDACTED],” May 16, 2019, INTUIT-FTC-PART3-000607308.
⁹³ The TY 2021 customer-level data only contain returns initiated through June 10, 2022. Some returns that were incomplete as of the date of data collection may have been completed and filed subsequently. Intuit customer-level data, INTUIT-FTC-PART3-000608571-572. *See also*, INTUIT-FTC-PART3-000602999.
⁹⁴ Hauser Report, Exhibit 9. Specifically, 11.0 percent of respondents reported that they switched providers in 2021 and 32.3 percent of respondents reported that they used the same provider as the prior year but considered switching providers in 2021.
⁹⁵ Hauser Report, Exhibit 10.

Open-ended responses to the Kirk Fair Disclosure Survey also indicated a willingness of consumers to conduct additional research and potentially switch tax preparation providers when faced with an upgrade screen.⁹⁶

67. TurboTax’s high NPS, positive customer reviews, and high customer retention imply that customers do not feel misled upon using TurboTax. In other words, Intuit’s consumer data demonstrate that most customers feel that the service they receive from TurboTax products matches or exceeds their expectations. Given the high-involvement purchase process and demonstrably low switching costs, both within-year and between-years, the fact that customers choose to stay with Intuit indicates they are simply revealing their true preference for TurboTax as a provider.

IV. LOW COMPLAINT RATES ARE INCONSISTENT WITH THE THEORY OF DECEPTION ALLEGED

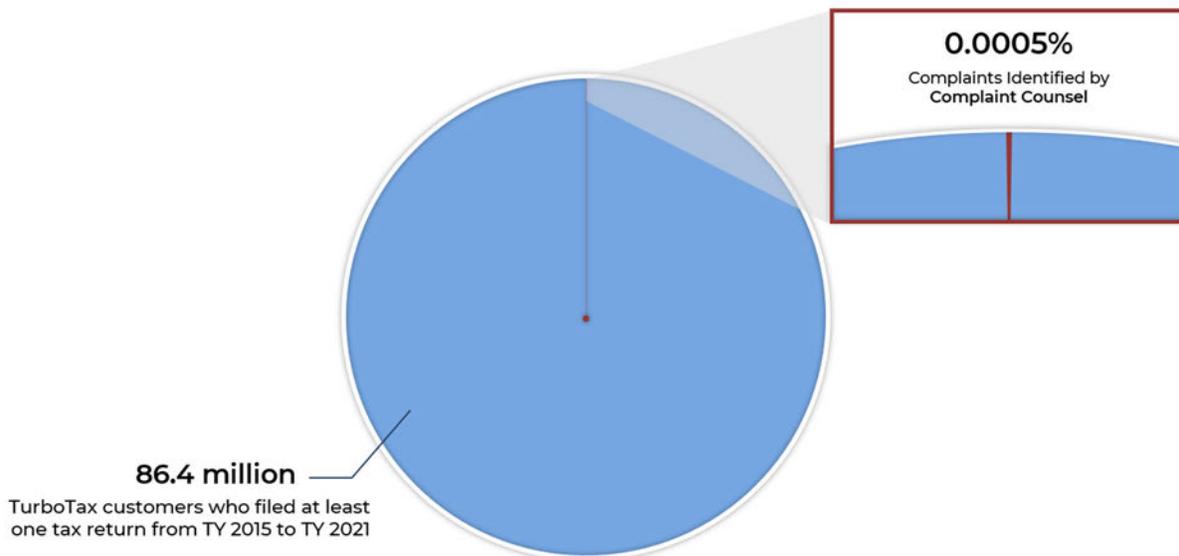
68. Another potential source of information regarding whether customers’ expectations were met or exceeded is consumer complaints. In this matter, Complaint Counsel have provided to date only 396 complaints that they currently allege are relevant to the allegations.⁹⁷ Even if we were to accept that *all* of these complaints are relevant complaints (which, as I will discuss in this section, is an overstatement), this upper bound on complaints would represent the views of only 0.0005 percent of the 86.4 million TurboTax customers who

⁹⁶ For example, one survey respondent stated that, if faced with an upgrade screen, they would, “search the internet and compare the Turbo Tax pay for edition with other tax platforms with comparable features.” See Kirk Fair Report, ¶¶ 34-35.

⁹⁷ Complaint Counsel’s Supplemental Responses to Intuit’s First and Second Set of Interrogatories, *In the matter of: Intuit Inc., A Corporation*, No. 9408, December 22, 2022 (“Complaint Counsel’s Supplemental Responses to First and Second Set of Interrogatories, December 22, 2022”).

filed at least one return from TY 2015 to TY 2021.⁹⁸ Again, such a minuscule number of complaints is inconsistent with Complaint Counsel’s alleged deception.

Figure 6
Complaints Identified by Complaint Counsel as a Share of TurboTax Customers Who Filed At Least One Return
TY 2015 – TY 2021



A. Complaint Counsel and Ms. Shiller’s Analyses of Complaints Are Unreliable

69. In June, Complaint Counsel and Diana Shiller (an investigator for the FTC) identified a set of 571 consumer complaints (“Initial Production”) that they claimed were related to “free” TurboTax.⁹⁹ In September, Complaint Counsel produced 396 complaints (“Revised

⁹⁸ From TY 2015 – TY 2021, 86.4 million customers filed their returns with TurboTax. Intuit customer-level data, INTUIT-FTC-PART3-000608571-2. *See also*, INTUIT-FTC-PART3-000603000.

⁹⁹ Declaration of Diana F. Shiller, *In the matter of: Intuit Inc., a corporation*, Docket No. 9408, May 6, 2022 (“Shiller Declaration”), GX 342, ¶ 220. Ms. Shiller explained that Complaint Counsel had gathered these complaints from a variety of sources, including the FTC’s Consumer Sentinel Database, a database which tracks consumer complaints reported directly to the FTC, as well as complaints submitted by other government agencies (e.g., Consumer Financial Protection Bureau, State Attorneys General, Internal Revenue Service) and the BBB.

Production”). The Revised Production included two sets of complaints: 228 complaints that were previously produced by Complaint Counsel in the Initial Production and 168 incremental complaints. Complaint Counsel claimed to have “narrowed the set of complaints to those that appear on their face to go to the core of [...] the Complaint.”¹⁰⁰ In reducing their Initial Production (from 571 to 228 complaints), Complaint Counsel seem to admit that more than half of the complaints in their Initial Production were not relevant to their allegations.

70. Ms. Shiller reviewed the subset of complaints that were filed in TY 2021, and defined three (not mutually exclusive) types of complaints: (1) “consumers [who] thought they were filing for free” (“Free” complaint type); (2) “consumers [who] mentioned they saw advertising indicating their tax filing will be free” (“Advertising” complaint type); and (3) “consumers [who] paid TurboTax when they thought their tax filing will be free” (“Paid” complaint type).¹⁰¹ Ms. Shiller did not describe the purpose of defining these three types, but presumably they were an attempt to identify complaints relevant to the allegations.
71. Ms. Shiller provided the analysis of these complaints independent of each other. However, this methodology is flawed and overstates the number of relevant complaints. At the very least, a complaint that is not classified as both the “Free” and “Advertising” complaint types would not include sufficient evidence to demonstrate that the complaint was related

¹⁰⁰ See Complaint Counsel, CONFIDENTIAL – CC Revised Cat. L Sentinel Complaints, September 14, 2022. See Attachment A of Complaint Counsel’s Supplemental Responses to First and Second Set of Interrogatories, December 22, 2022 and Complaint Counsel, CONFIDENTIAL – Supplemental Cat. L Sentinel Complaints, September 19, 2022. Complaint Counsel’s Reply to Respondent Intuit Inc.’s Supplemental Response to the Statement of Material Facts as to Which There is no Genuine Issue for Trial, *In the matter of: Intuit Inc., A Corporation*, No. 9408, September 29, 2022 (“Complaint Counsel’s Reply”), p. 3 and Attachment A.

¹⁰¹ Shiller Declaration, ¶ 221.

to Complaint Counsel’s allegations.¹⁰² For example, complainants who thought they should be able to file for free but do not mention seeing any TurboTax advertising may have developed the impression of their ability to file for free from sources that are not at issue, or may just be expressing disappointment that there is a free product and that they cannot use it. Similarly, complainants who say they saw an ad but did not think they could file for free could not be deceived as alleged by Complaint Counsel. In fact, the Revised Production removed more than half of the complaints Ms. Shiller had originally flagged in at least one of her three types, illustrating that Ms. Shiller’s methodology is overbroad and unreliable for identifying relevant complaints based on their substance.¹⁰³

72. Complaint Counsel provided the underlying coding for both Ms. Shiller’s initial classification and a revised classification performed by Complaint Counsel and their staff.^{104, 105} I note that neither Ms. Shiller nor Complaint Counsel were blind to the purpose of the coding process. It is best practice in matters requiring nuanced, interpretive human judgments (e.g., reviewing consumer verbatim text) to use independent (or “blind”)

¹⁰² I note that if one is looking for data that show a consumer was confused by an ad and potentially harmed by having to pay Intuit for filing, then one should consider all three Shiller complaint types. Complainants who thought they should be able to file for free and mention seeing an ad but were not categorized as “paid TurboTax” may have filed for free or may have been initially confused but that confusion cleared up at any point before filing.

¹⁰³ Of the 60 complaints Ms. Shiller originally reviewed, only 26 (43 percent) remained in the Revised Production.

¹⁰⁴ Complaint Counsel’s Reply, p. 3 (“Upon learning about Intuit’s objections and intentions regarding consumer depositions, Complaint Counsel and staff working at Complaint Counsel’s direction rereviewed the 571 consumer complaints referenced in Ms. Shiller’s declaration.”).

¹⁰⁵ I note that Complaint Counsel slightly modified the language of Ms. Shiller’s complaint types as a part of their revised classification. Complaint Counsel made the following adjustments to Ms. Shiller’s complaint types: 1) “consumers [who] thought they were filing for free” was changed to “consumers [who] indicated that they believed or TurboTax communicated that filing taxes with TurboTax would be free,” 2) “consumers [who] mentioned they saw advertising indicating that their tax filing will be free” was changed to “consumers [who] mentioned advertising about a free TurboTax option,” and 3) “consumers [who] paid TurboTax” was changed to “consumers [who] indicated they were charged for or paid for TurboTax.” See Complaint Counsel’s Reply, p. 6.

reviewers who are not aware of the hypotheses or goals of the analysis.¹⁰⁶ Such a methodology combats biases in human judgment. For example, reviewers who are aware of the goals or hypotheses may be subject to confirmation bias, a bias that causes humans to seek information that confirms their expectations and discard information that is inconsistent with expectations.¹⁰⁷

73. Complaint Counsel’s underlying coding covered all of the complaints from TY 2021 that were included in both the Revised and Initial Productions (26 complaints).¹⁰⁸ Notably, Complaint Counsel and Ms. Shiller disagree on the classification of certain complaints.¹⁰⁹ In fact, when looking at the number of complaints flagged as both relating to “Free” and “Advertising”, Complaint Counsel and Ms. Shiller reached different results. Ms. Shiller

¹⁰⁶ See “Diamond, Shari Seidman, *Reference Manual on Scientific Evidence* 3rd Ed., 2011 (“Reference Manual on Scientific Evidence”), p. 374 (“An early handbook for judges recommended that survey interviews be “conducted independently of the attorneys in the case.” [...] [A]ny potential bias is minimized by having interviewers and respondents blind to the purpose and sponsorship of the survey and by excluding attorneys from any part in conducting interviews and tabulating results.”).

¹⁰⁷ Confirmation bias is a phenomenon well documented by economists and psychologists. See Rabin, Matthew and J.L. Schrag, “First Impressions Matter: A Model of Confirmatory Bias,” *The Quarterly Journal of Economics*, Vol. 114, No. 1, 1999, pp. 37-82 (“First Impressions Matter: A Model of Confirmatory Bias”) J. L. (1999). First impressions matter: A model of confirmatory bias. *The Quarterly Journal of Economics*, 114(1), 37-82., p. 38 (“A person suffers from confirmatory bias if he tends to misinterpret ambiguous evidence as confirming his current hypotheses about the world”) and p. 46 (“[C]onfirmatory bias occurs when people selectively collect or scrutinize evidence.”).

¹⁰⁸ See **Appendix E**.

¹⁰⁹ For example, Ms. Shiller identified a complaint included in her count of “Free”; but excluded from her count of “Advertising.” Complaint Counsel re-coded this complaint as applying to both complaint types, despite no mention of advertising or ads by the complainant. See Complaint Counsel’s Reply, Attachment A, pp. 1, 23 (“1/27/22. [...] I filed my tax return and selected the free version. TurboTax would not let me proceed to file my taxes unless I paid \$39. I decided to move forward and pay \$39 even though I was told up front I didn’t have to pay any money. After I clicked the payment to agree to pay \$39, they gave me a receipt of payment of \$78, of which I did not agree to pay. There was no option to cancel that or get my money back. They out right stole my money. --- Additional Comments: Refund.”). Complaint Counsel did not provide any explanation as to why their re-coding differed from Ms. Shiller’s original coding.

identified only 18 complaints matching both of these types, while Complaint Counsel identified 22.¹¹⁰

74. The inconsistency of Ms. Shiller and Complaint Counsel’s coding, as well as my own review of the complaints, demonstrates that classifying these complaints is a challenging exercise, in part because many complaints are nuanced and difficult to interpret. Complaint Counsel and Ms. Shiller appear to have been looking to classify complaints as relevant to the allegations, without a clear (or any) methodology for reliably making that assessment. As a result, I developed a coding methodology to review the 396 complaints provided by Complaint Counsel. For this review, I employed an independent coding methodology, unlike Ms. Shiller and Complaint Counsel’s non-blind review.¹¹¹ Due to the blind nature of an independent coding methodology, this process reflects as much as possible an unbiased review of the consumer complaints. Two independent coders reviewed all complaints in the Revised Production. The coders reviewed these complaints for the following types (“Golder Complaint Types”).^{112,113}

¹¹⁰ Complaint Counsel’s Reply, Attachment A.

¹¹¹ Independent coders are blind-to-the purpose judges who reviewed the consumer complaints provided by Complaint Counsel, following the instructions listed in **Appendix D**.

¹¹² See **Appendix E** for additional details about this process.

¹¹³ I also asked the two independent coders to flag complainants who reported that they did not file their taxes with TurboTax (i.e., complainants who directly explain that they did not file with TurboTax, or complainants who submitted their complaint on behalf of a TurboTax customer but did not file with TurboTax themselves). While these complainants may have been confused, they are unlikely to have paid for TurboTax (something identified as important according to Ms. Shiller’s methodology). For example, complainant [REDACTED] started his complaint by writing “Well I signed up under their advertisement for Free EZ filing for taxes, got all my information in, and then was told there would be a charge. [...] I didn’t intend to pay them, I had better offers elsewhere with more security, and they found more money owed to me in taxes. So Turbo Tax wasn’t good for me.” See Complaint Counsel, CONFIDENTIAL – Supplemental Cat. L Sentinel Complaints, September 19, 2022, pp. 202-205. I do not use this complaint type in my analyses.

75. **Shiller Complaint Types.** I asked the coders to review the complaints to flag complaints based on each of the three Shiller Complaint Types. These types are:

- “Free” - Complainants who expected that they would be able to file for free;¹¹⁴
- “Advertising” - Complainants who mentioned they saw advertising indicating their tax filing would be free;¹¹⁵ and
- “Paid” - Complainants who paid TurboTax when they expected that they would be able to file for free.¹¹⁶

76. **Potentially Irrelevant Complaint Types.** I asked the coders to review the complaints for additional content-related types that suggest that these complaints are not related to the allegations in this matter. These complainants complained about charges unrelated to the tax filing process (e.g., add-ons) or indicated that they expected that they would be able to file for free due to reasons unrelated to Intuit’s advertising of TurboTax Free Edition. These additional types include:

- Complainants who expected that they would be able to file for free because they were able to file for free with TurboTax in previous years;¹¹⁷
- Complainants who expected that they would be able to file for free due to a non-income related discount (e.g., military discount, discount associated with driving for Uber/Lyft);¹¹⁸
- Complainants who expected that they would be able to file for free due to their income (i.e., low income);¹¹⁹

¹¹⁴ The Shiller Declaration states this complaint type as, “consumers [who] thought they were filing for free.” See Shiller Declaration, ¶ 221. In my coding instructions, I modified this wording slightly for clarity.

¹¹⁵ The Shiller Declaration states this complaint type as, “consumers [who] mentioned they saw advertising indicating their tax filing will be free.” See Shiller Declaration, ¶ 221. In my coding instructions, I modified this wording slightly for clarity.

¹¹⁶ The Shiller Declaration states this complaint type as, “consumers [who] paid TurboTax when they thought their tax filing will be free.” See Shiller Declaration, ¶ 221. In my coding instructions, I modified this wording slightly for clarity.

¹¹⁷ These complaints reflect expectations based on prior experiences, and year-to-year changes may be driven by changes in an individual’s tax situation.

¹¹⁸ These discounts are unrelated to the at-issue free ads.

¹¹⁹ These complainants may have expected that they would be able to file for free due to their low income, reflecting the qualification requirements for the IRS Free File Program, not Intuit’s free offers.

- Complainants who referred to the IRS Free File Program;¹²⁰ and
- Complainants who complained about “extra” charges, including charges for add-on products.¹²¹

77. **Unique TurboTax Relationship Complaint Types.** I asked the coders to review the complaints for additional types to identify complainants with unique relationships with TurboTax. These complainants did not complain in the regular course of being a new customer who engaged with Intuit’s Free Ads and the TurboTax website for the first time. These additional types include:

- Complainants who referred to a ProPublica article, FTC investigation, and/or lawsuit;¹²²
- Complainants who indicated that they are repeat or prior TurboTax customers.¹²³

78. **Figure 7** below illustrates that there is substantial heterogeneity in the complaint types that independent coders identified.¹²⁴ Unsurprisingly, given the flawed and overbroad nature of the Shiller methodology, the Shiller Complaint Types reflect the largest portions of complaints. Even within the Shiller Complaint Types, **Figure 7** shows that more than 20 percent of the complaints that the independent coders identified as “expected that they

¹²⁰ These complaints may be related to the IRS Free File Program, which has qualification requirements based on income.

¹²¹ These extra charges are unrelated to whether the actual tax filing was free.

¹²² These complainants were likely not complaining in the regular course of their experience as a TurboTax customer.

¹²³ These complainants have prior experience with the TurboTax Suite and therefore are more likely to be familiar with the qualification requirements.

¹²⁴ For any complaints about which there was disagreement for a particular complaint type, the two independent coders discussed their determinations directly, without any guidance from me and jointly recoded the response. If the two coders were unable to reach a consensus, additional personnel at Analysis Group, working under my direction and guidance, reviewed the complaint and made the final determination. Analysis Group personnel were responsible for breaking ties in 18 instances out of the 4,356 (396 complaints × 11 categories) classifications that the independent coders reviewed. I reviewed 17 of these 18 instances as well and agree with the final determinations in all of these 17 instances. I could not review one complaint for which the two coders were unable to reach a consensus because the complaint is written in Spanish. Analysis Group personnel who speak Spanish made the final determination for this complaint.

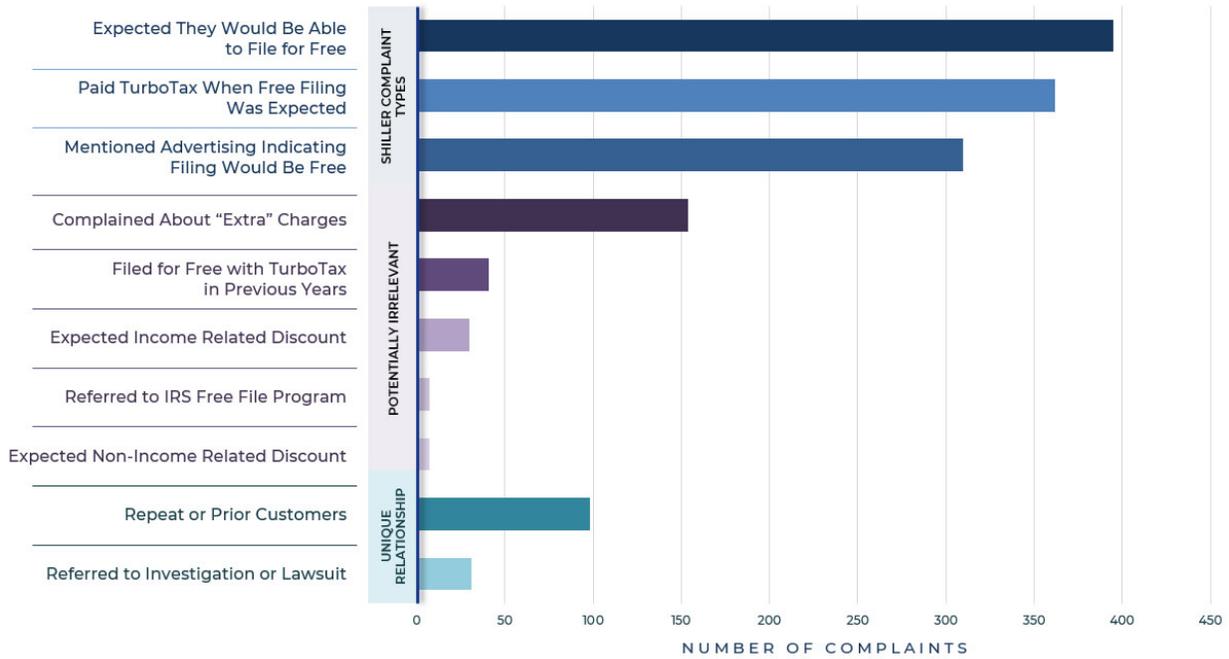
would be able to file for free” were not flagged by the independent coders as mentioning TurboTax advertising.¹²⁵ Again, Ms. Shiller’s flawed methodology would classify these complaints as relevant to the allegations, even without any evidence that the individuals saw any at-issue advertising. This does not even account for the fact that Complaint Counsel did not independently verify the accuracy of *any* complaint.¹²⁶

79. My analysis, which accounts for additional complaint types, demonstrates the need for an independent, careful, and nuanced review of these complaints. For example, independent coders flagged almost 40 percent of the 396 complaints as relating, at least in part, to charges for add-on products that customers can select to purchase when they file their taxes (see **Figure 7**). These add-on products are not advertised as free, and a taxpayer can prepare and file their taxes for free and separately purchase an add-on.

¹²⁵ For example, complainant ██████████ wrote “I [filed] my tax return with [sic] turbo tax and it was supposed to be free but got hit with unexpected charges[.]” Similarly, a summary of complainant ██████████ complaint reports “Consumer states she received an alert about the Turbo Tax, lawsuit, & wanted to file report, consumer filed taxes for 2021 in January 2022, & paid about \$100, after being told it would be free of charge.” See Complaint Counsel, CONFIDENTIAL – Supplemental Cat. L Sentinel Complaints, September 19, 2022 2022, pp. 34-37 and pp. 402-405.

¹²⁶ The Maxson deposition confirmed that the Bureau of Consumer Protection did not perform any independent investigation of the validity of the consumer complaints relied on by Complaint Counsel. Deposition of William T. Maxson (as Bureau of Consumer Protection 3.33(c) designee), *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, December 8, 2022 (“Maxson Deposition”) A Corporation, Docket No. 9408, December 8, 2022, 353:14-354:13.

Figure 7
Independent Coding of Complaints Illuminates the Overbroad Nature of the Shiller Methodology



80. Overall, independent coders identified 70 percent of complaints as either missing one of the “Free” or “Advertising” Shiller Complaint Types or having at least one additional Golder Complaint Type (*see Figure 8*). These results suggest that Complaint Counsel’s effort to identify complaints and Ms. Shiller’s flawed methodology are unreliable as they are unable to capture the nuance and heterogeneity within the complaints produced.

**Figure 8
Summary of Independent Coding**



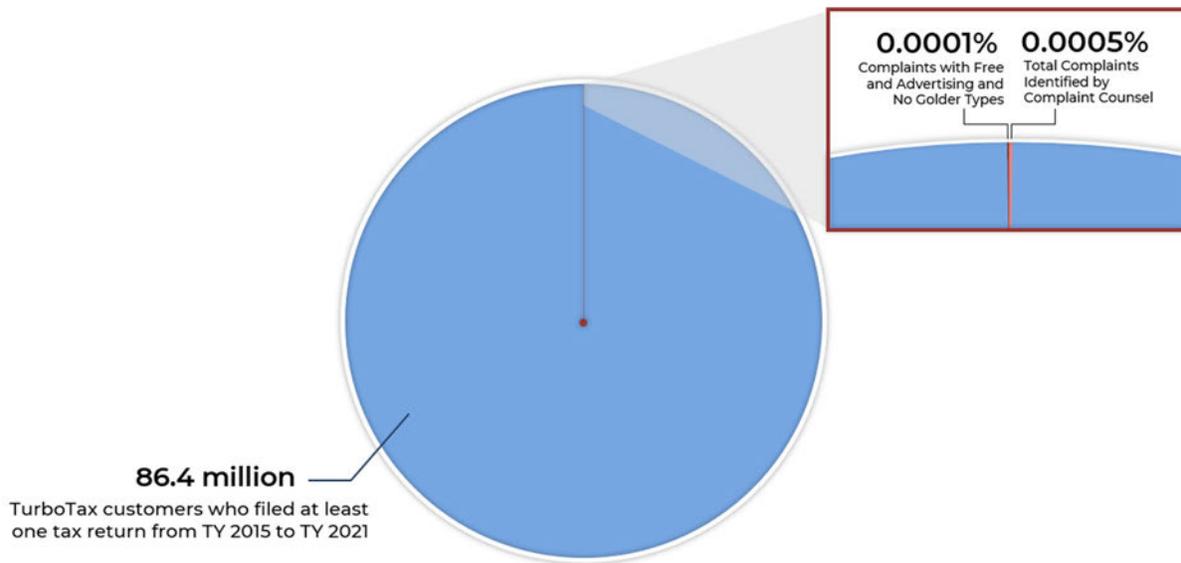
81. Complaint Counsel has also submitted a supplemental and non-blind coding exercise in which they determined that almost 60 percent of the complaints in the Revised Production are not responsive to either the allegation that “consumers who were not eligible for the [Free Edition] version of TurboTax [did] not learn they were ineligible until they had already invested significant time and effort [...]”¹²⁷ or the allegation that “the term ‘simple tax returns’ is not understood by many consumers.”¹²⁸
82. Regardless of whether one considers all complaints identified by Complaint Counsel or my revised and more complete independent coding, the volume of complaints identified by Complaint Counsel is minuscule in the context of the tens of millions of TurboTax

¹²⁷ Complaint Counsel determined 69 percent of complaints in the Revised Production were not responsive to Interrogatory No. 6, which requested the evidentiary basis for this allegation. *See* Complaint Counsel’s Supplemental Responses to First and Second Set of Interrogatories, December 22, 2022, p. 19.

¹²⁸ Complaint Counsel determined 78 percent of complaints in the Revised Production were not responsive to Interrogatory No. 7, which requested the evidentiary basis for this allegation. *See* Complaint Counsel’s Supplemental Responses to First and Second Set of Interrogatories, December 22, 2022, p. 22.

customers. These customers do not represent the experiences or views of most TurboTax customers. As discussed at the start of **Section IV**, the complaints identified by Complaint Counsel represent the views of only 0.0005 percent of the 86.4 million TurboTax customers who filed at least one return over the period during which the complaints were filed (i.e., TY 2015 to TY 2021). If I limit Complaint Counsel’s Revised Production to those complaints that independent coders flagged as having both “Free” and “Advertising” Shiller Complaint Types and no additional Golder Complaint Types (i.e., no potentially irrelevant or unique TurboTax relationship type), these complaints represent the views of only 0.0001 percent of the same customer base (*see Figure 9*).

Figure 9
Complaints Identified by Complaint Counsel and Independent Coders as a Share of TurboTax Customers Who Filed At Least One Return TY 2015 – TY 2021



83. I understand that Complaint Counsel have suggested that the complaints received are often just the “tip of the iceberg” and therefore there may be more complaints.¹²⁹ But these numbers are so small, even a dramatic increase in unreported complaints would not change my fundamental view that Complaint Counsel’s theory of widespread deception is unfounded. Intuit’s Free Ads were widely disseminated. If the ads created the misimpression that TurboTax was “free for them” when it was not, there would very likely be a substantially greater number of complaints. To further test that view, below I engaged in a detailed benchmarking exercise to contextualize the number of Complaints received.

B. Intuit’s Rate of BBB Complaints Is in Line with a Set of Comparable Benchmark Companies

84. The existence of a small number of customer complaints is not indicative of deception. Customer complaints occur in every industry and are a valuable source of information because they “represent critical turning points in the company’s relationship with its customers.”¹³⁰ Complaints represent an opportunity to remedy a problem, and as such, companies monitor complaints to identify areas where they could improve customer experience.¹³¹

¹²⁹ Maxson Deposition, 353:6-13.

¹³⁰ Knox, George and Rutger van Oest, “Customer Complaints and Recovery Effectiveness: A Customer Base Approach,” *Journal of Marketing*, Vol. 78, September 2014, pp. 42-57 (“Customer Complaints and Recovery Effectiveness: A Customer Base Approach”), INTUIT-FTC-PART3-000596665, p. 42.

¹³¹ Kotler and Keller (2012), p. 141 (“Listening to customers is crucial to customer relationship management. Some companies have created an ongoing mechanism that keeps their marketers permanently plugged in to frontline customer feedback.”).

85. Listening and responding to customer feedback is a crucial part of customer relationship management and is an important marketing activity for building customer loyalty.¹³² Consistent with an approach that seeks to improve customer relationships, Intuit has sought to address all complaints against Intuit available on the Better Business Bureau (BBB) website by responding to each complaint individually. Intuit received 3,131 unique complaints on the BBB website for the trailing three-year period as of January 3, 2023, of which the complaint status was available for 2,678 complaints.¹³³ Of these 2,678 complaints, 2,084 (or 78 percent) have been marked as “answered,” meaning that Intuit responded to the complaint but the customer had not followed up to accept the answer or close the complaint.¹³⁴ An additional 592 complaints (or 22 percent) have been marked “resolved,” meaning that the customer indicated to the BBB that they were satisfied with the response.¹³⁵ Only 1 complaint (or less than 1 percent) has been marked “unresolved” and 1 complaint has been marked “BBB unable to locate business.”¹³⁶ The complaints in

¹³² Kotler and Keller (2012), p. 141 (“Listening to customers is crucial to customer relationship management. Some companies have created an ongoing mechanism that keeps their marketers permanently plugged in to frontline customer feedback.”).

¹³³ “Intuit Inc., Complaints,” Better Business Bureau, available at <https://www.bbb.org/us/ca/mountain-view/profile/computer-hardware/intuit-inc-1216-202832/complaints>, accessed on January 3, 2023.

¹³⁴ According to the BBB’s definition, “Answered = The business addressed the issues within the complaint, but the consumer either (a) did not accept the response, OR (b) did not notify BBB as to their satisfaction.” See “Complaints,” *Better Business Bureau*, <https://www.bbb.org/process-of-complaints-and-reviews/complaints> (“BBB Complaints (2022)”), accessed July 13, 2022, INTUIT-FTC-PART3-000599022.

¹³⁵ According to the BBB’s definition, “Resolved = The complainant verified the issue was resolved to their satisfaction.” See *BBB Complaints (2022)*.

¹³⁶ According to the BBB’s definition, “Unresolved = The business responded to the dispute but failed to make a good faith effort to resolve it.” See *BBB Complaints (2022)*. I note that the one complaint marked with the “BBB unable to locate business” flag may have been mislabeled, as information downloaded from the BBB website shows that Intuit responded to the customer complaint in question. The statuses of 453 complaints (14 percent of the total 3,131 complaints) were missing on the website.

the BBB database include complaints about any topic (not limited to Complaint Counsel’s allegations in this matter).¹³⁷

1. Intuit’s Rate of Customer Complaints Is Comparable to Benchmark Companies

86. To put the number of complaints identified by Complaint Counsel into context, I compared complaints against Intuit on the BBB website to complaints against a set of benchmark companies. I identified 18 benchmark companies in total across four groups of companies, representing different points of comparison relative to Intuit. In **Appendix F**, I provide a detailed description of my methodology in choosing these benchmark companies.¹³⁸

- *Direct Intuit Competitors* in tax preparation services as listed in the Intuit 10-K financial statements. These companies are the most direct comparison to Intuit: they are in the same industry and provide the same basic service. These include H&R Block, TaxAct, TaxSlayer, FreeTaxUSA, and Cash App Taxes.¹³⁹ I also consider one additional tax preparation services firm, Jackson Hewitt, which Ms.

¹³⁷ The complaints in the BBB database included 98 complaints provided by Complaint Counsel in their Revised Production. This statistic is calculated using the “complaint source” and “complaint date” variables in Complaint Counsel’s Revised Production. Applying this restriction, 98 of the 396 complaints produced by Complaint Counsel have a “complaint source” beginning with “BBB” and a complaint date after January 3, 2020 (i.e., three years before I scraped complaints from the BBB website, which only includes three trailing years of complaints). See BBB Complaints (2022). These 98 complaints, which Complaint Counsel presumably identified as relevant to the allegations, represent 3.2 percent of the 3,131 customer complaints filed against Intuit on the BBB website as of January 3, 2023. See **Appendix G** for detailed notes and sources.

¹³⁸ I also reviewed the ProPublica and FTC websites for other companies that were investigated for consumer deception or “deceptive/misleading conduct,” respectively, in recent years. I identified companies including Chime Financial, MoneyGram, Dun & Bradstreet, Fleetcor Technologies, and Perdoceo Education Corporation. This group of companies does not closely resemble Intuit with respect to its business model, products, or customer base, and therefore is not a true benchmark. However, their complaint rates may provide context for Intuit’s.

¹³⁹ [REDACTED]. Square has recently purchased Cash App Taxes, formerly Credit Karma Tax, a tax preparation business which has its own BBB page, which I have included as a benchmark. FreeTaxUSA is owned by parent company TaxHawk. See “About FreeTaxUSA,” *FreeTaxUSA*, <https://www.freetaxusa.com/about.jsp?thn=3EEFE20943C213FECD8AAB04918F20C4> (“About FreeTaxUSA”), INTUIT-FTC-PART3-000599417. See **Appendix F** and Rowan, Lisa, “Square Will Buy Credit Karma’s Free Tax Prep Service. What Does That Mean for Consumers?,” *Forbes*, November 25, 2020, <https://www.forbes.com/advisor/credit-score/square-will-buy-credit-karmas-free-tax-prep-service-what-does-that-mean-for-consumers/> (“Square Will Buy Credit Karma’s Free Tax Prep Service. What Does That Mean for Consumers?”), INTUIT-FTC-PART3-000600825.

Shiller refers to as a competitor [REDACTED]
 [REDACTED] 140,141

- *Wireless Carriers.* Tax preparation is an unusual service because it assists with a process that is required by law. Therefore, it is difficult for consumers to fully opt out of the product category, which can impact customer sentiment relative to product categories where consumers can choose not to engage. I consider wireless carriers because they provide a service that, although not legally required, is so fundamental to modern life as to be functionally required. These wireless carriers include AT&T, Verizon Wireless, and T-Mobile USA.
- *TV Service Providers.* Similarly, most people in the U.S. purchase cable or satellite TV services.¹⁴² In addition, like tax preparation services, consumers typically purchase TV service on an annual, ongoing basis. The companies in this benchmark group include Comcast, Charter Spectrum, DirecTV, and Dish Network.
- *Automobile Insurance Providers.* Like filing one’s taxes, purchasing automobile insurance is required by law for vehicle owners in most U.S. states.¹⁴³ I therefore consider automobile insurance providers as a benchmark group. These include State Farm, Geico, Progressive, Allstate, and USAA.

87. The BBB makes publicly available all complaints for a trailing three-year period for each firm or product.¹⁴⁴ I pulled all available complaint metrics and complaints against Intuit and against benchmark companies on the same date, January 3, 2023, accessing these 3 years of data. I then evaluated the number of customer complaints filed against Intuit by comparing them with BBB complaints filed against benchmark companies, on both

¹⁴⁰ Shiller Declaration, ¶ 13.

¹⁴¹ [REDACTED] See Intuit, “TurboTax [REDACTED]” February 2021, INTUIT-FTC-PART3-000602321, slides 32-37.

¹⁴² According to Pew Research Center, 56 percent of Americans watch TV via cable or satellite. See Rainie, Lee, “Cable and Satellite TV Use Has Dropped Dramatically in the U.S. Since 2015,” *Pew Research Center*, March 17, 2021, <https://www.pewresearch.org/fact-tank/2021/03/17/cable-and-satellite-tv-use-has-dropped-dramatically-in-the-u-s-since-2015/> (“Cable and Satellite TV Use Has Dropped Dramatically in the U.S. Since 2015”), accessed November 10, 2022, INTUIT-FTC-PART3-000600262.

¹⁴³ Auto insurance is required in all states in the U.S. except for New Hampshire and Virginia. See Moore, Will, “States Where Car Insurance Is Not Mandatory (2022),” *Motor 1.com*, December 15, 2021, <https://www.motor1.com/reviews/403859/states-where-car-insurance-is-not-mandatory/> (“States Where Car Insurance Is Not Mandatory (2022)”), accessed August 25, 2022, INTUIT-FTC-PART3-000600031.

¹⁴⁴ BBB Complaints (2022).

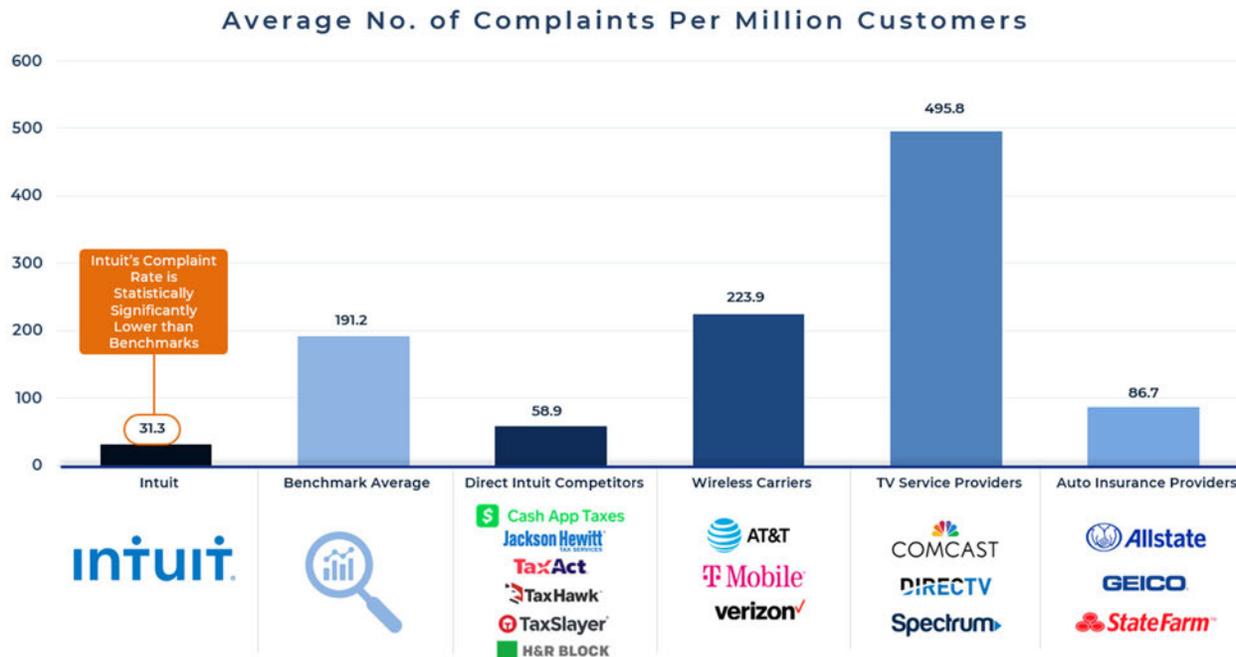
absolute and relative bases. The complaints in the BBB database include complaints about any topic (not limited to Complaint Counsel's allegations in this matter).

88. On an absolute basis, I compared the total number of complaints filed against Intuit relative to the comparable number for each benchmark company. On a relative basis, I normalized the total number of complaints filed against each company based on the total number of customers that each company reports in their public filings or other materials. I divide the total number of complaints for each company by the reported total number of customers. I then arrive at a rate of BBB complaints for Intuit and for each benchmark company. Comparing these rates allows for a more accurate comparison that is unaffected by the relative number of customers for each company.
89. **Figure 10** below shows the results of my BBB complaints benchmarking analysis. Intuit has 31.3 BBB complaints per million customers, compared to the benchmark companies' average of 191.2 BBB complaints per million customers. This difference in the average number of BBB complaints per million customers is statistically significantly different from zero, confirming that on average, Intuit has received fewer customer complaints than the benchmark companies in my analysis.¹⁴⁵ **Appendix G** presents the results of **Figure 10** on a by-company basis.¹⁴⁶

¹⁴⁵ I performed a one sample t-test for the null hypothesis that the average number of BBB complaints per million customers computed across the benchmark companies (191.2) is equal to the Intuit average (31.3). The two-tailed test rejects the null hypothesis of equality at the 1% significance level (p-value of 0.0022). A single-tailed test demonstrates that the average number of BBB complaints is significantly greater for benchmark companies than for Intuit (p-value of 0.0011).

¹⁴⁶ **Appendix G** also shows that on an absolute basis, Intuit has 3,131 complaints; benchmark companies have complaints ranging from 58 to 52,055.

Figure 10
Benchmarking of Intuit’s BBB Complaints¹⁴⁷



Notes:

- [1] Number of customers for Intuit and all benchmark companies are approximations based on publicly available sources. See **Appendix G** for further details on methodology.
- [2] Intuit customers include customers for all Intuit products, e.g., TurboTax, QuickBooks, etc.
- [3] Average Number of Complaints per Million Customers is calculated by dividing the sum of the number of complaints per million customers for each company by the number of companies in each benchmark group.
- [4] Median Complaints per Million Customers is the median of the number of complaints per million customers for each benchmark group.
- [5] Direct Intuit Competitors include Jackson Hewitt, TaxAct, H&R Block, TaxSlayer, TaxHawk, and Cash App Taxes.
- [6] Wireless Carriers include Verizon Wireless, AT&T, and T-Mobile USA.
- [7] TV Service Providers include Comcast, DirecTV, Charter Spectrum, and Dish Network.
- [8] Automobile Insurance Providers include Progressive, Geico, USAA, Allstate, and State Farm.

90. In comparison, complaint rates can be much higher for companies that consumers are truly dissatisfied with. For example, ProPublica published an exposé of Chime Financial on July 6, 2021, alleging that the banking app had been closing customers’ accounts unannounced and sometimes not returning customers’ money in a timely manner.¹⁴⁸ ProPublica noted

¹⁴⁷ See **Appendix G** for detailed notes and sources.

¹⁴⁸ Kessler, Carson, “A Banking App Has Been Suddenly Closing Accounts, Sometimes Not Returning Customers’ Money,” *ProPublica*, July 6, 2021, <https://www.propublica.org/article/chime> (“A Banking App Has Been

that Chime Financial had received a “high rate of complaints” including 920 complaints filed with the Consumer Financial Protection Bureau. Chime Financial had approximately 13 million active banking customers in 2022 and generated 7,667 complaints on the BBB website: a rate of 589.8¹⁴⁹ complaints per million customers.¹⁵⁰

2. Intuit’s Rates of Keywords Related to Deceptive Advertising or Deceptive Pricing in Complaints Are Comparable to Benchmark Companies

91. Based on my review of the Administrative Complaint, I identified a set of keywords that could be used to identify complaints related to deceptive advertising. This set of keywords is agnostic to the company at issue and focuses on words that arguably relate to the conduct at issue (i.e., words like “deceive,” “advertising,” “upgrade” were included, but not words like “TurboTax” that are specific to TurboTax). I then created categories for each set of keywords (i.e., the category of “deception” includes “cheated,” “deceptive,” “false,” etc.). A detailed description of the keyword methodology is attached as **Appendix H**.
92. I applied the keyword methodology to the set of complaints for Intuit and the benchmark companies available on the BBB website as of January 3, 2023.¹⁵¹ For each of the categories identified, I find that Intuit’s rate of complaints in those categories is in line with

Suddenly Closing Accounts, Sometimes Not Returning Customers’ Money”), INTUIT-FTC-PART3-000600887.

¹⁴⁹ See **Appendix G**.

¹⁵⁰ As discussed in **Appendix F**, I also identified MoneyGram, Dun & Bradstreet, Fleetcor Technologies, and Perdoceo Education Corporation as companies that were investigated for consumer deception by the FTC or ProPublica. However, Dun & Bradstreet and Fleetcor Technologies are B2B businesses whose customer numbers would not generate comparable rates of consumer complaints and Perdoceo Education Corporation has a very minimal BBB presence (0 customer reviews and 3 complaints). In **Appendix G**, I report complaint rates for Chime Financial, MoneyGram, and Perdoceo Education Corporation.

¹⁵¹ The BBB website lists total complaints and provides the underlying complaint text for a portion of those complaints. As a result, the total numbers of complaints in this analysis reflect only those complaints whose text was available on the BBB website.

benchmark companies’ rates. For example, 8 percent of Intuit complaints on the BBB website fall within the “advertising” category, while the share of complaints that fall within the “advertising” category for benchmark companies’ complaints ranges from an average of 2 percent for automobile insurance providers to 17 percent for wireless carriers. For each of the 6 keyword categories, the share of complaints against Intuit is comparable to that of the benchmark companies. **Figure 11** below presents my results.

93. For this keyword analysis, I removed the BBB complaints against Intuit and the benchmark companies that mention the FTC, ProPublica, or litigation. A version of the same analysis that includes complaints related to ProPublica or litigation is included in **Appendix H**.

Figure 11
Mentions of Keywords in the BBB Complaints for Intuit and Benchmark Companies¹⁵²

Category	Intuit ^[1]		Direct Intuit Competitors ^[2]		TV Providers ^[3]		Automobile Insurance Providers ^[4]		Wireless Carriers ^[5]	
	Count ^[6]	Percentage	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage
All complaints/reviews	1,799	100%	417	100%	8,314	100%	5,472	100%	14,491	100%
Advertising ^[7]	147	8%	24	6%	800	10%	133	2%	2,397	17%
Price / Charge	1,317	73%	250	60%	6,878	83%	3,573	65%	12,025	83%
Deception	437	24%	83	20%	1,716	21%	934	17%	4,055	28%
Forced to Upgrade / Pay More	260	14%	47	11%	823	10%	481	9%	2,234	15%
Waste of Time	211	12%	58	14%	821	10%	740	14%	1,955	13%
Disclosure	85	5%	16	4%	283	3%	133	2%	958	7%

Notes:

- [1] These data were procured by scraping all Intuit complaints from the BBB website as of January 3, 2023.
- [2] These data were procured by scraping all complaints from the BBB website for the following companies: Cash App Taxes, H&R Block, Jackson Hewitt, TaxAct, TaxHawk, and TaxSlayer.
- [3] These data were procured by scraping all complaints from the BBB website for the following companies: Charter Spectrum, Comcast, DirecTV, and Dish Network.
- [4] These data were procured by scraping all complaints from the BBB website for the following companies: Allstate, Geico, Progressive, State Farm, and USAA.
- [5] These data were procured by scraping all complaints from the BBB website for the following companies: AT&T, T-Mobile USA, and Verizon Wireless.
- [6] Counts for each category are based on the number of unique complaints which contain any of the specified search terms in that category.

¹⁵² See **Appendix H** for detailed notes and sources.

[7] Searches retrieved any word containing the string of letters searched. That is, searches for “advertise” also retrieved complaints that included the string “advertise” such as “advertisement” and/or “advertised.” See **Appendix H** for a complete listing of search terms.

[8] This exhibit excludes all complaints/reviews that were flagged as including litigation related keywords. Specifically, 879 unique BBB complaints were removed for Intuit and 12,030 unique BBB complaints were removed for the benchmark companies because they referenced the words “litigation,” “ProPublica,” “lawsuit,” “suit,” “legal,” “Federal Trade Commission,” “FTC,” and/or “sue.” See **Appendix H**.

V. INTUIT’S FREE ADS CONSISTENTLY INCLUDE INDUSTRY STANDARD DISCLOSURES ACROSS MEDIA THAT ARE IN LINE WITH BENCHMARK COMPANIES’ DISCLOSURES AND INFORM REASONABLE CONSUMERS ABOUT THE QUALIFICATIONS FOR FREE OFFERS

94. Complaint Counsel’s allegations relate to Intuit’s Free Ads across media from TY 2015 to TY 2021.¹⁵³ Complaint Counsel have raised concerns about selected Intuit TurboTax ads, including TV ads from TY 2015 to TY 2021, social media and display ads from TY 2018 to TY 2021, paid search ads from TY 2019 to TY 2021, and email ads from TY 2016 to TY 2021.¹⁵⁴
95. Complaint Counsel claim that the disclosures in Intuit’s Free Ads are “too small, too faint, too silent, too hidden, and too inscrutable.”¹⁵⁵ Complaint Counsel argue that the disclosures in Intuit’s Free Ads: (1) require an understanding of “simple” returns that they claim consumers do not have; (2) are partially in writing when they argue they should be voiced over in entirety; (3) are disproportionately small relative to the size of the marketing message; (4) are not visually prominent relative to the background; and (5) do not appear on the screen for long enough.¹⁵⁶ Complaint Counsel have not, however, provided any

¹⁵³ Complaint Counsel’s Statement of Material Facts as to Which There Is No Genuine Issue for Trial, *In the Matter of: Intuit Inc., A Corporation*, No. 9408, August 22, 2022 (“Complaint Counsel’s Statement of Material Facts”). See also, Shiller Declaration.

¹⁵⁴ Complaint Counsel’s Statement of Material Facts. See also, Shiller Declaration. Complaint Counsel’s Supplemental Responses to First and Second Set of Interrogatories, December 22, 2022, pp. 6-9, Attachment B.

¹⁵⁵ Complaint Counsel’s Motion for Summary Decision, *In the Matter of: Intuit Inc., A Corporation*, Docket No. 9408, August 22, 2022 (“Motion for Summary Decision”), p. 25.

¹⁵⁶ Motion for Summary Decision, pp. 27-29.

comparison or offered any information about what font sizes, colors, or amounts of time would be sufficient, nor what language would be clearer.

96. In summary, Complaint Counsel argue both that: (1) the “simple returns” language was not clear to consumers; and (2) the disclosures in Intuit’s Free Ads were insufficiently prominent.

97. As I will discuss in **Section VI**, consumers encounter advertising as only one piece in a highly-involved and individualized Consumer Buying Process; therefore, a reasonable consumer’s perception of individual ads cannot be considered in isolation but instead must be considered in the context of the holistic picture of the consumer’s path to purchase, including previous experience with the product and industry at issue as well as exposure to other advertising and advertising disclosures. In this section, however, I focus only on Intuit’s Free Ads by reviewing the presence, content, and proximity and placement of disclosures in the at-issue TurboTax ads. Even doing so, I find Intuit’s Free Ads include industry standard disclosures and are in line with ads from benchmark companies. Moreover, I find that the “simple returns” language puts consumers on notice that there are qualifications to use TurboTax Free Edition (or other free offers) tied to the complexity of one’s tax returns and that reasonable consumers viewing the disclosures would understand that they would need to go to the TurboTax website for additional detail before they concluded that TurboTax was free for them.

A. Intuit’s Free Ads Consistently Include Disclosures that the Free Offer Is for Simple Returns Only

98. Complaint Counsel identified 187 Intuit Free Ads across TV, social media and display, paid search, and email, from TY 2015 to TY 2021.¹⁵⁷ In **Figure 12** below, I summarize the presence of disclosures, and more specifically, Simple Returns Disclosures, across all of these ads.

**Figure 12
Presence of Simple Returns Disclosures in Intuit’s Free Ads Reviewed¹⁵⁸**

	Total Number of Ads Reviewed	Percentage of Ads with Simple Returns Disclosure
TV	35	100%
Social Media/Display	107	93%
Paid Search	17	71%
Email	28	79%
Total	187	90%

Notes:

[1] The specific language in the disclosures varies. Percentages are calculated based on the presence of a “simple returns” phrase (including, for example, “simple returns,” “simple U.S. returns,” and “simple tax returns”) within the ad.

[2] 27 of the 107 Social Media Display ads include a voiceover. 26 of these ads [96 percent] include a voiceover disclosure for “simple returns” in addition to a text disclosure for “simple returns.”

[3] Of the five paid search ads that did not have a Simple Returns Disclosure, four did include some other indication suggesting that not all consumers could file their taxes for free with TurboTax. Specifically, these four ads stated, “Over 50 million Americans Can File with TurboTax Free Edition.” The use of the word “can” (coupled with the statistic of 50 million, which is approximately one third of the number of taxpayers) suggests that there is a group of Americans who cannot file with TurboTax Free Edition. In TY 2019, there were 148.3 million individual income tax returns filed in the United States. *See* Tax Foundation, York, Summary of the Latest Federal Income Tax Data, 2022 Update, <https://taxfoundation.org/publications/latest-federal-income-tax-data/>, accessed January 6, 2023. I note that Intuit internal marketing guidance as of September 2021 includes specific requirements to ensure that “[For] simple [tax] returns only” appears in the result if the search result “references Free Edition or a variant of ‘File for Free.’” *See* Intuit, TY21 TurboTax September X-Agency Meeting, p. 34.

[4] Of the six email ads that did not have a Simple Returns Disclosure, all six did include some other indication suggesting that not all consumers could file their taxes for free with TurboTax. Specifically, these six ads included the

¹⁵⁷ Complaint Counsel’s Supplemental Responses to First and Second Set of Interrogatories, December 22, 2022, Attachment B, pp. 1-28.

¹⁵⁸ *See* **Appendix C**, Ads Cited by Complaint Counsel in Response to Interrogatory 1, and **Appendix I** for additional TV ads.

disclosure “1040EZ/1040A” or “1040EZ/A,” suggesting only individuals who qualified to file with those forms would be able to file for free with TurboTax.

[5] I am unable to read the disclosure for the Facebook and Tik Tok “Dance Workout” ads cited in GX 342 ¶¶ 159, 160 and therefore do not include these two ads in my analysis. I note that these are versions of the “Dance Workout” TV ad, which is included in this analysis as well as my TV ad benchmarking analysis.

99. As shown above, the vast majority of Intuit’s Free Ads identified by Complaint Counsel, including all TV ads, included a disclosure (“Simple Returns Disclosure”) indicating that the advertised product (TurboTax Free Edition, AbsoluteZero, or a limited time offer for TurboTax Live) was free for simple returns only.¹⁵⁹

100. For example, as shown in **Figure 13** below, the disclosure on several TV ads from TY 2021 read, “TurboTax Free Edition is for simple U.S. returns only. See if you qualify at turbotax.com. Offer subject to change.”

¹⁵⁹ Most ads included a disclosure indicating “simple U.S. returns only” or “simple returns only” or “simple tax returns only.” Some other ads indicated the offer was “for simple U.S. returns,” many of which referenced that it was for a particular product “only” (e.g., Free Edition product only).

See Intuit, “,” September 27, 2021, INTUIT-FTC-PART3-000490342, p. 34. See **Appendix C**, Ads Cited by Complaint Counsel in Response to Interrogatory 1, and **Appendix I** for additional TV ads.

Figure 13
Simple Returns Disclosure: Dog Show, Auctioneer, and Dance Workout TV Ads



101. Similarly, as shown in **Figure 14** below, the disclosure on a Reddit ad from TY 2021 read, “Simple tax returns only,” in both the post title and ad creative.

Figure 14
TurboTax Reddit Ad: “File FREE with TurboTax: \$0 Fed. \$0 State. \$0 to File. Simple tax returns only.”¹⁶⁰



102. Intuit’s internal marketing guidance is consistent with these ads. [REDACTED]

103. In addition, many of Intuit’s Free Ads included the phrase, “see if you qualify at turbotax.com.” This language was present in disclosures for all TV ads I reviewed from TY 2020 and TY 2021.¹⁶² The “see if you qualify” language further reinforces that there are qualification requirements and the direction to turbotax.com assists consumers in

¹⁶⁰ Shiller Declaration, ¶ 169.

¹⁶¹ Intuit, “[REDACTED],” September 27, 2021, INTUIT-FTC-PART3-000490342, p. 31.

¹⁶² See Appendix I.

identifying how to assess whether they qualify. More recent versions of the TurboTax website also include “See if you qualify” links (*see Section VII* for discussion of the website).

B. Intuit’s Simple Returns Disclosure Effectively Conveys the Existence and Category of Eligibility Limitations for Free Offers

104. Complaint Counsel argue that the disclosures in Intuit’s Free Ads require an understanding of “simple” returns that they claim consumers do not have.¹⁶³ In this section, I discuss how Intuit’s Simple Returns Disclosure effectively conveys the existence and category of eligibility limitations. I further observe that the complexity (or lack thereof) of an individual consumer’s tax return is a widely used concept in the tax preparation industry and is consistent with Intuit’s definition.

1. Intuit’s Simple Returns Disclosure Indicates Both the Existence and Category of Eligibility Restriction and Is Consistent with Industry Norms

105. As discussed in **Section V.A**, Intuit’s Free Ads typically include a Simple Returns Disclosure reflecting the qualification requirements. Specifically, Intuit uses the phrases “for simple U.S. returns” or “simple U.S. returns only” or “simple tax returns only” throughout its ads. The Simple Returns Disclosure efficiently conveys two pieces of information: (1) there is a restriction on who can use the product (“only” or “for”); and (2) that restriction relates to the complexity of the individual’s tax return (“simple returns”).

106. Reasonable consumers encountering the Simple Returns Disclosure do so in the context of their own prior experience with tax preparation, including experiences with their own tax

¹⁶³ Motion for Summary Decision, p. 29.

situations, the IRS, and Intuit’s competitors (or their experience with TurboTax itself). In line with testimony from multiple consumer deponents, consumers understand that not all returns are simple, and therefore not all consumers can file for free using TurboTax and so are unlikely to believe without additional research or personal experience that TurboTax is “free for them.”¹⁶⁴ Additionally, in their supplemental and non-blind coding exercise, Complaint Counsel determined that 78 percent of the consumer complaints in the Revised Production are not responsive to the allegation that “the term ‘simple tax returns’ is not understood by many consumers.”¹⁶⁵ This coding shows that, of the very small number of complaints that are filed against Intuit, an even smaller fraction of them even purport to be related to the understanding of the term “simple tax returns.”

107. According to the Government Accountability Office (“GAO”), the IRS itself classifies tax returns as simple, intermediate, and complex.¹⁶⁶ According to a GAO report, the IRS considers “[s]imple returns” to be those “without any schedules.”¹⁶⁷ Similarly, an IRS

¹⁶⁴ I understand that counsel for Intuit has deposed a total of 22 consumers (“deponents”), 15 of these deponents filed complaints produced by Complaint Counsel in their Initial or Revised Production and the remaining 7 deponents filed declarations after being contacted by Complaint Counsel. See ██████ Deposition, 70:1-7; ██████ Deposition, 28:21-29:2; Deposition of ██████, *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, October 6, 2022 (“██████████”), 69:19-70:2; ██████ Deposition, 70:19-21.

¹⁶⁵ This allegation relates to Interrogatory No. 7. See Complaint Counsel’s Supplemental Responses to First and Second Set of Interrogatories, December 22, 2022, pp. 22.

¹⁶⁶ U.S. GAO Report re: IRS Free File Program, p. 14.

¹⁶⁷ The GAO notes that the IRS determines three levels of tax complexity: Simple, Intermediate, and Complex. “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, Child Care Credit, Credit for the Elderly, or Earned Income Tax Credit. Complex returns are all other returns, including returns with schedules C, E, F, or other schedules.” U.S. GAO Report re: IRS Free File Program, p.14.

presentation defines simple returns to be those returns with “Form 1040, 1040A, or 1040EZ, without any schedules.”¹⁶⁸ Intuit uses the same definition.

108. Intuit’s use of the phrase “simple returns” is also standard among online tax preparation providers.¹⁶⁹ H&R Block,¹⁷⁰ TaxAct,¹⁷¹ and TaxSlayer,¹⁷² which together with TurboTax serve most taxpayers who use online tax preparation services,¹⁷³ all use similar tiered pricing models and disclosures. Each provides a free version of their tax preparation software that can be used for filing simple personal tax returns (and are marketed as such) and three tiers of premium offerings, priced within \$65 of each other, that include additional features for more complicated tax returns.^{174,175} For example, [REDACTED]

¹⁶⁸ Cico, David and Courtney L. Howard Olson, *Lessons Learned from IRS Free Filers: Capturing Young Taxpayers for a Lifetime of Electronic Filing*, IRS, June 12, 2008, <https://www.irs.gov/pub/irs-soi/08resconefile.pdf> (“Lessons Learned from IRS Free Filers: Capturing Young Taxpayers for a Lifetime of Electronic Filing”), INTUIT-FTC-PART3-000599183, slide 19. This 2008 presentation concerns tax data from TY 2005 and TY 2006. I note that the redesigned Form 1040 resulted in the elimination Forms 1040A and 1040EZ were eliminated as part of the Tax Cuts and Jobs Act starting in TY 2018. See “Tax Cuts and Jobs Act: Assessment of Implementation Efforts,” *Treasury Inspector General for Tax Administration*, April 18, 2019, <https://www.treasury.gov/tigta/auditreports/2019reports/201944027fr.pdf> (“Tax Cuts and Jobs Act: Assessment of Implementation Efforts”), INTUIT-FTC-PART3-000600521, p. 9.

¹⁶⁹ There are minor variations in what the companies consider “simple returns,” but Intuit’s definition aligns with the IRS definition.

¹⁷⁰ “File Online. Free Online,” *H&R Block*, <https://www.hrblock.com/online-tax-filing/free-online-tax-filing/> (“File Online. Free Online (2022)”), accessed November 10, 2022, INTUIT-FTC-PART3-000599486.

¹⁷¹ “Online Tax Filing Services,” *TaxAct*, <https://www.taxact.com/taxes-online> (“Online Tax Filing Services”), accessed November 10, 2022, INTUIT-FTC-PART3-000600579.

¹⁷² “Compare our online tax software,” *TaxSlayer*, <https://www.taxslayer.com/tax-tools/compare-tax-software> (“Compare our online tax software”), accessed August 26, 2022, INTUIT-FTC-PART3-000600587.

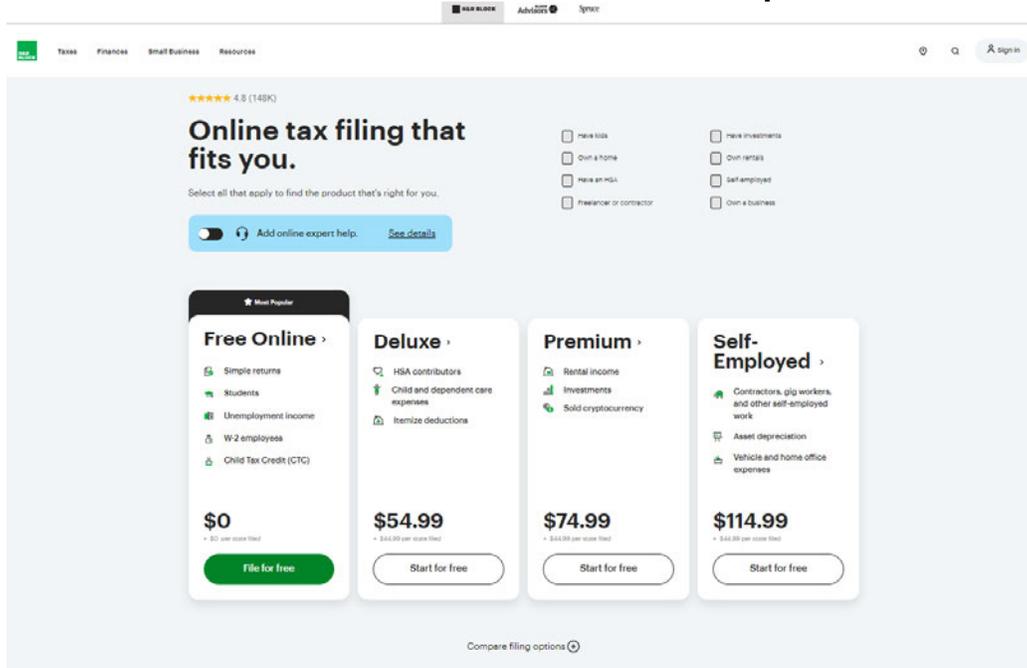
¹⁷³ “Electronic Filings via Online Tax Software Companies,” *ProPublica*, 2019, <https://assets.documentcloud.org/documents/6788961/ProPublica-Analysis-of-IRS-Electronic-Filing-Data.pdf> (“Electronic Filings via Online Tax Software Companies”), INTUIT-FTC-PART3-000600261.

¹⁷⁴ Bradbury, Danny, “Tech Tips: Tax Software For Your Clients,” *Investment Executive*, April 5, 2019, https://www.investmentexecutive.com/newspaper_/building-your-business-newspaper/tech-tips-tax-software-for-your-clients/ (“Tech Tips: Tax Software For Your Clients”), INTUIT-FTC-PART3-000599171.

¹⁷⁵ “Deluxe” or “Classic” products are priced within \$34.05 of each other, “Premium” products are priced within \$54.05 of each other, and “Self-employed” products are priced within \$59.05 of each other. See “Personal Taxes Online,” *Intuit*, accessed July 20, 2022 “Online Tax Filing,” *H&R Block*, <https://www.hrblock.com/online-tax-filing/> (“Online Tax Filing”), accessed August 26, 2022, INTUIT-FTC-PART3-000599506.; Online Tax Filing Services; Compare our online tax software.

[REDACTED],¹⁷⁶ H&R Block, has four DIY products (similar to Intuit as discussed earlier) as shown in **Figure 15**.

Figure 15
H&R Block DIY Online Product Lineup¹⁷⁷

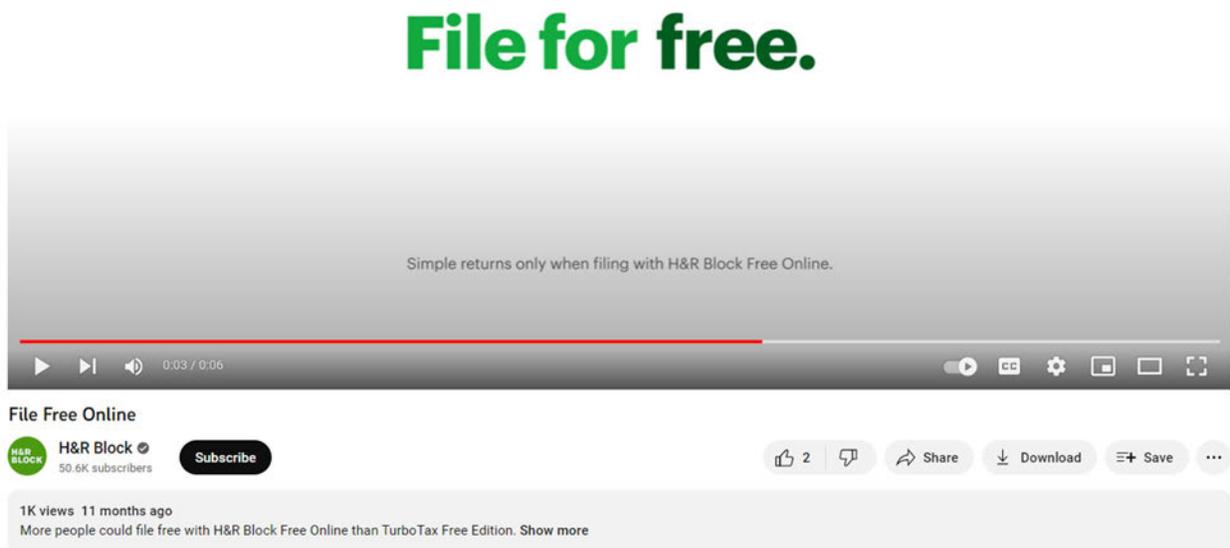


109. Some of Intuit’s competitors also advertise their free tax products. For example, in TY 2021, H&R Block had a short “File Free Online” ad, stating “File for nada. File for zip. File for zilch. File for free.” The disclosure said, “Simple returns only when filing with H&R Block Free Online,” and text in the YouTube description compared eligibility requirements between H&R Block Free Online and TurboTax Free Edition. *See Figure 16* for an image of this ad.

¹⁷⁶ Intuit, “[REDACTED],” March 2019, INTUIT-FTC-PART3-000601465, pp. 5, 15.

¹⁷⁷ Online Tax Filing.

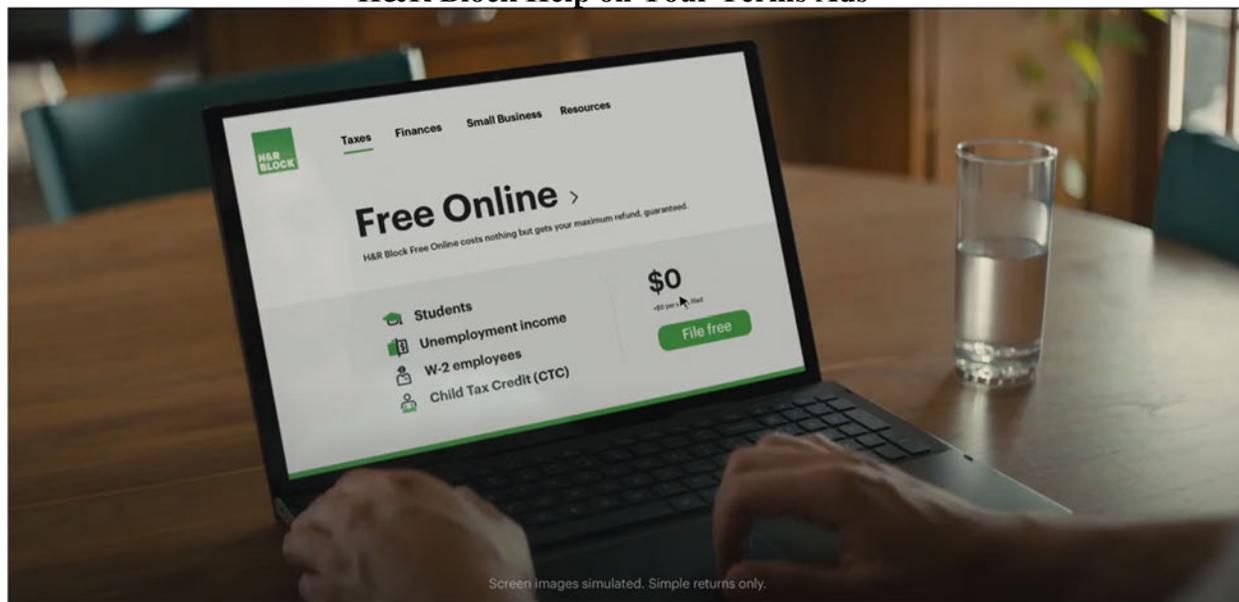
Figure 16
H&R Block File Free Online Ad¹⁷⁸



110. Other H&R Block ads reference the free product in the context of a larger ad, again using the “Simple returns only” language. For example, the TY 2021 Help on Your Terms ad included a simulated screen image of the H&R Block Free Online page with a “Simple returns only” disclosure. See **Figure 17** for an image from this ad.

¹⁷⁸ “File Free Online,” *H&R Block TV Ad*, January 4, 2022, https://www.youtube.com/watch?v=l9_P0aclSXk (“File Free Online”).

Figure 17
H&R Block Help on Your Terms Ads¹⁷⁹



111. In another example, TaxSlayer’s “Cash Cow” commercial advertised its free online tax preparation product (“TaxSlayer Simply Free”) and concluded with a voiceover that said: “file for free with TaxSlayer Simply Free and get your guaranteed maximum refund.”¹⁸⁰ Similar to Intuit’s Free Ads, the TaxSlayer disclosure refers to “qualifying simple tax situations” for the free product. See **Figure 18** below for a screenshot of the disclosure provided in this TaxSlayer ad.

¹⁷⁹ “Help On Your Terms,” *H&R Block TV Ad*, March 31, 2022, https://www.youtube.com/watch?v=8y6K2xJo_uQ&t=1s (“Help On Your Terms”), INTUIT-FTC-PART3-000602954.

¹⁸⁰ “TaxSlayer 2022 Commercial ‘Cash Cow’ (Official TV Ad: 30),” *TaxSlayer TV Ad*, January 4, 2022, <https://www.youtube.com/watch?v=nSaryc0WZB0> (“TaxSlayer 2022 Commercial ‘Cash Cow’ (Official TV Ad: 30)”), accessed August 28, 2022, INTUIT-FTC-PART3-000593206.

Figure 18
Simple Returns Disclosure on TaxSlayer Cash Cow TV Ad¹⁸¹



112. In addition to their advertising, Intuit’s tax preparation competitors that offer a free product use similar simple returns terminology to describe products on their websites. For example:

- **H&R Block’s** website describing online tax filing options lists “Simple returns” as an eligibility criterion for its “Free Online” product,¹⁸² as shown in **Figure 15** above. Under its offer details and disclosures H&R Block’s website describes its free online tax product as “for simple returns only” in TY 2022.¹⁸³
- **TaxSlayer** names its Free product “Simply Free” and lists “Simple tax situations” as an eligibility criterion to file for free.¹⁸⁴
- **TaxAct’s** website states that the “Free” product is “perfect for simple federal filers.”¹⁸⁵
- **Tax Hawk** uses a different pricing mechanism (charging for state returns) but emphasizes on its website that customers can “file advanced or simple federal

¹⁸¹ TaxSlayer 2022 Commercial ‘Cash Cow’ (Official TV Ad: 30).

¹⁸² “Online Tax Filing That Fits You,” *H&R Block*, <https://www.hrblock.com/online-tax-filing/> (“Online Tax Filing That Fits You”), accessed August 23, 2022, INTUIT-FTC-PART3-000593488.

¹⁸³ “File Online For Zero, Zip, Zilch,” *H&R Block*, <https://www.hrblock.com/> (“File Online For Zero, Zip, Zilch”), accessed December 16, 2022.

¹⁸⁴ TaxSlayer, “Ready To Get Your Biggest Refund?,” <https://www.taxslayer.com/> (“Ready To Get Your Biggest Refund?”), accessed October 20, 2022, INTUIT-FTC-PART3-000593214.

¹⁸⁵ “Missed the IRS Deadline?,” *TaxAct*, <https://www.taxact.com/> (“Missed the IRS Deadline?”), accessed August 23, 2022, INTUIT-FTC-PART3-000600576.

taxes for free” and that “Simple Returns,” “Premium Returns,” and “Advanced Returns” are all free.¹⁸⁶

113. The pervasiveness of the concept of a simple return across the tax preparation industry and even its use by the IRS demonstrates that reasonable consumers would likely be familiar with the idea that tax returns vary in their complexity, and that such variation may impact their qualification to use a free product. Likewise, traditional non-DIY paid preparers often vary their pricing based on the complexity of the return.¹⁸⁷ Imposing a disclosure that is out-of-step with industry norms would likely reduce the effectiveness of Intuit’s TurboTax Free Edition marketing.¹⁸⁸

2. *A Full Assessment of Whether an Individual’s Tax Return Is Simple or Complex Is Not Feasible in an Advertisement*

114. I understand that Complaint Counsel argue that consumers would not necessarily know if their tax return qualified as “simple.” The question of whether a particular individual’s return qualifies as simple or complex is an individual assessment requiring an understanding of one’s specific tax situation. Because the U.S. tax code itself is complex, a substantial amount of detailed tax information may be required to fully identify whether a particular return would be simple or complex. Many taxpayers are familiar with their

¹⁸⁶ “File Federal Taxes Free!,” *TaxHawk*, <https://www.taxhawk.com/> (“File Federal Taxes Free!”), accessed August 23, 2022, INTUIT-FTC-PART3-000600584.

¹⁸⁷ Weltman, Barbara, “What Will I Pay for Tax Preparation Fees?,” *Investopedia*, July 21, 2022, <https://www.investopedia.com/articles/taxes/021717/what-will-i-pay-tax-preparation-fees.asp> (“What Will I Pay for Tax Preparation Fees?”), accessed January 3, 2023.

¹⁸⁸ Testimony from Intuit executive Jack Rubin, Vice President of Marketing Services at TurboTax, supports this point. Rubin testified that the phrase “Free Edition for Form 1040 with no attached schedules” would be more confusing to consumers than the phrase “simple tax returns,” because most people do not know what Form 1040 is, and the few who do might remember it as a complex form, which was the case before Tax Year 2018. Rubin Deposition, 209:11-210:7. Consumer testimony also bears out this point. For example, ██████████ testified that he did not “have any idea” what Form 1040 was but that he knew that “simple returns” meant “a tax return that’s fairly straightforward.” ██████████ Deposition at 58:23-59:7, 72:23-73:5.

personal tax situations and, from previous experience preparing their taxes, understand where they fall on the IRS continuum. For those who are entirely unfamiliar, Intuit's Simple Returns Disclosure puts consumers on notice that there are eligibility restrictions related to complexity, but the more individualized work of identifying whether an individual's return is simple or complex is performed on the TurboTax website, which helps guide consumers to the product that fits their particular tax situation. Intuit makes clear in its ads that this is where consumers should look for this information and again, reasonable consumers who are comfortable enough with preparing their taxes online would know that is where they should go for additional details.

115. It would be unrealistic to explain each of these details in a space-constrained medium like an ad. Dr. Novemsky's design process and the evolution of his survey instrument reflects the challenge of appropriate, concise articulation of every different tax situation without overly burdening respondents (or consumers). In addition to his primary survey conducted March 11th - March 24th, 2022, Dr. Novemsky conducted a pilot of his survey February - March 1st, 2022 and a pretest of his survey instrument (March 9th, 2022) to "improve the clarity of communication with respondents" and "increase the likelihood that questions are clear and unambiguous."¹⁸⁹ Following both the pilot and the pretest, Dr. Novemsky changed the wording of the screening criteria used to identify potential respondents who would not be eligible to file for free with TurboTax Free Edition. Dr. Novemsky posed three questions related to this screening criteria, and changed aspects of each question following the pilot and pretest (*See Figure 19*).

¹⁸⁹ Novemsky Report, ¶ 61.

Figure 19
Evolution of Novemsky Survey Screening Questions¹⁹⁰

#	Pilot Survey Language	Pretest Survey Language	Final Survey Language
Question S90: Which of the following income types did you earn in 2021?			
	Wages (reported on a W-2 form)	Wages (reported on a W-2 form)	Wages (reported on a W-2 form) or retirement income
	Independent contractor income (reported on a 1099-NEC form)	Independent contractor income (reported on a 1099-NEC form)	Income reported on 1099-NEC, 1099-MISC or Schedule C (such as independent contractor income, self-employment income or small business income)
	Business income	Business income	Income from stock sales
Question S100 (Final): Are you planning to itemize your deductions or claim the standard deduction on your 2021 income tax return?			
	Which type of deductions are you planning to claim on your 2021 income tax return?	N/A	Are you planning to itemize your deductions or claim the standard deduction on your 2021 income tax return?
	I am planning to claim <u>itemized deductions</u> .	N/A	I am planning to <u>itemize my deductions</u> .
Question S110: Which of the below, if any, did you do in 2021?			
	Received, exercised, or disposed of stock options	Received, exercised, or disposed of stock options	Received, exercised, or disposed of stock options issued by your employer as part of your compensation
	Paid mortgage interest	missing	missing

Note: Question S100 was not included in the reported pretest edits and Dr. Novemsky did not provide a complete survey instrument as it appeared to respondents in the pretest.

116. Such a screening process is understandably difficult to address in just a few questions given all of the potential tax situations a given individual may face. If respondents were unsure about their tax situation at the time of taking the survey, respondents would be unlikely to be able to accurately answer Dr. Novemsky’s screener criteria about specific forms. Similarly, if consumers were unsure about their tax situation at the time of viewing an Intuit Free Ad, incremental information about specific forms would be unlikely to convey relevant or helpful information. As Dr. Novemsky’s survey design process demonstrates, it is unrealistic to suggest that all of the information available through the TurboTax website could be sufficiently conveyed to consumers in a space and time constrained advertisement.

¹⁹⁰ Novemsky Report, Appendices D (Pilot), H (Pretest), and E (Final).

117. To the extent that consumers were unsure about whether their tax returns would be considered simple at the time they watched Intuit’s Free Ads, they could easily find that information on the TurboTax website when such information would be timely for their purchase decision. On the TurboTax website, every reference to simple returns includes a hyperlinked pop-up that clearly lays out the included and excluded forms. I discuss the TurboTax website, including the Simple Returns Pop-up, in greater detail in **Section VII**. There are also countless other websites that include this information – *see Section VI.B* for a discussion of other sources.
118. The FTC itself recognizes the tension between detail and clarity and publishes guidelines for clear and conspicuous online consumer disclosures, including guidance on the importance of understandable language. The FTC Guidelines suggest that advertisers should “use clear language” and that disclosures should be “as simple and straightforward as possible.”¹⁹¹
119. Other federal regulations governing advertisements in space- and time-constrained settings such as TV and radio specify that all price information need not be included. For example, the Consumer Financial Protection Bureau’s “Truth in Lending” regulations state that advertisements for financial products “made through television or radio” may omit some pricing details typically required in advertisements so long as they include a telephone number that “may be used by consumers to obtain the additional cost information.”¹⁹² Similarly, the National Credit Union Administration’s regulations state that the

¹⁹¹ “.Com Disclosures: How to Make Effective Disclosures in Digital Advertising,” *FTC*, March 2013, <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf> (“FTC Guidelines, 2013”), INTUIT-FTC-PART3-000600903, p. 21.

¹⁹² 12 C.F.R. § 1026.16(e).

requirement to include certain information in credit union advertisements does not apply to radio or TV ads of less than 30 seconds or to other “[a]dvertisements that because of their type or character would be impractical to include” the otherwise required information.¹⁹³

120. Such guidelines are consistent with academic literature, which demonstrates that providing detailed information in TV ads, for example, is often not the most effective way to disseminate information to consumers. According to Stewart and Martin (2004), TV advertising is a relatively “ineffective medium for providing consumers with information” because the ad is short, comes without notice, and consumers cannot control the pace of the information.¹⁹⁴ There are trade-offs in the communication and processing of longer, more complex, or a greater number of disclosures. When there is a lot of information to communicate, “consumers might be better served through strategic timing of disclosures to ensure that information is available at specific points in the purchase and product usage process when such information is most relevant to them.”¹⁹⁵ As a result, ads typically contain short disclosures appropriate for the medium.

121. [REDACTED]

¹⁹³ 12 C.F.R. § 740.5(c)(7)-(9).

¹⁹⁴ Stewart, David and Ingrid Martin, “Advertising Disclosures: Clear and Conspicuous or Understood and Used?,” *Journal of Public Policy & Marketing*, Vol. 23, No. 2, 2004, pp. 183-192 (“Stewart and Martin (2004)”), INTUIT-FTC-PART3-000598479, p. 187.

¹⁹⁵ Stewart and Martin (2004), p. 186.

[REDACTED]

[REDACTED]²⁰¹

123. It certainly would not make sense or be an effective communication in a space-constrained ad to present the full list of tax forms and schedules included or not included in Free Edition. Instead, the Simple Returns Disclosure communicates that there are restrictions based on tax complexity, and the TurboTax website provides, to those who are not familiar with the term or need help assessing their personal situation, the relevant details, in a user-friendly format, on how to assess whether a particular return would be considered simple (discussed in more detail in **Section VII**). More recent ads specifically point consumers with a verbal encouragement to “see details at TurboTax.com.”

C. Intuit’s Disclosure Proximity and Prominence Are in Line with Benchmark Companies’ Disclosures

124. Complaint Counsel claim that Intuit’s disclosures are disproportionately small relative to the size of the marketing message, are not visually prominent relative to the background, and, for TV and “moving” social media ads, do not appear on the screen for long enough and should be accompanied by a voiceover.²⁰² However, Complaint Counsel have provided no clear indication of what would be sufficient or appropriate.

125. The FTC publishes guidelines, which are intended to help businesses verify that their ads’ disclosures are not deceptive in their communications.²⁰³ The six components of the FTC

²⁰¹ [REDACTED] May 17-18, 2017, INTUIT-FFA-FTC-000549928, RX 34, p. 23.

²⁰² Motion for Summary Decision, pp. 27-29.

²⁰³ I rely on the FTC’s 1970 guidelines on TV advertising and 2013 .com guidelines. While the 2013 .com guidelines were created to focus on online disclosures, they rely on the TV guidelines and cover similar key

Guidelines relating to online consumer disclosures are consistent with the marketing and consumer behavior literature. Specifically, the FTC Guidelines regarding proximity and placement,²⁰⁴ prominence,²⁰⁵ limited distractors,²⁰⁶ the use of repetition for key disclosures,²⁰⁷ consideration of disclosures across different forms of media,²⁰⁸ and the need to use simple and direct language²⁰⁹ are consistent with research on the importance of balancing information in advertising and comprehension/cognitive overload.²¹⁰

126. Intuit’s internal marketing materials similarly provide guidance for the prominence and placement of disclosures for free offers. [REDACTED]

[REDACTED]

[REDACTED]

metrics, including specific discussion of multimedia-specific guidelines: (“This approach mirrors one articulated by the Commission in 1970.”). See FTC Guidelines, 2013, p. 7. “Commission Enforcement Policy Statement in Regard to Clear and Conspicuous Disclosure in Television Advertising,” *FTC*, October 21, 1970, https://www.ftc.gov/system/files/documents/public_statements/288851/701021tvad-pr.pdf (“FTC TV Guidelines, 1970”), INTUIT-FTC-PART3-000600859.

²⁰⁴ FTC Guidelines, 2013, p. 8.

²⁰⁵ FTC Guidelines, 2013, p. 17.

²⁰⁶ FTC Guidelines, 2013, p. 19.

²⁰⁷ FTC Guidelines, 2013, p. 19 (“It may be necessary to disclose information more than once to convey a non-deceptive message. Repeating a disclosure makes it more likely that a consumer will notice and understand it and will also increase the likelihood that it will be seen by consumers who may be entering the website at different points.”).

²⁰⁸ FTC Guidelines, 2013, p. 20 (“Display visual disclosures for a sufficient duration. Visual disclosures presented in video clips or other dynamic portions of online ads should appear for a duration sufficient for consumers to notice, read, and understand them. As with brief video superscripts in television ads, fleeting online disclosures are not likely to be effective.”).

²⁰⁹ FTC Guidelines, 2013, p. 21 (“Advertisers should use clear language and syntax and avoid legalese or technical jargon. Disclosures should be as simple and straightforward as possible.”).

²¹⁰ Ariely, Dan, “Controlling the Information Flow: Effects on Consumers’ Decision Making and Preferences,” *Journal of Consumer Research*, Vol. 27, No. 2, 2000, pp. 233-248 (“Controlling the Information Flow: Effects on Consumers’ Decision Making and Preferences”), INTUIT-FTC-PART3-000595119.

[REDACTED]

[REDACTED]”²¹¹

127. Based on the FTC guidelines and Complaint Counsel’s allegations in this matter, I developed metrics to compare Intuit’s TV ads and social media ads to ads from the 18 benchmark companies discussed in **Section IV.B** above, including 6 tax preparation competitors and 12 other benchmark companies.
128. To compare Intuit’s TV ads to benchmark ads, I selected the three most recent 30-second ads as of July 11, 2022 that I could locate going back to 2020 for each of the benchmark companies that contained a disclosure and pertained to a free offer, price of a product or service, or eligibility criteria for a product or service.^{212, 213} I was unable to find ads that met my search criteria for TaxHawk and Cash App Taxes. Therefore, I reviewed TV ads for 16 benchmark companies. I reviewed all of Intuit’s TV ads that Complaint Counsel claimed to be deceptive.²¹⁴
129. **Figure 20** summarizes the results of my review of Intuit’s TV ads compared to the benchmark ads. I provide the detailed results, including benchmarking for all individual

²¹¹ Intuit, “[REDACTED],” September 27, 2021, INTUIT-FTC-PART3-000490342, p. 33.

²¹² Two ads I included in my August Declaration are no longer available: (DirecTV’s “Get your TV Together: Wonder feat. Serena Williams: 30” and Dish Network’s “Voice Search Across Live TV and Streaming Apps with Dish.) To replace these ads, I chose the most recent TV ad available that was (1) 30 seconds, and (2) had a disclosure. *See* August Golder Declaration, Figure G-1.

²¹³ Where I was not able to find 30-second ads discussing a free offer, price of product or service, or eligibility criteria for a product or service, I selected the three most recent ads (going back to 2020) that contained a disclosure. Note that there were instances in which I was not able to find three ads that fit these criteria. *See Appendix I* for additional details.

²¹⁴ Complaint Counsel’s Supplemental Responses to First and Second Set of Interrogatories, December 22, 2022, pp. 6-9, Attachment B.

Intuit Free Ads and benchmark ads as well as a detailed description of my methodology in **Appendix I.**

**Figure 20
TurboTax and Benchmark TV Ads²¹⁵**

Benchmark Group	Proximity	Prominence		Repetition	Multimedia	Distracting Factors		
	Disclosure on the screen the same time the claim is made? ³	Average Disclosure Height (Disclosure height as a % of total screen height) ⁴	Color of Disclosure Text / Color of Background ⁵	Is there a voiceover of disclosure text?	Is the disclosure repeated on the company website? ⁶	Total Time Disclosure is on the Screen in Seconds (time as a % of total length of ad)	Total Time Disclosure is on a Solid Screen in Seconds (time as a % of total length disclosure is on the screen)	Are there Multiple Disclosures, Cost of Product, or Eligibility per ad?
TurboTax (All)	Sometimes	2.3%	White / Various Backgrounds (Some Moving)	No	Yes	4.1 (19.9%)	1.9 (48.1%)	No
TurboTax (30-second)	Sometimes	2.3%	White / Various Backgrounds (Some Moving)	No	Yes	4.1 (14.6%)	2.1 (51.6%)	No
TurboTax (TY2021)	Yes	2.1%	White / Various Backgrounds (Some Moving)	No	Yes	4.4 (23.1%)	3.2 (73.0%)	No
Direct Intuit Competitors	Sometimes	2.0%	Various Colors / Various Backgrounds (Some Moving)	No	Yes	4.2 (14.0%)	3.4 (80.0%)	No
Wireless Carriers	Yes	2.1%	White / Various Backgrounds (Some Moving)	No	Yes	3.8 (12.8%)	2.1 (53.5%)	Sometimes
TV Providers	Sometimes	1.8%	Various Colors / Various Backgrounds (Some Moving)	No	Yes	4.3 (14.3%)	1.8 (37.9%)	Sometimes
Automobile Insurance Providers	Sometimes	2.1%	White / Various Backgrounds (Some Moving)	No	Yes	3.4 (11.3%)	0.8 (25.0%)	Sometimes
Average of Benchmark Groups (excluding TurboTax)		2.0%				3.9 (12.9%)	1.8 (44.9%)	

130. Below I discuss the results of my benchmarking analysis of Intuit’s TV ads, per the six components of the FTC Guidelines relating to online consumer disclosures.

131. **Proximity and Placement** – Intuit’s TV ads from TY 2021 always include the disclosure on the screen at the same time as the claim, as do the majority of Intuit’s TV ads from previous years (while the voiceover says “TurboTax Free Edition is Free” or “TurboTax is

²¹⁵ See Appendix I for detailed notes and sources.

free for simple returns”).²¹⁶ 9 out of 16 benchmark companies’ ads did so. In addition, all companies, including Intuit, placed disclosures at the bottom of the screen. This location for disclosures is standard in TV ads, and therefore consumers are conditioned to look for any disclosures in this location. Moving such a disclosure location would be out of step with industry norms and may reduce the likelihood that consumers would see the disclosure. Therefore, my review indicates that Intuit’s disclosures are comparable to benchmark companies on proximity and placement metrics.

132. **Prominence** – Intuit’s TV ads have an average disclosure height as a percentage of the total screen height of approximately 2.3 percent. This figure is in line with the average ranges for benchmark companies of 1.6 percent to 2.6 percent, with a mean of 2.0 percent. Intuit’s disclosure height is larger and statistically significantly different than those of benchmark companies.²¹⁷ Intuit’s disclosures are in white font, either against a light blue background or against a moving background. Benchmark companies also primarily used white font with either a moving background or a solid color consistent with the company’s branding (e.g., green for H&R Block, magenta for T-Mobile). Therefore, my review indicates that Intuit’s disclosures are comparable to or, in the case of disclosure height, superior to those of benchmark companies on prominence metrics.
133. **Distracting Factors** – Beginning in TY 2018, Intuit’s ad disclosures began on a moving screen that transitioned to a solid blue background, with the duration the disclosure was on the solid background increasing over the next 3 years. Benchmark companies varied, with

²¹⁶ See **Appendix I** for a detailed analysis by ad.

²¹⁷ I performed a two-sample t-test for the null hypothesis of equality between the average disclosure height as a percentage of the total screen height for benchmark companies and the same average computed for TY 2021 Intuit Free TV ads. The two-tailed test rejects the null hypothesis of equality between the averages computed across the two groups at the 5% significance level (p-value of 0.0003).

5 companies presenting disclosures only on solid backgrounds, 3 presenting disclosures only on moving backgrounds, and others mixed. None of Intuit’s TV ads included multiple disclosures discussing free, price of product, or eligibility. In comparison, 6 out of 16 benchmark companies’ ads sometimes or always included multiple disclosures, typically associated with multiple different claims. Overall, my review indicates that Intuit’s disclosures are consistent with benchmark companies on distracting factors metrics.

134. **Repetition** – Intuit’s TV ads do not include a voiceover of the disclosure text in which the disclosure text is voiced over exactly as written. Benchmark companies’ ads also do not include this voiceover. Outside of the prescription drug industry and political campaigns, such voiceovers in my experience are uncommon.²¹⁸ Intuit’s website contains similar or more detailed messaging than the disclosure text in all ads. Benchmark companies’ ads containing a claim featured on the website also included similar or more detailed messaging on the website than the disclosure text included in the ad. Therefore, my review indicates that Intuit’s disclosures are consistent with benchmark companies on repetition metrics.
135. **Multimedia Messages and Campaigns** – This TV-specific metric studies the length of time a disclosure is on screen for videos. Intuit’s TV ads have disclosures that appear on screen for an average of 4.1 seconds. For benchmark companies, the average duration ranges from 3.0 seconds to 6.3 seconds, with a mean of 3.9 seconds. Intuit’s disclosure duration is

²¹⁸ “Voiceover disclosures” are not explicitly mandated by the FTC; it is therefore at the discretion of most companies to determine how they craft “clear and conspicuous” marketing of their disclosures. Voiceover disclosures are often required in industries that have high stakes outcomes, such as pharmaceuticals and political ads. See *Guidance for Industry Consumer-Directed Broadcast Advertisements*, FDA, August 1999 (“Guidance for Industry Consumer-Directed Broadcast Advertisements”), and “Advertising and Disclaimers (Special Rules for Television and Radio Ads: The ‘Stand By Your Ad’ Provision),” *FEC*, <https://www.fec.gov/help-candidates-and-committees/advertising-and-disclaimers/> (“Advertising and Disclaimers (Special Rules for Television and Radio Ads: The ‘Stand By Your Ad’ Provision)”).

longer and is statistically significantly different than those of benchmark companies.²¹⁹

Therefore, my review indicates that Intuit's disclosures are superior to those of benchmark companies on multimedia-specific dimensions.

136. ***Understandable Language*** – In **Section V.B** above, I discussed the use of the simple returns language and how it effectively conveys the existence of eligibility limitations for TurboTax Free Edition (and other free offers).
137. Overall, I find that Intuit's disclosures in its Free TV Ads are in line with industry standards across the benchmark companies. Along every metric studied, which were drawn from the FTC's own disclosure guidelines, Intuit is in line with benchmark companies.
138. I conducted a similar review and benchmarking exercise for Intuit's Free social media ads, using the Meta Ad Library. I benchmarked three Intuit social media ads that appeared in the Meta Ad Library and three ads for each benchmark company, where available. I provide the detailed results and a detailed description of my methodology in **Appendix J**. I again find that Intuit's Free social media ads are in line with the benchmark companies' social media ads with respect to their disclosures.²²⁰
139. With respect to Intuit's Free paid search ads, I note that search engines such as Google and Bing standardize the format of paid search ads so that companies do not have creative control over the paid search ad beyond what text is included in the display URL, headline,

²¹⁹ I performed a two-sample t-test for the null hypothesis of equality between the average number of seconds in which the disclosure is on the screen as a percentage of the total ad duration for benchmark companies and the same average computed for TY 2021 Intuit Free TV ads. The two-tailed test rejects the null hypothesis of equality between the averages computed across the two groups at the 5% (p-value of 0.0011).

²²⁰ In **Appendix J** I show results from two t-tests demonstrating that Intuit's disclosure height and disclosure duration are not statistically significantly different from those of benchmark companies.

and description, subject to character length limits.²²¹ Therefore benchmarking Intuit’s Free paid search ads to the benchmark companies based on the FTC’s Guidelines of proximity and placement, prominence, and distracting factors would not make sense.

140. Lastly, there is no readily available source from which to systematically retrieve and review the email ads of other companies, so I am therefore unable to benchmark Intuit’s Free email ads for TurboTax. However, I have reviewed all of the ads cited by Complaint Counsel and Ms. Shiller and, again, they all include a Simple Returns Disclosure.

VI. INTUIT’S FREE ADS ARE ONE INITIAL SOURCE OF INFORMATION IN THE HIGH-INVOLVEMENT CONSUMER BUYING PROCESS FOR TAX PREPARATION AND WOULD BE UNLIKELY TO DECEIVE REASONABLE CONSUMERS

141. Complaint Counsel’s argument appears to assume that reasonable consumers would see Intuit’s Free Ads, conclude from the ads that they could personally file for free—despite inherent skepticism about free filing, familiarity with TurboTax and other industry participants from previous years, the absence of any claim that everyone could file for free, and the industry standard disclosures in the ads—and based on that belief, proceed to the TurboTax website to file their tax returns, performing no additional research and ignoring additional disclosures on the website, including the Products & Pricing Page. This suggestion is unfounded and contrary to marketing research on the way reasonable consumers make decisions and how advertising plays a role in the Consumer Buying Process.

²²¹ “About Text Ads,” *Google*, <https://support.google.com/google-ads/answer/1704389?hl=en> (“About Text Ads”).

142. To the contrary, reasonable consumers are unlikely to be deceived by viewing Intuit’s Free Ads into believing that TurboTax was free for them when it was not, given the involved information search and buying process that culminates in filing one’s taxes, the inherent skepticism towards free offers, and consumers’ own familiarity with the tax preparation process. In addition to the industry standard disclosures discussed in **Section V**, reasonable consumers will encounter these ads in the context of their personal Consumer Buying Process, including their likely prolonged information search as well as their prior experiences with tax preparation and terms and conditions on free offers.

A. Reasonable Consumers of Tax Preparation Services Are Typically Careful Buyers Who Make Informed Purchase Decisions

143. Complaint Counsel’s theory appears to assume that consumers see a TurboTax TV ad and proceed immediately to paying TurboTax without conducting any other research or considering any other potential providers of tax preparation solutions. This theory flies in the face of the well-recognized Consumer Buying Process.²²² The Consumer Buying Process is a five-stage model that describes the typical series of activities that result in purchase and post-purchase consumption (*see Figure 21*).²²³

- *Problem recognition.* The Consumer Buying Process begins when the consumer recognizes a problem or need.²²⁴ Problem recognition may be triggered, for

²²² See e.g., Bettman, James R. et al., “Constructive Consumer Choice Processes,” *Journal of Consumer Research*, Vol. 25, December 1998, pp. 187-217 (“Constructive Consumer Choice Processes”), INTUIT-FTC-PART3-000595235; Kotler and Keller (2016), p. 172; Kerin and Hartley (2020); and Perreault., et al. (2019).

²²³ Zalani, Chintan, “Consumer Decision-Making Process Mastery,” *The Ecom Academy*, 2018, <https://ecomacademy.com/consumer-decision-making-process/> (“Consumer Decision-Making Process Mastery”), accessed April 2, 2022, INTUIT-FTC-PART3-000600804; Wallace, Chris, “The 5 Stages of the Consumer Decision Making Process,” *Zoovu*, July 5, 2016, <https://zoovu.com/blog/how-to-leverage-the-5-stages-of-the-customer-decision-making-process/> (“The 5 Stages of the Consumer Decision Making Process”), accessed April 2, 2022, INTUIT-FTC-PART3-000601008.

²²⁴ Kotler and Keller (2016), p. 173.

example, by receiving W-2s or similar forms in the mail, speaking to friends and family about taxes, or by seeing ads from tax return professionals or services.

- *Information search.* In this stage, the consumer begins to search for information about how to solve the problem or meet the need. Consumers may receive information from a variety of sources during this stage, including commercial ads, research on public sources such as reviews or consumer-rating organizations, word-of-mouth, and prior experience.²²⁵ For example, taxpayers may seek information about a broad set of tax preparation options, including whether to use a CPA or tax professional or a DIY option.
- *Evaluation of alternatives.* After the information search stage, a consumer narrows his or her potential choices down to a “consideration set” that includes the options the consumer is seriously considering for purchase.²²⁶ For example, a taxpayer may narrow his or her choices down to using an online e-filer or filing on paper and then focus on evaluating those options, and possibly returning to the information search stage to collect additional information.
- *Purchase decision.* In this stage, the consumer selects the product or service to solve the problem or fulfill the need identified in the problem recognition stage and makes the purchase.²²⁷ For example, a taxpayer would select the relevant TurboTax product for his or her tax circumstances and pay (or not pay) for the tax preparation service.
- *Post-purchase behavior.* The Consumer Buying Process continues after the purchase decision. Consumers learn first-hand and evaluate how well the product or service provides the benefits they seek, satisfies their needs and solves their problems. Consumers who are satisfied with their purchase are likely to become repeat purchasers.²²⁸ In this case, because taxpayers must file their tax returns every year, there are millions of taxpayers in the post-purchase stage throughout the year and their evaluation of their prior tax preparation experiences will inform their choices in subsequent years.

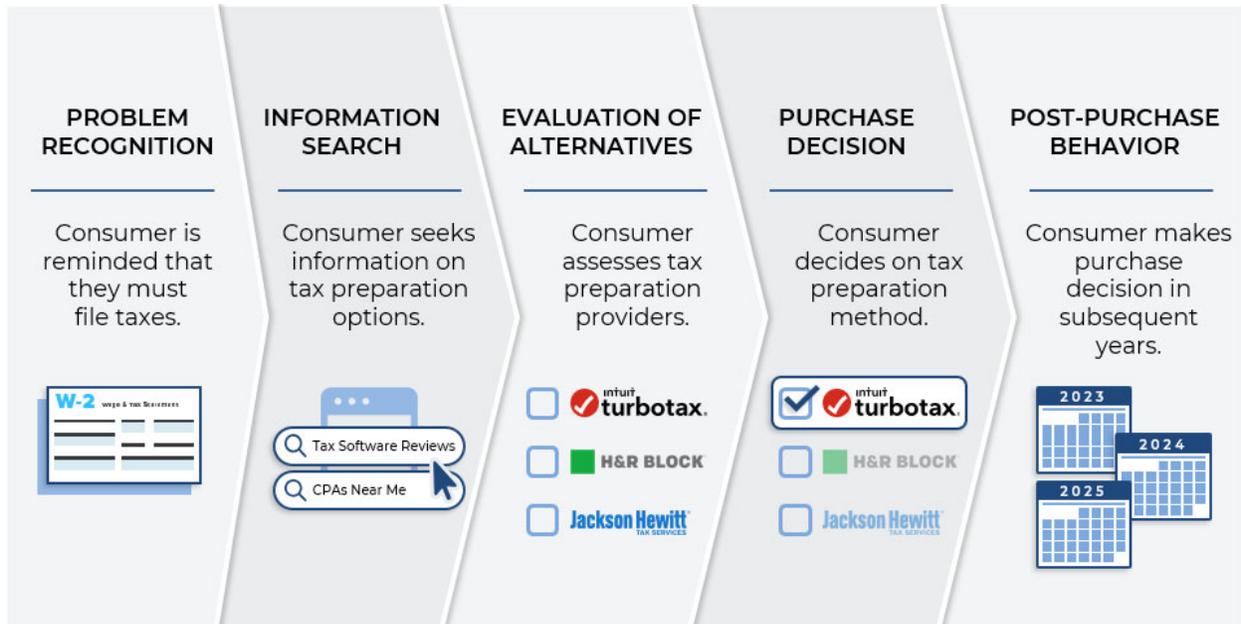
²²⁵ Kotler and Keller (2016), p. 174.

²²⁶ Kotler and Keller (2016), pp. 175-176.

²²⁷ Kotler and Keller (2016), pp. 176-178.

²²⁸ Kotler and Keller (2016), pp. 178-180.

**Figure 21
Consumer Buying Process²²⁹**



144. Consumers may pass through the Consumer Buying Process in their own personal way and may skip steps or backtrack throughout their purchase process.²³⁰ The complexity and expense of a product or service can impact the level of consumer involvement in the Consumer Buying Process. In the case of a financial product with significant downside risk (e.g., making a costly mistake preparing one’s tax return or failing to maximize deductions), consumers are likely to be highly motivated, highly involved, and risk averse in their Consumer Buying Process,²³¹ particularly for low-income taxpayers for whom a

²²⁹ Consumer Decision-Making Process Mastery; The 5 Stages of the Consumer Decision Making Process.

²³⁰ Kotler and Keller (2016), p. 173.

²³¹ Assael, Henry, *Consumer Behavior: A Strategic Approach*, Boston, MA, Houghton Mifflin Company, 2004 (“Assael (2004)”), INTUIT-FTC-PART3-000595153, pp. 90-91.

refund may be a larger share of annual earnings.²³² Therefore, the selection of a tax preparation provider is a high-involvement process, in which consumers are likely to invest time and conduct research to ensure they are buying the right product for their personal needs.

B. Prolonged Information Search Is Common for High-Involvement Products Like Tax Preparation

145. Regardless of the ads they encounter, consumers have a number of potential tax return filing alternatives, including other online DIY products, assisted tax preparation products, and other options within the TurboTax Suite such as TurboTax Live and TurboTax Live Full Service. Each of these tax preparation solutions competes with operators across similar product offerings along several dimensions, including price, functionality, and service quality. For instance, the online DIY segment itself includes various differentiated products with varying price points, product features, levels of audit assistance, and other add-on services.
146. As the consumer evaluates TurboTax and other alternatives, they can compare the features of different TurboTax products to each other and to products offered by competitors, all before making any purchase. In fact, the Hauser Purchase Driver Survey surveyed respondents who chose a new tax preparation provider or considered changing tax preparation providers for their TY 2020 taxes and found that 46.4 percent of respondents reported exploring tax preparation provider software or websites as part of their research

²³² See e.g., Daly, Lyle, “The Average Tax Refund: A Visual Guide to Your Money Back,” *The Ascent*, January 31, 2020, <https://www.fool.com/the-ascent/research/average-tax-refund/> (“The Average Tax Refund: A Visual Guide to Your Money Back”), accessed July 20, 2022, INTUIT-FTC-PART3-000599402.

process (the most common research factor selected by respondents).²³³ Of course, even customers who start using a TurboTax product can make a different filing choice up until the tax return is filed (including using a different tax preparation service altogether).

147. Consistent with a high-involvement purchase process, the Hauser Purchase Driver Survey found respondents conduct substantial research before selecting a tax preparation provider or method, and do not simply rely on one or more ads to make a decision. On average, respondents who chose a new tax preparation provider or considered changing tax preparation providers for their TY 2020 taxes reported using 3 different sources of information in their research process, with 73.6 percent of respondents reporting using two or more sources of information when researching tax preparation methods.²³⁴ Only a small number of respondents (3 of 125) indicated that, in researching tax preparation methods / providers, they conducted that research solely using ads.²³⁵
148. Moreover, the Hauser Purchase Driver Survey found 36.8 percent of respondents who chose a new tax preparation provider or considered changing tax preparation providers for their TY 2020 taxes read articles, rankings, or third-party reviews in their research into potential tax preparation methods and providers.²³⁶ Numerous, widely read third-party websites offer comparisons of leading DIY tax preparation services. Any taxpayer who does some online research on TurboTax products can also easily find third-party

²³³ Hauser Report, Exhibit 11a.

²³⁴ Hauser Report, Exhibit 12.

²³⁵ Three respondents out of 125 (2.4 percent) in the Hauser Purchase Driver Survey reported that they *only* “Viewed Advertisements” and/or “Reviewed Marketing Emails” in response to closed-ended questions. *See* Hauser Report, ¶ 107.

²³⁶ Hauser Report, Exhibit 11a.

information that TurboTax Free Edition can be used only to file simple tax returns and information about the meaning of simple tax returns in this context.²³⁷ For example:

- The New York Times’ Wirecutter review of “The Best Tax Filing Software” separates its recommendations based on individual tax situations, comparing hiring a CPA or tax professional, H&R Block Free Online, and TurboTax Free Edition. The review recommends: (1) a CPA or tax professional for those with complicated returns such as those who are self-employed, have rental income, or bought and sold stocks; (2) H&R Block Free Online for those who have student loan debt or college tuition payments and an otherwise simple return; and (3) TurboTax Free Edition for those who do not meet the previous criteria.²³⁸
- NerdWallet’s review of TurboTax 2022 products clearly states that “TurboTax offers a free version for simple tax returns only; it lets you file a Form 1040, claim the earned income tax credit, reconcile your advanced child tax credits and deduct student loan interest. Unlike last year, the free version no longer handles unemployment income reported on a 1099-G. The free package also can’t handle itemized deductions or schedules 1, 2, or 3 of Form 1040, which means it probably won’t work for you if you plan to do things such as deduct mortgage interest, report business or freelance income, or report stock sales or income from a rental property.”²³⁹
- SmartAsset’s review of TurboTax 2022 products states that “For instance, if you have many different types of income, claim a number of different credits, have multiple tax forms to enter, are self-employed or own a business, you’ll pay more. But if you simply file a W-2, you’ll likely qualify for a free service. In addition, if you qualify for a free federal return, your state return will also be free, unless you file with multiple states.”²⁴⁰

149. New York Times’s Wirecutter, NerdWallet, and SmartAsset are widely circulated websites relied on by consumers. In 2021, Wirecutter had 12 million monthly readers, NerdWallet

²³⁷ Notably, the scope of Free Edition’s eligibility described on these websites is consistent with (and potentially sourced from) the disclosures found on turbotax.com.

²³⁸ Pinola, Melanie, “The Best Online Tax Filing Software,” *Wirecutter*, February 15, 2022, <https://www.nytimes.com/wirecutter/reviews/best-tax-software/> (“Pinola (2022)”), accessed July 29, 2022, INTUIT-FTC-PART3-000601013.

²³⁹ TurboTax Review 2022, accessed July 22, 2022.

²⁴⁰ Zhu, Emily, “TurboTax Review 2022,” *SmartAsset*TM, February 14, 2022, <https://smartasset.com/taxes/turbo-tax-review> (“TurboTax Review 2022”), INTUIT-FTC-PART3-000600813. This review further notes the specific other included forms: “Outside of the standard Form 1040, TurboTax’s Free Edition allows you to file the following: Form 1040-ES (estimated taxes), Form 1040-X (amended returns), Form 1095-A (health insurance marketplace statement), 1099-DIV (dividends and distribution income), 1099-INT (interest income), 1099-R (retirement distributions), Schedule EIC (earned income tax credit), [and] Schedule 8812 (additional child tax credit).”

had 39 million monthly readers, and SmartAsset had more than 100 million monthly readers.²⁴¹ Moreover, the users of these websites are the types of consumers who would be more likely to be comfortable enough with the internet to consider using an online tax preparation product. Research has shown that online research and reviews play a key role in a consumer’s purchase decision. For example, a 2016 Pew study found that 82 percent of U.S. adults read online ratings or reviews before purchasing items for the first time. The same study found 46 percent of U.S. adults felt the availability of customer ratings and reviews helped ‘a lot’ to make them feel confident about their purchases.²⁴²

150. As a result of the high-involvement Consumer Buying Process, it is likely that a substantial number of consumers did not proceed directly from viewing a TurboTax ad to filing their taxes with TurboTax without encountering or investigating additional information sources.

Reasonable consumers would be expected to do so. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²⁴¹ Aycock, Jason, “New York Times’ Wirecutter Moving To Subscription Service,” *Seeking Alpha*, August 31, 2021, <https://seekingalpha.com/news/3735810-new-york-times-wirecutter-moving-to-subscription-service> (“New York Times’ Wirecutter Moving To Subscription Service”), INTUIT-FTC-PART3-000600847; “NerdWallet IPO: What you need to know about a 2021 public offering,” *public.com*, <https://public.com/learn/nerdwallet-ipo-what-you-need-to-know> (“NerdWallet IPO: What you need to know about a 2021 public offering”), INTUIT-FTC-PART3-000600067; Thrasher, Michael, “Advisor Referral Business Helps Lift SmartAsset to \$1Billion Valuation,” *RIAIntel*, June 24, 2021, [https://www.riaintel.com/article/b1sf2vm6cbw9q8/advisor-referral-business-helps-lift-smartasset-to-\\$1-billion-valuation](https://www.riaintel.com/article/b1sf2vm6cbw9q8/advisor-referral-business-helps-lift-smartasset-to-$1-billion-valuation) (“Advisor Referral Business Helps Lift SmartAsset to \$1Billion Valuation”), INTUIT-FTC-PART3-000600986.

²⁴² Smith, Aaron and Monica Anderson, “2. Online Reviews,” *Pew Research Center*, December 19, 2016, <https://www.pewresearch.org/internet/2016/12/19/online-reviews/> (“2. Online Reviews”), INTUIT-FTC-PART3-000600272.

²⁴³ Intuit, “[REDACTED] Study,” INTUIT-FTC-PART3-000602289, slide 22.

[REDACTED]
[REDACTED] as

shown in **Figure 22**.

Figure 22



151. These findings suggest that ads play a relatively minimal role in how consumers ultimately select a tax preparation product. Instead, consumers are likely to consult a variety of sources of information and may test out multiple options.²⁴⁵ Examples from consumer deponents in their decision to use their tax preparation services include referrals from friends, Google searches, and satisfaction from previous use.²⁴⁶

²⁴⁴ Intuit, “[REDACTED]” INTUIT-FTC-PART3-000602289, slide 22. Intuit, “[REDACTED]”
[REDACTED] Intuit, “[REDACTED],” INTUIT-FTC-PART3-000602289, slide 17.

²⁴⁵ See **Section III.B.1**.

²⁴⁶ See [REDACTED] Deposition, 28:4-6; [REDACTED] Deposition, 27:5-9; [REDACTED] Deposition, 19:5-16.

C. Advertising Represents Only One Piece of Information in the Consumer Buying Process

152. Marketers target consumers throughout the Consumer Buying Process in different ways, depending on where each consumer is in the buying process. Consistent with this approach,

[REDACTED]

[REDACTED].²⁴⁷

153. Marketers often link their associated communications strategy with the marketing funnel, reflecting that there are more consumers who are targeted for awareness and general brand sentiment, attempting to lead consumers to investigate further, than the bottom of the funnel where a firm is hoping some share of the smaller number of consumers who are nearing the purchase decision will select their product.²⁴⁸

154. A variety of different advertising strategies are used across this funnel – such as ads to build brand awareness, build brand equity, enhance consideration, educate consumers, direct consumers to the website, or to engage with prior customers. Importantly, both consumers and marketers expect that consumers new to a product category or brand will encounter an array of communications presenting increasingly targeted information.

²⁴⁷ Cathleen Ryan, VP of Marketing at Intuit, testified that [REDACTED]
 [REDACTED] Individual Deposition of Cathleen Ryan, *In the Matter of: Intuit Inc., A Corporation*, No. 9408, November 28, 2022 (“Ryan Individual Deposition (2022)”), 124:20-125-4.

²⁴⁸ For example, Kotler and Keller describe the marketing funnel as the potential target market at each stage of the decision process, from merely aware to highly loyal. Kotler and Keller (2016), p. 141.

[REDACTED]

[REDACTED], as shown in **Figure 23** below.

Figure 23



155. Ads reflect only one source of information considered by consumers in the Consumer Buying Process. Reasonable consumers engaged in the high-involvement Consumer Buying Process are likely to conduct research before selecting a tax preparation provider and are unlikely to weigh advertising as the single piece of relevant information on their search.²⁵⁰

156. Consumers interact with brands, often repeatedly, across different media before ultimately making a purchase decision. Consider the following consumer journeys:

²⁴⁹ Intuit, “[REDACTED],” April 2019, INTUIT-FTC-PART3-000601283, p. 11. [REDACTED]

²⁵⁰ Assael (2004), pp. 98, 104-106.

- Person A – asks a friend about their experience filing with TurboTax, then conducts a search on Google for a third-party review of different tax preparers, then sees a targeted display ad on Facebook, which takes Person A to the TurboTax website.
- Person B – views a TurboTax TV ad, then sees an article when reading the newspaper about what to look for in choosing a tax preparer, then asks a friend about their experience filing with TurboTax, then types TurboTax.com into their web browser to land on the TurboTax website.

157. As the examples above illustrate, different consumers will see different ads and learn about TurboTax in different ways. Much of this process is unobservable to Intuit: there is no meaningful way to track each consumer's unique purchase journey from awareness of TurboTax to the TurboTax website to purchase. However, [REDACTED]. Consistent with an involving and varied Consumer Buying Process, there is substantial variation in sources of inbound traffic. **Figure 24** [REDACTED]

Figure 24



158.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Of course, some of these

²⁵¹ Intuit, “[REDACTED]” INTUIT-FTC-PART3-000608576; Intuit, “[REDACTED]” [REDACTED] June 2022, INTUIT-FTC-PART3-000602247, p. 27.

consumers may have seen advertising at some point in their Consumer Buying Process; [REDACTED]
[REDACTED]
[REDACTED]

159. [REDACTED]
[REDACTED]

[REDACTED]. Academic research on search terms indicates that consumers who use brand search terms have a specific destination in mind and simply use paid search ads as a means to reach that destination.²⁵² In other words, these are consumers who have already decided to go to the TurboTax website or specifically search for information about TurboTax.

160. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

161. [REDACTED]
[REDACTED].

162. In addition, I note that these statistics are not limited to Intuit’s free-related advertising. Intuit also has numerous ads, often focused on expert-assisted products, that do not include any references to filing for free. [REDACTED]

²⁵² Kalyanam, Kirithi and Sridhar Narayanan, “Position Effects in Search Advertising and Their Moderators: A Regression Discontinuity Approach,” *Marketing Science*, Vol. 34, No. 3, May-June 2015, pp. 309-472 (“Position Effects in Search Advertising and Their Moderators: A Regression Discontinuity Approach”), p. 393; Schultz, Carsten, “Informational, Transactional, and Navigational Need of Information: Relevance of Search Intention in Search Engine Advertising,” *Information Retrieval Journal*, Vol. 23, April 2020, pp. 117-135 (“Informational, Transactional, and Navigational Need of Information: Relevance of Search Intention in Search Engine Advertising”).

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For example:

- The TY 2021 Superbowl *Matchmaker* TV ad focused on Intuit’s TurboTax Live product.²⁵⁴
- Similarly in TY 2021, some online ads focused on Intuit’s TurboTax Live product, such as the Yahoo ad with a creative headline “Get Unlimited Tax Expert Advice and Answers” and body of “Get unlimited answers and advice from real tax experts right from the comfort of home, with TurboTax Live.”²⁵⁵
- In TY 2022, some paid search results included:
 - “Get Rid Of The Guesswork And Have Confidence Filing With America’s Leader In Taxes. Tax Filing Is Fast And Simple With TurboTax®. See How Easy It Really Is Today. File On Any Device. Import Prior Year’s Data. File With Confidence. Audit Support Guarantee.”²⁵⁶
 - “File On Your Own, With Expert Help, Or Get A Full Service Experience. Only From TurboTax®. File Your Taxes On Your Own, Or File With Expert Help. TurboTax® Has What You Need. File On Any Device. Tax Experts Available. Audit Support Guarantee. Import Prior Year’s Data.”²⁵⁷

In TY 2021 and TY 2022, email communications included prompts early in tax season to “get a head start on this year’s taxes,” as well as reminders about the tax deadline towards the end of tax season (“final weekend to file”).²⁵⁸

²⁵³ Cathleen Ryan, VP of Marketing at Intuit, testified that [REDACTED] Ryan Individual Deposition (2022), 124:20-125:4. See also Deposition of Jennifer Crosby, *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, November 30, 2022 (“Crosby Deposition”), 119:4-9 [REDACTED]

²⁵⁴ “TurboTax Live 2022 Super Bowl Commercial: Matchmaker,” <https://www.youtube.com/watch?v=JFFmnRg1CmE> (“TurboTax Live 2022 Super Bowl Commercial: Matchmaker”).

²⁵⁵ Intuit, “[REDACTED],” INTUIT-FTC-PART3-000490338.

²⁵⁶ “Get Rid Of The Guesswork,” *Google Search*, <https://www.google.com/search?q=turbotax> (“Get Rid Of The Guesswork”), accessed January 4, 2023.

²⁵⁷ “File On Your Own,” *Google Search*, <https://www.google.com/search?q=turbotax> (“File On Your Own”), accessed January 4, 2023.

²⁵⁸ “Get a sneak peek at your refund!,” *Intuit*, December 29, 2022 (“Get a sneak peek at your refund!”). “Tax Deadline Is Approaching. Only 4 Days Left to File Your Taxes,” *Intuit*, April 14, 2022 (“Tax Deadline Is Approaching. Only 4 Days Left to File Your Taxes”).

D. Consumers Encounter Many Offers for Free Products or Services and Demonstrate Skepticism and an Expectation of Terms and Conditions that Describe Accessing or Keeping the Free Offer

163. Reasonable consumers viewing Intuit’s Free Ads do not do so in a vacuum. Instead, they would consider these ads in the context of their prior experiences and expectations regarding free goods and services as well as their personal Consumer Buying Process for tax preparation services.
164. Consumers regularly encounter a variety of free product offerings across a range of goods and services. Examples of common free product offerings include Buy One Get One Free (“BOGO”), Free for a Limited Time, Free with Purchase, and Free Tier of Service offers.
165. Consumers can expect unique terms and conditions of free product offerings based on the type of offering, the company responsible for the offer, the product itself, and characteristics of the consumer:
- BOGO pricing allows customers to receive a free product after buying a product usually of equal or greater value.²⁵⁹ 93 percent of shoppers have taken advantage of BOGO promotions at least once.²⁶⁰
 - Free for a Limited Time offers include free trials where free introductory pricing is offered for premium content, with the regular pricing kicking in after some

²⁵⁹ For example, Payless Shoes gives consumers the opportunity to buy one pair of shoes and get one free. See “BOGO,” *Payless Shoes*, <https://www.payless.com/bogo> (“BOGO”), INTUIT-FTC-PART3-000600080; “Buy One, Get One Free: The Marketing Strategy to Boost Sales for E-commerce,” *Mage Solution*, <https://magesolution.com/buy-one-get-one-free-the-sales-strategy/> (“Buy One, Get One Free: The Marketing Strategy to Boost Sales for E-commerce”), INTUIT-FTC-PART3-000600020.

²⁶⁰ A survey of shopper responses to BOGO and free promotions with 673 respondents from 2012. “Shopper Response to BOGO/Free Promotions,” *AMG Strategic Advisors*, February 2012, https://members.alanational.org/assets/research_center/Hot_Topic_BOGO_freeFINAL.pdf (“Shopper Response to BOGO/Free Promotions”).

number of months.²⁶¹ 80 percent of all retail subscribers in the U.S. first used their subscriptions via a free trial.²⁶²

- Free with Purchase offers give customers a free sample or gift with purchase, a common offering in the retail and makeup industries.²⁶³ Marketers spend over \$2 billion annually promoting sampling.²⁶⁴
- Free Tier of Service offers give customers free access to content with inclusions of ads or certain limitations that paying customers are not subject to. Such offers are common in music and TV streaming services.²⁶⁵ More than half of all Spotify users have the free version of the app.²⁶⁶
- Free offers or discount pricing sometimes only apply to consumers of a certain age or status. Many companies offer discount pricing for senior citizens, children,

²⁶¹ Verizon sells a “1 Gig” Fios Internet plan that includes Disney+ for 6 months for free, and \$7.99 afterwards. *See* “Get Verizon Fios,” *Verizon*, <https://www.verizon.com/home/bundles/fios> (“Get Verizon Fios”), INTUIT-FTC-PART3-000600602.

²⁶² Survey on share of customers who used a free trial to obtain at least one retail subscription since March 2020 in Q4 2021. Draws from a census-balanced panel of 2,424 adult U.S. consumers and a complementary study in which PYMNTS researched the online subscription sign-up processes of 206 subscription commerce providers across more than nine industries. “Subscription Commerce Conversion Index: The Exclusive Access Effect Edition,” *PYMNTS*, November 2021, <https://www.pymnts.com/wp-content/uploads/2021/11/PYMNTS-Subscription-Commerce-Conversion-Index-November-2021.pdf> (“Subscription Commerce Conversion Index: The Exclusive Access Effect Edition”)29.

²⁶³ Clinique offers customers up to six free samples based on how much they spend. *See* “Offers,” *Clinique*, <https://www.clinique.com/offers> (“Offers”), INTUIT-FTC-PART3-000600074.

²⁶⁴ “According to VSS Communications Industry Forecast, marketers spent \$2.2 billion on sample marketing in 2009.” “The Beginner’s Guide to Free Sample Marketing To Promote Your Products,” *Linchpin SEO*, October 1, 2022, <https://linchpinseo.com/free-sample-marketing-guide/> (“The Beginner’s Guide to Free Sample Marketing To Promote Your Products”), accessed January 11, 2023.

²⁶⁵ Spotify, for example, gives listeners the ability to listen to a “free” version with ads. *See* “Play millions of songs and podcasts, for free,” *Spotify*, <https://www.spotify.com/us/free/> (“Play millions of songs and podcasts, for free”), INTUIT-FTC-PART3-000600277; “Spotify is testing a less restrictive ad-supported tier costing \$.99 a month,” *The Verge*, <https://www.theverge.com/2021/8/3/22607203/spotify-plus-ad-supported-tier-unlimited-skips-on-demand-listening> (“Spotify is testing a less restrictive ad-supported tier costing \$.99 a month”); Peacock’s streaming service, has a free tier but limits high-profile and new content to customers who use the paid version. *See* “Peacock: What’s Free, What’s Paid and What Else to Know,” *CNET*, August 19, 2022, <https://www.cnet.com/tech/services-and-software/peacock-whats-free-whats-paid-and-what-else-to-know/> (“Peacock: What’s Free, What’s Paid and What Else to Know”), INTUIT-FTC-PART3-000600083; “Choose a Plan,” *Peacock*, <https://www.peacocktv.com/plan-picker> (“Choose a Plan”), INTUIT-FTC-PART3-000600082.

²⁶⁶ Wanjala, Alvin, “How Many Users Does Spotify Have?,” *MUO*, August 3, 2022, <https://www.makeuseof.com/how-many-users-spotify-has/> (“How Many Users Does Spotify Have?”), accessed October 12, 2022.

veterans, first responders, students, or first-time customers.²⁶⁷ At Holiday Inn, for example, children can stay with parents and eat at the hotels for free.²⁶⁸

166. Each of these offerings offer some aspect of a product or service for free with limitations, restrictions, or requirements to access the free product. As a result, consumers routinely encounter free offers with restrictions. Consumers' prior experiences with these free offers provide context for their interpretation and expectations when faced with other free offers. Consumers understand that for-profit companies need to make money.²⁶⁹ In fact, multiple consumers deposed in this matter indicated that they understood that, as a for-profit company, Intuit could not offer all of its products for free.²⁷⁰

²⁶⁷ Gill, Kristine, "Are You Eligible for These Special Discounts? Here's How to Find Out So You Don't Miss Out," *Real Simple*, June 22, 2022, <https://www.realsimple.com/work-life/money/saving/eligible-special-discounts> ("Are You Eligible for These Special Discounts? Here's How to Find Out So You Don't Miss Out"). Tarlton, Amanda, "100 Popular Retailers That Offer A Discount To First-time Customers," *USA Today*, January 7, 2021, <https://www.usatoday.com/story/tech/reviewedcom/2021/01/07/100-retailers-offer-discount-your-first-purchase/6563942002/> ("100 Popular Retailers That Offer A Discount To First-time Customers"). Nelson, Dustin, "Everywhere You Can Get Free Food for Kids Right Now," *Thrillist*, October 20, 2022, <https://www.thrillist.com/news/nation/free-food-kids-meal-deals> ("Everywhere You Can Get Free Food for Kids Right Now").

²⁶⁸ "Kids Stay & Eat Free," *Holiday Inn Hotels & Resorts*, <https://www.ihg.com/holidayinn/content/us/en/offers/kids-free> ("Kids Stay & Eat Free"), accessed January 2, 2023.

²⁶⁹ Studies find that consumers regard higher prices due to increased costs as fair, revealing that they understand that for-profit companies need to make money on the products and services that they sell. See Kahneman, Daniel et al., "Fairness as a Constraint on Profit Seeking: Entitlements in the Market," *The American Economic Review*, Vol. 76, No. 4, September 1986, pp. 728-741 ("Fairness as a Constraint on Profit Seeking: Entitlements in the Market"), INTUIT-FTC-PART3-000595424, p. 728; Kalapurakal, Rosemary et al., "Perceived Price Fairness and Dual Entitlement," *Advances in Consumer Research*, Vol. 18, 1991, pp. 788-793 ("Perceived Price Fairness and Dual Entitlement"), INTUIT-FTC-PART3-000595439, p. 788.

²⁷⁰ Multiple Intuit consumer deponents acknowledge that as a for-profit company, Intuit cannot offer all its products for free. See [REDACTED] Deposition, 14:12-15:6; [REDACTED] Deposition, 37:17-20; Deposition of [REDACTED] *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, September 29, 2022 ("[REDACTED] Deposition"), 26:23-24:20; Deposition of [REDACTED], *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, October 5, 2022 ("[REDACTED] Deposition"), 14:7-18; [REDACTED] Deposition, 20:12-17, 43:17-44:4; [REDACTED] Deposition, 22:21-23:3. Additional consumer deponents acknowledge Intuit as a "private business," and therefore cannot offer all its products for free. See [REDACTED] Deposition, 22:11-23-22; Deposition of [REDACTED] *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, November 3, 2022 ("[REDACTED] Deposition"), 20:11-16.

167. Because reasonable consumers expect companies to monetize their products, they often display skepticism when faced with offers for free products. Per Kamins et al. (2009):

Consumers commonly consider a firm's motive for the prices it sets [...] That should be particularly true for a freebie since getting a product for free is an implausibly good deal [...] Consumers realize that firms intend to profit from their sales and integrate their assessments of a firm's likely return in their price perceptions. Firms cannot profit unless they offer products commensurate with their value, so consumers may wonder, 'How can firms profitably give away free products?' Consumers' responses to this question may lead them to discount the deal's value as they may make negative inferences about a firm's offering of a freebie.²⁷¹

168. In a survey published by Frontier in 2021, 18 percent of respondents indicated that they do not trust free trial offers in general, while 41 percent of respondents indicated that trust depended on the service itself or who was offering the service.²⁷²

²⁷¹ Kamins, Michael et al., "Promotional Bundles and Consumers' Price Judgments: When the Best Things in Life Are Not Free," *Journal of Consumer Research*, December 2009, pp. 660-670 ("Promotional Bundles and Consumers' Price Judgments: When the Best Things in Life Are Not Free").

²⁷² A survey of consumer habits related to free trials comprised of 1,000 respondents (16-54+) in 2021. Quach, Karen, "Survey: How Many Americans Are 'Free Trial Hopping?'," *Frontier*, July 2021, <https://go.frontier.com/media-center/trial-hopping-survey/> ("Survey: How Many Americans Are 'Free Trial Hopping?'").

169. [REDACTED]

[REDACTED] For example:

- [REDACTED]
- [REDACTED]
- [REDACTED]

170. This skepticism is an important background to how consumers interpreting Intuit’s Free Ads react. Many consumers, including those who qualify to file for free, simply will not believe the product is truly free, regardless of what Intuit says. As a result, reasonable consumers are unlikely to assume, without research, that TurboTax is free for them.

171. Dr. Novemsky has speculated that “modern consumers, particularly those who are familiar with online products, are not inherently skeptical that a product can be free, as they have been conditioned by years of exposure to numerous free and ‘freemium’ products” like Google or Facebook.²⁷⁶ However, even products like Google and Facebook that Dr. Novemsky references as free are monetized through advertising. Contrary to Dr. Novemsky’s suggestion that such online services reflect a novel consumer experience,

²⁷³ Intuit, “[REDACTED],” INTUIT-FTC-PART3-000601645, p. 21.

²⁷⁴ Intuit, “[REDACTED]” March 2019, INTUIT-FTC-PART3-000602709, p. 17.

²⁷⁵ Intuit, “[REDACTED],” October 2017, INTUIT-FTC-PART3-000601542, p.15.

²⁷⁶ Novemsky Report, ¶ 81.

consumers have encountered ad-supported free services like TV and radio for decades. The lack of any advertising on the TurboTax website demonstrates that the product is not monetized through advertising.

172. Dr. Novemsky cites to a 2020 study of four preliminary versions of Free TV ads as evidence that exposure to Intuit’s TV ads “with ‘free’ messaging causes an increase in viewers’ perceptions that they can use TurboTax for free.”²⁷⁷ In fact, this very document specifically references that “[REDACTED]

[REDACTED]

[REDACTED]²⁷⁸

173. For example, [REDACTED]

[REDACTED]

[REDACTED]

174. Consumers’ familiarity with restrictions on free offers and general skepticism around free offers increases the likelihood that they will expect and attend to restrictions on Intuit’s free offers.

175. As a result of the industry standard disclosures in Intuit’s Free Ads, combined with the high-involvement Consumer Buying Process and consumers’ prior experiences with tax preparation and free product offers, it is unlikely that reasonable consumers would be

²⁷⁷ Novemsky Report, ¶ 97.

²⁷⁸ See Intuit, “[REDACTED],” September 2020, INTUIT-FTC-PART3-000490565 (GX 460), pp. 20 and 28.

²⁷⁹ Intuit, “[REDACTED],” September 2020, INTUIT-FTC-PART3-000490565 (GX 460), p. 28.

deceived by Intuit's Free Ads into believing they could necessarily file their personal tax return for free.

VII. THE TURBOTAX WEBSITE PROVIDES INFORMATION IN A CLEAR AND TIMELY MANNER

176. Regardless of the specific Consumer Buying Process and ads viewed, *all* customers must go to the TurboTax website to file their taxes using the online version of TurboTax. Therefore, the TurboTax website is one of the few steps that *all* consumers have in common during the purchase process. The TurboTax website provides detailed information about the TurboTax Suite, including pricing for all TurboTax products and add-ons, recommendations for the appropriate product for individual tax situations, and qualification requirements for Free Edition.

A. The TurboTax Website Provides Clear Information About the TurboTax Product Lineup and Discloses Up Front that Free Edition Is Not Appropriate for All Tax Situations

177. In this section, I review four key webpages on the TurboTax website that reasonable consumers are likely to visit during the course of deciding to use TurboTax or while preparing their taxes with TurboTax. I review in detail:

- a. The TurboTax homepage (likely the first stop for any visitor to the TurboTax website);
- b. The Simple Returns Pop-up (a pop-up describing the qualification requirements for Free Edition in detail);
- c. The Products & Pricing Page (a page summarizing the full TurboTax Suite that all new customers are routed to); and

d. The Free Edition Landing Page (a page with detailed information about Free Edition).

178. In this section, I review the TurboTax website as of TY 2021, including updated pages for TY 2022. In **Appendix K**, I review the same pages as they existed in prior years, TY 2015 through TY 2020. I note that throughout this period of time, Intuit has consistently included disclosures regarding the qualifications to file taxes with TurboTax for free.²⁸⁰
179. Each of these pages consistently includes disclosures reflecting the eligibility requirements for Free Edition. Since TY 2016, the Simple Returns Disclosure has appeared proximate to any claim regarding a free offer, with more detail available in the hyperlinked Simple Returns Pop-up.²⁸¹ Of note, both the academic literature and the FTC Guidelines relating to online consumer disclosures note that keeping a disclosure short and prominently displayed increases the likelihood that consumers notice the disclosure and are able to understand and recall this information.²⁸² The FTC guidelines relating to proximity and placement of a disclosure also note that “if the details about the additional fees are too complex to describe adjacent to the price claim, those details may be provided using a hyperlink [...] [and] [t]he hyperlink should appear adjacent to the price.”²⁸³
180. The Simple Returns Disclosure puts consumers on notice that there are eligibility requirements pertaining to tax complexity, and the hyperlink provides detailed requirements that would be infeasible to display proximate to every “free” offer. Having a

²⁸⁰ See **Appendix K**.

²⁸¹ In TY 2015, there was simple returns language on the website, but there was no pop-up. See **Appendix K**.

²⁸² FTC Guidelines, 2013, p. 17; OECD (2018), pp. 24-25.

²⁸³ FTC Guidelines, 2013, pp. 10-11.

lengthy disclosure on the top of the Products & Pricing Page that lists each IRS form that would or would not qualify as a simple tax return would be unwieldy and may be counterproductive to consumer understanding.²⁸⁴

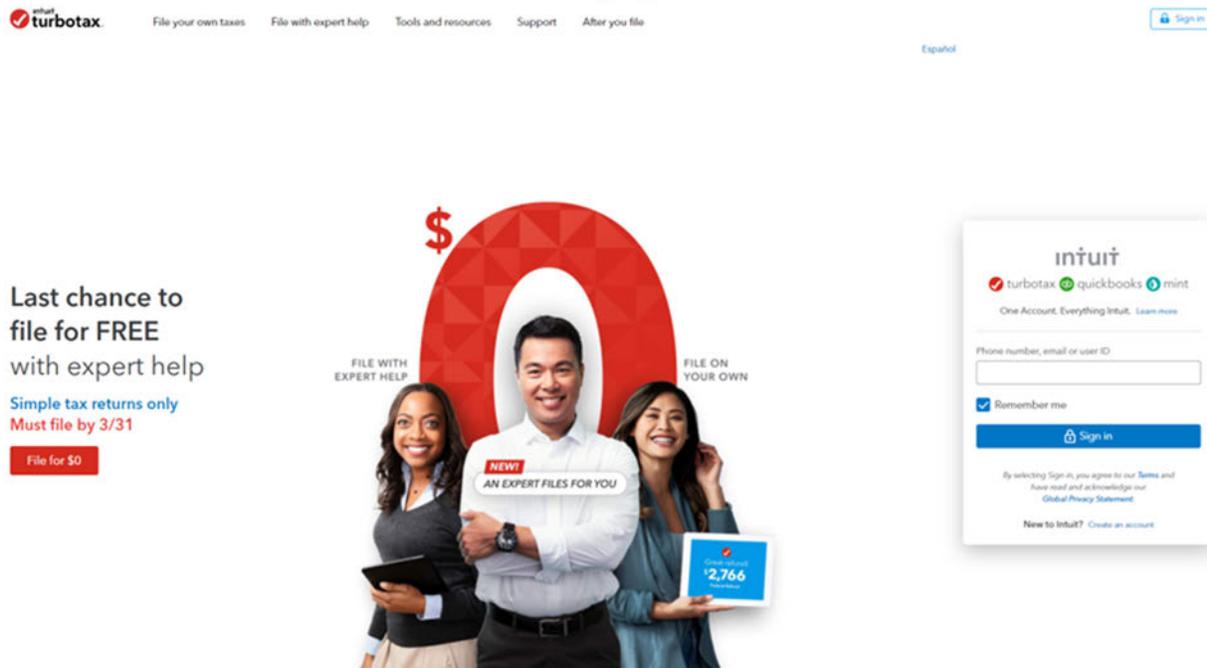
1. Homepage

181. For new users, the TurboTax homepage (i.e., turbotax.intuit.com) features a login, a high-level product comparison, customer reviews, and, at the bottom of the page, a roadmap of the TurboTax website. I understand that there are multiple versions of the TurboTax homepage active at any time: I have chosen a version that emphasized free tax filing for the purposes of assessing Complaint Counsel’s allegations (*see Figure 25*). However, other versions emphasize the different types of expert help available (e.g., “Your taxes, your way: Do it yourself, get expert help, or hand it off start to finish - let’s get your taxes done right”).²⁸⁵

²⁸⁴ FTC Guidelines, 2013, p. 15.

²⁸⁵ These other versions that emphasize different types of expert help available would not have the reinforcing “simple tax returns only” disclosure, as it would not be applicable to the highlighted offer.

Figure 25
TurboTax Homepage in TY 2021²⁸⁶



182. The version of the homepage emphasizing free filing says, “Last chance to file for FREE with expert help.” It then includes a disclosure noting “Simple tax returns only” that is hyperlinked to a pop-up describing what qualifies as a simple tax return as well as a disclosure that this represented a limited time offer, both of which precede and appear to have larger font than the proximate “File for \$0” text within the red button.²⁸⁷ The Simple Returns Disclosure is blue on a solid white background, indicating that it is a hyperlink (as these are often displayed in blue) and making the disclosure stand out relative to the black

²⁸⁶ “Last Chance to File for Free With Expert Help: Simple Tax Returns Only,” *Intuit*, <https://turbotax.intuit.com/> (“Last Chance to File for Free With Expert Help: Simple Tax Returns Only”), accessed March 31, 2022, INTUIT-FTC-PART3-000600599.

²⁸⁷ I note that at the time of this screenshot, there was an active promotion to motivate taxpayers to file by March 31, 2022.

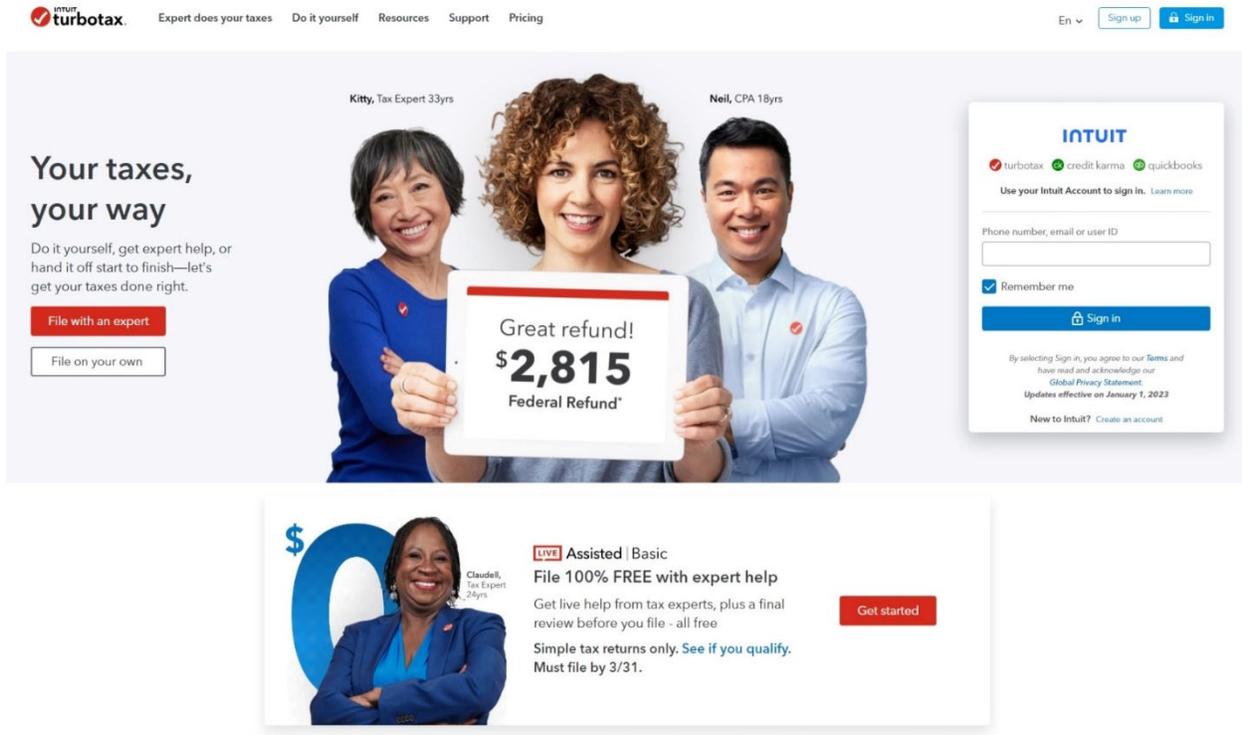
text used elsewhere. In line with testimony from multiple consumer deponents, consumers are familiar that this type of formatting indicates a hyperlink.²⁸⁸

183. The current TurboTax homepage for TY 2022 is shown below in **Figure 26**. The homepage highlights the different levels of assistance available to customers choosing from the TurboTax Suite: “Your taxes, your way; Do it yourself, get expert help, or hand it off start to finish—let’s get your taxes done right.”
184. The homepage also includes an offer to use TurboTax Live Basic for free for early filers with three disclosures: “Simple tax returns only. See if you qualify. Must file by 3/31.” The “See if you qualify” text is in blue, indicating it is a hyperlink, which leads to the Simple Returns Pop-up.²⁸⁹ This updated language even more strongly suggests to customers that not everyone can file for free with TurboTax: “see if you qualify” indicates that there are specific qualification requirements (“qualify”) and that not everyone qualifies (through use of the word “if”) and provides guidance on how to identify whether users qualify by clicking the blue hyperlink to learn more about eligibility restrictions.

²⁸⁸ [REDACTED] Deposition, 17:14-18:7; [REDACTED] Deposition, 93:12-17; [REDACTED] Deposition, 64:3-11; Deponent [REDACTED] refers to this blue text as a “hypertext,” similarly noting that is “a link to another page embedded in normal text,” [REDACTED] Deposition, 28:16-24.

²⁸⁹ “TurboTax Official Site: File Taxes Online, Tax Filing Made Easy,” *Intuit*, <https://turbotax.intuit.com/> (“TurboTax Official Site: File Taxes Online, Tax Filing Made Easy”), accessed December 28, 2022.

Figure 26
TurboTax Homepage in TY 2022²⁹⁰



185. The individual situations discussed in the Simple Returns Pop-up are now also presented towards the bottom of the homepage, in addition to in the pop-up (see **Figure 27**).²⁹¹

²⁹⁰ TurboTax Official Site: File Taxes Online, Tax Filing Made Easy.

²⁹¹ TurboTax Official Site: File Taxes Online, Tax Filing Made Easy.

Figure 27 TurboTax Homepage in TY 2022 (Continued)²⁹²

TurboTax Online: Important Details about Free Filing for Simple Tax Returns

If you have a simple tax return, you can file with TurboTax Free Edition, TurboTax Live Assisted Basic, or TurboTax Live Full Service Basic. Free filing is only available in certain products.

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
- Hobby, personal property rental or personal item sales income reported on Form 1099-K
- IRS standard deduction
- Earned Income Tax Credit (EIC)
- 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)

* More Important Details and Disclosures

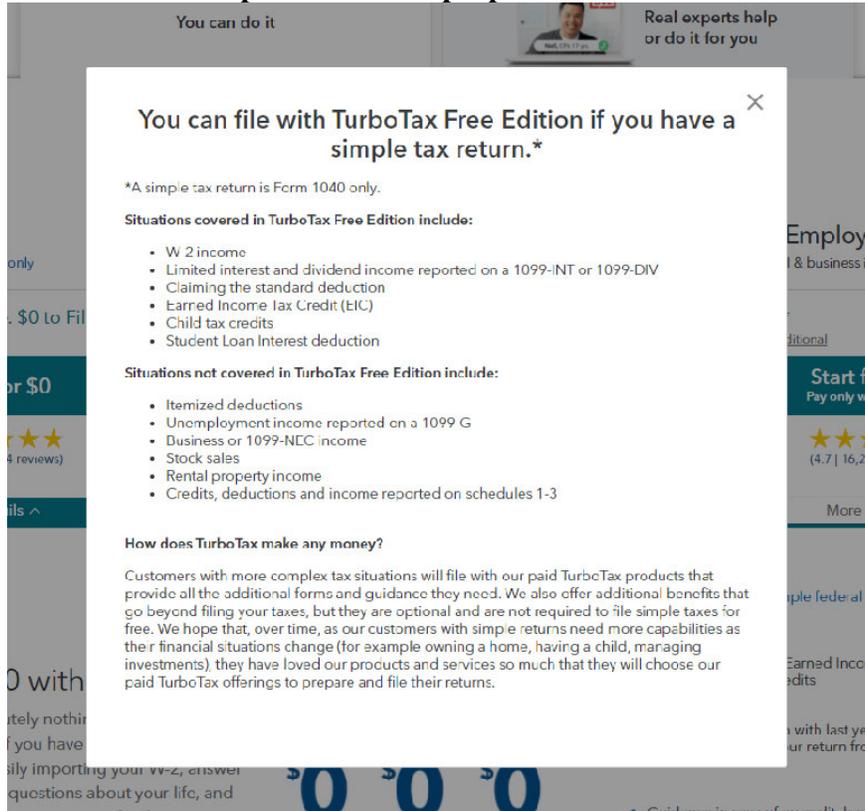


2. Simple Returns Pop-up

186. The Simple Returns Pop-up describes the specific tax situations covered and not covered by Free Edition, as well as information responding to the question “How does TurboTax make any money?” See **Figure 28**.

²⁹² TurboTax Official Site: File Taxes Online, Tax Filing Made Easy.

Figure 28
Simple Returns Pop-up in TY 2021²⁹³



187. This pop-up clearly describes the qualification requirements and is available from links anywhere on the TurboTax website that relate to Free Edition or free offers (e.g., three places on the Products & Pricing Page alone – see **Figure 33**, below). On the homepage, this pop-up is hyperlinked to the “Simple tax returns only” or “See if you qualify” language and the situations covered are displayed in full at the bottom of the page as noted above in **Figure 27**. [REDACTED]

[REDACTED].²⁹⁴

²⁹³ “‘Personal Taxes Online: Free Edition’ pop-up,” *Intuit*, <https://turbotax.intuit.com/personal-taxes/online/> (“‘Personal Taxes Online: Free Edition’ pop-up”), INTUIT-FTC-PART3-000600270, accessed March 16, 2022.

²⁹⁴ [REDACTED] See Intuit, [REDACTED] September 27, 2021, INTUIT-FTC-PART3-000490342, p. 32.

188. Multiple consumer deponents provide supporting testimony regarding Intuit's use of hyperlinks to provide more information about what constitutes simple returns on their website.²⁹⁵
189. **Figure 29** and **Figure 30** below contain the Simple Returns Pop-Up as of TY 2022.

Figure 29
Simple Returns Pop-up in TY 2022
What qualifies as a simple tax return?

If you have a simple tax return, you can file with TurboTax Free Edition, TurboTax Live Assisted Basic, or TurboTax Live Full Service Basic. 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
- Hobby, personal property rental or personal item sales income reported on Form 1099-K
- IRS standard deduction
- Earned Income Tax Credit (EIC)
- Child tax credits
- Student loan interest deduction

²⁹⁵ [REDACTED] Deposition, 17:6-18:7; [REDACTED] Deposition, 64:5-11. [REDACTED] Deposition, 28:16-29:10.

Figure 30
Simple Returns Pop-up in TY 2022 (Continued)

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.

How does TurboTax make any 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.

190. Notably, Dr. Novemsky used similar language in screening his survey respondents and asserts that respondents were able to understand the language. For example, potential survey respondents were asked whether they “earned income...from unemployment...stock sales, or rental properties” or “had...plans to itemize deductions,” which would qualify them for participation in the survey.²⁹⁶ Based on a pretest, Dr. Novemsky claims that, “by and large, the respondents had no difficulty understanding the survey as [Dr. Novemsky] designed it and were able to answer the questions without difficulty,” and that the “questions [he] asked, the answer choices [he] presented, and the instructions [he] provided were clear.”²⁹⁷

²⁹⁶ Novemsky Report, ¶ 21, FN 19.

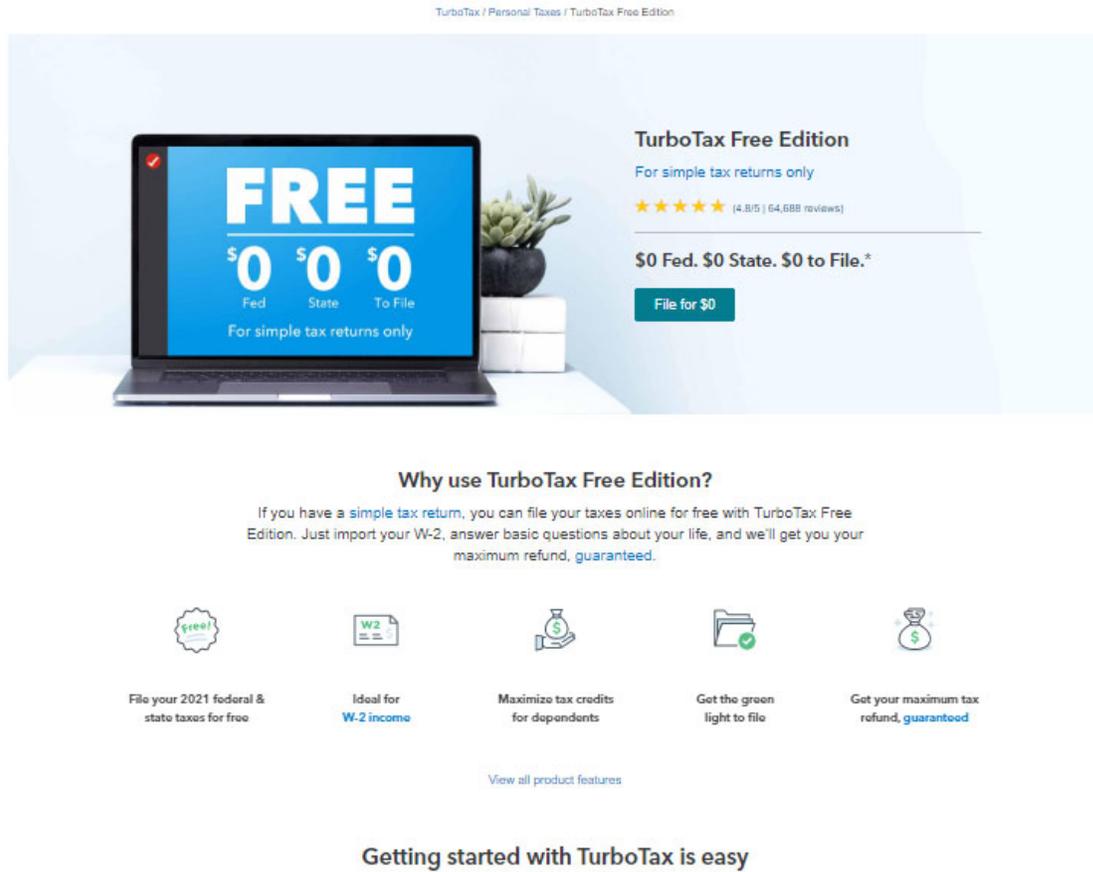
²⁹⁷ Novemsky Report, ¶ 58.

3. *Free Edition Landing Page*

191. In addition to the homepage, each TurboTax product has its own product-specific landing page. The Free Edition landing page provides additional details on Free Edition (*see Figure 31*). The Free Edition landing page can be accessed in many ways including: (1) by clicking “Free Edition tax filing” under “Online software products” from the bottom of the Homepage, (2) by clicking “Learn more” under the Free Edition panel of the Products & Pricing Page, or (3) directly from certain internet searches. The Free Edition landing page provides information on how to get started with Free Edition, including additional information to help consumers determine if Free Edition is the right product for their tax situation including product features, customer reviews, tax form requirements, operating systems/browser requirements, and links to help and support.²⁹⁸

²⁹⁸ “Why use TurboTax Free Edition?,” *Intuit*, April 1, 2022, <https://web.archive.org/web/20220401142411/https://turbotax.intuit.com/personal-taxes/online/free-edition.jsp> (“Why use TurboTax Free Edition?”).

Figure 31
Free Edition Page in TY 2021²⁹⁹

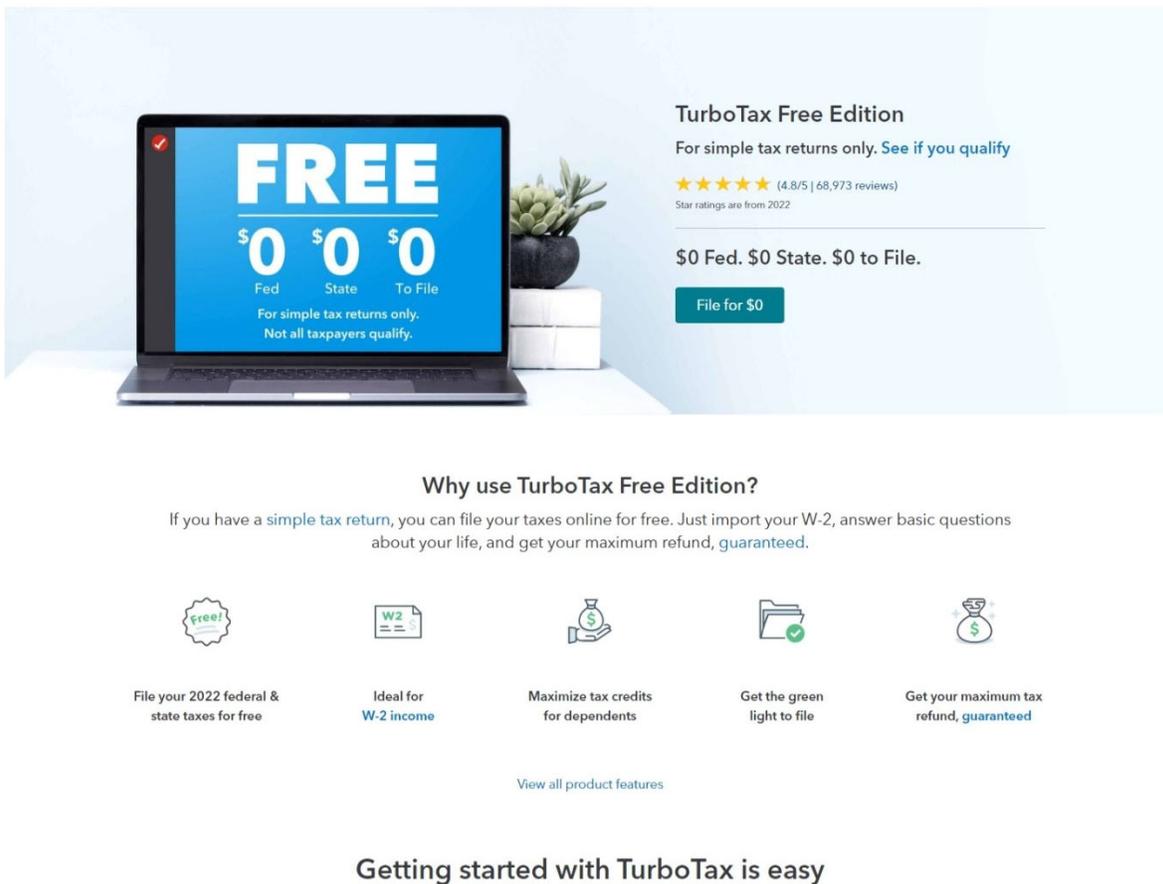


192. The Free Edition landing page has also been updated for TY 2022. As on the Homepage and Products & Pricing Page, the hyperlink for the Simple Returns Pop-up was updated to read, “See if you qualify,” encouraging customers to learn more about the eligibility restrictions for Free Edition. In addition, the image of the laptop stating, “FREE; \$0 Fed, \$0 State, \$0 To File; For simple tax returns only,” was updated to also include the additional disclosure, “Not all taxpayers qualify” (see **Figure 32**). Towards the bottom of the page,

²⁹⁹ Why use TurboTax Free Edition?.

the situations described in the Simple Returns Pop-up are also displayed, similar to the homepage (see **Figure 27**).³⁰⁰

Figure 32
Free Edition Page in TY 2022³⁰¹



4. Products & Pricing Page

193. The Products & Pricing Page (see **Figure 33** below) is one of the primary TurboTax webpages and can be accessed in a number of ways, including: (1) by clicking any product

³⁰⁰ “Why Use TurboTax Free Edition?,” *Intuit*, <https://turbotax.intuit.com/personal-taxes/online/free-edition.jsp> (“Why Use TurboTax Free Edition?”), accessed December 28, 2022.

³⁰¹ Why Use TurboTax Free Edition?.

described at a high-level on the TurboTax homepage; (2) as the first page for a new log-in; and (3) by clicking “Pricing” at the top of the TurboTax website at any time (including from the homepage).³⁰² [REDACTED]

[REDACTED]³⁰³

³⁰² In TY 2021, rather than clicking “Pricing” at the top of the TurboTax website at any time, the Products & Pricing page could be accessed by clicking “Products & Pricing” from the “File your own taxes” drop down at the top of the TurboTax website at any time.

³⁰³ Intuit, “[REDACTED],” October 2017, INTUIT-FTC-PART3-000601542, p. 71.

Figure 33
Products & Pricing Page in TY 2021³⁰⁴

Let's find the right tax solution for you

Select all that apply:

I have 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

[Am I self-employed?](#)

I own a small business

You can do it

Real experts help or do it for you

America's #1 brand of tax software

Free Edition <small>For simple tax returns only</small>	Deluxe <small>Maximize tax deductions and credits</small>	Premier <small>Investments and rental property</small>	Self-Employed <small>Personal & business income and expenses</small>
<p>\$0 Fed. \$0 State. \$0 to File.</p> <p style="background-color: #0070c0; color: white; padding: 5px; text-align: center;">File for \$0</p> <p style="text-align: center;">★★★★★ <small>(4.9 63,250 reviews)</small></p> <p style="text-align: center;">Hide Details ^</p>	<p>\$59* <small>State additional</small></p> <p style="background-color: #0070c0; color: white; padding: 5px; text-align: center;">Start for free <small>Pay only when you file</small></p> <p style="text-align: center;">★★★★★ <small>(4.4 56,830 reviews)</small></p> <p style="text-align: center;">More Details v</p>	<p>\$89* <small>State additional</small></p> <p style="background-color: #0070c0; color: white; padding: 5px; text-align: center;">Start for free <small>Pay only when you file</small></p> <p style="text-align: center;">★★★★★ <small>(4.4 13,454 reviews)</small></p> <p style="text-align: center;">More Details v</p>	<p>\$119* <small>State additional</small></p> <p style="background-color: #0070c0; color: white; padding: 5px; text-align: center;">Start for free <small>Pay only when you file</small></p> <p style="text-align: center;">★★★★★ <small>(4.7 16,251 reviews)</small></p> <p style="text-align: center;">More Details v</p>

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 filing of your simple federal and state tax returns only.
- ✓ 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

194. The Products & Pricing Page clearly lists the price for each paid product and indicates that state returns would incur an additional fee, near the same place Free Edition indicates that

it is \$0 for simple tax returns only, and all proximate to the button to begin the return in that product. This design makes price points transparent, limits distracting factors in the disclosure, and repeats the relevant disclosure as suggested by the FTC Guidelines and the academic literature.³⁰⁵ The price point of each product is listed right above where the potential customer has to take action. The proximity and prominence of price placement promote a “clear and conspicuous disclosure.”³⁰⁶

195. As with the TurboTax homepage, any references to Free Edition or a free offer include disclosures and hyperlinks to the Simple Returns Pop-up. The Free Edition tab on the Products & Pricing Page includes three separate hyperlinks to the Simple Returns Pop-up.
196. The current Products & Pricing Page has been updated for TY 2022. The Free Edition tab of the bottom panel again includes three hyperlinks to the Simple Returns Pop-up, but with two of them updated to read, “See if you qualify,” encouraging customers to click the hyperlink and learn more about eligibility restrictions (*see Figure 34* below).³⁰⁷

³⁰⁴ “Personal Taxes Online,” *Intuit*, accessed April 3, 2022.

³⁰⁵ *See Section V.B* and *Section V.C*.

³⁰⁶ FTC Guidelines, 2013, p. i (“In evaluating whether a disclosure is likely to be clear and conspicuous, advertisers should consider its placement in the ad and its proximity to the relevant claim.”).

³⁰⁷ Products & Pricing Page in Tax Year 2021, as of February 1, 2022.

Figure 34
Products & Pricing Page in TY 2022³⁰⁸

The screenshot displays the TurboTax website's product and pricing page for Tax Year 2022. At the top, there are two navigation options: "Do it yourself" and "Real experts help or do it for you". The main heading is "America's #1 brand of tax software". Below this, four product tiers are presented in a grid:

- Free Edition:** Simple tax returns only. Price: \$0 Fed. \$0 State. \$0 to File. Button: "File for \$0". Rating: 4.9 stars (68,973 reviews).
- Deluxe:** Maximize tax deductions and credits. Price: ~~\$59~~ \$39* (State additional). Button: "Start for free Pay only when you file". Rating: 4.5 stars (63,465 reviews).
- Premier:** Investments and rental property. Price: ~~\$89~~ \$69* (State additional). Button: "Start for free Pay only when you file". Rating: 4.4 stars (16,545 reviews).
- Self-Employed:** Personal & business income and expenses. Price: ~~\$119~~ \$89* (State additional). Button: "Start for free Pay only when you file". Rating: 4.7 stars (18,644 reviews).

Below the grid, there is a detailed section for "File for \$0 with Free Edition". It states: "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." This section features a large "FREE" graphic and "0 \$0 \$0" for "Fed", "State", and "To File" respectively. A list of benefits includes: free filing of simple federal and state tax returns; coverage of W-2 income, EIC, and child tax credits; support for hobby and personal property rental income; jumpstart with previous TurboTax info; audit support guarantee; and 24/7 customer support.

197. Like on the homepage, the Products & Pricing Page in TY 2022 now also presents the situations covered as described in the Simple Returns Pop-up towards the bottom of the screen (see **Figure 27** above).³⁰⁹

³⁰⁸ Products & Pricing Page in Tax Year 2021, as of February 1, 2022.

³⁰⁹ Products & Pricing Page in Tax Year 2021, as of February 1, 2022.

198. After viewing the Products & Pricing Page, if a customer who does not qualify for Free Edition chooses to start in Free Edition, it is likely that they would do so knowing that there was a good chance they may not qualify, or at least would not have a reasonable expectation that they would be able to file for free. In order for a customer who does not qualify for Free Edition to decide to start in Free Edition, they must either: (1) ignore the product information, Simple Returns Pop-up, and recommendation buttons entirely; (2) only select recommendation buttons that would qualify them for Free Edition even though their tax situation was more complex; or (3) select recommendation buttons that would not qualify them for Free Edition but disregard the recommendation.

B. The TurboTax Website Minimizes the Amount of Time for Consumers to Find the Appropriate Product for Their Tax Situation and Provides Clear Information Throughout the Process

199. Complaint Counsel allege that consumers are told that they do not qualify for Free Edition only “after investing time and effort gathering and inputting into TurboTax their sensitive personal and financial information.”³¹⁰ In fact, consumers are provided with tools to determine their eligibility throughout the process, and the website *immediately* informs them of their eligibility once they enter information sufficient to identify that eligibility. Not only does the TurboTax website provide detailed information up front, including clear disclosures proximate to any reference to a free offer with hyperlinks to more details, but it also contains functionality to assist potential customers in identifying the appropriate product for their personal tax situation before they enter *any* information.

³¹⁰ Complaint Counsel’s Motion for Summary Decision, *United States of America before the Federal Trade Commission in the Matter of: Intuit Inc., A Corporation, Respondent*, Docket No. 9408, May 6, 2022 (“Motion for Summary Decision”), INTUIT_13_00000458, pp. 4-5.

200. **Figure 35** [REDACTED]

Figure 35



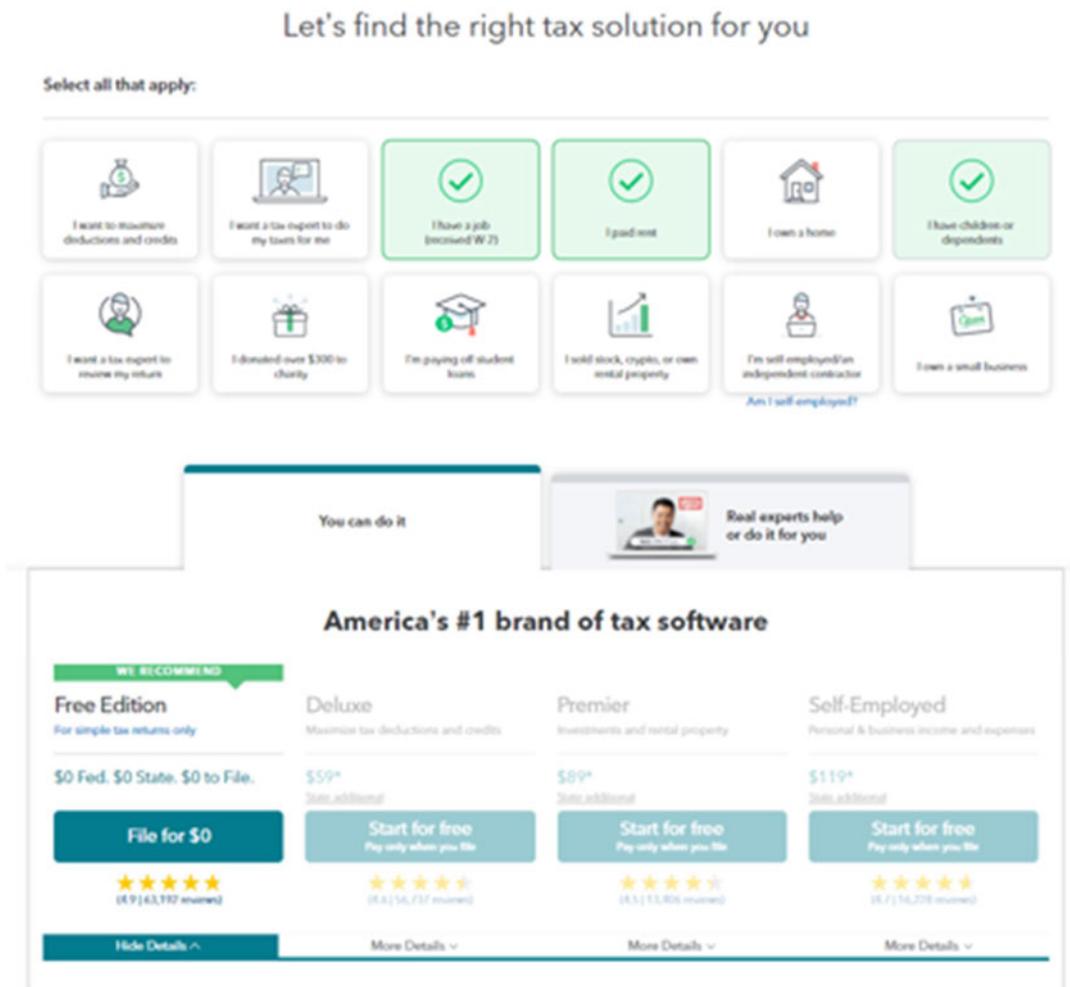
1. The TurboTax Website Contains Functionality to Direct Customers to the Appropriate Product for Their Tax Situation

201. For customers who may want additional assistance in selecting a product, rather than simply reading the descriptions, the Products & Pricing Page includes a SKU Selector that includes twelve buttons that relate to common tax situations that might qualify a taxpayer for a certain type of product. The screening questions allow the TurboTax software to recommend a TurboTax product to fit the potential customer's needs.³¹¹ As the potential customer checks boxes, the software updates its recommendation, which appears in the

³¹¹ "Personal Taxes Online," *Intuit*, accessed July 20, 2022.

bottom panel of the Products & Pricing Page (see **Figure 33**). For example, if a taxpayer indicates that they rent their home, have a job with W-2 income, and have children or dependents, the website suggests Free Edition, which still includes the “For simple tax returns only” hyperlink (see **Figure 36** below).

Figure 36
Initial Screening Questions³¹²



202. If, however, the taxpayer indicates that they have a more complex tax situation, for example because they have sold stock or own a small business, the website suggests a product

³¹² “Personal Taxes Online,” *Intuit*, accessed July 20, 2022.

consistent with that information. For example, if a customer indicates that they own a small business, TurboTax will recommend TurboTax Self-Employed which covers personal and business income and expenses.

203. Contrary to Complaint Counsel’s assertion that consumers must enter sensitive personal information to find out whether they qualify for Free Edition, the Products & Pricing Page appears very early in the purchase process, before a consumer has to enter any personal information at all. As soon as a customer navigates to the TurboTax website and clicks on a prompt to start their taxes (including the prompt to “start for free”) they are immediately directed to the Products & Pricing Page. New customers are unable to start their tax returns without encountering this webpage. [REDACTED]

[REDACTED]

[REDACTED]³¹³

204. [REDACTED]

[REDACTED]³¹⁴ [REDACTED]

³¹³ Intuit, “[REDACTED]” June 2022, INTUIT-FTC-PART3-000602247, p. 36; Intuit, “[REDACTED]” October 2017, INTUIT-FTC-PART3-000601542 p. 71.

³¹⁴ Intuit, “[REDACTED]” INTUIT-FTC-PART3-000601811, pp. 73.

[REDACTED] 315

The fact that customers are unable to begin their returns without first passing through the Products & Pricing Page and encountering the information it provides, is further evidence that Intuit’s marketing is unlikely to deceive consumers into believing that TurboTax is free for all tax situations, but rather is designed to provide consumers with information necessary to start in the appropriate product for their tax situation.

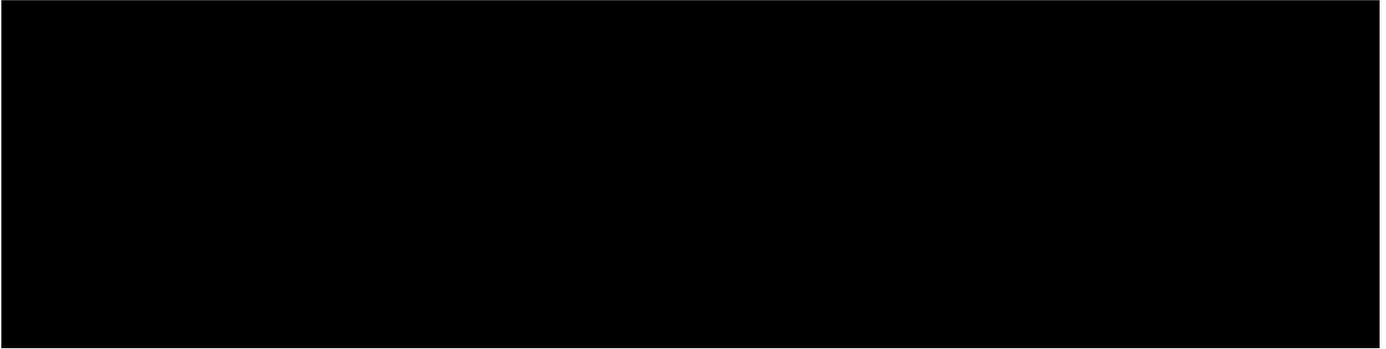
205. Providing this information with the user-friendly SKU Selector tool is consistent with Intuit approaching its relationship with potential customers through a Customer Lifetime Value lens. It is in Intuit’s best interest to match potential customers to the appropriate product for their tax situation as soon as possible in their purchase journey to minimize any disappointment or negative experiences.

206. Evidence from Intuit’s business documents and detailed customer-level data indicate that

[REDACTED] **Figure 37**
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

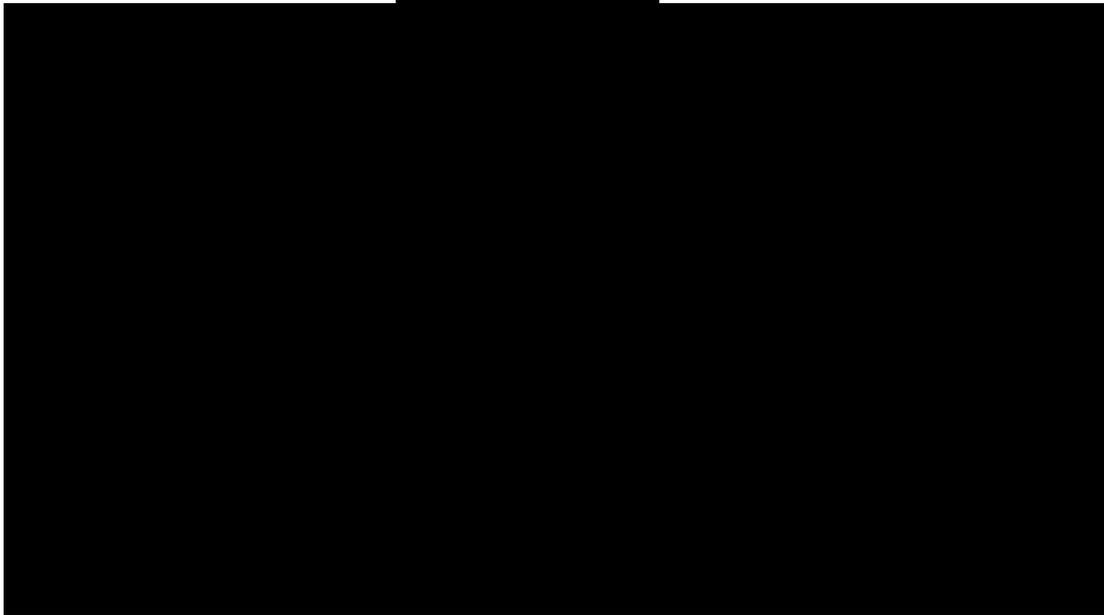
315 [REDACTED] Intuit, “[REDACTED]” June 2022, INTUIT-FTC-PART3-000602247, p. 4.

Figure 37



207. [Redacted]
[Redacted] (see **Figure 38**).³¹⁷

Figure 38



³¹⁶ Intuit customer-level data, INTUIT-FTC-PART3-000608571-2. *See also*, INTUIT-FTC-PART3-000603002.

³¹⁷ [Redacted] Intuit customer-level data, INTUIT-FTC-PART3-000608571-2. *See also*, INTUIT-FTC-PART3-000603029.

208. This is consistent with statistics showing that in TY 2019, only [REDACTED] of TurboTax customers encountered a required upgrade screen.³¹⁸ Such statistics likely overstate the number of taxpayers who expected to file for free using such a solution, as some consumers may choose to start with Free Edition “just to see” if they are eligible. In fact, the New York Times’ Wirecutter review of “The Best Tax Filing Software” for TY 2021 advised that “we think most people should start with the Free Edition. Even if you might have some deductible expenses, such as mortgage interest or charitable donations, it’s better to start here and upgrade to Deluxe only if you’re required to.”³¹⁹ Consumers who may not expect to be eligible for Free Edition may nevertheless choose to start in Free Edition just in case they are eligible.

2. Upgrade Screens Inform Customers as Early as Possible of a Required Upgrade, Minimizing the Time and Effort Customers Spend Before Encountering an Upgrade Screen

209. Reasonable consumers using the interactive SKU Selector or reading the Products & Pricing Page to select the appropriate product for their tax situation can identify the appropriate product with a few simple clicks of their mouse, without entering any personal information or investing meaningful time in the process. The TurboTax website provides all of this information up front, and all of it is accessible without even making a TurboTax account.

210. Even if customers ignore the detailed product information and skip the SKU Selector or disregard its recommendation, as soon as they enter any personal information that would

³¹⁸ Intuit, “[REDACTED],” FY20, INTUIT-FTC-PART3-000601173, p. 13.

³¹⁹ Pinola (2022).

disqualify them from using their current product, the TurboTax website would immediately alert them with an upgrade screen. If a taxpayer who started in Free Edition enters information sufficient to identify their tax situation as complex, the software alerts the taxpayer immediately, provides information about why the taxpayer does not qualify for Free Edition, and discloses the associated upgrade fee. Informing customers of the need to upgrade early in the process allows them to decide whether or not to continue to use TurboTax before they spend any additional time and lets them comparison shop.³²⁰

211.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].³²² As Intuit is unable to know whether any of this time was spent taking a break or being distracted, the average “active” time is likely shorter. In comparison, an IRS report estimated the average time spent to file for a “nonbusiness” entity was nine hours.³²³

³²⁰ I also note that the Kirk Fair Disclosure Survey finds that TurboTax’s upgrade screens do not induce consumers to upgrade to paid products or affect the extent to which consumers use other free filing solutions. *See* Kirk Fair Report, Section V.A-V.B.

³²¹ Intuit, “[REDACTED],” INTUIT-FTC-PART3-000601463, p. 1.

³²² *See* Expert Report of Bruce F. Deal, *In the Matter of: Intuit Inc., a corporation*, No. 9408, January 13, 2023 (“Deal Report”), Figure 12. The Deal Report also notes that this “measure is very conservative, as it represents the *total time elapsed*...and is not restricted to the time the customer *actively interacted* with the website while filling in the required information.” *See* Deal Report, ¶ 106.

³²³ The nine hours average estimate includes: three hours of record-keeping, one hour of tax planning, three hours of form completion and submission, and one additional hour spent because of other filing burdens. “Nonbusiness” filers are considered those who do not file a Schedule C, E, or F, or Form 2106 with their Form

The time required to file reported by Intuit consumer deponents is often much less than nine hours, ranging from roughly one and a half hours to three hours.³²⁴ When asked whether much time was required to input information into TurboTax’s website before reaching a paid prompt, consumer deponent ██████ responded, “probably not.”³²⁵

212. The exact moment at which a customer sees a required upgrade screen is driven by that customer’s personal tax situation, approach to using the website, and what aspect of their taxes triggers the need for an upgrade. Each module of TurboTax includes initial screening questions related to the topic: for example, the income module includes questions about common *types* of income before customers enter *specific* income information.
213. For example, **Figure 39** illustrates an income screening question for a TY 2021 customer who selects that they have cryptocurrency. **Figure 40** shows that the customer is notified of the need for an upgrade as soon as they answered this screening question affirmatively, likely before entering the details of any of their income.³²⁶

1040 or 1040-SR. “Tax Year 2021 1040 Instructions,” *Internal Revenue Service*, December 21, 2021, <https://www.irs.gov/pub/irs-pdf/i1040gi.pdf> (“Tax Year 2021 1040 Instructions”), pp. 107–108.

³²⁴ ██████ Deposition, 25:15-26:14; ██████ Deposition, 18:6-9.

³²⁵ ██████ Deposition, 83:12-15.

³²⁶ I note that the customer may choose to import their tax information automatically from their bank or financial institution. If the customer chooses to have their information imported in this way, the customer does not see the upgrade screen until after their information has been automatically imported. For customers who choose to manually enter their information, they see the upgrade screen immediately.

Figure 39
Investment Screening Questions³²⁷

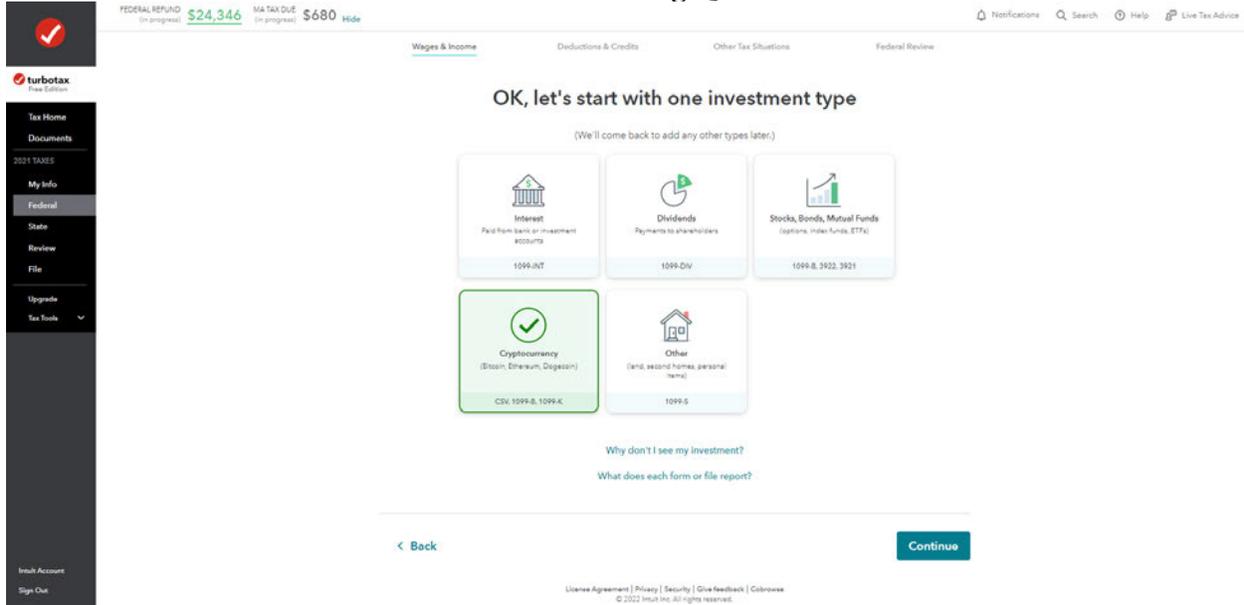
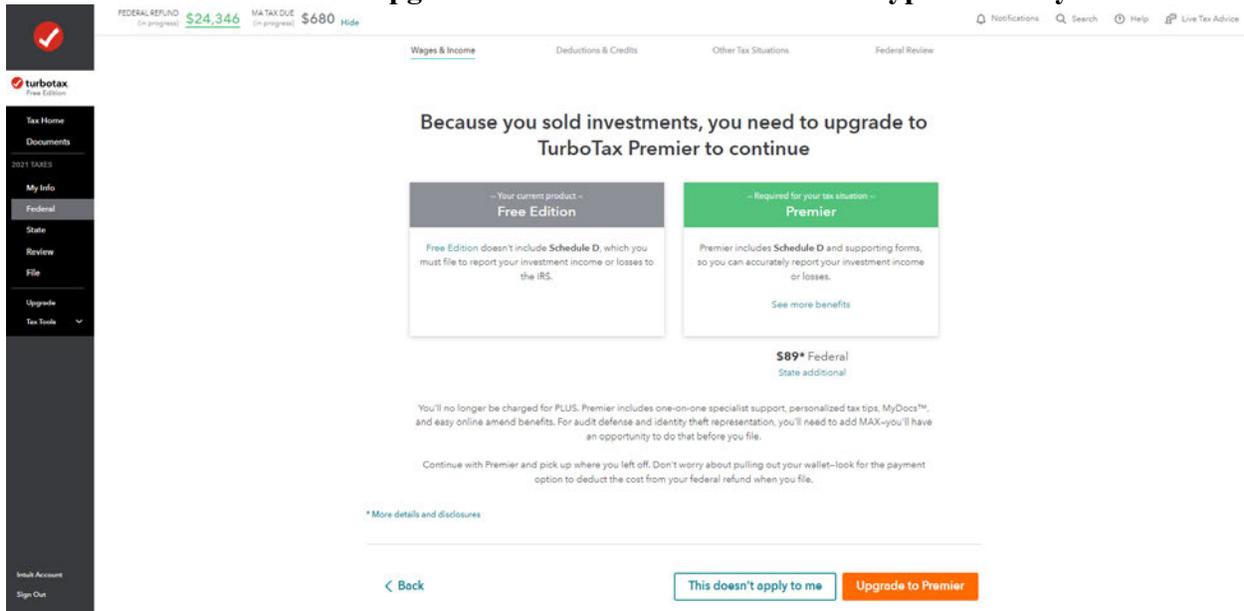


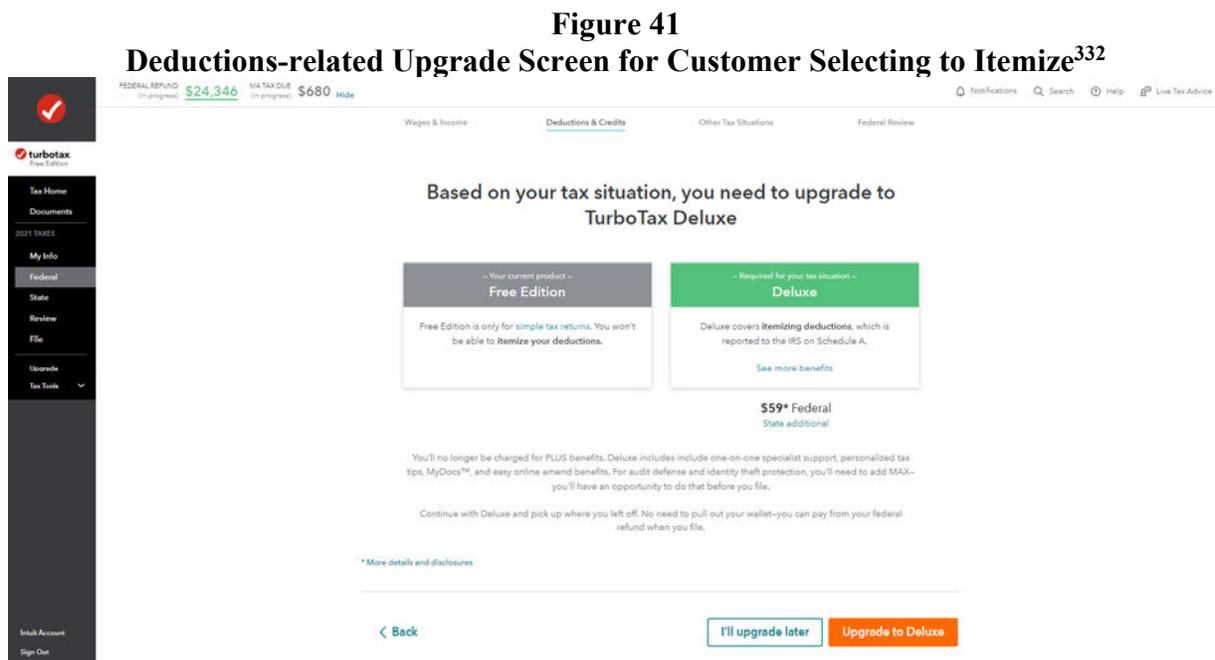
Figure 40
Income-related Upgrade Screen for Customer with Cryptocurrency³²⁸



³²⁷ “Personal Taxes Online,” *Intuit*, accessed July 29, 2022.

³²⁸ “Personal Taxes Online,” *Intuit*, accessed July 29, 2022.

consumer deponent [REDACTED] cites this figure as approximately 30 to 45 minutes.³³¹



217. In fact, Complaint Counsel produced a screen video recording of an individual who created a TurboTax account, skipped the SKU Selector, began entering personal tax information, and then was presented with a deduction-related upgrade screen, very similar to the one shown in **Figure 41**. From the time the individual created their account (provided a name and email address and created a password) to the first time they were presented with an upgrade screen, approximately 14 minutes and 30 seconds had passed while the individual entered their personal information. The individual then clicked the “I’ll upgrade later” button. While the TurboTax software allows customers to continue without upgrading in the moment, it very clearly informed the individual of the need to upgrade as soon as the

³³¹ [REDACTED] Deposition, 58:13-18.

³³² “Personal Taxes Online,” *Intuit*, accessed July 29, 2022.

upgrade was triggered. The individual's choice to delay the upgrade does not reflect a lack of notice provided by TurboTax. The "I'll upgrade later" button prompted a new screen that asked, "Are you sure?," and stated, "You need TurboTax Deluxe to accurately complete your taxes because TurboTax Free Edition doesn't cover your situation. Upgrade to TurboTax Deluxe for \$59*. State is additional." From this screen, the individual selected, "Don't upgrade," and then continued to finish completing the tax breaks section within Deductions & Credits. At that point, the individual was again presented with an upgrade screen that stated, "Based on your tax situation, you need to upgrade to TurboTax Deluxe." Less than one additional minute had passed before the user was again presented with the upgrade screen.³³³ The functionality that allows customers to continue after reaching an upgrade screen allows them to enter all of the relevant deductions and credits to estimate the full refund they would receive if they chose to itemize, which allows for a more complete trade-off between the price of TurboTax Deluxe and their expected refund.

218. Despite their allegations, in their supplemental and non-blind coding exercise, Complaint Counsel determined that 69 percent of the consumer complaints in the Revised Production are not responsive to the allegation that "consumers who were not eligible for the [Free Edition] version of TurboTax [did] not learn they were ineligible until they had already invested significant time and effort creating an account and inputting their sensitive personal and financial information into TurboTax."³³⁴ This suggests that the amount of time and effort required before learning their personal eligibility (whether through an

³³³ "Complaint Counsel Screen Recording of TurboTax Website," 2020_07_13_TT_TY2019_Account and SL_Redacted, GX 240.

³³⁴ This allegation relates to Interrogatory No. 6. *See* Complaint Counsel's Supplemental Responses to Intuit's First and Second Set of Interrogatories, December 22, 2022, p. 19.

upgrade screen or other mechanism, such as a disclosure or the SKU Selector) is not substantial for many customers.

219. Therefore, even among customers who ignore product recommendations and choose to start in a product that is not appropriate for their tax situation, it is unlikely that most customers would invest a substantial amount of time before reaching an upgrade screen.³³⁵

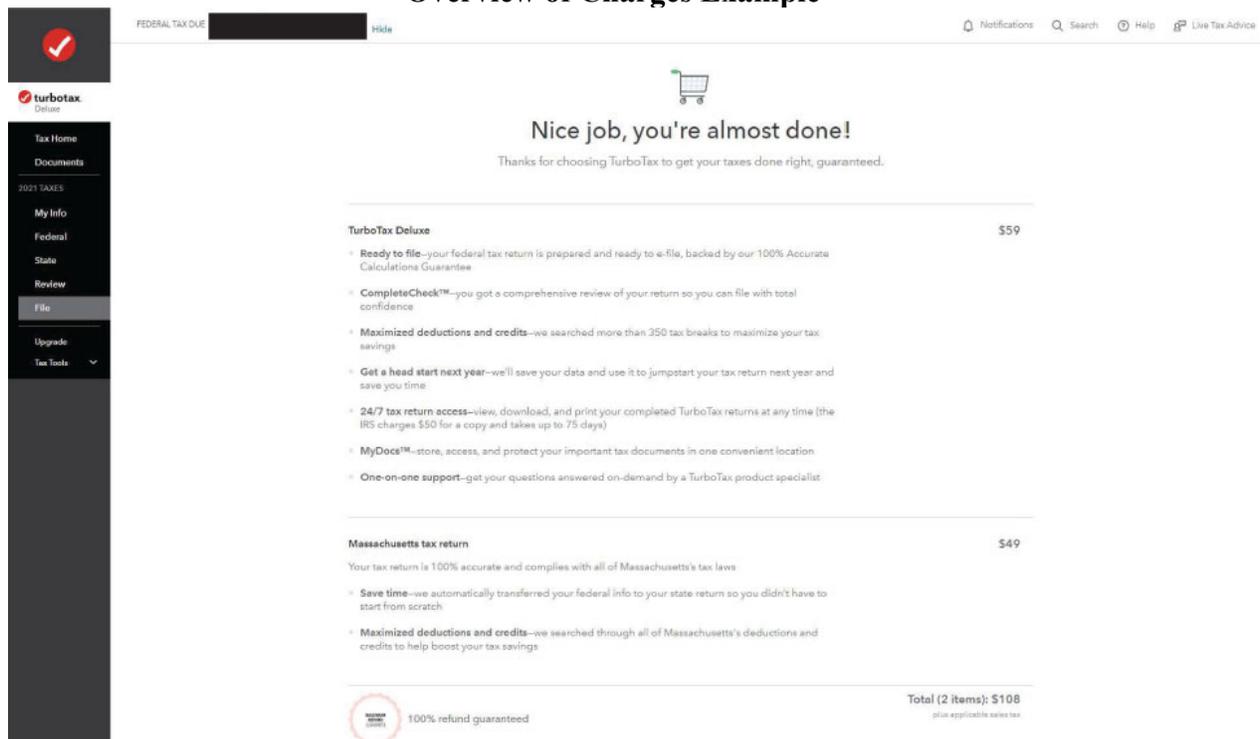
3. Even in the Final Stages of the Filing Process, TurboTax Provides Clear Pricing Information to Customers One More Time Before Purchase

220. After a taxpayer has entered all relevant personal information and completed the Federal and State filing sections (if applicable), they reach the final Review and File stages. Regardless of when the customer selected the TurboTax product they are using, these final steps are the same and it is at this juncture that the customer must make their final purchase decision. Notably, as discussed in **Section III.B**, [REDACTED], suggesting that the time required to reach the final review stage is not prohibitive of switching behavior.

221. **Figure 42** shows an example of a taxpayer being presented an overview of charges in the Review phase. The overview of charges includes a breakdown of the taxpayer's total amount owed, including the product selected, a detailed list of product features, and product prices. In this example, the taxpayer is clearly being charged \$59 for TurboTax Deluxe and \$49 for their state tax return. This webpage is laid out like a common webpage receipt, with prices for the individual products and a total indicating the number of products purchased.

³³⁵ Intuit, "[REDACTED]," INTUIT-FTC-PART3-000601463, p. 1.

Figure 42
Overview of Charges Example³³⁶



222. On the overview of charges screen, the TurboTax website also presents the taxpayer an optional opportunity to purchase an add-on. As **Figure 42** shows, the taxpayer is provided the opportunity to add MAX Benefits. Again, the price of MAX and all features included in the add-on are clearly presented. The taxpayer can decide if they would like to purchase MAX Benefits, which would add \$49 to their total and provide them with “Full Audit Representation,” “Identity Theft Monitoring,” “Identity Theft Insurance,” “Full Identity Restoration,” and “Priority Care.”

³³⁶ “Personal Taxes Online,” *Intuit*, accessed July 20, 2022.

Figure 43 Overview of Charges Example (continued)³³⁷

Customers like you also added:

★ **MAX Benefits** \$49

Get added reassurance with year-round audit representation and identity protection. [Learn more](#) Add MAX

- **Full Audit Representation**—audits by the IRS can be random. If you're audited, a dedicated expert will represent you, including talking to the IRS. Your return is covered for as long as it can be audited
- **Identity Theft Monitoring**—if suspicious activity related to your personal identity is detected online, you'll be notified promptly
- **Identity Theft Insurance**—get reimbursed up to \$250,000 to recover stolen funds, plus up to \$1 million to pay for legal fees and expenses caused by identity theft
- **Full Identity Restoration**—get help from a dedicated Resolution Specialist if you experience personal identity fraud
- **Priority Care**—get priority access to a TurboTax product specialist if you need help with your taxes

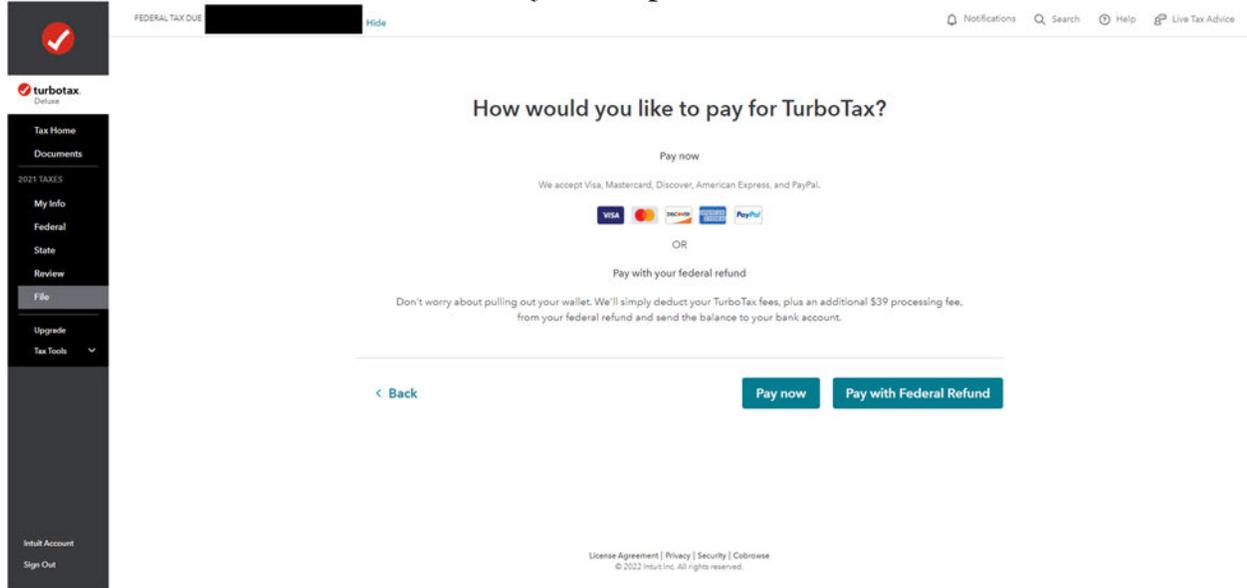
[← Back](#) View payment options

[I have a service code](#)

223. The taxpayer is presented with the final payment screen only after viewing the detailed overview of charges. In the final File stage, the taxpayer has already been made aware of the products and add-ons they are being charged for (see **Figure 42** and **Figure 43**) and they are given the choice to “Pay Now” or “Pay with Federal Refund” (for an additional \$39 processing fee) (see **Figure 44**).

³³⁷ “Personal Taxes Online,” *Intuit*, accessed July 20, 2022.

Figure 44
Payment Options³³⁸



224. It is only at this point in the process that the customer makes a final decision about whether or not to pay for TurboTax: after seeing Simple Returns Disclosures in ads, on the Homepage, and on the Products & Pricing Page, pricing disclosures for paid products on the Products & Pricing Page and any applicable upgrade screens, and the summary of charges on the prior screen. Throughout the entire process, the customer had the ability to change their mind or re-evaluate their choice.

VIII. REASONABLE CONSUMERS ARE NOT LIKELY TO BE DECEIVED BY INTUIT'S FREE ADS

225. Based on the entirety of my review in this matter, including my review of the academic literature, consumer data, Intuit materials, data on third-party firms, publicly available information, and Complaint Counsel and Dr. Novemsky's analyses, it is my opinion that

³³⁸ "Personal Taxes Online," *Intuit*, accessed March 17, 2022.

reasonable consumers would be unlikely to be deceived by Intuit's Free Ads into believing that the free offer was necessarily applicable to their personal tax situation.

226. Reasonable consumers encountering Intuit's Free Ads would do so in the context of the broader Consumer Buying Process, including their prior experiences with tax preparation and with other free offers across industries. They would be likely to approach such ads with inherent skepticism and expectations that there would be terms and conditions on the free offer. Reasonable consumers would be likely to expect disclosures in the ads, as well as more information on the TurboTax website, and interested consumers would even be likely to seek out additional information from third-party sources.
227. Intuit's Free Ads consistently include industry standard disclosures that describe that the free offer is for simple tax returns only. This disclosure uses industry-standard terminology and describes both that there are restrictions ("only") and that the restrictions relate to tax complexity ("simple returns"). Intuit's disclosures are comparable on proximity and placement metrics to the benchmark companies I evaluated. The TurboTax website, too, includes consistent disclosures proximate to every reference to a free offer, including both a concise disclosure indicating that the offer applies only to simple returns and more detailed information available in pop-ups and on product pages.
228. Post-purchase data, including high NPS scores, high customer ratings, high year-over-year customer retention, and low rates of complaints are all inconsistent with deception. To the contrary, these metrics demonstrate that TurboTax regularly meets or exceeds the expectations of its customers.

IX. NON-STANDARD DISCLOSURE REQUIREMENTS COULD ALTER TURBOTAX FREE EDITION TV ADVERTISING AND COULD DECREASE AWARENESS AND USE OF FREE TAX FILING SOLUTIONS

229. As discussed throughout this report, customers are unlikely to have been deceived by Intuit’s advertising for Free Edition. In fact, contrary to Complaint Counsel’s allegations, Intuit’s offering and advertising of Free Edition are likely to *benefit* consumers. TurboTax’s investment in advertising Free Edition likely increased awareness of and use of Free Edition and also likely increased category demand for free tax preparation products across the industry.
230. As discussed in **Section I.B**, I understand that Complaint Counsel are seeking certain requirements concerning Intuit’s free offers and additional disclosures.³³⁹ As noted, I have been asked to assume as a legal matter that such additional disclosures would require Intuit to include the content of its Simple Returns Pop-up (including specific tax situations covered and not covered under Free Edition) and state that “a majority of taxpayers do not qualify for its Free Edition product” as a voiceover in its Free TV ads.

³³⁹ Complaint Counsel ask for an order to be issued, which would include the following provisions: (1) Intuit must not represent that a good or service is “Free” in connection with advertising, marketing, promoting, or offering for sale of any goods or services unless (a) Intuit offers the good or service for free to all consumers, (b) all terms, conditions, and obligations upon which receipt and retention of the free good or service are contingent are set forth clearly and conspicuously at the outset of the offer, or (c) the goods or services are not free for the majority of U.S. taxpayers and such a fact is disclosed clearly and conspicuously at the outset of any disclosures, and (2) Intuit must not misrepresent or assist others in misrepresenting in connection with advertising, marketing, promoting, or offering for sale of any goods or services including (a) the cost of Intuit’s goods or services, including any TurboTax product or service; (b) that consumers can only file their taxes online accurately if they use a paid TurboTax product or service; (c) that consumers can only claim a tax credit or deduction if they used a paid TurboTax product or service; and (d) any other fact material to consumers concerning any good or service such as the total costs, any refund policy, any material restrictions, limitations, or conditions, or any material aspect of its performance, efficacy, nature, or central characteristics. *See* [Proposed] Decision and Order, *In the Matter of: Intuit Inc., A Corporation, Respondent*, Docket No. 9408, August 22, 2022, pp. 5, 6.

231. As discussed in **Section V**, Intuit’s Free Ads include disclosures that are consistent with industry standards and FTC Guidelines and that are in line with those of benchmark companies across all metrics I studied. In addition, lengthy disclosures in the context of TV ads are non-standard and are often not an effective way to convey complex information to consumers. Academic research discusses the importance of balancing information in advertising and comprehension/cognitive overload.³⁴⁰ Incorporating the specific tax situations and forms covered and not covered would require a much lengthier disclosure than currently included in Intuit’s Free TV Ads or the ads of its competitors and would likely decrease consumer engagement with the ads. In particular, the current Simple Returns Pop-up is 157 words,³⁴¹ which is 7 times more than the 19-word written disclosure and 13 times more than the 11-word voiceover in the TY 2021 Free TV Ads.³⁴²
232. As discussed in **Section V.B.1**, Intuit’s competitors in tax preparation use similar tiered pricing models and Simple Returns Disclosures. Incorporating a lengthy disclosure and

³⁴⁰ Controlling the Information Flow: Effects on Consumers’ Decision Making and Preferences.

³⁴¹ ‘Personal Taxes Online: Free Edition’ pop-up, accessed January 9, 2023 (“If you have a simple tax return, you can file with TurboTax Free Edition, TurboTax Live Assisted Basic, or TurboTax Live Full Service Basic. 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 • Hobby, personal property rental or personal item sales income reported on Form 1099-K • IRS standard deduction • Earned Income Tax Credit (EIC) • Child tax credits • Student loan interest deduction. Situations not covered (assuming no added tax complexity): • 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.”).

³⁴² The written disclosures in Intuit’s TY 2021 “Free, Free, Free” TV ads (*Dog Show*, *Auctioneer*, and *Dance Workout*) are 19 words and the voiceovers are 11 words. The TY 2021 TV ad “*Spit Take*” includes additional disclosures related to the limited-time nature of the offer and is not included in this analysis. The written disclosures of other tax competitors’ ads average 33.5 words and the written disclosures of all benchmark companies average 37.1 words. In comparison, the Simple Returns Pop-up is 157 words. The Simple Returns Pop-up is more than 7 times the written disclosure in the TY 2021 Free, Free, Free ads: $(157-19) / 19 = 7.26$. The Simple Returns Pop-up is more than 13 times the voiceover disclosure in these ads: $(157-11) / 11 = 13.27$. See **Appendix I**.

specifically calling out that “most” taxpayers do not qualify would be out of step with competitors – even though Intuit’s competitors also offer free products with similar eligibility requirements.

233. Given that lengthy disclosure requirements may reduce the impact and relevance of Intuit’s Free TV Ads and would unfavorably differentiate TurboTax from competitors, Intuit would need to re-evaluate its allocation of marketing resources and may reconsider its Free TV Ads. Such a re-evaluation may lead to Intuit investing less in, or even eliminating entirely, its advertising for Free Edition.³⁴³ Reducing the impact or quantity of Intuit’s Free Ads is likely to have the perverse effect of harming consumers who may turn to other, more expensive, filing options as a result.

A. Intuit’s Investment in Advertising Free Edition Likely Increased the Number of Taxpayers Filing Their Tax Returns for Free

234. Before the introduction of free online products such as TurboTax Free Edition, the only free options for tax preparation included preparing and mailing one’s own paper returns, or using free government programs that are only available to certain consumers, such as the IRS Free File program; the IRS’s Volunteer Income Tax Assistance (“VITA”) program;³⁴⁴ the Tax Counseling for the Elderly (“TCE”) program, which provides

³⁴³ See Ryan Deposition (2020), 1282:2-18 “Q. In this case, complaint counsel are seeking an order that would require Intuit to disclose whenever it uses the word ‘free’ in any marketing communication that a majority of taxpayers do not qualify to use the free product. What do you think of that proposal? ... THE WITNESS: I believe that proposal would have a very negative effect on the ability for simple tax filers to understand that they are able to file for free and, as a result, would reduce the overall usage of free filing tax products for simple tax returns.”

³⁴⁴ VITA is only available to people who generally make \$54,000 or less, people with disabilities, people who are senior citizens, and people who speak limited English. See “Volunteer Income Tax Assistance (VITA),” *Benefits.gov*, <https://www.benefits.gov/benefit/1543> (“Volunteer Income Tax Assistance (VITA)”), accessed December 14, 2022, INTUIT-FTC-PART3-000599025.

assistance to taxpayers who are age 60 or older; or free options available for active military at military bases.³⁴⁵ As the eligibility restrictions indicate, these free options are limited in terms of accessibility. Given the historically limited availability of free tax filing options, consumers may not have been aware of the existence of free online tax preparation products without Intuit’s advertising and may have not even considered using an online product as a result. [REDACTED]

[REDACTED]³⁴⁶

235. Since Intuit first launched and marketed Free Edition, it not only increased the number of taxpayers filing their tax returns for free with TurboTax, but it also likely increased category awareness. In 2007, Intuit launched a free Federal tax return product, Intuit’s first free product offering a free federal return for qualifying customers during a limited portion of the tax season.³⁴⁷ Intuit later expanded its free product offering in TY 2014 with the launch of Absolute Zero, offering free federal returns for the entire tax season for eligible customers and free state tax returns for a portion of the tax season.³⁴⁸ Intuit has continued to expand this offering: in TY 2018 it made state returns free for the entire tax season and added additional functionality such as the popular year-over-year data transfer feature.³⁴⁹

³⁴⁵ See Volunteer Income Tax Assistance (VITA); “Tax Counseling for the Elderly,” *Benefits.gov*, <https://www.benefits.gov/benefit/722> (“Tax Counseling for the Elderly”), accessed December 14, 2022, INTUIT-FTC-PART3-000600516; “Independent Assessment of the Free File Program,” *The MITRE Corporation*, October 3, 2019, <https://www.irs.gov/pub/newsroom/exec-summary-free-file-program-assessment-100319.pdf> (“Independent Assessment of the Free File Program”), INTUIT_13_00000472.

³⁴⁶ Intuit, “[REDACTED]” INTUIT-FTC-PART3-000602494, p. 18.

³⁴⁷ Intuit, “The Power of Free,” INTUIT-FTC-PART3-000601673, p. 4 shows that Intuit “rolled out” free edition in FY07 and p. 8 shows the “limited forms” included with “Free.”

³⁴⁸ Intuit, “[REDACTED]” 2015, INTUIT-FTC-PART3-000601704, pp. 15-16.

³⁴⁹ Intuit, “[REDACTED]” INTUIT-FTC-PART3-000594591, p. 21.

236. Intuit’s investment in advertising Free Edition likely had a direct effect on the number of filers filing their tax returns for free with TurboTax and likely increased overall category awareness of and demand for free filing solutions. Intuit’s Free Ads are brand-building ads aimed to increase awareness of Free Edition and to increase positive association with the TurboTax brand. Such brand-building ads make consumers aware of the fact that filing for free with TurboTax is an option. [REDACTED]

237. In fact, millions of Americans have filed their federal and state tax returns for free with TurboTax. From [REDACTED]

[REDACTED] .³⁵³

238. Intuit’s investment in advertising Free Edition has likely increased awareness (and therefore demand) not just for TurboTax Free Edition but also for the entire category of

³⁵⁰ Intuit, “[REDACTED]g,” March 2017, INTUIT-FTC-PART3-000602837, p. 40; Intuit, “[REDACTED]18,” March 2019, INTUIT-FTC-PART3-000602709, p. 6.

³⁵¹ Intuit, “[REDACTED],” March 2017, INTUIT-FTC-PART3-000602837, p. 40; Intuit, “[REDACTED],” March 2019, INTUIT-FTC-PART3-000602709, p. 6.

³⁵² Intuit, “[REDACTED] February 2022, INTUIT-FTC-PART3-000602728, p. 12.

³⁵³ [REDACTED] Intuit customer-level data, INTUIT-FTC-PART3-000608571-2. *See also*, INTUIT-FTC-PART3-000603001.

free online tax preparation, providing an indirect benefit to consumers. Intuit's competitors have also responded to Intuit's Free Edition offering and advertising.

239.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Intuit's advertising of Free Edition and its investment in allowing taxpayers to test out DIY online tax preparation likely increased demand for, and acceptance of, online tax preparation products benefitting consumers who may have otherwise used a more costly assisted tax preparation product.

B. Reducing the Impact or Amount of TV Advertising for TurboTax Free Edition Would Not Lead Many, if Any, Consumers to Pay Less to File Their Taxes and Could Lead Many to Pay More to File Their Taxes

240. Reducing the impact or amount of information about TurboTax Free Edition (including eliminating advertising entirely) would not lead many, if any, consumers to pay less to file their taxes. The decreased advertising for a free tax preparation product would likely decrease awareness of and demand for that free tax solution, diverting consumers, including those who would qualify to file for free with TurboTax Free Edition, away from the TurboTax Suite. More consumers might even choose TurboTax's paid products than those that do so today, with less marketing reinforcing the potential free option. Any consumers who were diverted from filing with TurboTax (either using Free Edition or a paid product) would still need to file their taxes and would need to seek alternate methods. Instead of choosing TurboTax, they may choose an alternate online tax preparation

³⁵⁴ Intuit, "[REDACTED]," October 2016, INTUIT-FTC-PART3-000601484, pp. 4, 18.

provider, a paid preparer such as a CPA, or a government program such as the IRS Free File Program. Many of these options would be comparably priced or even more expensive than TurboTax.

1. Other Online Tax Preparation Providers

241. Intuit’s TurboTax website allows consumers to try out the TurboTax platform, only paying at the very end of the process. This “try before you buy” model allows curious taxpayers to sample DIY online tax preparation services before committing to using one and to compare different online tax preparation services against each other to ensure they are getting the highest refund or the lowest price.
242. As discussed in **Section V.B.1**, Intuit’s competitors also run TV ads for both their free and paid online tax products, some of which position their product lineup in comparison to Intuit’s. For example, [REDACTED]
[REDACTED]
[REDACTED].³⁵⁵ In TY 2020, TaxAct ran a TV ad positioning TaxAct as costing “30% less than the big guys” with a disclosure at the bottom of the screen that read “30% less claim based on comparison of TurboTax and H&R Block federal pricing for Deluxe and Premier consumer online products on 12/4/2020. Other TaxAct consumer online products also cost less than comparable TurboTax and H&R Block products on same date. Price paid is determined at the time of filing and is subject to change. Restrictions apply. See

³⁵⁵ Intuit, [REDACTED],” March 2019, INTUIT-FTC-PART3-000601465, p. 15.

www.taxact.com/company/accuracy-guarantee for Details & Disclosures on the Maximum Refund.”³⁵⁶

243. Given the similarity in competitors’ online tax product lineups and eligibility requirements for their free products, the effect of reducing or eliminating Intuit’s advertising of Free Edition may simply be to divert consumers who would otherwise file with TurboTax to a competitor, where they would face similar restrictions on their qualifications to use free tax filing solutions. Reducing or eliminating Intuit’s advertising of Free Edition would not necessarily result in more consumers filing for free but would simply divert customers from Intuit to its competitors, with no meaningful change in consumer welfare.

2. Other Tax Preparation Filing Options

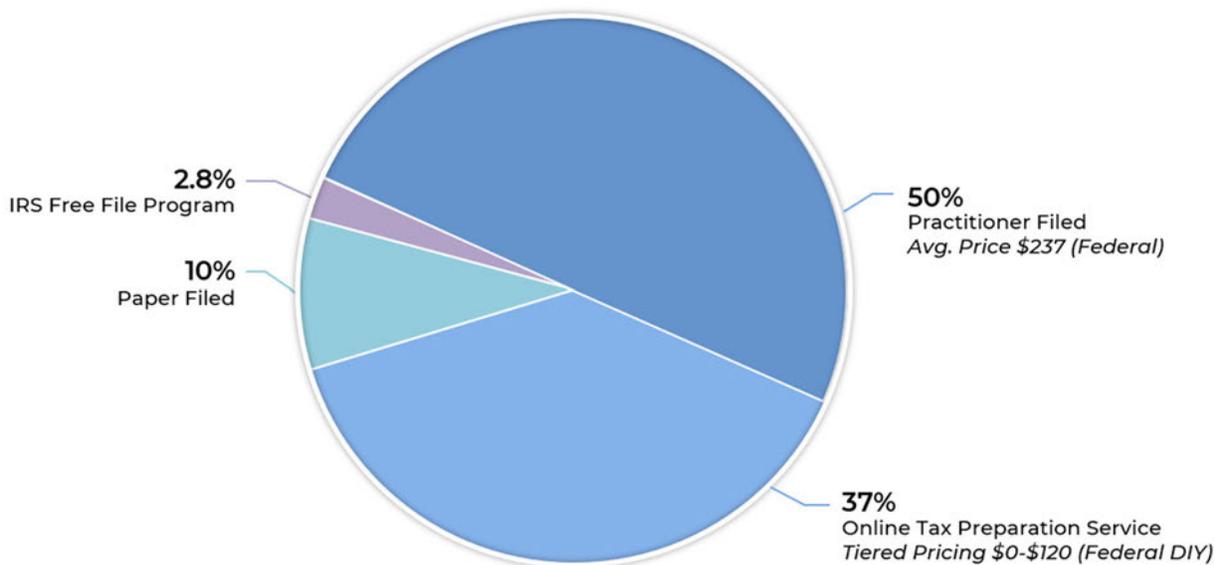
244. Instead of diverting to other online tax preparation providers, some consumers may choose alternate filing options such as using a paid preparer, self-preparing their taxes by hand or using the IRS Free File Program. Self-preparation by hand and the IRS Free File Program remain relatively rare tax preparation choices; in TY 2021, of the 167.9 million tax returns filed, only 16.8 million (10 percent) were paper filed (i.e., self-prepared by hand) and 4.7 million (3 percent) were filed using IRS Free File (*see Figure 45*).³⁵⁷ Self-preparation is free for all filers but requires sufficient knowledge about the U.S. tax code and confidence in ones’ ability to accurately prepare their taxes. Free government programs like the IRS Free File Program continue to be available to select individuals but command a relatively

³⁵⁶ “Bear: Taxes Aren’t Scary,” *TaxAct TV Ad*, January 4, 2021, <https://www.ispot.tv/ad/tzw7/taxact-bear-taxes-arent-scary> (“Bear: Taxes Aren’t Scary”), accessed July 13, 2022, INTUIT-FTC-PART3-000602976.

³⁵⁷ “Internal Revenue Service 2021 Data Book,” *IRS*, May 2022, <https://www.irs.gov/pub/irs-pdf/p55b.pdf> (“Internal Revenue Service 2021 Data Book”), INTUIT-FTC-PART3-000599920, p. 2; “Free File Fillable Forms,” *IRS*, <https://www.irs.gov/e-file-providers/free-file-fillable-forms> (“Free File Fillable Forms”), INTUIT-FTC-PART3-000600016.

limited share of the U.S. tax preparation market. Moreover, diverting customers from TurboTax to alternative filing options such as self-preparation could lead to greater mistakes or risk lower refunds.

Figure 45
TY 2021 Tax Returns Filed by Preparation Method



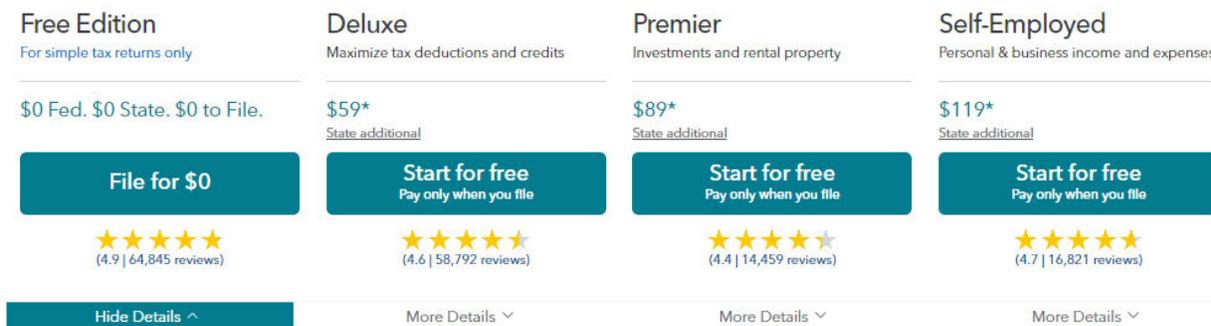
245. In contrast, the most common tax filing method continues to be using a paid preparer to assist in preparing taxes. In TY 2019, 50 percent of individual tax returns in the United States were filed using an assisted tax preparation method.³⁵⁸ On average, the cost of assisted tax preparation is higher than online DIY products, including the core TurboTax Suite. A Morgan Stanley Research report noted that on average the cost of assisted tax preparation was \$237 for federal returns, with additional fees for state returns.³⁵⁹ By

³⁵⁸ Internal Revenue Service 2021 Data Book, p. 2.

³⁵⁹ “Assessing the Key Debates Leaves Us Bullish – Reiterate OW,” *Morgan Stanley*, February 2, 2021 (“Assessing the Key Debates Leaves Us Bullish – Reiterate OW”), INTUIT-FTC-PART3-000598329, p. 3.

comparison, TurboTax’s products range from \$0 for Free Edition to \$119 for TurboTax Self-Employed (plus an additional fee for state returns), as shown in **Figure 46**.³⁶⁰

Figure 46
TurboTax Core Products & Pricing as of April 4, 2022³⁶¹



Not only is the average cost of an assisted tax preparation method higher than even the most expensive TurboTax DIY solution, but there is also a wide range in potential prices, and the pricing can be opaque and difficult to identify and assess in advance. A 2016 article published in the Atlantic described an informal survey of tax storefront operations in two different cities. The authors of this survey went to two tax storefronts in different cities (Washington D.C. and Baltimore) and presented the tax professionals with identical information. The authors found that depending on the storefront location, they would have spent between \$309 and \$509.³⁶² In contrast with the pricing uncertainty from these tax professionals, the TurboTax webpage clearly lays out the prices of each product and includes the ability to “start for free” and pay only when taxpayers file their returns. This “try before you buy” approach allows consumers to comparison shop and ensure that they believe their TurboTax purchase is worth the price. There is no such ability to “try before

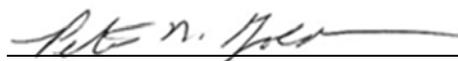
³⁶⁰ “Personal Taxes Online,” *Intuit*, accessed July 20, 2022.

³⁶¹ “Personal Taxes Online,” *Intuit*, accessed July 20, 2022.

³⁶² White, G, “How the Tax-Prep Industry Takes Advantage of Low-Income Filers,” *The Atlantic*, April 14, 2016, <https://www.theatlantic.com/business/archive/2016/04/eic-tax-prep/478305/> (“How the Tax-Prep Industry Takes Advantage of Low-Income Filers”), INTUIT-FTC-PART3-000600796.

you buy” with assisted tax preparation products, meaning any taxpayers who choose to evaluate a CPA or tax professional as an option will likely be faced not only with higher prices, but would be more limited in their ability to evaluate different assisted tax preparation options and comparison shop based on price.

246. Therefore, reducing the impact or amount of Intuit’s advertising of Free Edition could have the perverse effect of diverting potential TurboTax customers to other, comparable, DIY tax preparation solutions or to more expensive assisted tax preparation solutions, including people who could have filed for free using TurboTax.



Peter N. Golder
January 13, 2023

APPENDIX A
CURRICULUM VITAE

Appendix A Curriculum Vitae

Peter N. Golder
Tuck School of Business
Dartmouth College
100 Tuck Hall
Hanover, NH 03755-9000
(603) 646-0598
peter.n.golder@tuck.dartmouth.edu

ACADEMIC EXPERIENCE

Dartmouth College, Tuck School of Business
Professor of Marketing, 2009-present
Co-Editor, Idea Corner track, *Marketing Letters*, 2021-present
Co-Editor-in-Chief, *Marketing Letters*, 2015-2020
Academic Fellow, Marketing Science Institute, 2020-present
Academic Trustee, Marketing Science Institute, 2016-2020
Faculty Director, TuckGO, 2018-2020
Faculty Director, First-Year Project, 2017-2020
Marketing Faculty Area Coordinator, 2015-2018
Senior Fellow, Dartmouth College Society of Fellows, 2014-2017

New York University, Stern School of Business
Professor of Marketing, 2008-2009
Coordinator, Marketing Department Doctoral Program, 2008-2009
George and Edythe Heyman Faculty Fellow, 2004-2009
Associate Professor of Marketing, 1999-2008 (tenured in 2002)
Assistant Professor of Marketing, 1995-1999

Peking University, Guanghua School of Management
Visiting Professor of Marketing, 2006-2007

University of California, Los Angeles (UCLA)
Visiting Assistant Professor of Marketing, 1994-1995

University of Southern California
Research and Teaching Assistant, 1990-1994

EDUCATION

Ph.D. in Business Administration (Marketing), 1994
University of Southern California, Los Angeles, CA

B.S. in Mechanical Engineering, 1984
University of Pennsylvania, Philadelphia, PA

HONORS

Marketing Strategy Consortium Faculty Fellow (2020)
 AMA Doctoral Consortium Faculty Member (2019 [invited, unable to attend], 2015, 2005, 2004, 2002, 1999)
 Citation of Excellence Award from Emerald Group Publishing for paper with high citations, novelty, interdisciplinary interest, and relevance in today's world (2015)
 Maynard Award for *Journal of Marketing* paper making the most significant contribution to marketing theory and thought (2013)
 Elsevier Distinguished Scholar Award from Society for Marketing Advances—career achievement award for “brilliant work and nurturing of the historical method in research in marketing” (2012)
 INFORMS Society for Marketing Science Long Term Impact Award—chosen from all papers published in *Marketing Science* during preceding 10 years (2012)
 Excellence in Global Marketing Research Award, American Marketing Assoc. (2011)
 Executive MBA Great Professor Teaching Award (2008)
 Buzzell Award for best paper published by Marketing Science Institute (2007, 1994)
 Finalist, Little Award for Best Paper in *Marketing Science* (2007)
 Finalist, Bass Award for Best Dissertation-based paper in *Marketing Science* (2007)
 Best Paper Award, American Marketing Association Technology and Innovation Group (2005)
 Berry Book Prize (Best Book in Marketing), American Marketing Association (2003)
 Early Career Award for First 10 Years of Contributions to Marketing Strategy Research, American Marketing Association (2003)
 Editor's Award for Reviewing, *Journal of Marketing* (2003)
 Finalist, INFORMS Society for Marketing Science Practice Prize (2003)
 Top Ten Business Book of the Year, *Harvard Business Review* (2002)
 Marketing Science Institute Young Scholars Program Faculty Member (2006, 2001)
 O'Dell Award for *Journal of Marketing Research* paper making the most significant long-term contribution (1998)
 Bass Award for best paper in *Marketing Science* or *Management Science* based on a marketing doctoral dissertation (1998)
 Faculty Advisor Award for Field Study Achievement (UCLA - 1995)
 Beta Gamma Sigma (1994)
 Richard D. Irwin Dissertation Award Winner (1993)
 AMA Doctoral Consortium Fellow, University of Illinois (1993)
 Graduate of Conoco's Management Development Program (1985)
 Second Prize, Senior Design Project, University of Pennsylvania (1984)
 Pi Tau Sigma, National Honorary Mechanical Engineering Fraternity (1984)

JOURNAL PUBLICATIONS

Golder, Peter N., Marnik G. Dekimpe, Jake T. An, Harald J. van Heerde, Darren S.U. Kim, and Joseph W. Alba (2022), “Learning from Data: An Empirics-First Approach to Relevant Knowledge Generation,” *Journal of Marketing* (published online September 13), <https://doi.org/10.1177/00222429221129200>.

- Pang, Jun, Angela Xia Liu, and Peter N. Golder (2022), “Critics’ conformity to consumers in movie evaluation,” *Journal of the Academy of Marketing Science*, 50, 864-887.
- Bradlow, Eric T., Peter N. Golder, Joel Huber, Sandy Jap, Aparna A. Labroo, Donald R. Lehmann, John Lynch, Natalie Mizik, Russell S. Winer (2020), “Editorial: Relaunching Marketing Letters,” *Marketing Letters*, 31, 311-314.
- Golder, Peter N. and Sandy Jap (2020), “Launching the Idea Corners section of *Marketing Letters*,” *Marketing Letters*, 31 (March), 1-2.
- Golder, Peter N., Debanjan Mitra, and Christine Moorman (2018), “Incorporating Quality Considerations in Merger Analysis: Why, What, When, and How?” *The Antitrust Bulletin*, 63 (June), 222-236.
- Golder, Peter N., Dmitri. G. Markovitch, and Jonathan P. O’Brien (2018), “When do Investors reward Acquisitions and Divestitures? The Contrasting Implications of Normative and Behavioral Economic Theories,” *Managerial and Decision Economics*, 39 (March), 226-239.
- Golder, Peter N., Sandy Jap, and Joel H. Steckel (2017), “The Future of *Marketing Letters*: Vision, Review Process, and a New Type of Paper—Idea Corners,” *Marketing Letters*, 28 (September), 335-339.
- Golder, Peter N., Debanjan Mitra, and Christine Moorman (2012), “What is Quality? An Integrative Framework of Processes and States,” *Journal of Marketing*, 76 (July), 1-23.
- Harold H. Maynard Award for *Journal of Marketing* paper making the most significant contribution to marketing theory and thought (2013)
 - Citation of Excellence Award from Emerald Group Publishing for paper with high citations, novelty, interdisciplinary interest, and relevance in today’s world (2015).
- Golder, Peter N., Rachel Shacham, and Debanjan Mitra (2009), “Innovations’ Origins: When, By Whom, and How are Radical Innovations Developed?” *Marketing Science*, 28 (January), 166-179.
- Mitra, Debanjan and Peter N. Golder (2008), “Does Academic Research Help or Hurt MBA Programs?” *Journal of Marketing*, 72 (September), 31-49.
- Selected by *JM* Editor as single article from issue to feature on *JM* Blog
 - Basis of our article in *Financial Times* (see Other Publications)
 - Basis of our article in *BusinessWeek* online (see Other Publications)
 - Featured on The Chronicle of Higher Education *News Blog*

Markovitch, Dmitri and Peter N. Golder (2008), “Using Stock Prices to Predict Market Events: Evidence on Sales Takeoff and Long-Term Firm Survival,” *Marketing Science*, 27 (July-August), 699-716.

Mitra, Debanjan and Peter N. Golder (2007), “Quality is in the Eye of the Beholder,” *Harvard Business Review*, 85 (April), 26-28.

Mitra, Debanjan and Peter N. Golder (2006), “How Does Objective Quality Affect Perceived Quality? Short-Term Effects, Long-Term Effects, and Asymmetries,” *Marketing Science*, 25 (3), 230-247.

- Robert D. Buzzell Best Paper Award from Marketing Science Institute (2007)
- Finalist, John D. C. Little Award for Best Paper in *Marketing Science* (2007)
- Finalist, Frank M. Bass Award for Best Dissertation-based paper in *Marketing Science* (2007)
- Featured in *Handelsblatt*, a top German economics and business periodical
- Featured in *Insights from MSI* (Marketing Science Institute)
- Reprinted in ICFAI’s *Journal of Brand Management*

Golder, Peter N. and Gerard J. Tellis (2004), “Growing, Growing, Gone: Cascades, Diffusion, and Turning Points in the Product Life Cycle,” *Marketing Science*, 2, 207-218.

- INFORMS Society for Marketing Science Long Term Impact Award (2012)
- Best Paper Award, American Marketing Association Technology and Innovation Group (2005)
- Also published in the Marketing Science Institute working paper series and featured in their periodical, *Insights from MSI*

Foster, Joseph A., Peter N. Golder, and Gerard J. Tellis (2004), “Predicting Sales Takeoff for Whirlpool’s New Personal Valet,” *Marketing Science*, 2, 182-185.

- INFORMS Society on Marketing Science Inaugural Practice Prize (finalist)

Bohlmann, Jonathan D., Peter N. Golder, and Debanjan Mitra (2002), “Deconstructing the Pioneer’s Advantage: Examining Vintage Effects and Consumer Valuations of Quality and Variety,” *Management Science*, 48 (September), 1175-1195.

Mitra, Debanjan and Peter N. Golder (2002), “Whose Culture Matters? Near-Market Knowledge and Its Impact on Foreign Market Entry Timing,” *Journal of Marketing Research*, 39 (August), 350-365.

- Excellence in Global Marketing Research Award, American Marketing Association (2011)

- Golder, Peter N. (2000), “Insights from Senior Executives about Innovation in International Markets,” *Journal of Product Innovation Management*, 17 (September), 326-340, lead article.
- Golder, Peter N. (2000), “Historical Method in Marketing Research with New Evidence on Long-Term Market Share Stability,” *Journal of Marketing Research*, 37 (May), 156-172.
- Featured in *The Wall Street Journal* (front page) and *Advertising Age*
- Golder, Peter N. and Gerard J. Tellis (1998), “Beyond Diffusion: An Affordability Model of the Growth of New Consumer Durables,” *Journal of Forecasting*, 17 (June-July), 259-280.
- Golder, Peter N. and Gerard J. Tellis (1997), “Will It Ever Fly? Modeling the Takeoff of Really New Consumer Durables,” *Marketing Science*, 3, 256-270.
- Frank M. Bass Award (1998) for best paper in *Marketing Science* or *Management Science* based on a marketing doctoral dissertation
 - Featured in *The Wall Street Journal* (front page)
 - Published in the Marketing Science Institute working paper series
- Tellis, Gerard J. and Peter N. Golder (1996), “First to Market, First to Fail? Real Causes of Enduring Market Leadership,” *Sloan Management Review*, (Winter), 65-75.
- Featured in *The Wall Street Journal*, *The Economist*, *The Los Angeles Times*, *WirtschaftsWoche* (German business magazine) and *Harvard Management Update*
 - Reprinted in *Harvard Business Manager*
 - Invited keynote presentation at the Conference Board’s 1996 Marketing Conference
- Golder, Peter N. and Gerard J. Tellis (1993), “Pioneer Advantage: Marketing Logic or Marketing Legend?” *Journal of Marketing Research*, (May), 158-170.
- William F. O’Dell Award (1998) for long-term contribution to the marketing discipline
 - Findings referenced in *Wall Street Journal* op-ed article

BOOKS AND OTHER PUBLICATIONS

- Fan, Tingting, Peter N. Golder, and Donald R. Lehmann (2022), “New Products Research,” in *The History of Marketing Science*, second edition, Russell S. Winer and Scott A. Neslin, editors, World Scientific – Now publishers, forthcoming.
- Golder, Peter N., et al. (2020), “Brief of Professor Peter N. Golder, Ph.D. and other Marketing Academics as Amici Curiae in Support of Respondent,” United States

Patent and Trademark Office, et al. v. Booking.com B.V., Supreme Court of the United States, No. 19-46.

Golder, Peter N. and Debanjan Mitra, editors (2019), *Handbook of Research on New Product Development*, Edward Elgar (paperback edition).

Golder, Peter N. and Debanjan Mitra, editors (2018), *Handbook of Research on New Product Development*, Edward Elgar.

Golder, Peter N. and Debanjan Mitra (2018), “New Product Development Research: Consolidating the Present and Guiding the Future,” in *Handbook of Research on New Product Development*, Peter N. Golder and Debanjan Mitra, editors, Edward Elgar.

Fan, Tingting, Peter N. Golder, and Donald R. Lehmann (2017), “Innovation and New Products Research: A State-of-the-Art Review, Models for Managerial Decision Making, and Future Research Directions,” in *Handbook of Marketing Decision Models*, Berend Wierenga and Ralf van der Lans, editors, Springer.

Golder, Peter N., Debanjan Mitra, and Christine Moorman (2015), “A Comprehensive View of Quality and Its Implications for Managers,” *The AMA Journal Reader*, American Marketing Association (online publication).

Fan, Tingting, Peter N. Golder, and Eitan Muller (2014), “Dynamics of Multi-Feature Product Usage: Carryover, Spillover, and Social Effects,” *Marketing Science Institute Report No. 14-118*.

Lehmann, Donald R. and Peter N. Golder (2014), “New Products Research,” in *The History of Marketing Science*, Russell S. Winer and Scott A. Neslin, editors, World Scientific – Now publishers.

Golder, Peter N., Julie R. Irwin, and Debanjan Mitra (2013), “Long-Term Market Leadership Persistence: Baselines, Economic Conditions, and Category Types,” *Marketing Science Institute Report No. 13-110*.

Golder, Peter (2010), “First-mover (pioneer) advantage,” in *Wiley International Encyclopedia of Marketing*, Jagdeth Sheth and Naresh Malhotra, editors, in Volume 1, *Marketing Strategy*, Robert Peterson and Roger Kerin, editors, John Wiley & Sons Limited.

Golder, Peter (2010), “Later mover (nonpioneer) advantage,” in *Wiley International Encyclopedia of Marketing*, Jagdeth Sheth and Naresh Malhotra, editors, in Volume 1, *Marketing Strategy*, Robert Peterson and Roger Kerin, editors, John Wiley & Sons Limited.

- Golder, Peter and Gerard Tellis (2010), “Product Life Cycle,” in *Wiley International Encyclopedia of Marketing*, Jagdeeth Sheth and Naresh Malhotra, editors, in Volume 5, New Product Development, Barry Bayus, editor, John Wiley & Sons Limited.
- Mitra, Debanjan and Peter N. Golder (2009), “Objective and Perceived Quality,” in *Empirical Generalizations about Marketing Impact*, Dominique M. Hanssens, editor, Marketing Science Institute, 18.
- Golder, Peter N. (2009), “Market Leadership,” in *Empirical Generalizations about Marketing Impact*, Dominique M. Hanssens, editor, Marketing Science Institute, 21.
- Golder, Peter N. and Gerard J. Tellis (2009), “First-mover Advantage,” in *Empirical Generalizations about Marketing Impact*, Dominique M. Hanssens, editor, Marketing Science Institute, 34.
- Golder, Peter N. and Gerard J. Tellis (2009), “Sales Takeoff,” in *Empirical Generalizations about Marketing Impact*, Dominique M. Hanssens, editor, Marketing Science Institute, 39.
- Golder, Peter N., Rachel Shacham, and Debanjan Mitra (2009), “Radical Innovations,” in *Empirical Generalizations about Marketing Impact*, Dominique M. Hanssens, editor, Marketing Science Institute, 42.
- Golder, Peter N. and Debanjan Mitra (2008), “MBA Recruiters Value Academic Research,” *Businessweek* online, October 16.
- Golder, Peter and Debanjan Mitra (2008), “Academic research is good for MBA students,” *Financial Times*, September 22.
- Chandy, Rajesh K., Peter N. Golder, and Gerard J. Tellis (2004), “Historical Research in Marketing Strategy: Method, Myths, and Promise,” in *Assessing Marketing Strategy Performance*, Christine Moorman and Donald R. Lehmann, eds., Boston, MA: Marketing Science Institute.
- Tellis, Gerard J. and Peter N. Golder (2002), *Will and Vision: How Latecomers Grow to Dominate Markets*, New York: McGraw-Hill.
- Winner of the Berry-AMA Book Prize for the best book in marketing (2003)
 - Selected by *Harvard Business Review* as one of the top ten business books of 2001
 - Reviewed in *Harvard Business Review* (September 2001)
- Golder, Peter N. and Gerard J. Tellis (2001), “Competition is the Best Way to Regulate Microsoft,” *Los Angeles Times*, December 26.

Golder, Peter N. and Gerard J. Tellis (1992), “Do Pioneers Really Have Long-Term Advantages? A Historical Analysis,” Marketing Science Institute Report Number 92-124, Boston, MA: Marketing Science Institute.

- Winner of Marketing Science Institute Best Paper of the Year Award

PRESENTATIONS

Topchy, Mariya, Debanjan Mitra, and Peter N. Golder (2021), “How Affect Works: Incidental and Integral Pathways to Customer Satisfaction,” Marketing Science Conference, University of Rochester (virtual).

Golder, Peter N. (2020), “Hearing the Voice of the Consumer through Archival Evidence,” McCarthy Institute webinar.

Golder, Peter N., Julie R. Irwin, and Debanjan Mitra (2020), “Will You Still Try Me, Will You Still Buy Me, When I'm 64? Long-Term Market Leadership in the Age of Disruption,” State of Marketing Science Summit: Marketing in Disruption, Marketing Science Institute, San Francisco, CA.

Golder, Peter N. (2020), “Real-time Emotions in Customer Service Encounters,” invited presentation, University of Connecticut.

Trinh, Giang Tue and Peter N. Golder (2019), “Factors Affecting Long Term Brand Growth,” Marketing Science Conference, University of Roma Tre / NYU Stern School.

Golder, Peter N., Michael J. Schreck, and Aaron Yeater (2019), “Assessing Secondary Meaning of Brand Elements: A Conceptual and Methodological Complement to Survey Research,” Legal Applications of Marketing Theory Conference, Harvard Law School.

Chang, Sue Ryung, Peter N. Golder, and Joel H. Steckel (2017), “Measuring and Managing International Market Share Volatility: Insights from a Country, Category, and Brand Hierarchy Framework,” Tuck Marketing Research Camp.

Golder, Peter N., Julie R. Irwin, and Debanjan Mitra (2016), “Will You Still Try Me, Will You Still Buy Me, When I'm 64? Long-Term Market Leadership Persistence and the Impact of Economic Conditions and Category Types,” invited presentation, Kelley School of Business, Indiana University.

Golder, Peter N. (2016), “Design Thinking: Learn to Think Like a Disruptor,” invited workshop, Marketing Science Institute, Cambridge, MA.

Golder, Peter N. (2016), “The Fragility of Market Leadership,” AEMARK: XXVIII Congreso de Marketing at Universidad de Leon, Leon, Spain.

- Golder, Peter N. (2016), “The Fragility of Market Leadership,” L2/NYU Stern Digital Leadership Academy, New York, NY.
- Golder, Peter N. (2016), “What is Quality?” American Antitrust Institute Invitational Symposium on Non-Price Effects of Mergers, Washington D.C.
- Golder, Peter N. and Hans-Willi Schroiff (2016), “Closing the Gap between Innovation Management Theory and Practice,” American Marketing Association Winter Educators’ Conference, Las Vegas, NV.
- Chang, Sue Ryung, Peter N. Golder, and Joel H. Steckel (2015), “Measuring and Managing International Market Share Volatility: Insights from a Country, Category, and Brand Hierarchy Framework,” invited presentation, Corporate Competitiveness in International Perspective, Keizai Koho Center, Tokyo, Japan.
- Golder, Peter N. (2015), “Strategy Research: Interesting Questions + Illuminating Data → Publication,” AMA-Sheth Foundation Doctoral Consortium, London Business School.
- Fan, Tingting, Peter N. Golder, and Eitan Muller (2015), “Communication on Mobile Phones versus Online Social Networks: Complements or Substitutes?” Marketing Science Conference, Johns Hopkins University.
- Fan, Tingting, Peter N. Golder, and Eitan Muller (2015), “Multi-media and Multi-form Communication: A Framework and Application with Smartphones and Online Social Networks,” Theory + Practice in Marketing Conference, Georgia State University. Fan, Tingting, Peter N. Golder, and Eitan Muller (2015), “Communication on Smartphones vs. Online Social Networks: Complements or Substitutes?” Big Data Conference, Ludwig Maximilian University (LMU), Munich, Germany.
- Golder, Peter N. (2014), “Exploring and Exploding(!) Myths of Innovation Success,” MOT Summer School—The New Paradigm of Innovation, Seoul, Korea.
- Shacham, Rachel, Tulin Erdem, and Peter N. Golder (2014), “Talking Away the Vice? Communication and Vices,” Marketing Science Conference, Emory University.
- Fan, Tingting, Peter N. Golder, and Cheng Zhang (2014), “Usage Adoption of New Products in an Emerging Market,” Marketing and Innovation Symposium, Erasmus University, Rotterdam, Netherlands.
- Golder, Peter N. (2014), “The Art and Craft of Developing Impactful Theory,” AMS Review Theory Forum, Indianapolis, IN.

- Golder, Peter N. and Wonjoon Kim (2014), "Order of Entry Effects with Attribute Innovations," American Marketing Association Winter Educators' Conference, Orlando, FL.
- Golder, Peter N. and Wonjoon Kim (2013), "Order of Entry Effects with Attribute Innovations," invited presentation, Syracuse University.
- Pang, Jun, Angela Xia Liu, and Peter N. Golder (2013), "Effects of Peer Opinions and Customer Opinions on Critic Evaluations of Cultural Products," Marketing Science Conference, Ozyegin University, Istanbul, Turkey.
- Chang, Sue Ryung, Peter N. Golder, and Joel H. Steckel (2013), "Exploring Market Share Volatility around the World: The Role of Economics, Culture, Business Environment, and Market Structure," invited presentation, Peking University.
- Chang, Sue Ryung, Peter N. Golder, and Joel H. Steckel (2013), "Exploring Market Share Volatility around the World: The Role of Economics, Culture, Business Environment, and Market Structure," invited presentation, Cambridge University Judge Business School.
- Fan, Tingting, Eitan Muller, and Peter N. Golder (2012), "The Dynamics of New Product Feature Usage," Marketing Science Conference, Boston University.
- Shacham, Rachel, Tulin Erdem, and Peter N. Golder (2012), "Are Vices Substitutes or Complements?" Marketing Science Conference, Boston University.
- Golder, Peter N., Julie R. Irwin, and Debanjan Mitra (2012), "Do Economic Conditions Affect Long-Term Brand Leadership Persistence?" Theory + Practice in Marketing Conference, Harvard Business School.
- Golder, Peter N. and Tingting Fan (2011), "The Dynamics of Consumers' Brand Consideration Sets," Marketing Scholar Forum, Peking University.
- Shacham, Rachel, Peter N. Golder, and Tulin Erdem (2011), "The Complementarity of Vices," Marketing Science Conference, Rice University.
- Fan, Tingting and Peter N. Golder (2011), "The Dynamics of Brand Preferences Along Consumers' Life Paths," Marketing Science Conference, Rice University.
- Golder, Peter N. (2011), "Beyond New Products: Innovation for Growth," MSI 50th Anniversary Conference, Boston.
- Golder, Peter N., Julie R. Irwin, and Debanjan Mitra (2011), "Will You Still Try Me, Will You Still Buy Me, When I'm 64? How Economic Conditions and Category Types Affect Long-Term Brand Leadership Persistence," invited presentation, Cornell University.

- Golder, Peter N., Julie R. Irwin, and Debanjan Mitra (2010), “Will You Still Try Me, Will You Still Buy Me, When I'm 64? How Economic Conditions and Category Types Affect Long-Term Brand Leadership Persistence,” invited presentation, Peking University.
- Chang, Sue Ryung, Peter N. Golder, Joel Steckel (2010), “Global Market Share Dynamics,” Marketing Science Conference, University of Cologne.
- Shacham, Rachel, Tulin Erdem and Peter N. Golder (2010), “A Cigarette, a Six Pack or Porn: Are Vices Substitutes or Complements?” Marketing Science Conference, University of Cologne.
- Golder, Peter N. (2010), “Attribute-Level Innovation and Its Opportunities for Marketing Strategy Research,” The Practice and Impact of Marketing Science, MSI/ISMS Conference, Massachusetts Institute of Technology.
- Golder, Peter N. (2009), “Why Your Firm Can’t Innovate,” Luxury Lab Innovation Forum, Times Center, New York City, talk on youtube.
- Golder, Peter N., Julie R. Irwin and Debanjan Mitra (2009), “How Do Economic Conditions Affect Long-Term Brand Leadership Persistence,” New York City Marketing Modelers Meeting.
- Shacham, Rachel, Peter N. Golder, and Sha Yang (2009), “On the Importance of Ignorance,” Marketing Science Conference, University of Michigan.
- Mitra, Debanjan, Peter N. Golder, Jinhong Xie (2009), “The Weakness of Strong Ties: Homophily, Heterophily, and the Valence of Buzz,” Marketing Science Conference, University of Michigan.
- Golder, Peter N., Tingting Fan, Kevin L. Keller (2009), “Branding for China: The Role of Next Generation Consumers,” Innovation in India and China: How to Create Value from Emerging Markets, Cambridge University Judge Business School.
- Shacham, Rachel, Peter N. Golder, and Sha Yang (2009), “Exploring the Unknown: Incorporating Awareness in New Product Adoption,” Collaborative & Multidisciplinary Research Conference, Yale School of Management.
- Golder, Peter N., Tingting Fan, and Kevin L. Keller (2009), “Evolving Brand Preferences of Young Chinese Consumers,” China India Consumer Insights Conference, Yale School of Management.
- Mitra, Debanjan and Peter N. Golder (2008), “Competing for the Future of Business Schools: Does Academic Research Help or Hurt MBA Programs?” Marketing Science Conference, University of British Columbia.

- Markovitch, Dmitri and Peter N. Golder (2007), "Can the Stock Market Predict Sales Takeoff and the Long-Term Survival of Firms?" Marketing Science Conference, Singapore Management University.
- Golder, Peter N. (2007), "Will and Vision: How Latecomers Grow to Dominate Markets," Wuhan University's First International Conference on Corporate Governance and Innovation.
- Golder, Peter N., Rachel Shacham, and Debanjan Mitra (2006), "Innovations' Origins: When, By Whom, and How are Radical Innovations Developed?" Guanghua School of Management, Peking Univeristy.
- Mitra, Debanjan and Peter N. Golder (2006), "The Buzz on Business Schools: A Longitudinal Analysis of Scholarly Research and Perceptions," Marketing Science Conference, University of Pittsburgh.
- Mitra, Debanjan and Peter N. Golder (2006), "Why Today's Business School Rankings are Yesterday's News: A Long-Term Analysis of the Impact of Academic Research," University of Southern California Marketing Camp.
- Golder, Peter N., Rachel Shacham, and Debanjan Mitra (2005), "The Continuity of Seemingly Discontinuous, Radical Innovations," conference on Bridging Operations and Marketing, Catholic University, Lisbon, Portugal.
- Mitra, Debanjan and Peter N. Golder (2005), "Why Today's Business School Rankings are Yesterday's News: A Long-Term Analysis of the Impact of Academic Research," ERIM Conference at Erasmus University, Rotterdam, Netherlands.
- Golder, Peter N. (2005), "Continuous Innovation: The Key to Market Leadership," AMA Doctoral Consortium, University of Connecticut.
- Golder, Peter N., Rachel Shacham, and Debanjan Mitra (2005), "The Continuity of Seemingly Discontinuous, Radical Innovations," Marketing Science Conference, Emory University.
- Golder, Peter N., Rachel Shacham and Debanjan Mitra (2004), "A Discontinuous Perspective on Seemingly Radical Innovations," Hot Thoughts on Innovation: Insights at the Intersection of Marketing and Technology, MSI-AMA Conference at AMA Summer Educators' Conference, Boston, MA.
- Golder, Peter N. (2004), "Comments on Research with Impact and Collaborating with your Advisor: Promise, Perils, and Solutions," AMA Doctoral Consortium, Texas A&M University.

- Golder, Peter N. (2004), "Will and Vision: How Latecomers Grow to Dominate Markets," opening presentation at AMA Strategic Marketing Conference, Chicago, Illinois (based on book co-authored with Gerry Tellis).
- Chandy, Rajesh K., Peter N. Golder, and Gerard J. Tellis (2003), "Historical Research: Method, Myths, and Applications," Cool Tools Conference for Marketing Strategy Research, AMA Summer Educators' Conference, Chicago, Illinois.
- Foster, Joseph A., Peter N. Golder, and Gerard J. Tellis (2003), "Will It Ever Fly? Application of Takeoff Model at Whirlpool," ISMS Practice Prize Competition, Marketing Science Conference, University of Maryland.
- Mitra, Debanjan, Peter N. Golder, and Qi Wang (2003), "Running Hard to Stand Still? Analyzing Persistence and the Duration of Market Performance," Marketing Science Conference, University of Maryland.
- Golder, Peter N. (2003), "Historical Research and Innovation: How Does Looking Back Help Us Understand How to Look Ahead?" American Marketing Association Winter Educators' Conference, Orlando, FL.
- Markovitch, Dmitri and Peter N. Golder (2002), "Competing Through Speed: Product Development and Alliance Speed and Their Impact on Firm Performance," Marketing Science Conference, University of Alberta.
- Mitra, Debanjan and Peter N. Golder (2002), "When Do Firms Become Truly Multinational? A Study of the Dynamics of 'Near-Market' Knowledge on Entry Timing Decisions," Marketing Science Conference, University of Alberta.
- Golder, Peter N. (2002), "Secondary Data," AMA Doctoral Consortium, Emory University.
- Golder, Peter N. (2001), "Historical Research in Marketing," Special Session, AMA Summer Educators' Conference, Washington DC.
- Mitra, Debanjan and Peter N. Golder (2001), "When Will They Ever Learn? An Econometric Analysis of the Long-Term Effects of Product Quality (or Why the Business School Ratings are always Yesterday's News?)," Marketing Science Conference, University of Mainz.
- Golder, Peter N. and Julie R. Irwin (2001), "If They Could See Us Now: A Look at How Category Relationships Drive Long-Term Brand Leadership Persistence," Marketing Science Institute's Young Scholars Conference.
- Golder, Peter N. and Julie R. Irwin (2000), "If They Could See Us Now: A Look at How Category Relationships Drive Long-Term Brand Leadership Persistence," New York Marketing Modelers Group.

- Golder, Peter N. and Julie R. Irwin (2000), "If They Could See Us Now: A Look at How Consumers Relate to Their Products and How These Relationships Explain Why Leading Brands Succeed or Fail," special session at ACR Conference, Salt Lake City.
- Bohlmann, Jonathan D. and Peter N. Golder (2000), "Deconstructing the Pioneer's Advantage: An Examination of the Relative Success and Failure of Market Pioneers," Marketing Science Conference, UCLA.
- Mitra, Debanjan and Peter N. Golder (2000), "Veni, Vidi, Vici: Modern Insights for Selecting and Succeeding in New Country Markets," Marketing Science Conference, UCLA.
- Golder, Peter N. (1999), "Contemporary Knowledge versus Historical Data: Other Examples of How the Past Catches Up with the Present," AMA Doctoral Consortium, University of Southern California.
- Golder, Peter N. and Gerard J. Tellis (1999), "How Long Can This Keep Going On? Modeling the Growth of Radically New Products," Marketing Science Conference, Syracuse University.
- Golder, Peter N. (1999), "Historical Method in Marketing Research with New Evidence on Long-Term Market Share Stability," invited presentation at University of Chicago.
- Golder, Peter N. (1998), "Does Early Leadership Lock-in Long-term Leadership?" Fall INFORMS Conference, Seattle.
- Golder, Peter N. and Gerard J. Tellis (1998), "Is There Life in the Product Life Cycle? New Formulation and Generalizations on a Dormant Concept," Marketing Science Conference, INSEAD.
- Golder, Peter N. and Gerard J. Tellis (1998), "Great Expectations: How the Market Really Responds to Really New Products," invited presentation at University of Mainz, Germany.
- Golder, Peter N. (1998), "Contemporary Knowledge versus Historical Data: Another Example of How the Past Catches Up with the Present," Columbia-NYU-Wharton-Yale Marketing Colloquium, New Haven, CT.
- Golder, Peter N. and Gerard J. Tellis (1998), "Evaluating New Product Growth: When Will Sales Slow Down?" invited presentation at University of Houston.
- Tellis, Gerard J. and Peter N. Golder (1996), "First to Market, First to Fail? Real Causes of Enduring Market Leadership," The Conference Board's 1996 Marketing Conference, New York, NY.

Golder, Peter N. and Gerard J. Tellis (1996), “Who are long-term leaders? When and how do they enter?” INFORMS Conference, Atlanta, GA.

Golder, Peter N. and Gerard J. Tellis (1996), “Evaluating New Product Growth: When Will Sales Slow Down?” Marketing Science Conference, University of Florida.

Golder, Peter N. and Gerard J. Tellis (1995), “When Will It Fly? Modeling the Takeoff of Really New Consumer Durables,” New York City Marketing Modelers Group.

Golder, Peter N. and Gerard J. Tellis (1995), “When Will It Fly? Modeling the Takeoff of Really New Consumer Durables,” Product Development Management Association Conference, Minneapolis, MN.

Golder, Peter N. and Gerard J. Tellis (1995), “Evaluating New Product Growth: Will Sales Ever Take Off,” Marketing Science Conference, Australian Graduate School of Management.

Tellis, Gerard J. and Peter N. Golder (1994), “Forecasting Market Opportunities: Predicting the Takeoff of New Durables,” Marketing Science Institute Conference, Boston, MA.

Golder, Peter N. (1994), “An Alternative Explanation for Order of Entry Effects Among Surviving Brands,” Marketing Science Conference, University of Arizona.

Tellis, Gerard J. and Peter N. Golder (1993), “The Real Causes of Enduring Market Leadership,” ORSA/TIMS Meeting, Phoenix, Arizona.

Golder, Peter N. (1993), “The Disadvantage of Being a Pioneer,” Marketing Science Conference, Washington University.

Golder, Peter N. and Gerard J. Tellis (1993), “Pioneer Advantage: Marketing Logic or Marketing Legend?” Marketing Science Institute Conference, Atlanta, GA.

Golder, Peter N. and Gerard J. Tellis (1992), “Market Building vs. Pioneering: What Causes Long-term Leadership?” ORSA/TIMS Meeting, San Francisco, CA.

Golder, Peter N. and Gerard J. Tellis (1992), “Pioneer Advantage: Marketing Logic or Marketing Legend?” Marketing Science Conference, London Business School.

RESEARCH INTERESTS

Market Entry, New Products, Market Leadership, Quality, Global Marketing, Branding

TEACHING INTERESTS

Marketing Concepts, Global Marketing, New Products, Marketing Strategy

PROFESSIONAL EXPERIENCE

Northrop Corporation, 1986-1990
Conoco, 1984-1986

GRANTS

NYU Stern Berkley Center grant from Kauffman Foundation (2006)
NYU Stern Berkley Center grant from Kauffman Foundation (2005)
Marketing Science Institute (2000)
Richard D. Irwin Dissertation Fellowship - National Award Winner (1993)
U.S. Department of Education - Awarded through Center for International Business
Education and Research at University of Southern California (1993)
Dissertation Fellowship from Center for International Business Education and
Research at University of Southern California (1992)
Marketing Science Institute (1992)
Fellowship, University of Southern California (1990-1994)

ACADEMIC SERVICE

Associate Editor: *Journal of Product Innovation Management*
Editorial Review Board: *Journal of Marketing*
Dissertation Committee Chair/Co-Chair:
Debanjan Mitra (placement: University of Florida)
Rachel Shacham (placement: University of Minnesota)
Tingting Fan (placement: Chinese University of Hong Kong)
Dissertation Committee: Jane Gu, Dmitri Markovitch, Sergio Meza
Co-Chair, Hot Thoughts on Innovation: Insights at the Intersection of Marketing and
Technology, special interest conference sponsored by MSI and AMA, 2004.
Chair, Strategy Track, Winter AMA 2005, San Antonio, Texas

ASSOCIATIONS

American Marketing Association
Institute for Operations Research and Management Science (INFORMS)

Revised January 8, 2023

APPENDIX B
EXPERT TESTIMONY

Appendix B Expert Testimony

Ballet Beauty, LLC, V. Lions Gate Films Inc., JAMS Arbitration Reference No. 1210034307, deposed January 26, 2019.

United States District Court of New Jersey, *Merck & Co., Inc., and Merck Sharp & Dohme Corp. v. Merck KGAA*, 2:16-cv-00266-ES-MAH, deposed March 3, 2019.

United States District Court for the District of Delaware, *LiQWD, Inc. and Olaplex LLC v. L'Oréal USA, Inc. et al.*, Civil Action No. 17-14 (JFB) (SRF), deposed March 10, 2019.

United States District Court, Southern District of New York, *Sprint Spectrum L.P., Sprintcom, Inc., and Sprint/United Management Company v. AT&T Mobility LLC*, Case No. 1:19-CV-01215-VSB, deposed April 3, 2019.

In the Court of Chancery of the State of Delaware, *Outlaw Beverage, Inc. v. Lance Collins and A Shoc Beverage, LLC*, C.A. No. 2019-0342-AGB, report filed, no deposition.

United States District Court, District of Arizona, *CDK Global, LLC and The Reynolds and Reynolds Company v. Mark Brnovich, Attorney General of the State of Arizona, and John S. Halikowski, Director of the Arizona Department of Transportation*, Case No. 2:19-cv-04849-GMS, deposed February 4, 2020.

United States District Court, Northern District of California, *The American Beverage Association et al., v. City of San Francisco*, 3:15-cv-03415, reports filed, no deposition.

State of New Mexico County of Santa Fe First Judicial District Court, *State of New Mexico, ex rel. Hector H. Balderas, Attorney General v. Dolgencorp, LLC (d/b/a/ Dollar General, Corporation), a Kentucky limited liability company*, Case No. D-101-CV-2017-01562, report filed, no deposition.

United States District Court, Southern District of New York, *Tiffany and Company and Tiffany (NJ) LLC v. Costco Wholesale Corp.*, C.A. No. 1:13-cv-01041-LJL-DCF, deposed June 2, 2021.

United States District Court, District of Connecticut, *BBAM Aircraft Management LP and BBAM US LP v. Babcock & Brown LLC, Burnham Sterling & Company LLC, Babcock & Brown Securities LLC, Babcock & Brown Investment Management LLC*, Case No. 3:20-cv-01056-VLB, deposed October 14, 2021.

United States District Court, District of Maryland, Southern Division, *R80 LLC v. Société des Produits Nestlé S.A., et al*, 8:21-cv-01455-PWG, reports filed, no deposition.

United States District Court, District of California, San Francisco Division, *Federal Trade Commission v. Intuit Inc.*, 3:22-cv-1973-CRB, reports filed, no deposition.

United States District Court for the Southern District of Ohio, Eastern Division, *The Scotts Company*

LLC, and OMS Investments, Inc. v. Central Garden & Pet Company, and Pennington Seed, Inc., Case No. 2:19-cv-02185-MHW-CMV, deposited May 4, 2022.

United States District Court, Central District of California, *Snap Inc. v. Katherine K. Vidal, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, and the United States Patent and Trademark Office*, CV 22-00085-SK, reports filed, no deposition.

United States District Court, Northern District of California, *The Cookie Department, Inc. v. The Hershey Company*, Case No. 3:20-cv-09324, deposited July 28, 2022.

APPENDIX C
MATERIALS CONSIDERED

Appendix C Materials Considered

Report

Legal Documents

- Complaint Counsel's Reply to Respondent Intuit Inc.'s Supplemental Response to the Statement of Material Facts as to Which There is no Genuine Issue for Trial, *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, September 29, 2022, and attachments.
- Complaint, *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, March 28, 2022.
- Complaint Counsel's Motion for Summary Decision, *In the Matter of: Intuit Inc., A Corporation*, Docket No. 9408, August 22, 2022, and exhibits.
- Complaint Counsel's Motion for Summary Decision, *United States of America before the Federal Trade Commission in the Matter of Intuit Inc., A Corporation, Respondent*, Docket No. 9408, May 6, 2022, and exhibits.
- Complaint Counsel's Statement of Material Facts as to Which There Is No Genuine Issue for Trial, *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, August 22, 2022.
- Complaint Counsel's Supplemental Responses to Intuit's First and Second Set of Interrogatories, *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, December 22, 2022, and attachments.
- [Proposed] Decision and Order, *In the Matter of Intuit Inc., A Corporation, Respondent*, Docket No. 9408, August 22, 2022.

Depositions and Examinations

- Declaration of John R. Hauser, SC.D., *In the Matter of: Intuit Inc., a corporation, Respondent*, Docket No. 9408, August 30, 2022.
- Deposition of [REDACTED], *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, September 20, 2022.
- Deposition of [REDACTED], *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, October 6, 2022.
- Deposition of [REDACTED], *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, November 29, 2022.
- Deposition of [REDACTED], *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, September 29, 2022.
- Deposition of [REDACTED], *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, October 13, 2022.
- Deposition of Cathleen Ryan (as Intuit 3.33(c) Designee), *In the Matter of: Intuit Inc., A Corporation*, Docket No. 9408, November 28, 2022.
- Deposition of [REDACTED], *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, October 25, 2022.
- Deposition of [REDACTED], *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, September 15, 2022.
- Deposition of Jennifer Crosby, *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, November 30, 2022.
- Deposition of [REDACTED], *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, September 30, 2022.

Deposition of Mary-Ann Somers, *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, November 22, 2022.

Deposition of [REDACTED] w, *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, November 3, 2022.

Deposition of [REDACTED] r, *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, September 19, 2022.

Deposition of [REDACTED], *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, October 5, 2022.

Deposition of William T. Maxson (as Bureau of Consumer Protection 3.33(c) designee), *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, December 8, 2022.

Examination of Greg Johnson via Zoom, *Federal Trade Commission in the Matter of: TurboTax, Inc., A Corporation*, Docket No. 1923119, September 29, 2020.

Individual Deposition of Cathleen Ryan, *In the Matter of: Intuit Inc., A Corporation*, No. 9408, November 28, 2022.

Videoconference Examination of Catherine C. Goode, *United States of America before the Federal Trade Commission in the Matter of: TurboTax, Inc., A Corporation*, Docket No. 1923119, October 23, 2020.

Videoconference Examination of Cathleen Ryan, *United States of America before the Federal Trade Commission in the Matter of: TurboTax, Inc., A Corporation*, Docket No. 1923119, October 9, 2020.

Videoconference Examination of Jack Rubin, *United States of America before the Federal Trade Commission in the Matter of: TurboTax, Inc., A Corporation*, Docket No. 1923119, October 30, 2020.

Expert Reports and Declarations

Declaration of Diana F. Shiller, *In the Matter of Intuit Inc.*, Docket No. 9408, May 6, 2022, GX 342.

Declaration of John R. Hauser, SC.D., *In the Matter of Intuit Inc.*, Docket No. 9408, August 30, 2022.

Declaration of Nathan Novemsky, *Federal Trade Commission v. Intuit Inc.*, Docket No. 3:22-cv-1973-CRB, March 28, 2022, GX 302.

Declaration of Peter Golder, Ph.D., *Federal Trade Commission v. Intuit Inc.*, Docket No. 3:22-cv-1973-CRB, April 4, 2022.

Declaration of Peter Golder, Ph.D., *In the Matter of Intuit Inc.*, Docket No. 9408, August 30, 2022.

Declaration of Rebecca Kirk Fair, *In the Matter of Intuit Inc.*, Docket No. 9408, August 30, 2022.

Expert Report of Bruce F. Deal, *In the Matter of Intuit Inc.*, Docket No. 9408, January 13, 2023.

Expert Report of John R. Hauser, SC.D, *In the Matter of Intuit Inc.*, Docket No. 9408, January 13, 2023.

Expert Report of Nathan Novemsky, Ph.D., *In the Matter of Intuit Inc.*, Docket No. 9408, December 9, 2022, GX 303.

Expert Report of Rebecca Kirk Fair, *In the Matter of Intuit Inc.*, Docket No. 9408, January 13, 2023.

Second Declaration of Nathan Novemsky, *Federal Trade Commission v. Intuit Inc.*, Docket No. 3:22-cv-1973-CRB, April 8, 2022, GX 313.

Complaint Counsel Production

Complaint Counsel, CONFIDENTIAL – CC Revised Cat. L Sentinel Complaints, September 14, 2022.

Complaint Counsel, CONFIDENTIAL – Supplemental Cat. L Sentinel Complaints, September 19, 2022.

“Complaint Counsel Screen Recording of TurboTax Website,” 2020_07_13_TT_TY2019_Account and SL_Redacted, GX 240.

Intuit Internal Data and Documents

Intuit customer-level data, INTUIT-FTC-PART3-000608571-8572. *See also*, INTUIT-FTC-PART3-000602999-3002, INTUIT-FTC-PART3-000603004, INTUIT-FTC-PART3-000603029.

Intuit, [REDACTED] March 2017, INTUIT-FTC-PART3-000602837.

Intuit, “[REDACTED],” INTUIT-FTC-PART3-000602289.

Intuit, “[REDACTED],” March 2019, INTUIT-FTC-PART3-000602709.

Intuit, “[REDACTED] February 2022, INTUIT-FTC-PART3-000602728.

Intuit, “[REDACTED] FY20, INTUIT-FTC-PART3-000601173.

Intuit, “[REDACTED],” February 2013, INTUIT-FTC-PART3-000601230.

Intuit, “[REDACTED],” April 2019, INTUIT-FTC-PART3-000601283.

Intuit, “[REDACTED] May 16, 2019, INTUIT-FTC-PART3-000607308.

Intuit, “[REDACTED],” October 2017, INTUIT-FTC-PART3-000601542.

Intuit, “[REDACTED],” June 2022, INTUIT-FTC-PART3-000602247.

Intuit, “[REDACTED] INTUIT-FTC-PART3-000602494.

Intuit, “[REDACTED]xes,” INTUIT-FTC-PART3-000601463.

Intuit, “[REDACTED],” March 2019, INTUIT-FTC-PART3-000601465.

Intuit, “[REDACTED],” INTUIT-FTC-PART3-000601645.

Intuit, “[REDACTED] INTUIT-FTC-PART3-000608560.

Intuit, “[REDACTED],” December 2018, INTUIT-FTC-PART3-000608564.

Intuit, “[REDACTED],” October 2016, INTUIT-FTC-PART3-000601484.

Intuit, “[REDACTED],” July 2020, INTUIT-FTC-PART3-000602376.

Intuit, “[REDACTED] INTUIT-FTC-PART3-000489527.

Intuit, “[REDACTED],” INTUIT-FTC-PART3-000490338.

Intuit, “[REDACTED],” March 2017, INTUIT-FTC-PART3-000602837.

Intuit, “[REDACTED],” 2015, INTUIT-FTC-PART3-000601704.

Intuit, “The Power of Free,” INTUIT-FTC-PART3-000601673.

Intuit, “[REDACTED] February 2021, INTUIT-FTC-PART3-000602321.

Intuit, “[REDACTED],” June 2017, INTUIT-FTC-PART3-000602784.

Intuit, “[REDACTED],” June 2018, INTUIT-FTC-PART3-000601699.

Intuit, “[REDACTED],” July 2019, INTUIT-FTC-PART3-000602794.

Intuit, “[REDACTED],” August 2021, INTUIT-FTC-PART3-000602627.

Intuit, “[REDACTED],” August 2021, INTUIT-FTC-PART3-000602627.

Intuit, “[REDACTED],” INTUIT-FTC-PART3-000608576.

Intuit, “[REDACTED],” INTUIT-FTC-PART3-000601811.

Intuit, “[REDACTED],” July 2015, INTUIT-FTC-PART3-000602906.

Intuit, “[REDACTED],” June 2016, INTUIT-FTC-PART3-000602881.

Intuit, “[REDACTED],” INTUIT-FTC-PART3-000594591.

Intuit, “[REDACTED] November 18, 2022, INTUIT-FFA-FTC-000153389 (GX 448-B).

Intuit, “[REDACTED],” INTUIT-FTC-PART3-000601811.

Intuit, “[REDACTED],” September 2020, INTUIT-FTC-PART3-000490565 (GX 460).

Intuit, “[REDACTED],” June 2021, INTUIT-FTC-PART3-000602174.

Intuit, “[REDACTED] September 27, 2021, INTUIT-FTC-PART3-000490342.

Intuit, “[REDACTED] INTUIT-FTC-PART3-000602782.

[REDACTED],” May 17-18, 2017, INTUIT-FFA-FTC-000549928, RX 34.

Academic Literature

Ariely, Dan, “Controlling the Information Flow: Effects on Consumers’ Decision Making and Preferences,” *Journal of Consumer Research*, Vol. 27, No. 2, 2000, pp. 233-248, INTUIT-FTC-PART3-000595119.

Arkes, Hal R., and Catherine Blumer, “The Psychology of Sunk Cost,” *Organizational Behavior and Human Decision Processes*, Vol. 35, 1985, pp. 124-140, INTUIT-FTC-PART3-000595136.

Assael, Henry, *Consumer Behavior: A Strategic Approach*, Boston, MA, Houghton Mifflin Company, 2004, INTUIT-FTC-PART3-000595153.

Batra, Rajeev, Aaron Ahuvia, and Richard Bagozzi, “Brand Love,” *Journal of Marketing*, Vol. 76, No. 2, March 2012, pp. 1-16, INTUIT-FTC-PART3-000595202.

Batra, Rajeev, Aaron Ahuvia, and Richard Bagozzi, “Brand Love: Development and Validation of a Practical Scale,” *Springer Science and Business Media Marketing Letter*, Vol. 28, No. 1, 2017, pp. 1-14, INTUIT-FTC-PART3-000595188.

Bettman, James R., Mary Frances Luce, and John W. Payne, “Constructive Consumer Choice Processes,” *Journal of Consumer Research*, Vol. 25, December 1998, pp. 187-217, INTUIT-FTC-PART3-000595235.

Craig, Adam, Yuliya Komarova Loureiro, Stacy Wood, et al., “Suspicious Minds: Exploring Neural Processes During Exposure to Deceptive Advertising,” *Journal of Marketing Research*, Vol. 49, No. 3, June 2012, pp. 361-372, INTUIT-FTC-PART3-000595267.

- Diamond, Shari Seidman, *Reference Manual on Scientific Evidence* 3rd Ed., 2011, INTUIT-FTC-PART3-000618344.
- George, Babu P, and Manoj Edward, “Cognitive Dissonance and Purchase Involvement in the Consumer Behavior Context,” *The IUP Journal of Marketing Management*, Vol. VIII, No. 3 & 4, 2009, pp. 7-24, INTUIT-FTC-PART3-000595280.
- Golder, Peter N., “Historical Method in Marketing Research with New Evidence on Long-Term Market Share Stability,” *Journal of Marketing Research*, Vol. 37, May 2000, pp. 156-172, INTUIT-FTC-PART3-000595299.
- Golder, Peter N., Debanjan Mitra, and Christine Moorman, “What is Quality? An Integrative Framework of Processes and States,” *Journal of Marketing*, Vol. 76, No. 4, July 2012, pp. 1-23, INTUIT-FTC-PART3-000595336.
- Held, Johanna, and Claas Christian Germelmann, “Deception in Consumer Behavior Research: A Literature Review on Objective and Perceived Deception,” *Cairn.Info*, Vol. 3, No. 21, 2018, pp. 119-145, INTUIT-FTC-PART3-000595396.
- Kahneman, Daniel, Jack Knetsch, and Richard Thaler, “Fairness as a Constraint on Profit Seeking: Entitlements in the Market,” *The American Economic Review*, Vol. 76, No. 4, September 1986, pp. 728-741, INTUIT-FTC-PART3-000595424.
- Kalapurakal, Rosemary, Peter Dickson, and Joel Urbany, “Perceived Price Fairness and Dual Entitlement,” *Advances in Consumer Research*, Vol. 18, 1991, pp. 788-793, INTUIT-FTC-PART3-000595439.
- Kalyanam, Kirthi, and Sridhar Narayanan, “Position Effects in Search Advertising and Their Moderators: A Regression Discontinuity Approach,” *Marketing Science*, Vol. 34, No. 3, May-June 2015, pp. 309-472, INTUIT-FTC-PART3-000618276.
- Kamins, Michael, Valerie Folkes, and Alexander Fedorikhin, “Promotional Bundles and Consumers’ Price Judgments: When the Best Things in Life Are Not Free,” *Journal of Consumer Research*, December 2009, pp. 660-670, INTUIT-FTC-PART3-000618264.
- Keller, Kevin, *Strategic Brand Management* 4th Ed., Pearson Education, 2013, INTUIT-FTC-PART3-000596068.
- Keller, Kevin, and Vanitha Swaminathan, *Strategic Brand Management* 5th Ed., Pearson Education, 2020, INTUIT-FTC-PART3-000595446.
- Kerin, Roger, and Steven Hartley, *Marketing* 15th Ed., New York, NY, McGraw-Hill Education, 2020, INTUIT-FTC-PART3-000596659.
- Knox, George, and Rutger van Oest, “Customer Complaints and Recovery Effectiveness: A Customer Base Approach,” *Journal of Marketing*, Vol. 78, September 2014, pp. 42-57, INTUIT-FTC-PART3-000596665.
- Kotler, Philip, and Kevin Keller, *Marketing Management* 15th Ed., Pearson Education, 2016, INTUIT-FTC-PART3-000597494.
- Kotler, Philip, and Kevin Keller, *Marketing Management* 14th Ed., Pearson Education, 2012, INTUIT-FTC-PART3-000596682.
- Mitra, Debanjan, and Peter N. Golder, “How Does Objective Quality Affect Perceived Quality? Short-Term Effects, Long-Term Effects, and Asymmetries,” *Marketing Science*, Vol. 25, No. 3, May-June 2006, pp. 230-247, INTUIT-FTC-PART3-000595317.
- Perreault, William, Joseph Cannon, and E. Jerome McCarthy, *Essentials of Marketing*, New York, NY, McGraw-Hill Education, 2019, INTUIT-FTC-PART3-000598454.

- Rabin, Matthew, and J.L. Schrag, “First Impressions Matter: A Model of Confirmatory Bias,” *The Quarterly Journal of Economics*, Vol. 114, No. 1, 1999, pp. 37-82, INTUIT-FTC-PART3-000618297.
- Román, Sergio, “Relational Consequences of Perceived Deception in Online Shopping: The Moderating Roles of Type of Product, Consumer’s Attitude Toward the Internet and Consumer’s Demographics,” *Journal of Business Ethics*, Vol. 95, No. 3, September 2012, pp. 373-391, INTUIT-FTC-PART3-000598459.
- Schultz, Carsten, “Informational, Transactional, and Navigational Need of Information: Relevance of Search Intention in Search Engine Advertising,” *Information Retrieval Journal*, Vol. 23, April 2020, pp. 117-135, INTUIT-FTC-PART3-000618412.
- Stewart, David, and Ingrid Martin, “Advertising Disclosures: Clear and Conspicuous or Understood and Used?,” *Journal of Public Policy & Marketing*, Vol. 23, No. 2, 2004, pp. 183-192, INTUIT-FTC-PART3-000598479.
- Xie, Guang-Xin, Robert Madrigal, and David M. Boush, “Disentangling the Effects of Perceived Deception and Anticipated Harm on Consumer Responses to Deceptive Advertising,” *Journal of Business Ethics*, Vol. 29, April 1, 2014, pp. 281-293, INTUIT-FTC-PART3-000598490.
- Yang, Zhilin, and Robin T. Peterson, “Customer Perceived Value, Satisfaction, and Loyalty: The Role of Switching Costs,” *Psychology & Marketing*, Vol. 21, No. 10, October 2004, pp. 799-822, INTUIT-FTC-PART3-000598504.

Publicly Available Materials

12 C.F.R. § 1026.16(e).

12 C.F.R. § 740.5(c)(7)-(9).

“.Com Disclosures: How to Make Effective Disclosures in Digital Advertising,” *FTC*, March 2013, <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>, INTUIT-FTC-PART3-000600903.

“‘Personal Taxes Online: Free Edition’ pop-up,” *Intuit*, <https://turbotax.intuit.com/personal-taxes/online/>, INTUIT-FTC-PART3-000600270.

“About FreeTaxUSA,” *FreeTaxUSA*, <https://www.freetaxusa.com/about.jsp?thn=3EEFE20943C213FECD8AAB04918F20C4>, INTUIT-FTC-PART3-000599417.

“About Text Ads,” *Google*, <https://support.google.com/google-ads/answer/1704389?hl=en>, INTUIT-FTC-PART3-000618165.

“Advertising and Disclaimers (Special Rules for Television and Radio Ads: The ‘Stand By Your Ad’ Provision),” *FEC*, <https://www.fec.gov/help-candidates-and-committees/advertising-and-disclaimers/>, INTUIT-FTC-PART3-000618517.

“Allstate Insurance Reviews 2022,” *Influenster*, <https://www.influenster.com/reviews/allstate-insurance>, accessed January 2, 2023, INTUIT-FTC-PART3-000618247.

“Assessing the Key Debates Leaves Us Bullish – Reiterate OW,” *Morgan Stanley*, February 2, 2021, INTUIT-FTC-PART3-000598329.

“AT&T Insurance Reviews 2022,” *Influenster*, <https://www.influenster.com/reviews/att>, accessed January 2, 2023, INTUIT-FTC-PART3-000618235.

“Bear: Taxes Aren’t Scary,” TaxAct TV Ad, January 4, 2021, <https://www.ispot.tv/ad/tzw7/taxact-bear-taxes-arent-scary>, accessed July 13, 2022, INTUIT-FTC-PART3-000602976.

- “BOGO,” *Payless Shoes*, <https://www.payless.com/bogo>, INTUIT-FTC-PART3-000600080.
- “Brand Page Chime,” *Comparably*, July 20, 2022, <https://www.comparably.com/brands/chime>, accessed July 20, 2022, INTUIT-FTC-PART3-000600996.
- “Brand Page DirecTV,” *Comparably*, July 20, 2022, [comparably.com/brands/directv](https://www.comparably.com/brands/directv), accessed July 20, 2022, INTUIT-FTC-PART3-000600961.
- “Brand Page GEICO,” *Comparably*, July 20, 2022, [comparably.com/brands/geico](https://www.comparably.com/brands/geico), accessed July 20, 2022, INTUIT-FTC-PART3-000599375.
- “Brand Page MoneyGram International,” *Comparably*, July 20, 2022, <https://www.comparably.com/brands/moneygram-international>, accessed July 20, 2022, INTUIT-FTC-PART3-000600989.
- “Brand Page Sprint,” *Comparably*, July 20, 2022, [comparably.com/brands/sprint](https://www.comparably.com/brands/sprint), accessed July 20, 2022, INTUIT-FTC-PART3-000618503.
- “Brand Page TurboTax,” *Comparably*, July 20, 2022, [comparably.com/brands/turbotax](https://www.comparably.com/brands/turbotax), accessed July 20, 2022, INTUIT-FTC-PART3-000600973.
- “Buy One, Get One Free: The Marketing Strategy to Boost Sales for E-commerce,” *Mage Solution*, <https://magesolution.com/buy-one-get-one-free-the-sales-strategy/>, INTUIT-FTC-PART3-000600020.
- “Charter Communications Reviews 2022,” *Influenster*, <https://www.influenster.com/reviews/charter-communications>, accessed January 2, 2023, INTUIT-FTC-PART3-000618217.
- “Choose a Plan,” *Peacock*, <https://www.peacocktv.com/plan-picker>, INTUIT-FTC-PART3-000600082.
- “Comcast Xfinity Reviews 2022,” *Influenster*, <https://www.influenster.com/reviews/comcast-xfinity>, accessed January 2, 2023, INTUIT-FTC-PART3-000618175.
- “Commission Enforcement Policy Statement in Regard to Clear and Conspicuous Disclosure in Television Advertising,” *FTC*, October 21, 1970, https://www.ftc.gov/system/files/documents/public_statements/288851/701021tvad-pr.pdf, INTUIT-FTC-PART3-000600859.
- “Compare Our Online Tax Software,” *TaxSlayer*, <https://www.taxslayer.com/tax-tools/compare-tax-software>, accessed August 26, 2022, INTUIT-FTC-PART3-000600587.
- “Complaints,” *Better Business Bureau*, <https://www.bbb.org/process-of-complaints-and-reviews/complaints>, accessed July 13, 2022, INTUIT-FTC-PART3-000599022.
- “Customer Reviews for GEICO Car Insurance,” *Geico*, <https://www.geico.com/reviews/carmotorcycle-atv-rv-boat-insurance/car-insurance/>, accessed December 21, 2022, INTUIT-FTC-PART3-000617820.
- “Customer Reviews,” *TaxHawk*, <https://www.taxhawk.com/reviews.jsp>, accessed December 21, 2022, INTUIT-FTC-PART3-000618184.
- “Electronic Filings via Online Tax Software Companies,” *ProPublica*, 2019, <https://assets.documentcloud.org/documents/6788961/ProPublica-Analysis-of-IRS-Electronic-Filing-Data.pdf>, INTUIT-FTC-PART3-000600261.
- “Electronic Filings via Online Tax Software Companies,” *ProPublica*, 2019, INTUIT-FTC-PART3-000600261.
- “File Federal Taxes Free!,” *TaxHawk*, <https://www.taxhawk.com/>, accessed August 23, 2022, INTUIT-FTC-PART3-000600584.
- “File Free Online,” *H&R Block TV Ad*, January 4, 2022, https://www.youtube.com/watch?v=I9_P0aclSXk, INTUIT-FTC-PART3-000617818.

- “File On Your Own,” *Google Search*, <https://www.google.com/search?q=turbotax>, accessed January 4, 2023, INTUIT-FTC-PART3-000617811.
- “File Online For Zero, Zip, Zilch,” H&R Block, <https://www.hrblock.com/>, accessed December 16, 2022, INTUIT-FTC-PART3-000618486.
- “File Online. Free Online,” *H&R Block*, <https://www.hrblock.com/online-tax-filing/free-online-tax-filing/>, accessed November 10, 2022, INTUIT-FTC-PART3-000599486.
- “Free File Fillable Forms,” *IRS*, <https://www.irs.gov/e-file-providers/free-file-fillable-forms>, INTUIT-FTC-PART3-000600016.
- “Free File Fillable Forms,” *IRS*, <https://www.irs.gov/e-file-providers/free-file-fillable-forms>, INTUIT-FTC-PART3-000600016.
- “GEICO Reviews 2022,” *Influenster*, <https://www.influenster.com/reviews/geico>, accessed January 2, 2023, INTUIT-FTC-PART3-000617998.
- “Get a sneak peek at your refund!,” *Intuit*, December 29, 2022, INTUIT-FTC-PART3-000618170.
- “Get Rid Of The Guesswork,” *Google Search*, <https://www.google.com/search?q=turbotax>, accessed January 4, 2023, INTUIT-FTC-PART3-000618164.
- “Get Verizon Fios,” *Verizon*, <https://www.verizon.com/home/bundles/fios>, INTUIT-FTC-PART3-000600602.
- “Guidance for Industry Consumer-Directed Broadcast Advertisements”, FDA, August 1999, INTUIT-FTC-PART3-000617812.
- “H&R Block Reviews For Tax Preparation Offices, Software And Online Filing,” *H&R Block*, <https://www.hrblock.com/reviews/>, accessed December 21, 2022, INTUIT-FTC-PART3-000618152.
- “H&R Block Tax Software Review 2022,” *NerdWallet*, March 28, 2021, <https://www.nerdwallet.com/article/taxes/hr-block-review>, accessed July 18, 2022, INTUIT-FTC-PART3-000600046.
- “H&R Block,” *Influenster*, <https://www.influenster.com/reviews/hr-block>, accessed January 2, 2023, INTUIT-FTC-PART3-000617959.
- “Help On Your Terms,” *H&R Block TV Ad*, March 31, 2022, https://www.youtube.com/watch?v=8y6K2xJo_uQ&t=1s, INTUIT-FTC-PART3-000602954.
- “How To Use A Top 2 Box Score In Your Survey Analysis,” *SurveyMonkey*, <https://www.surveymonkey.com/mp/top-2-box-scores/>, INTUIT-FTC-PART3-000600830.
- “Independent Assessment of the Free File Program,” *The MITRE Corporation*, October 3, 2019, <https://www.irs.gov/pub/newsroom/exec-summary-free-file-program-assessment-100319.pdf>, INTUIT-FTC-PART3-000601039.
- “Internal Revenue Service 2021 Data Book,” *IRS*, May 2022, INTUIT-FTC-PART3-000599920.
- “Internal Revenue Service 2021 Data Book,” *IRS*, May 2022, <https://www.irs.gov/pub/irs-pdf/p55b.pdf>, INTUIT-FTC-PART3-000599920.
- “Intuit Completes Acquisition of Credit Karma,” *Intuit*, <https://investors.intuit.com/news/news-details/2020/Intuit-Completes-Acquisition-of-Credit-Karma/default.aspx>, INTUIT-FTC-PART3-000600851.
- “Investor Day 2022,” *Intuit*, September 2022, https://s23.q4cdn.com/935127502/files/doc_presentations/2022/09/Intuit-Investor-Day-2022_092822_For-Upload_SHIPPED.pdf, INTUIT-FTC-PART3-000618000.

- “IRS Free File Program”, *United States Government Accountability Office Report to Congressional Requesters*, April 2022, <https://www.gao.gov/assets/gao-22-105236.pdf>, INTUIT-FTC-PART3-000599424.
- “It’s Easy to Switch from TurboTax to H&R Block,” *H&R Block TV Ad*, March 4, 2022, <https://www.youtube.com/watch?v=vxuzp8cRdgE>, accessed August 27, 2022, INTUIT-FTC-PART3-000593230.
- “It’s Tax Season | The Holiday Season | Pay Less :15,” *H&R Block TV Ad*, <https://www.youtube.com/watch?v=1Nyj5xs4IRk>, accessed January 3, 2023, INTUIT-FTC-PART3-000618215.
- “Justice Department Requires Divestiture of Credit Karma Tax for Intuit to Proceed with Acquisition of Credit Karma,” *Department of Justice Office of Public Affairs*, INTUIT-FTC-PART3-000600868.
- “Kids Stay & Eat Free,” *Holiday Inn Hotels & Resorts*, <https://www.ihg.com/holidayinn/content/us/en/offers/kids-free>, accessed January 2, 2023, INTUIT-FTC-PART3-000618241.
- “Last Chance to File for Free With Expert Help: Simple Tax Returns Only,” *Intuit*, <https://turbotax.intuit.com/>, accessed March 31, 2022, INTUIT-FTC-PART3-000600599.
- “Live Full Service,” *Intuit*, <https://turbotax.intuit.com/personal-taxes/online/live/full-service/>, accessed April 24, 2022, INTUIT-FTC-PART3-000599613.
- “Missed the IRS Deadline?,” *TaxAct*, <https://www.taxact.com/>, accessed August 23, 2022, INTUIT-FTC-PART3-000600576.
- “NerdWallet IPO: What you need to know about a 2021 public offering,” *public.com*, <https://public.com/learn/nerdwallet-ipo-what-you-need-to-know>, INTUIT-FTC-PART3-000600067.
- “Net Promoter System,” *Bain & Company*, <https://www.bain.com/consulting-services/customer-strategy-and-marketing/customer-loyalty/>, INTUIT-FTC-PART3-000599016.
- “Offers,” *Clinique*, <https://www.clinique.com/offers>, INTUIT-FTC-PART3-000600074.
- “Online Tax Filing Services,” *TaxAct*, <https://www.taxact.com/taxes-online>, accessed November 10, 2022, INTUIT-FTC-PART3-000600579.
- “Online Tax Filing That Fits You,” *H&R Block*, <https://www.hrblock.com/online-tax-filing/>, accessed August 23, 2022, INTUIT-FTC-PART3-000593488.
- “Online Tax Filing,” *H&R Block*, <https://www.hrblock.com/online-tax-filing/>, accessed August 26, 2022, INTUIT-FTC-PART3-000599506.
- “Peacock: What’s Free, What’s Paid and What Else to Know,” *CNET*, August 19, 2022, <https://www.cnet.com/tech/services-and-software/peacock-whats-free-whats-paid-and-what-else-to-know/>, INTUIT-FTC-PART3-000600083.
- “Personal Taxes Online,” *Intuit*, <https://turbotax.intuit.com/personal-taxes/online/>, INTUIT-FTC-PART3-000600270, INTUIT-FTC-PART3-000616973-6978, INTUIT-FTC-PART3-000618237.
- “Play millions of songs and podcasts, for free,” *Spotify*, <https://www.spotify.com/us/free/>, INTUIT-FTC-PART3-000600277.
- “Products & Pricing Page in Tax Year 2021, as of February 1, 2022,” *TurboTax*, <https://web.archive.org/web/20220201023105/https://turbotax.intuit.com/personal-taxes/online/>, INTUIT-FTC-PART3-000617792.
- “Progressive Insurance Reviews,” *Progressive*, <https://www.progressive.com/insurance-reviews/>, accessed December 21, 2022, INTUIT-FTC-PART3-000617957.

- “Ready To Get Your Biggest Refund?,” *TaxSlayer*, <https://www.taxslayer.com/>, accessed October 20, 2022, INTUIT-FTC-PART3-000593214.
- “Shopper Response to BOGO/Free Promotions,” *AMG Strategic Advisors*, February 2012, https://members.alanational.org/assets/research_center/Hot_Topic_BOGO_freeFINAL.pdf, INTUIT-FTC-PART3-000617975.
- “Spotify is testing a less restrictive ad-supported tier costing \$.99 a month,” *The Verge*, <https://www.theverge.com/2021/8/3/22607203/spotify-plus-ad-supported-tier-unlimited-skips-on-demand-listening>, INTUIT-FTC-PART3-000618208.
- “StateFarm Insurance Reviews 2022,” *Influenster*, <https://www.influenster.com/reviews/statefarm-insurance>, accessed January 2, 2023, INTUIT-FTC-PART3-000618206.
- “Subscription Commence Conversion Index: The Exclusive Access Effect Edition,” *PYMNTS*, November 2021, <https://www.pymnts.com/wp-content/uploads/2021/11/PYMNTS-Subscription-Commerce-Conversion-Index-November-2021.pdf>, INTUIT-FTC-PART3-000617977.
- “Tax Counseling for the Elderly,” *Benefits.gov*, <https://www.benefits.gov/benefit/722>, accessed December 14, 2022, INTUIT-FTC-PART3-000600516.
- “Tax Cuts and Jobs Act: Assessment of Implementation Efforts,” I, April 18, 2019, <https://www.treasury.gov/tigta/auditreports/2019reports/201944027fr.pdf>, INTUIT-FTC-PART3-000600521.
- “Tax Cuts and Jobs Act: Assessment of Implementation Efforts,” *Treasury Inspector General for Tax Administration*, April 18, 2019, <https://www.treasury.gov/tigta/auditreports/2019reports/201944027fr.pdf>, INTUIT-FTC-PART3-000600521.
- “Tax Deadline Is Approaching. Only 4 Days Left to File Your Taxes,” *Intuit*, April 14, 2022, INTUIT-FTC-PART3-000618167.
- “Tax Year 2021 1040 Instructions,” *Internal Revenue Service*, December 21, 2021, <https://www.irs.gov/pub/irs-pdf/i1040gi.pdf>, INTUIT-FTC-PART3-000617826.
- “TaxAct Free,” *TaxAct*, <https://www.taxact.com/individual-taxes/online/free/>, accessed July 20, 2022, INTUIT-FTC-PART3-000593228.
- “TaxAct,” *Influenster*, <https://www.influenster.com/reviews/taxact>, accessed January 2, 2023, INTUIT-FTC-PART3-000618158.
- “TaxSlayer 2022 Commercial ‘Cash Cow’ (Official TV Ad: 30),” TaxSlayer TV Ad, January 4, 2022, <https://www.youtube.com/watch?v=nSaryc0WZB0>, accessed August 28, 2022, INTUIT-FTC-PART3-000593206.
- “TaxSlayer Customer Reviews,” *TaxSlayer*, <https://www.taxslayer.com/reviews>, accessed December 21, 2022, INTUIT-FTC-PART3-000618220.
- “TaxSlayer Simply Free,” *TaxSlayer*, <https://www.taxslayer.com/products/taxslayer-free-tax-filing>, accessed July 20, 2022, INTUIT-FTC-PART3-000600956.
- “TaxSlayer,” *Influenster*, <https://www.influenster.com/reviews/taxslayer>, accessed January 2, 2023, INTUIT-FTC-PART3-000618222.
- “The Beginner’s Guide to Free Sample Marketing To Promote Your Products,” *Linchpin SEO*, October 1, 2022, <https://linchpinseo.com/free-sample-marketing-guide/>, accessed January 11, 2023, INTUIT-FTC-PART3-000616989.

- “T-Mobile Insurance Reviews 2022,” *Influenster*, <https://www.influenster.com/reviews/t-mobile>, accessed January 2, 2023, INTUIT-FTC-PART3-000618249.
- “TurboTax Deluxe,” *Intuit*, <https://turbotax.intuit.com/personal-taxes/online/deluxe.jsp#tax-forms>, accessed August 25, 2022, INTUIT-FTC-PART3-000599625.
- “TurboTax Live 2022 Super Bowl Commercial: Matchmaker,” <https://www.youtube.com/watch?v=JFFmnRg1CmE>, INTUIT-FTC-PART3-000618204.
- “TurboTax Live,” *Intuit*, <https://turbotax.intuit.com/personal-taxes/online/live/how-it-works.htm>, accessed August 24, 2022, INTUIT-FTC-PART3-000599629.
- “TurboTax Official Site: File Taxes Online, Tax Filing Made Easy,” *Intuit*, <https://turbotax.intuit.com/>, accessed December 28, 2022, INTUIT-FTC-PART3-000617783.
- “TurboTax Product Reviews,” *Intuit*, <https://turbotax.intuit.com/reviews/?Sort=Rating:desc,SubmissionTime:desc,Helpfulness:desc>, accessed December 21, 2022, INTUIT-FTC-PART3-000618155.
- “TurboTax,” *Influenster*, <https://www.influenster.com/reviews/turbo-tax>, accessed January 2, 2023, INTUIT-FTC-PART3-000617823.
- “U.S. Consumer 2016 Net Promoter Benchmarks,” *Satmetrix*, 2016, <https://www.netpromoter.com/satmetrix-infographic-2016-consumer-np-benchmarks/>, INTUIT-FTC-PART3-000600269.
- “U.S. Consumer 2017 Net Promoter Benchmarks,” *Satmetrix*, 2017, <https://info.nice.com/rs/338-EJP-431/images/satmetrix-infographic-2017-b2c-nps-benchmarks-glance-061217.pdf>, INTUIT-FTC-PART3-000598529.
- “U.S. Consumer 2018 Net Promoter Benchmarks,” *Satmetrix*, 2018, <https://info.nice.com/rs/338-EJP-431/images/NICE-Satmetrix-infographic-2018-b2c-nps-benchmarks-050418.pdf>, INTUIT-FTC-PART3-000598530.
- “U.S. Consumer 2019 Net Promoter Benchmarks,” *Satmetrix*, 2019, https://mlgsupport.zendesk.com/hc/en-us/article_attachments/360029651591/NICE-Satmetrix-infographic-2019-b2c-nps-benchmarks-042619.pdf, INTUIT-FTC-PART3-000598531.
- “U.S. Consumer 2020 Net Promoter Benchmarks,” *Satmetrix*, 2020, https://cincysc.com/wp-content/uploads/2020/10/2020_benchmarks.pdf, INTUIT-FTC-PART3-000598532.
- “U.S. Consumer 2021 Net Promoter Benchmarks,” *Satmetrix*, 2021, https://www.satmetrix.com/wp-content/uploads/2021/05/2021_benchmarks.pdf, INTUIT-FTC-PART3-000598533.
- “Verizon Wireless Insurance Reviews 2022,” *Influenster*, <https://www.influenster.com/reviews/verizon-wireless>, accessed January 2, 2023, INTUIT-FTC-PART3-000618162.
- “Volunteer Income Tax Assistance (VITA),” *Benefits.gov*, <https://www.benefits.gov/benefit/1543>, accessed December 14, 2022, INTUIT-FTC-PART3-000599025.
- “What Happened to Credit Karma Tax?,” *Cash App Taxes*, February 1, 2022, <https://taxeshelp.cash.app/s/article/What-changes-at-Credit-Karma-Tax-now-that-we-are-a-Cash-App-product#>, INTUIT-FTC-PART3-000617940.
- “What Our Customers Are Saying,” *Jackson Hewitt*, <https://www.jacksonhewitt.com/file-taxes-options-products/file-taxes-online/reviews/>, accessed December 21, 2022, INTUIT-FTC-PART3-000600018.

- “Why use TurboTax Free Edition?,” *Intuit*, April 1, 2022, <https://web.archive.org/web/20220401142411/https://turbotax.intuit.com/personal-taxes/online/free-edition.jsp>, INTUIT-FTC-PART3-000617788.
- “Why Use TurboTax Free Edition?,” *Intuit*, <https://turbotax.intuit.com/personal-taxes/online/free-edition.jsp>, accessed December 28, 2022, INTUIT-FTC-PART3-000618219.
- Aycock, J, “New York Times’ Wirecutter Moving To Subscription Service,” *Seeking Alpha*, August 31, 2021, <https://seekingalpha.com/news/3735810-new-york-times-wirecutter-moving-to-subscription-service>, INTUIT-FTC-PART3-000600847.
- Bradbury, Danny, “Tech Tips: Tax Software For Your Clients,” *Investment Executive*, April 5, 2019, https://www.investmentexecutive.com/newspaper_/building-your-business-newspaper/tech-tips-tax-software-for-your-clients/, INTUIT-FTC-PART3-000599171.
- Chen, Elaine, “What Is the Net Promoter Score (NPS)?,” *MIT Orbit*, <https://orbit-kb.mit.edu/hc/en-us/articles/206440723-What-is-the-Net-Promoter-Score-NPS->, INTUIT-FTC-PART3-000600984.
- Cico, David, and Courtney L. Howard Olson, *Lessons Learned from IRS Free Filers: Capturing Young Taxpayers for a Lifetime of Electronic Filing*, IRS, June 12, 2008, <https://www.irs.gov/pub/irs-soi/08resconefile.pdf>, INTUIT-FTC-PART3-000599183.
- Daly, Lyle, “The Average Tax Refund: A Visual Guide to Your Money Back,” *The Ascent*, January 31, 2020, <https://www.fool.com/the-ascent/research/average-tax-refund/>, accessed July 20, 2022, INTUIT-FTC-PART3-000599402.
- Gill, Kristine, “Are You Eligible for These Special Discounts? Here’s How to Find Out So You Don’t Miss Out,” *Real Simple*, June 22, 2022, <https://www.realsimple.com/work-life/money/saving/eligible-special-discounts>, INTUIT-FTC-PART3-000618224.
- Kardashian, Kirk, “Golder Wins Distinguished Scholar Award,” *Tuck School of Business*, November 2, 2012, <https://www.tuck.dartmouth.edu/news/articles/golder-wins-distinguished-scholar-award>, INTUIT-FTC-PART3-000600865.
- Kessler, Carson, “A Banking App Has Been Suddenly Closing Accounts, Sometimes Not Returning Customers’ Money,” *ProPublica*, July 6, 2021, <https://www.propublica.org/article/chime>, INTUIT-FTC-PART3-000600887.
- Moore, Will, “States Where Car Insurance Is Not Mandatory (2022),” *Motor 1.com*, December 15, 2021, <https://www.motor1.com/reviews/403859/states-where-car-insurance-is-not-mandatory/>, accessed August 25, 2022, INTUIT-FTC-PART3-000600031.
- Nelson, Dustin, “Everywhere You Can Get Free Food for Kids Right Now,” *Thrillist*, October 20, 2022, <https://www.thrillist.com/news/nation/free-food-kids-meal-deals>, INTUIT-FTC-PART3-000617946.
- Parys, Sabrina, and Tina Orem, “TurboTax Review 2022,” March 3, 2022, <https://www.nerdwallet.com/article/taxes/turbotax-review>, accessed July 22, 2022, INTUIT-FTC-PART3-000600057.
- Pinola, Melanie, “The Best Online Tax Filing Software,” *Wirecutter*, February 15, 2022, <https://www.nytimes.com/wirecutter/reviews/best-tax-software/>, accessed July 29, 2022, INTUIT-FTC-PART3-000601013.
- Quach, Karen, “Survey: How Many Americans Are ‘Free Trial Hopping?’,” *Frontier*, July 2021, <https://go.frontier.com/media-center/trial-hopping-survey/>, INTUIT-FTC-PART3-000618186.
- Rainie, Lee, “Cable and Satellite TV Use Has Dropped Dramatically in the U.S. Since 2015,” *Pew Research Center*, March 17, 2021, <https://www.pewresearch.org/fact->

- tank/2021/03/17/cable-and-satellite-tv-use-has-dropped-dramatically-in-the-u-s-since-2015/, accessed November 10, 2022, INTUIT-FTC-PART3-000600262.
- Smith, Aaron, and Monica Anderson, “2. Online Reviews,” *Pew Research Center*, December 19, 2016, <https://www.pewresearch.org/internet/2016/12/19/online-reviews/>, INTUIT-FTC-PART3-000600272.
- Tarlton, Amanda, “100 Popular Retailers That Offer A Discount To First-time Customers,” *USA Today*, January 7, 2021, <https://www.usatoday.com/story/tech/reviewedcom/2021/01/07/100-retailers-offer-discount-your-first-purchase/6563942002/>, INTUIT-FTC-PART3-000618561.
- Thrasher, Michael, “Advisor Referral Business Helps Lift SmartAsset to \$1Billion Valuation,” *RIAIntel*, June 24, 2021, [https://www.riaintel.com/article/blsf2vm6cbw9q8/advisor-referral-business-helps-lift-smartasset-to-\\$1-billion-valuation](https://www.riaintel.com/article/blsf2vm6cbw9q8/advisor-referral-business-helps-lift-smartasset-to-$1-billion-valuation), INTUIT-FTC-PART3-000600986.
- Wallace, Chris, “The 5 Stages of the Consumer Decision Making Process,” *Zoovu*, July 5, 2016, <https://zoovu.com/blog/how-to-leverage-the-5-stages-of-the-customer-decision-making-process/>, accessed April 2, 2022, INTUIT-FTC-PART3-000601008.
- Wanjala, Alvin, “How Many Users Does Spotify Have?,” *MUO*, August 3, 2022, <https://www.makeuseof.com/how-many-users-spotify-has/>, INTUIT-FTC-PART3-000617961.
- Weltman, Barbara, “What Will I Pay for Tax Preparation Fees?,” *Investopedia*, July 21, 2022, <https://www.investopedia.com/articles/taxes/021717/what-will-i-pay-tax-preparation-fees.asp>, accessed January 3, 2023, INTUIT-FTC-PART3-000618177.
- White, G, “How the Tax-Prep Industry Takes Advantage of Low-Income Filers,” *The Atlantic*, April 14, 2016, <https://www.theatlantic.com/business/archive/2016/04/eict-tax-prep/478305/>, INTUIT-FTC-PART3-000600796.
- York, Erica, “Summary of the Latest Federal Income Tax Data, 2022 Update,” *Tax Foundation*, January 20, 2022, <https://taxfoundation.org/publications/latest-federal-income-tax-data/>, accessed January 6, 2023, INTUIT-FTC-PART3-000618526.
- Zalani, Chintan, “Consumer Decision-Making Process Mastery,” *The Ecom Academy*, 2018, <https://ecomacademy.com/consumer-decision-making-process/>, accessed April 2, 2022, INTUIT-FTC-PART3-000600804.
- Zhu, Emily, “TurboTax Review 2022,” *SmartAsset*TM, February 14, 2022, <https://smartasset.com/taxes/turbo-tax-review>, INTUIT-FTC-PART3-000600813.

Appendix F: Benchmark Companies Selection

Publicly Available Documents

- “About FreeTaxUSA,” *FreeTaxUSA*, <https://www.freetaxusa.com/about.jsp?thn=3EEFE20943C213FECDD8AAB04918F20C4>, INTUIT-FTC-PART3-000599417.
- “AT&T TV Is Now DIRECTV STREAM,” *AT&T*, <https://www.att.com/tv/>, INTUIT-FTC-PART3-000599008.
- “Better Business Bureau,” <https://www.bbb.org/>, accessed December 20, 2022, INTUIT-FTC-PART3-000603020.

- “Mobile Fact Sheet,” *Pew Research Center*, April 7, 2021, <https://www.pewresearch.org/internet/fact-sheet/mobile/>, INTUIT-FTC-PART3-000600245.
- “SEC Form 10-K (for the fiscal year ended July 31, 2022),” *Intuit Inc.*, July 31, 2022, <https://www.sec.gov/ix?doc=/Archives/edgar/data/896878/000089687822000028/intu-20220731.htm>, INTUIT-FTC-PART3-000599641. FreeTaxUSA, “About FreeTaxUSA,” <https://www.freetaxusa.com/about.jsp?thn=3EEFE20943C213FECED8AAB04918F20C4>, INTUIT-FTC-PART3-000599417.
- Intuit Inc., SEC Form 10-K (for the fiscal year ended July 31, 2022), <https://www.sec.gov/ix?doc=/Archives/edgar/data/896878/000089687822000028/intu-20220731.htm>, INTUIT-FTC-PART3-000599641.
- Moore, Will, “States Where Car Insurance Is Not Mandatory (2022),” *Motor 1*, December 15, 2021, <https://www.motor1.com/reviews/403859/states-where-car-insurance-is-not-mandatory/>, accessed August 25, 2022, INTUIT-FTC-PART3-000600031.
- Poushter, Jacob, “Car, Bike, or Motorcycle? Depends on Where You Live,” *Pew Research Center*, <https://www.pewresearch.org/fact-tank/2015/04/16/car-bike-or-motorcycle-depends-on-where-you-live/>, INTUIT-FTC-PART3-000600842.
- Rainie, Lee, “Cable and Satellite TV Use Has Dropped Dramatically in the U.S. Since 2015,” *Pew Research Center*, March 17, 2021, <https://www.pewresearch.org/fact-tank/2021/03/17/cable-and-satellite-tv-use-has-dropped-dramatically-in-the-u-s-since-2015/>, accessed November 10, 2022, INTUIT-FTC-PART3-000600262.
- Rowan, Lisa, “Square Will Buy Credit Karma’s Free Tax Prep Service. What Does That Mean for Consumers?,” *Forbes*, November 25, 2020, <https://www.forbes.com/advisor/credit-score/square-will-buy-credit-karmas-free-tax-prep-service-what-does-that-mean-for-consumers/>, INTUIT-FTC-PART3-000600825.

Intuit Internal Data and Documents

Intuit, “[REDACTED]” 2021, INTUIT-FTC-PART3-000602321.

Appendix G: Benchmark BBB Complaints

Publicly Available Documents

- “2021 by the numbers,” State Farm, February 25, 2022, available at <https://newsroom.statefarm.com/2021-by-the-numbers-infographic>, INTUIT-FTC-PART3-000600279.
- “About Charter,” Charter Spectrum, available at <https://corporate.charter.com/about-charter>, INTUIT-FTC-PART3-000599174.
- “About Us,” Progressive, available at <https://www.progressive.com/about/>, INTUIT-FTC-PART3-000600252.
- “Complaints,” *Better Business Bureau*, <https://www.bbb.org/process-of-complaints-and-reviews/complaints>, accessed July 13, 2022, INTUIT-FTC-PART3-000599022.

- “Corporate Overview,” USAA, available at https://www.usaa.com/inet/wc/about_usaa_corporate_overview_main?akredirect=true, INTUIT-FTC-PART3-000593231.
- “GEICO At A Glance,” Geico, July 2022, available at <https://www.geico.com/about/corporate/at-a-glance/>, INTUIT-FTC-PART3-000599482.
- “MoneyGram International Reports Second Quarter 2021 Results,” MoneyGram, July 29, 2021, available at <https://ir.moneygram.com/news-releases/news-release-details/moneygram-international-reports-second-quarter-2021-results>, INTUIT-FTC-PART3-000600025.
- “Notice of 2022 Annual Meeting and Proxy Statement,” Allstate, available at <https://www.allstate.com/resources/allstate/attachments/annual-report/allstate-year-end-report-combo-2021.pdf>, INTUIT-FTC-PART3-000598535.
- “Pay TV providers ranked by the number of subscribers in the United States,” Statista, December 2021, available at <https://www.statista.com/statistics/251793/pay-tv-providers-with-the-largest-number-of-subscribers-in-the-us/>, INTUIT-FTC-PART3-000600079.
- “ProPublica Analysis of IRS Electronic Filing Data,” ProPublica, available at <https://www.documentcloud.org/documents/6788961-ProPublica-Analysis-of-IRS-Electronic-Filing-Data.html>, INTUIT-FTC-PART3-000600261.
- “SEC Form 10-K for the fiscal year ended April 30, 2021,” H&R Block, Inc., available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/12659/000183886221000028/hrb-20210430.htm>, INTUIT-FTC-PART3-000599525.
- “SEC Form 10-K for the fiscal year ended December 31, 2021,” AT&T Inc., available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/732717/000073271722000015/t-20211231.htm>, INTUIT-FTC-PART3-000598808.
- “SEC Form 10-K for the fiscal year ended December 31, 2021,” Blucora, Inc., available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/1068875/000106887522000042/bcor-20211231.htm>, INTUIT-FTC-PART3-000599029.
- “SEC Form 10-K for the fiscal year ended December 31, 2021,” Comcast Corporation, available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/1166691/000116669122000009/cmcsa-20211231.htm>, INTUIT-FTC-PART3-000599202.
- “SEC Form 10-K for the fiscal year ended December 31, 2021,” Perdoceo Education Corporation, available at https://www.sec.gov/ix?doc=/Archives/edgar/data/1046568/000156459022006719/prdo-10k_20211231.htm, INTUIT-FTC-PART3-000600089.
- “SEC Form 10-K for the fiscal year ended December 31, 2021,” T-Mobile US, Inc., available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/1283699/000128369922000018/tmus-20211231.htm>, INTUIT-FTC-PART3-000600293.
- “SEC Form 10-K for the fiscal year ended December 31, 2021,” Verizon Communications Inc., available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/732712/000073271222000008/vz-20211231.htm>, INTUIT-FTC-PART3-000600605.

“SEC Form 10-K for the fiscal year ended July 31, 2021,” Intuit Inc., available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/896878/000089687821000233/intu-20210731.htm> (“Intuit 10-K”), INTUIT-FTC-PART3-000599641.

“TaxSlayer Offers New Resources to Help Taxpayers File in 2021,” TaxSlayer, February 8, 2021, available at <https://www.taxslayer.com/media-room/prdetails?articleID=122508>, INTUIT-FTC-PART3-000600861.

Better Business Bureau website, available at <https://www.bbb.org/>, INTUIT-FTC-PART3-000603020.

Curry, D., “Chime Revenue and Usage Statistics (2022),” Business of Apps, May 4, 2022, available at <https://www.businessofapps.com/data/chime-statistics/>, INTUIT-FTC-PART3-000599389.

Macfarlane, G., “The Path Forward for America's Outdated Tax System,” Jackson Hewitt, May 17, 2021, available at <https://www.jacksonhewitt.com/about-jackson-hewitt/news-and-events/opinion-the-path-forward-for-americas-outdated-tax-system/>, INTUIT-FTC-PART3-000600870.

Publicly Available Complaints

“Allstate Insurance, Complaints,” Better Business Bureau, available at <https://www.bbb.org/us/il/northbrook/profile/insurance-companies/allstate-insurance-0654-12014144/complaints>, accessed on January 3, 2023, INTUIT-FTC-PART3-000617744.

“AT&T, Complaints,” Better Business Bureau, available at <https://www.bbb.org/us/tx/dallas/profile/long-distance-phone-service/att-0875-7935/complaints>, accessed on January 3, 2023, INTUIT-FTC-PART3-000617718.

“Cash App Taxes, Inc., Complaints,” Better Business Bureau, available at <https://www.bbb.org/us/ca/san-francisco/profile/tax-return-preparation/cash-app-taxes-inc-1116-879545/complaints>, accessed on January 3, 2023, INTUIT-FTC-PART3-000617719.

“Charter Spectrum, Complaints,” Better Business Bureau, available at <https://www.bbb.org/us/ct/stamford/profile/cable-tv/charter-spectrum-0111-110075917/complaints>, accessed on January 3, 2023, INTUIT-FTC-PART3-000617723.

“Chime Financial Inc., Complaints,” Better Business Bureau, available at <https://www.bbb.org/us/ca/san-francisco/profile/financial-technology/chime-financial-inc-1116-530173/complaints>, accessed on January 3, 2023, INTUIT-FTC-PART3-000617733.

“Comcast Corporation, Complaints,” Better Business Bureau, available at <https://www.bbb.org/us/pa/philadelphia/profile/cable-tv/comcast-corporation-0241-80003221/complaints>, accessed on January 3, 2023, INTUIT-FTC-PART3-000617724.

“DirecTV Inc., Complaints,” Better Business Bureau, available at <https://www.bbb.org/us/ca/el-segundo/profile/cable-tv/directv-inc-1216-81000357/complaints>, accessed on January 3, 2023, INTUIT-FTC-PART3-000617738.

- “Dish Network LLC, Complaints,” Better Business Bureau, available at <https://www.bbb.org/us/co/englewood/profile/cable-tv/dish-network-llc-1296-6370/complaints>, accessed on January 3, 2023, INTUIT-FTC-PART3-000617741.
- “Dun & Bradstreet, Complaints,” Better Business Bureau, available at <https://www.bbb.org/us/fl/jacksonville/profile/credit-reporting-agencies/dun-bradstreet-0332-3137/complaints>, accessed on July 1, 2022, INTUIT-FTC-PART3-000607368.
- “Fleetcor Technologies, Complaints,” Better Business Bureau, available at <https://www.bbb.org/us/ga/norcross/profile/credit-cards-and-plans/fleetcor-technologies-llc-0443-7005062/complaints>, accessed on January 3, 2023, INTUIT-FTC-PART3-000617725.
- “Geico, Complaints,” Better Business Bureau, available at <https://www.bbb.org/us/md/chevy-chase/profile/insurance-companies/geico-0241-8768/complaints>, accessed on January 3, 2023, INTUIT-FTC-PART3-000617736.
- “H&R Block Inc., Complaints,” Better Business Bureau, available at <https://www.bbb.org/us/mo/kansas-city/profile/tax-return-preparation/h-r-block-inc-us-headquarters-0674-46030004/complaints>, accessed on January 3, 2023, INTUIT-FTC-PART3-000617739.
- “Intuit Inc., Complaints,” Better Business Bureau, available at <https://www.bbb.org/us/ca/mountain-view/profile/computer-hardware/intuit-inc-1216-202832/complaints>, accessed on January 3, 2023, INTUIT-FTC-PART3-000617729.
- “Jackson Hewitt, Complaints,” Better Business Bureau, available at <https://www.bbb.org/us/nj/jersey-city/profile/tax-return-preparation/jackson-hewitt-tax-services-of-america-inc-0221-22001064/complaints>, accessed on January 3, 2023, INTUIT-FTC-PART3-000617720.
- “MoneyGram, Complaints,” Better Business Bureau, available at <https://www.bbb.org/us/tx/dallas/profile/money-orders/moneygram-0875-90246426/complaints>, accessed on January 3, 2023, INTUIT-FTC-PART3-000617731.
- “Perdoceo Education Corp., Complaints,” Better Business Bureau, available at <https://www.bbb.org/us/il/schaumburg/profile/college-and-university/perdoceo-education-corporation-0654-9003047/complaints>, accessed on January 3, 2023, INTUIT-FTC-PART3-000617743.
- “Progressive Corporation, Complaints,” Better Business Bureau, available at <https://www.bbb.org/us/oh/mayfield-vlg/profile/insurance-companies/progressive-corporation-0312-15000696/complaints>, accessed on January 3, 2023, INTUIT-FTC-PART3-000617728.
- “State Farm Insurance Co., Complaints,” Better Business Bureau, available at <https://www.bbb.org/us/il/bloomington/profile/insurance-companies/state-farm-insurance-company-0724-6000391/complaints>, accessed on January 3, 2023, INTUIT-FTC-PART3-000617734.
- “TaxAct, Complaints,” Better Business Bureau, available at <https://www.bbb.org/us/ia/cedar-rapids/profile/computer-software-developers/taxact-0664-22001061/complaints>, accessed on January 3, 2023, INTUIT-FTC-PART3-000617737.

- “TaxHawk, Complaints,” Better Business Bureau, available at <https://www.bbb.org/us/ut/provo/profile/tax-return-preparation/taxhawk-inc-1166-22009863/complaints>, accessed on January 3, 2023, INTUIT-FTC-PART3-000617727.
- “TaxSlayer, Complaints,” Better Business Bureau, available at <https://www.bbb.org/us/ga/evans/profile/tax-software/taxslayercom-0743-9390/complaints>, accessed on January 3, 2023, INTUIT-FTC-PART3-000617742.
- “T-Mobile USA, Complaints,” Better Business Bureau, available at <https://www.bbb.org/us/wa/bellevue/profile/cell-phone-supplies/t-mobile-usa-inc-1296-27026359/complaints>, accessed on January 3, 2023, INTUIT-FTC-PART3-000617740.
- “USAA, Complaints,” Better Business Bureau, available at <https://www.bbb.org/us/tx/san-antonio/profile/insurance-companies/usaa-0825-23452/complaints>, accessed on January 3, 2023, INTUIT-FTC-PART3-000617722.
- “Verizon Wireless, Complaints,” Better Business Bureau, available at <https://www.bbb.org/us/nj/basking-ridge/profile/cell-phone-supplies/verizon-wireless-0221-1001468/complaints>, accessed on January 3, 2023, INTUIT-FTC-PART3-000617721.

Appendix H: Keyword Methodology

Legal Documents

Complaint, United States of America before the Federal Trade Commission in the Matter of: Intuit Inc., A Corporation, Docket No. 9408, March 28, 2022.

Appendix I: TV Ad Benchmark Methodology

Legal Documents

Complaint Counsel’s Motion for Summary Decision, *United States of America before the Federal Trade Commission in the Matter of: Intuit Inc., A Corporation, Respondent*, Docket No. 9408, August 22, 2022.

Complaint Counsel’s Supplemental Responses to Intuit’s First and Second Set of Interrogatories, *In the matter of: Intuit Inc., A Corporation*, No. 9408, December 22, 2022.

Expert Report and Declarations

Declaration of Diana F. Shiller, *In the Matter of Intuit Inc., a corporation*, Docket No. 9408, June 9, 2022, GX 342.

Intuit Internal Data and Documents

Intuit, “[REDACTED],” September 27, 2021, INTUIT-FTC-PART3-000490342.

Publicly Available Materials

- “.Com Disclosures: How to Make Effective Disclosures in Digital Advertising,” *FTC*, March 2013, <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>, INTUIT-FTC-PART3-000600903.
- “Advertising Claim,” *Marketing Accofuntability Standards Board Common Language Dictionary*, <https://marketing-dictionary.org/a/advertising-claim/>, INTUIT-FTC-PART3-000598534.
- “Allstate Insurance Company,” Allstate, available at <https://www.allstate.com/>, accessed on July 13, 2022, INTUIT-FTC-PART3-000593223.
- “An Insurance Company For Your Car and More,” Geico, available at <https://www.geico.com/>, accessed on July 13, 2022, INTUIT-FTC-PART3-000593224.
- “An Insurance Company You Can Rely On,” Progressive, available at <https://www.progressive.com/>, accessed on July 27, 2022, INTUIT-FTC-PART3-000593238.
- “AT&T Official Site,” AT&T, available at att.com, accessed on July 25, 2022, INTUIT-FTC-PART3-000603027.
- “Bear: Taxes Aren’t Scary,” TaxAct TV Ad, January 4, 2021, <https://www.ispot.tv/ad/tzw7/taxact-bear-taxes-arent-scary>, accessed July 13, 2022, INTUIT-FTC-PART3-000602976.
- “Charter Spectrum Official,” Charter Spectrum, available at <https://official.spectrum.com/lfo-7n>, accessed on July 12, 2022, INTUIT-FTC-PART3-000593222.
- “Cloudy with a Chance of TaxAct – Version A,” *TaxAct TV Ad*, January 3, 2022, <https://youtu.be/inVk3O8sXIk>, accessed July 13, 2022, INTUIT-FTC-PART3-000602942.
- “Commission Enforcement Policy Statement in Regard to Clear and Conspicuous Disclosure in Television Advertising”, *FTC*, October 21, 1970, https://www.ftc.gov/system/files/documents/public_statements/288851/701021tvad-pr.pdf, INTUIT-FTC-PART3-000600859.
- “Dish Satellite TV – Official Site,” Dish Network, available at <https://www.dish.com/>, accessed on July 13, 2022, INTUIT-FTC-PART3-000593226.
- “File Taxes Online,” TaxAct, available at <https://www.taxact.com/>, accessed on July 19, 2022, INTUIT-FTC-PART3-000593229.
- “File Your Taxes for Free With the Biggest Refund Possible,” *TaxSlayer TV Ad*, January 2, 2020, <https://www.youtube.com/watch?v=zYgk8TqJu4>, accessed July 13, 2022, INTUIT-FTC-PART3-000602992.
- “Free Tax Filing Online,” TaxSlayer, available at <https://www.taxslayer.com/products/taxslayer-free-tax-filing/>, accessed on July 12, 2022, INTUIT-FTC-PART3-000600956.
- “Free Tax Filing,” TaxAct, available at <https://www.taxact.com/individual-taxes/online/free/>, accessed on July 19, 2022, INTUIT-FTC-PART3-000593228.
- “Get HBO Max – Access Unique HBO Max Channels, Streaming Content,” available at <https://www.dish.com/programming/packages/add-ons/premium-channels/hbo-max/>, accessed on December 6, 2022, INTUIT-FTC-PART3-000618434.
- “Guarantees,” H&R Block, available at <https://www.hrblock.com/guarantees/>, accessed on July 22, 2022, INTUIT-FTC-PART3-000593237.
- “Insurance, Banking, Retirement & Investment Services,” USAA, available at <https://www.usaa.com/>, accessed on July 13, 2022, INTUIT-FTC-PART3-000603003.

- “Internet, TV, Phone Smart Phone Smart Home,” Xfinity, available at <https://www.xfinity.com/overview>, accessed on July 12, 2022, INTUIT-FTC-PART3-000593221.
- “Let’s find the right tax solution for you,” TurboTax, available at <https://turbotax.intuit.com/personal-taxes/online/>, accessed on July 20, 2022, INTUIT-FTC-PART3-000599621.
- “Monsters: Dinner,” Charter Spectrum TV Ad, February 3, 2022, <https://www.youtube.com/watch?v=6-nsCJ54TkQ>, accessed July 12, 2022, INTUIT-FTC-PART3-000602970.
- “State Farm Auto Insurance & More for 100 Years,” State Farm, available at <https://www.statefarm.com/>, accessed on July 13, 2022, INTUIT-FTC-PART3-000593225.
- “Streaming Services & Satellite TV,” DirecTV, available at <https://www.directv.com/>, accessed on July 12, 2022, INTUIT-FTC-PART3-000593219.
- “Tax Preparation Services Company,” H&R Block, available at www.hrblock.com, accessed on July 22, 2022, INTUIT-FTC-PART3-000600565.
- “Tax Preparation Services,” Jackson Hewitt, available at <https://www.jacksonhewitt.com/>, accessed on July 12, 2022, INTUIT-FTC-PART3-000593215.
- “Tax Resolution Services: IRS Tax Issue Relief,” Jackson Hewitt, available at <https://www.jacksonhewitt.com/tax-resolution/>, accessed on July 12, 2022, INTUIT-FTC-PART3-000593216.
- “TaxAct Guarantees,” TaxAct, available at <https://www.taxact.com/company/guarantees>, accessed on July 19, 2022, INTUIT-FTC-PART3-000593227.
- “TaxSlayer,” TaxSlayer, available at <https://www.taxslayer.com/>, accessed on July 11, 2022.
- “The Disney Bundle: On Us,” Verizon, available at <https://www.verizon.com/solutions-and-services/disneyplus/>, accessed on July 12, 2022, INTUIT-FTC-PART3-000593218.
- “T-Mobile & Sprint merged to create America’s 5G Leader in coverage,” T-Mobile, available at <https://www.t-mobile.com/>, accessed on July 12, 2022, INTUIT-FTC-PART3-000600280.
- “Verizon: Plans, Services & Solutions,” Verizon, available at <https://www.verizon.com/>, accessed on July 12, 2022, INTUIT-FTC-PART3-000593217.
- “Watch MLB on DIRECTTV STREAM,” DirecTV, available at <https://www.directv.com/stream/sports/mlb/>, accessed on July 12, 2022, INTUIT-FTC-PART3-000593220.
- “What We Do: The New Standard for TV Ad Measurement,” *iSpot.tv*, <https://www.ispot.tv/about>, accessed July 26, 2022, INTUIT-FTC-PART3-000600796.

TV Ads

- Intuit TV Ad, “Copy of Dance Workout,” 30 seconds, QTTX0023000H, INTUIT-FTC-PART3-000594976, GX 620.
- Intuit TV Ad, “Dog Show,” 30 seconds, QTT2159H, INTUIT-FTC-PART3-000602935, GX 604.
- Intuit TV Ad, “Spit Take,” 30 seconds, QTTX0157000H, INTUIT-FTC-PART3-000603030, GX 309.
- Intuit TV Ad, “Auctioneer,” 30 seconds, QTTX001900H, INTUIT-FTC-PART3-000602934, GX 606.
- Intuit TV Ad, “Boston Tea Party,” 60 seconds, CC-00006794, GX 321.
- Intuit TV Ad, “Never a Sellout,” 30 seconds, CC-00006799, GX 323.

Intuit TV Ad, "Anthem," 45 seconds, INTUIT-FFA-FTC-000528211, GX 347.

Intuit TV Ad, "Baby," 15 seconds, INTUIT-FFA-FTC-000528210, GX 346.

Intuit TV Ad, "Cruise," 30 seconds, INTUIT-FFA-FTC-000169117, GX 345.

Intuit TV Ad, "Fish," 15 seconds, INTUIT-FFA-FTC-000528212, GX 325.

Intuit TV Ad, "Fish," 30 seconds, INTUIT-FFA-FTC-000169116, GX 324.

Intuit TV Ad, "Guzman," 15 seconds, INTUIT-FFA-FTC-000528209, GX 344.

Intuit TV Ad, "Big Kick," 30 seconds, INTUIT-FFA-FTC-000528218, GX 670.

Intuit TV Ad, "Big Kick," 60 seconds, QTTX12976H, INTUIT-FFA-FTC-000169119, GX 349.

Intuit TV Ad, "Court Reporter," 15 seconds, INTUIT-FFA-FTC-000528219, GX 348.

Intuit TV Ad, "Game Show," 30 seconds, CC-00000662, GX 59.

Intuit TV Ad, "Lawyer," 30 seconds, INTUIT-FFA-FTC-000528222, GX 300.

Intuit TV Ad, "Lawyer," 60 seconds, QTTX12996H, INTUIT-FFA-FTC-000169120, GX 328.

Intuit TV Ad, "Movie Credits," 15 seconds, GX 331.

Intuit TV Ad, "Movie Credits," 30 seconds, QTTX13063H, INTUIT-FFA-FTC-000169121, GX 299.

Intuit TV Ad, "Spelling Bee," 15 seconds, GX 671.

Intuit TV Ad, "Spelling Bee," 30 seconds, QTTX13083H, INTUIT-FFA-FTC-000169122, GX 350.

Intuit TV Ad, "Crossword," 15 seconds, GX 326.

Intuit TV Ad, "Game Show," 15 seconds, GX 356.

Intuit TV Ad, "Game Show," 30 seconds, QTTX12353H, INTUIT-FFA-FTC-000169118, GX 669.

Intuit TV Ad, "Movie Credits," 30 seconds, INTUIT-FFA-FTC-000528226, GX 330.

Intuit TV Ad, "Spelling Bee," 30 seconds, INTUIT-FFA-FTC-000528221, GX 351.

Intuit TV Ad, "Auctioneer," 15 seconds, QTTX0021000H, INTUIT-FTC-PART3-000000536, GX 202.

Intuit TV Ad, "Dog Show," 15 seconds, QTTX1899H, INTUIT-FTC-PART3-000000530, GX 204.

Intuit TV Ad, "Spit Take," 15 seconds, QTTX0256000H, INTUIT-FTC-PART3-000000537, GX 622.

Intuit TV Ad, "Dance Workout," 15 seconds, INTUIT-FTC-PART3-000000523, GX 608.

Intuit TV Ad, "Young Love," 15 seconds, INTUIT-FTC-PART3-000000544, GX 629.

Intuit TV Ad, "Echo," INTUIT-FTC-PART3-000000524, GX 609.

Intuit TV Ad, "Freeloader," 15 seconds, INTUIT-FTC-PART3-000000518, GX 603.

Intuit TV Ad, "Freeloader," 30 seconds, INTUIT-FTC-PART3-000000529, GX 614.

H&R Block TV Ad, "Max Refund," February 14, 2021, available at <https://www.youtube.com/watch?v=FnkYy3nGNkk>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602955.

H&R Block TV Ad, "Help on Your Terms," February 14, 2021, available at <https://www.youtube.com/watch?v=1TtOBbUKzAA>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602954.

H&R Block TV Ad, "File Virtually," March 21, 2021, available at <https://www.youtube.com/watch?v=7GDqBfbLVLg>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602953.

- TaxAct TV Ad, “Cloudy with a Chance of TaxAct – Version A,” January 3, 2022, available at <https://youtu.be/inVk3O8sXIk>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602942.
- TaxAct TV Ad, “The Fixer: 30,” February 10, 2022, available at <https://youtu.be/z5IiW8zTS1c>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602977.
- TaxAct TV Ad, “Bear: Taxes Aren’t Scary,” January 4, 2021, available at <https://www.ispot.tv/ad/tzw7/taxact-bear-taxes-arent-scary>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602976.
- TaxSlayer TV Ad, “Commercial ‘Cash Cow’ (Official TV Ad: 30),” January 4, 2022, available at <https://youtu.be/nSaryc0WZB0>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602979.
- TaxSlayer TV Ad, “Anthem-Simply Free,” February 8, 2022, available at <https://www.youtube.com/watch?v=SCb2njAteeQ>, accessed on July 20, 2022, INTUIT-FTC-PART3-000602978.
- TaxSlayer TV Ad, “File Your Taxes for Free with the Biggest Refund Possible,” January 2, 2020, available at <https://www.youtube.com/watch?v=zYgk8TtqJu4>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602992.
- Jackson Hewitt TV Ad, “Break Free,” August 4, 2020, available at https://www.ispot.tv/ad/n_JU/jackson-hewitt-tax-debt-resolution-break-free, accessed on July 13, 2022, INTUIT-FTC-PART3-000602956.
- AT&T TV Ad, “Plays,” August 18, 2021 available at <https://www.youtube.com/watch?v=sWEP4zZU37A>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602939.
- AT&T TV Ad, “Lily + Matthew: Interview Featuring Matthew Stafford,” April 4, 2022, available at <https://www.ispot.tv/ad/b1k1/at-and-t-wireless-lily-matthew-interview-featuring-matthew-stafford>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602938.
- AT&T TV Ad, “Always Right: Up to \$800 Off Smartphones,” January 21, 2022, available at <https://www.ispot.tv/ad/qcf7/at-and-t-wireless-always-right-up-to-800-off-smartphones>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602937.
- Verizon TV Ad, “More Star Wars: Disney+,” March 28, 2022, available at <https://www.ispot.tv/ad/bqgX/verizon-5g-unlimited-is-going-ultra-star-wars-included>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602986.
- Verizon TV Ad, “Show the Love: Customers for Years and Switchers,” May 12, 2022, available at <https://www.ispot.tv/ad/bylk/verizon-show-the-love-customers-for-years-and-switchers>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602987.
- Verizon TV Ad, “Holiday Better: What’s Better? Featuring Kate McKinnon,” November 25, 2021, available at <https://www.ispot.tv/ad/qN3d/verizon-holiday-better-whats-better-featuring-kate-mckinnon>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602985.
- T-Mobile TV Ad, “iPhone 13: Hide and Seek: New Line and Apple TV+,” June 6, 2022, available at <https://www.ispot.tv/ad/bN4X/t-mobile-iphone-13-hide-and-seek-new-line-and-apple-tv-song-by-tina-turner>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602981.
- T-Mobile TV Ad, “Please Listen: Switch and Get \$1000,” May 27, 2022, available at <https://www.ispot.tv/ad/bMCU/t-mobile-please-listen-switch-and-get-1000-featuring-ben-barnes>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602982.

- T-Mobile TV Ad, “Value: Mom’s Birthday,” May 5, 2022, available at <https://www.ispot.tv/ad/bpj3/t-mobile-value-moms-birthday-families-get-up-to-1000-song-by-billy-idol>, accessed on July 12, 2022, INTUIT-FTC-PART3-000602983.
- DirecTV TV Ad, “Get Your TV Together: Fan :30,” October 7, 2022, available at <https://www.youtube.com/watch?v=N4f1Gwf0LDE>, accessed on December 6, 2022.
- DirecTV TV Ad, “Feel the Energy of the Big Leagues \$23.33,” April 17, 2022, available at <https://www.ispot.tv/ad/bT7N/directv-feel-the-energy-of-the-big-leagues-2333>, accessed on July 12, 2022, INTUIT-FTC-PART3-000602944.
- DirecTV TV Ad, “GOATbusters,” April 21, 2022, available at <https://www.youtube.com/watch?v=uUou6r0y3uI>, accessed on July 6, 2022, INTUIT-FTC-PART3-000602951.
- Comcast/Xfinity TV Ad, “Our Way of Showing Appreciation,” March 14, 2022 available at <https://www.ispot.tv/ad/boUL/xfinity-rewards-our-way-of-showing-appreciation>, accessed on July 12, 2022, INTUIT-FTC-PART3-000602968.
- Comcast/Xfinity TV Ad, “Gateway Upgrade,” June 2, 2022, available at <https://www.ispot.tv/ad/bN11/xfinity-internet-gateway-upgrade-featuring-ed-helms>, accessed on July 12, 2022, INTUIT-FTC-PART3-000602947.
- Comcast/Xfinity TV Ad, “Get it All,” May 15, 2022, available at <https://www.ispot.tv/ad/bl69/xfinity-3-for-1-bundle-get-it-all>, accessed on July 12, 2022, INTUIT-FTC-PART3-000602950.
- Charter Spectrum TV Ad, “Monsters: Dinner,” February 3, 2022, available at <https://www.youtube.com/watch?v=6-nsCJ54TkQ>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602970.
- Charter Spectrum TV Ad, “Monsters: Gamers,” March 30, 2022, available at <https://www.youtube.com/watch?v=VMfAMWWPMJA>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602971.
- Charter Spectrum TV Ad, “We Are Local: Madison,” February 18, 2022, available at <https://www.youtube.com/watch?v=GquwRDvCFWU>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602972.
- Dish Network TV Ad, “DISH makes TV easy with Prime Video – DISH,” October 18, 2021, available at https://www.youtube.com/watch?v=_L-9jGUxrMM, accessed on July 12, 2022, INTUIT-FTC-PART3-000602945.
- Dish TV Ad, “HBO Max,” August 11, 2021, available at <https://www.youtube.com/watch?v=Kwitzmgpu-s>, accessed on December 7, 2022.
- Dish Network TV Ad, “Get 99% signal reliability with DISH,” January 21, 2022, available at <https://www.youtube.com/watch?v=SoH8FxoqWo>, accessed on July 12, 2022, INTUIT-FTC-PART3-000602948.
- State Farm TV Ad, “Ronnie’s Options :30,” June 9, 2022, available at <https://www.youtube.com/watch?v=8Q48t3mw3fk>, accessed on June 24, 2022, INTUIT-FTC-PART3-000602969.
- State Farm TV Ad, “Fake Streamer :30,” May 10, 2022, available at <https://www.youtube.com/watch?v=Ek6xUMEG6Ic>, accessed on June 24, 2022, INTUIT-FTC-PART3-000602946.
- State Farm TV Ad, “Yours Now :30,” May 10, 2022, available at https://www.youtube.com/watch?v=Wd2WH_6Zsoo, accessed on June 24, 2022, INTUIT-FTC-PART3-000602991.

- GEICO TV Ad, “Life in a Victorian Home,” March 28, 2022, available at <https://www.youtube.com/watch?v=IRE9GBihEXU>, accessed on June 24, 2022, INTUIT-FTC-PART3-000602958.
- GEICO TV Ad, “Lamp Problems,” April 8, 2022, available at <https://www.youtube.com/watch?v=QEs3U6qfY1E>, accessed on June 27, 2022, INTUIT-FTC-PART3-000602957.
- GEICO TV Ad, “Open Floor Plan Problems,” February 7, 2022, available at <https://www.youtube.com/watch?v=EBPuXpdmlO0>, accessed on June 24, 2022, INTUIT-FTC-PART3-000602967.
- Progressive TV Ad, “Love and Other Bundles,” May 18, 2022, available at <https://www.youtube.com/watch?v=SwCUCptHrCg>, accessed on June 24, 2022, INTUIT-FTC-PART3-000602959.
- Progressive TV Ad, “Table for Two,” June 6, 2022, available at <https://www.youtube.com/watch?v=Gz04ZjRA9Pk>, accessed on June 27, 2022, INTUIT-FTC-PART3-000602973.
- Progressive TV Ad, “Old Flame,” May 23, 2022, available at <https://www.youtube.com/watch?v=wiZwmlOrGZU>, accessed on June 27, 2022, INTUIT-FTC-PART3-000602965.
- Allstate TV Ad, “Metaverse,” June 15, 2022, available at <https://www.youtube.com/watch?v=WnKtYCSSVSk>, accessed on June 26, 2022, INTUIT-FTC-PART3-000602963.
- Allstate TV Ad, “Tight Squeeze,” May 10, 2022, available at https://www.youtube.com/watch?v=FnJZor_E2M8, accessed on June 26, 2022, INTUIT-FTC-PART3-000602980.
- Allstate TV Ad, “Working From Home,” April 4, 2022, available at <https://www.youtube.com/watch?v=9ZLVXGVkrDY>, accessed on June 27, 2022, INTUIT-FTC-PART3-000602990.
- USAA TV Ad, “Gronk and Frank,” September 9, 2021, available at <https://www.youtube.com/watch?v=Dpqr10L4Ndl&list=PLY9SiBc9Cl4ltWaeCq5GHf9J7DltEnUK>, accessed on June 26, 2022, INTUIT-FTC-PART3-000602952.
- USAA TV Ad, “Too exclusive,” July 29, 2021, available at <https://www.ispot.tv/ad/O83u/usaa-too-exclusive>, accessed on July 9, 2022, INTUIT-FTC-PART3-000602984.
- USAA TV Ad, “Member Number - Gronk,” September 9, 2021, available at https://www.youtube.com/watch?v=ssnV1_89qo&list=PLY9SiBc9Cl4ltWaeCq5GHf9J7DltEnUK&index=2, accessed on June 26, 2022, INTUIT-FTC-PART3-000602962.

Appendix J: Social Media Ad Benchmarking Methodology

Legal Documents

Complaint Counsel’s Motion for Summary Decision, *United States of America before the Federal Trade Commission in the Matter of: Intuit Inc., A Corporation, Respondent*, Docket No. 9408, August 22, 2022.

Expert Reports and Declarations

Declaration of Diana F. Shiller, *In the Matter of Intuit Inc.*, Docket No. 9408, June 9, 2022, GX 342.

Publicly Available Materials

“.Com Disclosures: How to Make Effective Disclosures in Digital Advertising,” *FTC*, March 2013, <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>, INTUIT-FTC-PART3-000600903.

“5G Home Internet & 5G Wifi | Verizon,” Verizon, available at https://www.verizon.com/5g/home/?availability&CMP=soc_h_p_mc_fbk_5gh_2022_10_fwa_soc-346541217_180410561&dclid=CK7e1_3BsfsCFYxMDQodQjchJQ, accessed on November 16, 2022, INTUIT-FTC-PART3-000617392.

“Ad Library,” *Meta*, https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&media_type=all, accessed December 5, 2022, INTUIT-FTC-PART3-000618497.

“Add Two Unlimited Lines at No Additional Cost - Spectrum, Charter Spectrum,” available at https://www.spectrum.com/lp/mobile/ban-mob-0004?v=DISNS&p1=877-961-8529&cmp=banm_facebook_12_352127416_180556507&dclid=CN7b0ruktvsCFQMnD AodNFYEDA, accessed on November 16, 2022, INTUIT-FTC-PART3-000617496.

“Apple iPhone 14 - Colors, Specs, Pricing & Reviews | AT&T,” AT&T, available at <https://www.att.com/buy/phones/apple-iphone-14.html?offerId=22100052%2F%3Fsource%3DEC1N0H0000014i00S>, accessed on November 16, 2022, INTUIT-FTC-PART3-000617358.

“AT&T's Best Unlimited Wireless Deals For Existing Internet Customers,” AT&T, available at <https://signin.att.com/>, accessed on November 16, 2022, INTUIT-FTC-PART3-000617549.

“AT&T's Best Unlimited Wireless Deals For Existing Internet Customers,” AT&T, available at https://www.att.com/offers/internet-wireless-offer/?source=ESNG250000000000S&tfn=mobility&wtExtndSource=CS&cm360=6143923_26982509_3007174_351765111&dclid=CLmEo8uAs_sCFYWwnwodJLEEFQ, accessed on November 16, 2022, INTUIT-FTC-PART3-000617501.

“Bring Your Own Device (BYOD)| How To & Deals | Verizon,” Verizon, available at https://www.verizon.com/bring-your-own-device/?CMP=soc_m_p_140_ins_acq_22_10_acq_soc-346451751_181036482&dclid=CKfOoK69sfsCFQIDDQodzLAI1w, accessed on November 16, 2022, INTUIT-FTC-PART3-000617399.

“Bringing T-Mobile Coverage to Small Towns and Rural Areas,” T-Mobile, available at https://www.t-mobile.com/coverage/small-towns-rural-areas?cmpid=MGPO_PDS_P_22FAM20PAT_I7ZOCU38GUQRB7KJJ88254, accessed on November 16, 2022, INTUIT-FTC-PART3-000617471.

“Buy the New iPhone 14 Max Pro Max | Price, Colors | Verizon,” Verizon, available at https://www.verizon.com/smartphones/apple-iphone-14-pro-max/?CMP=soc_m_c_140_fbk_acq_22_10_acq_soc-

- 342824663_181036422&dclid=COb8oI7-sPsCFcdlsgodCkwLvA, accessed on November 16, 2022, INTUIT-FTC-PART3-000617475.
- “Compare DISH vs Directv - Value, Technology and Service,” Dish Network, available at https://www.dish.com/lp/dish-vs-directv/?HCID=socialpr&sp=1&RP=rr_431969&MCID=GDISP&utm_medium=social&utm_source=sc&utm_campaign=rta_dishgm_indirect_20220505_conversions_na&utm_term=_indirect_conversions_sc_mid-funnel_a008_us_a082_all_c0030_dtvgenericcomparitive_q4_bc0005_video_lp010_na_na, accessed on November 16, 2022, INTUIT-FTC-PART3-000617480.
- “Cumulative number of monthly Meta product users as of 3rd quarter 2022,” *Statista*, <https://www.statista.com/statistics/947869/facebook-product-mau/>, INTUIT-FTC-PART3-000618500.
- “Emerald Advance Line of Credit | H&R Block,” H&R Block, available at <https://www.hrblock.com/financial-services/emerald-advanced-lending-credit/>, accessed on January 5, 2023, INTUIT-FTC-PART3-000617416.
- “FIFA World Cup Qatar 2022 Stream - Watch Live Online Now!,” DirecTV, available at <https://www.directv.com/stream/sports/soccer/?source=EDDS00000DsP00S>, accessed on November 16, 2022, INTUIT-FTC-PART3-000617484.
- “File Taxes Online | Free Tax Preparation Software for Tax Filing,” TaxAct, available at <https://www.taxact.com/>, accessed on January 5, 2023, INTUIT-FTC-PART3-000617403.
- “File Taxes Online | Free Tax Preparation Software for Tax Filing,” TaxAct, available at https://www.taxact.com/lp/media23?sc=2209470450001&ad=broad-ios&utm_source=facebook&utm_medium=social&utm_content=m_sl_fb_awa_ty22-all_aud_brd_nl_2209470450001_ta_mt_ig_broad-ios_ta_mt_consumer_prepeak_mixed_static_graphic_silent_value_freexpertassist_taxact_notest_nyresolution_media23&fbclid, accessed on January 5, 2023, INTUIT-FTC-PART3-000617432.
- “Free Internet with the Affordable Connectivity Program (ACP),” Comcast/Xfinity, available at <https://www.xfinity.com/learn/internet-service/acp/free-internet?dfaid=4053494&cmp=0&cid=4053494&dclid=CM-S4ZuTtvsCFQXuswodG5UAug>, accessed on November 16, 2022, INTUIT-FTC-PART3-000617420.
- “Get America's Top Satellite TV Provider | DISH,” Dish Network, available at https://www.dish.com/lp/movie-offer-1/?HCID=socialpr&sp=1&RP=rr_431969&MCID=GDISP&utm_medium=social&utm_source=sc&utm_campaign=rta_dishgm_prospecting_20220505_conversions_na&utm_term=_prospecting_conversions_sc_mid-funnel_a017_us_a017_all_c0041_motm_q4_bc0027_video_lp004_na_na, accessed on November 16, 2022, INTUIT-FTC-PART3-000617511.
- “Gigabit Internet by Xfinity: Gigabit Speed over Wifi, Comcast/Xfinity,” available at <https://www.xfinity.com/gig?dfaid=4053494&cmp=0&cid=4053494&dclid=CPL5tO-ctvsCFVTNGAIdmEsEYQ>, accessed on November 16, 2022, INTUIT-FTC-PART3-000617382.

- “Humana Advantage | USAA, USAA,” available at https://www.usaa.com/inet/wc/insurance-humana-advantage?vurl=vurl_humana&txid=PSP%3ATX1%3AOXV5UMT80G, accessed on November 16, 2022, INTUIT-FTC-PART3-000617542.
- “Learn Why DISH has 99% Signal Reliability | DISH,” Dish Network, available at <https://www.dish.com/reliable-satellite-tv/>, accessed on November 16, 2022, INTUIT-FTC-PART3-000617355.
- “Live Streaming TV | Call 855.391.1966 - Order Now!,” DirecTV, available at <https://www.directv.com/stream/?source=EDDSDS00000DsP00S>, accessed on November 16, 2022, INTUIT-FTC-PART3-000617524.
- “Make All Your Insurance Easy | Progressive,” Progressive, available at <https://www.progressive.com/lp/auto-snapshot/?code=9903623000>, accessed on November 16, 2022, , INTUIT-FTC-PART3-000617396.
- “Money When You Need It | Refund Advance - Jackson Hewitt,” Jackson Hewitt, available at https://www.jacksonhewitt.com/refund-advance/cp/2/?utm_medium=paid_social&utm_source=facebook&utm_campaign=tp-era-fb-ff6aa92b-18e2-41a6-b4c6-910d717d657a&utm_content=new&utm_term=&dclid=CNPA-JiNsfwCFWkGaAgdulUHQw, accessed on January 5, 2023, INTUIT-FTC-PART3-000618524.
- “Protect Your Small Business | State Farm,” State Farm, available at <https://www.statefarm.com/general/small-business-a?cmpid=soc%3Afb%3AUPF%3ABRD%3ASMB%3AAUC-CPV%3AFB%2FIG%3ASMB%3AVID%3A6s%3A4x5%3APaint%20Roll>, accessed on November 16, 2022, INTUIT-FTC-PART3-000617360.
- “Samsung Galaxy Chromebook Go | 1 Color in 32 GB | Tmobile,” T-Mobile, available at https://www.t-mobile.com/hotspot-iot-connected-devices/samsung-galaxy-chromebook-go?sku=610214671066&cmpid=MGPO_PDS_P_22SGCHBKFR_LW8XDZP6Z, accessed on November 16, 2022, INTUIT-FTC-PART3-000617517.
- “Spectrum 5G - Check Availability Near You & Save,” Charter Spectrum, available at https://www.spectrum.com/mobile/5g?cid=soc_mob_fb_p_bnd_cv_mobileholiday_11fy22&cmp=soc_mob_fb_p_bnd_cv_mobileholiday_11fy22, accessed on November 16, 2022, INTUIT-FTC-PART3-000617535.
- “Streaming TV Packages | 844.522.2399 | 2399 | Order Now!,” DirecTV, available at <https://www.directv.com/stream/packages/?source=EDDSDS00000DsP00S>, accessed on November 16, 2022, INTUIT-FTC-PART3-000617450.
- “Term-Life-Insurance, Allstate,” available at <https://www.allstate.com/landingpages/lsp/term-life-insurance.html?cid=SMP-LF-V-129-LFI-NAT-NAT-221018&CAMPAIGN=444490000086295>, accessed on November 16, 2022, INTUIT-FTC-PART3-000617439.
- “Tmobile SyncUP KIDSTM Watch | 1 color in 8 GB | T-Mobile,” T-Mobile, available at https://www.t-mobile.com/smart-watch/t-mobile-syncup-kids-watch?sku=610214674203&cmpid=BTS_PDS_C_SYNCUPKIDS_58YUS37AD991Q4BC86992, accessed on November 16, 2022, INTUIT-FTC-PART3-000617424.
- “TurboTax: File Your Tax Return on the App Store,” TurboTax, available at <https://apps.apple.com/app/id940247939>, accessed on January 5, 2023, INTUIT-FTC-PART3-000617519.

“Unbeatable Mobile Deal,” Charter Spectrum, available at

https://www.spectrum.com/lp/mobile/ban-mob-0003?v=DISNS&p1=877-961-8529&cmp=banm_facebook_12_352128001_180556507&dclid=CJz05ZClvsCFTgQiAkdetQCjA, accessed on November 16, 2022, INTUIT-FTC-PART3-000617364.

“Why Join USAA | Benefits of Membership | USAA,” USAA, available at

https://www.usaa.com/inet/wc/why_choose_usaa_main?vurl=vurl_join&txid=PSP%3ATX1%3AJX3LDC2MUD, accessed on November 16, 2022, INTUIT-FTC-PART3-000617456.

“Xfinity Flex | 4K Streaming Box Free with Xfinity Internet,” Comcast/Xfinity, available at

<https://www.xfinity.com/learn/flex?dfaid=4053494&cmp=0&cid=4053494&dclid=CNn0tq6RtvsCFSYFaAgdhOUKWg>, accessed on November 16, 2022, INTUIT-FTC-PART3-000617531.

Social Media Ads

Allstate Meta Ad, “Your heirloom may keep your family timely, but it won't pay their bills on-

time when you're gone. Get life insurance online for pennies a day.,” available at

<https://www.facebook.com/ads/library>, accessed on November 17, 2022, INTUIT-FTC-PART3-000617434.

Allstate Meta Ad, “Your portrait may look appetizing, but it won't cover your family's groceries

when you're gone. Get life insurance online, no in-person medical exam,” available at

<https://www.facebook.com/ads/library>, accessed on November 17, 2022, INTUIT-FTC-PART3-000617500.

Allstate Meta Ad, “Your trinkets can decorate your family's home, but they won't help pay for it

when you're gone. Get life insurance online for pennies a day.,” available at

<https://www.facebook.com/ads/library>, accessed on November 17, 2022, INTUIT-FTC-PART3-000617413.

AT&T Meta Ad, “Best deals on smartphones,” available at

<https://www.facebook.com/ads/library>, accessed on November 16, 2022, INTUIT-FTC-PART3-000617469.

AT&T Meta Ad, “Thinking about making the switch during the holidays? (6 second),” available

at <https://www.facebook.com/ads/library>, accessed on November 16, 2022, INTUIT-

FTC-PART3-000617455, INTUIT-FTC-PART3-000617415.

AT&T Meta Ad, “Thinking about making the switch during the holidays? (15 second),”

available at <https://www.facebook.com/ads/library>, accessed on November 16, 2022,

INTUIT-FTC-PART3-000617490, INTUIT-FTC-PART3-000617363.

Charter Spectrum Meta Ad, “Get more this holiday season. Add one line, get another line free

for 12 months,” available at <https://www.facebook.com/ads/library>, accessed on

November 17, 2022, INTUIT-FTC-PART3-000617364.

Charter Spectrum Meta Ad, “Have an Unlimited Line? Add a 2nd line for only \$15 more per

month, and get a 3rd line Free for 12 mos.,” available at

<https://www.facebook.com/ads/library>, accessed on November 17, 2022, INTUIT-FTC-PART3-000617402.

Charter Spectrum Meta Ad, “Have two or more Unlimited lines? Add 2 more Unlimited lines at

no extra cost for 12 months,” available at <https://www.facebook.com/ads/library>,

accessed on November 17, 2022, INTUIT-FTC-PART3-000617496.

- Comcast/Xfinity Meta Ad, “Come back and get Gig-speed internet, streaming and mobile with the Supersonic Bundle.,” available at <https://www.facebook.com/ads/library>, accessed on November 17, 2022, INTUIT-FTC-PART3-000617380.
- Comcast/Xfinity Meta Ad, “Come back for entertainment that starts at free.,” available at <https://www.facebook.com/ads/library>, accessed on November 17, 2022, INTUIT-FTC-PART3-000617521.
- Comcast/Xfinity Meta Ad, “Get fast, reliable, FREE Internet at home when you qualify and enroll in Internet Essentials Plus and the ACP.,” available at <https://www.facebook.com/ads/library>, accessed on November 17, 2022, INTUIT-FTC-PART3-000617368.
- DirecTV Meta Ad, “Never miss a moment of entertainment with DIRECTV - Don't miss out,” available at <https://www.facebook.com/ads/library>, accessed on December 1, 2022, INTUIT-FTC-PART3-000617541, INTUIT-FTC-PART3-000617547.
- DirecTV Meta Ad, “We have every FIFA World Cup match so you can cheer on your country all long,” available at <https://www.facebook.com/ads/library>, accessed on November 17, 2022, INTUIT-FTC-PART3-000617534.
- DirecTV Meta Ad, “Your favorites. Your schedule. Get the best of live TV and on demand anytime, anywhere,” available at <https://www.facebook.com/ads/library>, accessed on November 17, 2022, INTUIT-FTC-PART3-000617440.
- Dish Network Meta Ad, “Get DISH and get a reliable signal every time you turn on the TV, plus unmatched recording power and DVR storage.,” available at <https://www.facebook.com/ads/library>, accessed on November 17, 2022. INTUIT-FTC-PART3-000617548.
- Dish Network Meta Ad, “No matter how you look at it, DISH beats DirecTV. Find out how much you could save when you switch to DISH.,” available at <https://www.facebook.com/ads/library>, accessed on November 17, 2022, INTUIT-FTC-PART3-000617407.
- Dish Network Meta Ad, “Sign up for Dish and get one On Demand movie included each month. Restrictions apply.,” available at <https://www.facebook.com/ads/library>, accessed on November 17, 2022, INTUIT-FTC-PART3-000617391.
- H&R Block Meta Ad, “Ever wonder what the best states for paying fewer taxes are? We’ve put together a little guidebook of states that have the lowest tax rates. Of the 48 states that participate in the national lottery, these are the 12 states that do not collect taxes on national lottery winnings in the U.S.,” available at <https://www.facebook.com/ads/library>, accessed on January 5, 2023, INTUIT-FTC-PART3-000617466.
- H&R Block Meta Ad, “To get where you're going in life, sometimes you need a little boost. You could get a line of credit up to \$1000 at H&R Block. Click the link in our bio to learn more. ^By Pathward, N.A.; Terms Apply.,” available at <https://www.facebook.com/ads/library>, accessed on January 5, 2023, INTUIT-FTC-PART3-000617495.
- H&R Block Meta Ad, “You could get a Refund Advance with 0% APR and no loan fees,” available at <https://www.facebook.com/ads/library>, accessed on January 5, 2023, INTUIT-FTC-PART3-000617362.
- Intuit TurboTax Ad, “Start for Free - America's #1 Free Tax Prep Provider,” INTUIT-FTC-PART3-000617460, INTUIT-FTC-PART3-000617509.

- Intuit TurboTax Meta Ad, “Get live help from tax experts — FREE. File for \$0 with TurboTax Live Assisted. Simple tax returns only. See if you qualify,” available at <https://www.facebook.com/ads/library>, accessed on January 5, 2023, INTUIT-FTC-PART3-000617546.
- Intuit TurboTax Meta Ad, “Get your taxes done right. Pay \$0 to file Fed and State with TurboTax. Simple tax returns only,” GX 508 - INTUIT-FTC-PART3-000000031.
- Jackson Hewitt Display Ad, “Don’t chance it. Choose an expert to do your taxes and get your biggest refund, guaranteed.,” available at <https://www.facebook.com/ads/library>, accessed on January 5, 2023, INTUIT-FTC-PART3-000617478.
- Progressive Meta Ad, “It’s safe to say, good drivers can save with Progressive Snapshot.,” available at <https://www.facebook.com/ads/library>, accessed on November 17, 2022, INTUIT-FTC-PART3-000617516.
- Progressive Meta Ad, “Savings Magic,” available at <https://www.facebook.com/ads/library>, accessed on November 17, 2022, INTUIT-FTC-PART3-000617398.
- Progressive Meta Ad, “We <3 to save you money,” available at <https://www.facebook.com/ads/library>, accessed on November 17, 2022, INTUIT-FTC-PART3-000617494.
- State Farm Meta Ad, “A fresh coat of paint to protect your walls is like a fresh insurance policy to help protect your small business. Get a quote!,” available at <https://www.facebook.com/ads/library>, accessed on November 17, 2022, INTUIT-FTC-PART3-000617522.
- State Farm Meta Ad, “Changing degrees means fresh fall khakis,” available at <https://www.facebook.com/ads/library>, accessed on November 17, 2022, INTUIT-FTC-PART3-000617468.
- State Farm Meta Ad, “Get a customized quote for your small business in a flash! Talk with your local State Farm agent today,” available at <https://www.facebook.com/ads/library>, accessed on November 17, 2022, INTUIT-FTC-PART3-000617538.
- TaxAct Display Ad, “It’s okay to ask for help, and our team is here to support you. They can even give your return a quick review before you file.,” available at <https://www.facebook.com/ads/library>, accessed on January 5, 2023, INTUIT-FTC-PART3-000617395.
- TaxAct Display Ad, “Simple resolution: Have our tax experts answer questions and quickly review your return. Xpert Assist is now included for free.,” available at <https://www.facebook.com/ads/library>, accessed on January 5, 2023, INTUIT-FTC-PART3-000617431.
- TaxAct Display Ad, “We’ve got plans for everyone. Meaning you really can file basic federal returns for free.,” available at <https://www.facebook.com/ads/library>, accessed on January 5, 2023, INTUIT-FTC-PART3-000617438.
- T-Mobile Meta Ad, “Home sweet home just got sweeter,” available at <https://www.facebook.com/ads/library>, accessed on December 1, 2022, INTUIT-FTC-PART3-000617444, INTUIT-FTC-PART3-000617414.
- T-Mobile Meta Ad, “Play, connect, share, effortlessly with SyncUP KIDS Watch,” available at <https://www.facebook.com/ads/library>, accessed on November 17, 2022, INTUIT-FTC-PART3-000617530.
- T-Mobile Meta Ad, “Still lookin' for the perfect gift? We got you. Get the Samsung Galaxy Chromebook Go FREE when you add a line at T-Mobile,” available at

<https://www.facebook.com/ads/library>, accessed on November 16, 2022, INTUIT-FTC-PART3-000617540.

USAA Meta Ad, “New to Medicare? Get the benefits you deserve with a Medicare Advantage plan, like the Humana Honor plans, available to all but built with Veterans in mind.,” available at <https://www.facebook.com/ads/library>, accessed on November 17, 2022, INTUIT-FTC-PART3-000617552.

USAA Meta Ad, “Some people think we only offer insurance or banking. But we can help with investing, retirement and lots more.,” available at <https://www.facebook.com/ads/library>, accessed on November 17, 2022, INTUIT-FTC-PART3-000617367.

USAA Meta Ad, “We’ve been proudly serving the military and their eligible families,” available at <https://www.facebook.com/ads/library>, accessed on November 17, 2022, INTUIT-FTC-PART3-000617551.

Verizon Meta Ad, “Love your phone? This holiday season, bring it and get \$500. With select 5G Unlimited plans.,” available at <https://www.facebook.com/ads/library>, accessed on November 16, 2022, INTUIT-FTC-PART3-000617379.

Verizon Meta Ad, “Switch to Verizon Home Internet and get an Amazon Echo Show 10, on us.,” available at <https://www.facebook.com/ads/library>, accessed on November 16, 2022, INTUIT-FTC-PART3-000617361.

Verizon Meta Ad, “This holiday, give the gift of iPhone 14 Pro Max with 5G,” available at <https://www.facebook.com/ads/library>, accessed on December 1, 2022, INTUIT-FTC-PART3-000617539, INTUIT-FTC-PART3-000617479.

Appendix K: TT Website Review

Publicly Available Materials

- “1040EZ/1040A’ pop-up TY 2017,” *TurboTax*, <https://web.archive.org/web/20180105034339/https://turbotax.intuit.com/personal-taxes/online/>, INTUIT-FTC-PART3-000617791.
- “AbsoluteZero’ pop-up in 2015,” *TurboTax*, <https://web.archive.org/web/20160313113020/https://turbotax.intuit.com/personal-taxes/online/free-edition.jsp>, INTUIT-FTC-PART3-000618481-8483.
- “AbsoluteZero’ pop-up in 2016,” *TurboTax*, <https://web.archive.org/web/20170126075134/https://turbotax.intuit.com/personal-taxes/online/free-edition.jsp>, INTUIT-FTC-PART3-000618484-8485.
- “AbsoluteZero’ Products & Pricing Page Pop-up TY 2015,” *TurboTax*, <https://web.archive.org/web/20160218054940/https://turbotax.intuit.com/personal-taxes/online/>, INTUIT-FTC-PART3-000618479-8480.
- “No catch, here’s why’ pop-up TY 2016,” *TurboTax*, <https://web.archive.org/web/20170121153604/https://turbotax.intuit.com/>, INTUIT-FTC-PART3-000617780, INTUIT-FTC-PART3-000617804, INTUIT-FTC-PART3-000617810, INTUIT-FTC-PART3-000617793..
- “See why it’s free’ pop-up TY 2017,” *TurboTax*, <https://web.archive.org/web/20180105033618/https://turbotax.intuit.com/>, INTUIT-FTC-PART3-000617771, INTUIT-FTC-PART3-000617799.

- “See why it’s free’ pop-up TY 2018,” *TurboTax*,
<https://web.archive.org/web/20190128061106/https://turbotax.intuit.com/>, INTUIT-FTC-PART3-000617775, INTUIT-FTC-PART3-000617768.
- “Simple tax returns’ pop-up TY 2018,” *TurboTax*,
https://web.archive.org/web/20190126174512mp_/https://turbotax.intuit.com/personal-taxes/online/, INTUIT-FTC-PART3-000617789.
- “Simple tax returns’ pop-up TY 2019,” *TurboTax*,
<https://web.archive.org/web/20200202081516/https://turbotax.intuit.com/>, INTUIT-FTC-PART3-000617781, INTUIT-FTC-PART3-000617773, INTUIT-FTC-PART3-000617795.
- “Simple tax returns’ pop-up TY 2020,” *TurboTax*,
<https://web.archive.org/web/20210126000145/https://turbotax.intuit.com/>, INTUIT-FTC-PART3-000617786, INTUIT-FTC-PART3-000617800.
- “Free Edition Landing Page in Tax Year 2015,” *TurboTax*,
<https://web.archive.org/web/20160313113020/https://turbotax.intuit.com/personal-taxes/online/free-edition.jsp>, INTUIT-FTC-PART3-000617779.
- “Free Edition Landing Page in Tax Year 2016,” *TurboTax*,
<https://web.archive.org/web/20170126075134/https://turbotax.intuit.com/personal-taxes/online/free-edition.jsp>, INTUIT-FTC-PART3-000617794.
- “Free Edition Landing Page in Tax Year 2017,” *TurboTax*,
https://web.archive.org/web/20180102211454mp_/https://turbotax.intuit.com/personal-taxes/online/free-edition.jsp, INTUIT-FTC-PART3-000617772.
- “Free Edition Landing Page in Tax Year 2018,” *TurboTax*,
https://web.archive.org/web/20190201035237mp_/https://turbotax.intuit.com/personal-taxes/online/free-edition.jsp, INTUIT-FTC-PART3-000617770.
- “Free Edition Landing Page in Tax Year 2019,” *TurboTax*,
<https://web.archive.org/web/20200129212202/https://turbotax.intuit.com/personal-taxes/online/free-edition.jsp>, INTUIT-FTC-PART3-000617782.
- “Free Edition Landing Page in Tax Year 2020,” *TurboTax*,
<https://web.archive.org/web/20210126032910/https://turbotax.intuit.com/personal-taxes/online/free-edition.jsp>, INTUIT-FTC-PART3-000617784.
- “Homepage in Tax Year 2015,” *TurboTax*,
<https://web.archive.org/web/20160115144229/https://turbotax.intuit.com/>, INTUIT-FTC-PART3-000617805.
- “Homepage in Tax Year 2016,” *TurboTax*,
<https://web.archive.org/web/20170121153604/https://turbotax.intuit.com/>, INTUIT-FTC-PART3-000617808.
- “Homepage in Tax Year 2017,” *TurboTax*,
<https://web.archive.org/web/20180105033618/https://turbotax.intuit.com/>, INTUIT-FTC-PART3-000617802.
- “Homepage in Tax Year 2018,” *TurboTax*,
<https://web.archive.org/web/20190128061106/https://turbotax.intuit.com/>, INTUIT-FTC-PART3-000617801.
- “Homepage in Tax Year 2019,” *TurboTax*,
<https://web.archive.org/web/20200202081516/https://turbotax.intuit.com/>, INTUIT-FTC-PART3-000617806.

- “Homepage in Tax Year 2020,” *TurboTax*,
<https://web.archive.org/web/20210126000145/https://turbotax.intuit.com/>, INTUIT-FTC-PART3-000617778.
- “Products & Pricing Page in Tax Year 2015,” *TurboTax*,
<https://web.archive.org/web/20160218054940/https://turbotax.intuit.com/personal-taxes/online/>, INTUIT-FTC-PART3-000617785.
- “Products & Pricing Page in Tax Year 2016,” *TurboTax*,
https://web.archive.org/web/20170125154641mp_/https://turbotax.intuit.com/personal-taxes/online/, INTUIT-FTC-PART3-000617777.
- “Products & Pricing Page in Tax Year 2017,” *TurboTax*,
<https://web.archive.org/web/20180105034339/https://turbotax.intuit.com/personal-taxes/online/>, INTUIT-FTC-PART3-000617790.
- “Products & Pricing Page in Tax Year 2018,” *TurboTax*,
https://web.archive.org/web/20190126174512mp_/https://turbotax.intuit.com/personal-taxes/online/, INTUIT-FTC-PART3-000617787.
- “Products & Pricing Page in Tax Year 2019,” *TurboTax*,
<https://web.archive.org/web/20201101232358/https://turbotax.intuit.com/personal-taxes/online/>, INTUIT-FTC-PART3-000617809.
- “Products & Pricing Page in Tax Year 2020,” *TurboTax*,
https://web.archive.org/web/20210126091057mp_/https://turbotax.intuit.com/personal-taxes/online/live/, INTUIT-FTC-PART3-000617776.

Ads Cited by Complaint Counsel in Response to Interrogatory 1

- 2020_07_13_TT_TY2019_Account and SL_Redacted
 2022-03-28 Motion for TRO - Redactions Highlighted - FILED
 2022-03-29 [SEALED] Administrative Complaint (Redactions Highlighted)
 2022-05-06 CC Motion for Summary Decision
 2022-05-06 CC Statement of Facts
 2022-09-08 CONFIDENTIAL - CC Reply re MSD - Filed
 Screenshot of Bing search for “tax extension 2022”, CC-00014620, GX 666
 Screenshot of TurboTax website, Products & Pricing page, CC-00014621, GX 667
 GX 200 - PUBLIC - Auctioneer Commercial (YouTube) Video
 GX 202 - PUBLIC - Auctioneer Commercial (Kantar) Video - #25438069
 GX 203 - PUBLIC
 GX 204 - PUBLIC - Dog Show Commercial (Kantar) Video - #25533561
 GX 205 - PUBLIC
 GX 206 - PUBLIC - Workout Commercial (YouTube) Video
 GX 208 - PUBLIC - Workout Commercial (Kantar) Video - #25364805
 GX 209 - PUBLIC
 GX 299 - CONFIDENTIAL - Credits Commercial (Intuit Production) Video - INTUIT-FFA-FTC-000169121
 GX 300 - CONFIDENTIAL - Courtroom Commercial (Intuit Production) Video - INTUIT-FFA-FTC-000528222
 GX 307 - PUBLIC - Steven Spit Take (iSpot TV) 14-second Video
 GX 308 - PUBLIC - Steven Spit Take (iSpot TV) 14-second Captures

GX 310 - PUBLIC - Steven Spit Take (iSpot TV) 28-second Captures
GX 321 - PUBLIC - 2015 Super Bowl ad "Boston Tea Party"
GX 323 - PUBLIC - 2016 Super Bowl ad Never A Sellout
GX 324 - CONFIDENTIAL - 30-second Fish Ad - INTUIT-FFA-FTC-000169116
GX 325 - CONFIDENTIAL - 15-second Fish Ad - INTUIT-FFA-FTC-000528212
GX 326 - PUBLIC - TY 2018 Crossword Kantar - #20577093
GX 327 - PUBLIC - TY 2018 Football Kantar - #20480082
GX 328 - CONFIDENTIAL - 60-second Lawyer Ad - INTUIT-FFA-FTC-000169120
GX 329 - CONFIDENTIAL - 30-second Lawyer Ad - INTUIT-FFA-FTC-000528222
GX 330 - CONFIDENTIAL - 30-second Movie Credits Ad - INTUIT-FFA-FTC-000528226
GX 331 - CONFIDENTIAL - 15-second Movie Credits Ad - INTUIT-FFA-FTC-000528225
GX 332 - PUBLIC - TY 2018 Spelling Bee Kantar - #20493038
GX 342 - CONFIDENTIAL - Declaration of Diana F. Shiller
GX 344 - CONFIDENTIAL - 15-second Guzman Ad - INTUIT-FFA-FTC-000528209
GX 345 - CONFIDENTIAL - 30-second Cruise Ad - INTUIT-FFA-FTC-000169117
GX 346 - CONFIDENTIAL - 15-second Baby Ad - INTUIT-FFA-FTC-000528210
GX 347 - CONFIDENTIAL - 45-second Anthem Launch Ad - INTUIT-FFA-FTC-000528211
GX 348 - CONFIDENTIAL - 15-second Court Reporter Ad - INTUIT-FFA-FTC-000528219
GX 349 - CONFIDENTIAL - 60-second Big Kick Ad - INTUIT-FFA-FTC-000169119
GX 350 - CONFIDENTIAL - 30-second Spelling Bee Ad - INTUIT-FFA-FTC-000169122
GX 351 - CONFIDENTIAL - 30-second Spelling Bee ad - INTUIT-FFA-FTC-000528221
GX 356 - CONFIDENTIAL - 15-second Game Show ad - INTUIT-FFA-FTC-000528223
GX 371 - CONF - Gmail - File your taxes for \$0 with TurboTax Free Edition
GX 374 - CONF
GX 375 - CONFIDENTIAL
GX 376 - CONFIDENTIAL
GX 377 - CONFIDENTIAL
GX 378 - CONFIDENTIAL
GX 379 - CONFIDENTIAL
GX 380 - CONFIDENTIAL
GX 381 - CONFIDENTIAL
GX 383 - CONF
GX 386 - CONF AD request 8
GX 387 - CONF AD request 8(2)
GX 388 - CONF AD request 8 (3)
GX 389 - CONF AD request 8 (4)
GX 390 - CONF AD request 8 (5)
GX 505 - INTUIT-FTC-PART3-000000025 - CONFIDENTIAL
GX 506 - INTUIT-FTC-PART3-000000029 - CONFIDENTIAL
GX 507 - INTUIT-FTC-PART3-000000030 - CONFIDENTIAL
GX 508 - INTUIT-FTC-PART3-000000031 - CONFIDENTIAL
GX 527 - INTUIT-FTC-PART3-000000073 - CONFIDENTIAL
GX 534 - INTUIT-FTC-PART3-000000092 - CONFIDENTIAL
GX 535 - INTUIT-FTC-PART3-000000093 - CONFIDENTIAL
GX 536 - INTUIT-FTC-PART3-000000097 - CONFIDENTIAL
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GX 553 - INTUIT-FTC-PART3-000000200 - CONFIDENTIAL
GX 554 - INTUIT-FTC-PART3-000000202 - CONFIDENTIAL
GX 555 - INTUIT-FTC-PART3-000000204 - CONFIDENTIAL
GX 556 - INTUIT-FTC-PART3-000000205 - CONFIDENTIAL
GX 560 - INTUIT-FTC-PART3-000000240 - CONFIDENTIAL
GX 563 - INTUIT-FTC-PART3-000000270 - CONFIDENTIAL
GX 564 - INTUIT-FTC-PART3-000000294 - CONFIDENTIAL
GX 565 - INTUIT-FTC-PART3-000000295 - CONFIDENTIAL
GX 566 - INTUIT-FTC-PART3-000000297 - CONFIDENTIAL
GX 567 - INTUIT-FTC-PART3-000000309 - CONFIDENTIAL
GX 568 - INTUIT-FTC-PART3-000000311 - CONFIDENTIAL
GX 569 - INTUIT-FTC-PART3-000000312 - CONFIDENTIAL
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GX 576 - INTUIT-FTC-PART3-000000332 - CONFIDENTIAL
GX 577 - INTUIT-FTC-PART3-000000333 - CONFIDENTIAL
GX 578 - INTUIT-FTC-PART3-000000334 - CONFIDENTIAL
GX 579 - INTUIT-FTC-PART3-000000335 - CONFIDENTIAL
GX 580 - INTUIT-FTC-PART3-000000342 - CONFIDENTIAL
GX 583 - INTUIT-FTC-PART3-000000356 - CONFIDENTIAL
GX 584 - INTUIT-FTC-PART3-000000359 - CONFIDENTIAL
GX 585 - INTUIT-FTC-PART3-000000373 - CONFIDENTIAL
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GX 587 - INTUIT-FTC-PART3-000000375 - CONFIDENTIAL
GX 588 - INTUIT-FTC-PART3-000000396 - CONFIDENTIAL
GX 594 - INTUIT-FTC-PART3-000000451 - CONFIDENTIAL
GX 595 - INTUIT-FTC-PART3-000000461 - CONFIDENTIAL
GX 596 - INTUIT-FTC-PART3-000000472 - CONFIDENTIAL
GX 598 - INTUIT-FTC-PART3-000000497 - CONFIDENTIAL
GX 600 - INTUIT-FTC-PART3-000000500 - CONFIDENTIAL
GX 668 - CONFIDENTIAL - INTUIT-FFA-FTC-000169115
GX 669 - CONFIDENTIAL - INTUIT-FFA-FTC-000169118
GX 670 - CONFIDENTIAL - INTUIT-FFA-FTC-000528218
GX 671 - CONFIDENTIAL - INTUIT-FFA-FTC-000528220
GX 672 - CONFIDENTIAL - INTUIT-FFA-FTC-000528224
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INTUIT-FTC-PART3-000000114
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INTUIT-FTC-PART3-000000150
INTUIT-FTC-PART3-000000208
INTUIT-FTC-PART3-000000213
INTUIT-FTC-PART3-000000216
INTUIT-FTC-PART3-000000252
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INTUIT-FTC-PART3-000000344
INTUIT-FTC-PART3-000000345
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INTUIT-FTC-PART3-000000516
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INTUIT-FTC-PART3-000000542
INTUIT-FTC-PART3-000000543
INTUIT-FTC-PART3-000000544
INTUIT-FTC-PART3-000000545

RX 0003 - Apr 11_ 2018 Email from Chase to [REDACTED] (FE AD)

RX 10 Public

RX 122 [REDACTED]

RX 124 [REDACTED]

RX 125 [REDACTED]

RX 126 [REDACTED]

RX 127 [REDACTED]

RX 128 [REDACTED]

RX 129 [REDACTED]

RX 133 [REDACTED]

RX 138 [REDACTED]

RX 139 [REDACTED]

RX 15 (Confidential)

RX 158 [REDACTED]

RX 159 [REDACTED]

RX 16 (Confidential)

RX 160

RX 161

RX 162

RX 163

RX 17 (Confidential)

RX 18 (Confidential)

RX 19 Public

RX 200 - 2015 TY14 Boston Tea Party 60 - #248

RX 201 - QTTX12273H_Free_Lawyer_HD_30_1920x1080 - #249

RX 202 - 5278628 - #250

RX 22 Public

RX 23 Public

RX 24 Public

RX 25 Public

RX 29 Public

RX 30 Public

RX 31 Public

RX 32 Confidential

RX 5 Public

RX 8 Public

RX 9 Public

APPENDIX D
INTUIT INDEPENDENT CODING INSTRUCTIONS

Appendix D Intuit Independent Coding Instructions

I. INDEPENDENT CODING OVERVIEW

Thank you for agreeing to participate in this independent coding exercise. In this task, you will be responsible for coding complaints related to Intuit, Inc (“Intuit”). Intuit is the owner and distributor of TurboTax, an online tax preparation provider. Specifically, you are being asked to be one of two independent coders who will determine whether certain verbatim complaint text fits into a series of potential complaint types. To complete this task, please follow these step-by-step instructions:

- 1) Each coder will independently review all of their assigned complaints. For each complaint, please use your best judgment in determining whether the text fits into each of the complaint types (described in **Section II** below) - do NOT consult with anyone else, including the other coder or any online sources. This is critically important.
- 2) If you determine that the complaint fits into a complaint type, please type “Yes” in the relevant column of your independent coding workbook. If you determine that the complaint does not fit into a complaint type, please type “No” in the relevant column of your independent coding workbook. If you are unsure, please type “Unsure.”
- 3) Complaints can fit into as many or as few complaint types as you see fit. For example, a complaint can theoretically fit into all 11 of the complaint types or none.
- 4) Do not rush – take your time. Please read the complaint twice before deciding which complaint type or types it fits into.
- 5) The entire complaint does not need to be related to a complaint type for you to mark “Yes” for that type.
 - For example, if the first half a complaint mentions seeing advertising indicating that a complainant’s tax filing will be free, but the second half of the complaint is unrelated to this topic, please still mark “Yes” in the “Complainants who mentioned they saw advertising indicating their tax filing would be free” column for this complaint.
- 6) After both coders have categorized the complaints using the list of “Complaint Types” below, you will meet to resolve any differences in coding. In the case of disagreement, please jointly recode the response. If you are unable to reach an agreement quickly, please type “Unsure” for the response.

II. COMPLAINT TYPES

- 1) Complainants who expected that they would be able to file for free.

- 2) Complainants who expected that they would be able to file for free because they were able to file for free with TurboTax in previous years.
- 3) Complainants who expected that they would be able to file for free due to their income (i.e., low income).
- 4) Complainants who expected that they would be able to file for free due to a non-income related discount (e.g., military discount, discount associated with driving for Uber/Lyft).
- 5) Complainants who mentioned they saw advertising indicating their tax filing would be free.
- 6) Complainants who paid TurboTax when they expected that they would be able to file for free.
- 7) Complainants who referred to a ProPublica article, FTC investigation, and/or lawsuit.
- 8) Complainants who referred to the IRS Free File Program.
 - The IRS Free File Program is a public-private partnership between the IRS and many tax preparation software industry leaders. Tax preparation companies make a Free File-version of their brand-name products available for free to taxpayers whose adjusted gross income is under a certain threshold (\$73,000 for tax year 2021).
 - Complainants may refer to this program without using the precise “IRS Free File Program” title. Please use your best judgment as to whether a complainant is describing this program in their complaint.
- 9) Complainants who complained about “extra” charges, including charges for add-on products.
 - TurboTax add-on products are features/bundles that customers can select in order to have access to additional functionality when completing their tax returns.
 - Below is a list of six common add-on products that you may see mentioned in the complaints. Please note that this is not a comprehensive list of all of the add-on products that TurboTax offers to its customers.
 - 1) Plus
 - Features include audit defense, full identity restoration, identity theft monitoring, identity theft insurance, one-on-one specialist support, personalized tax tips, easy online amend, and MyDocs.
 - 2) Max

- Features include full audit representation, full identity restoration, identity theft monitoring, identity theft insurance, and priority care.
- 3) Premium Services
 - Features include audit defense, full identity restoration, identity theft monitoring, identity theft insurance, priority care.
 - 4) Refund Transfer/Pay With My Refund
 - Allows customers to deduct the cost of their tax preparation from their tax refund, instead of paying out of pocket at the time of filing.
 - 5) Year-Over-Year Data Transfer
 - Allows customers to transfer data from last year's return.
- 10) Complainants who indicated that they are repeat or prior TurboTax customers.
- 11) Complainants who did not file with TurboTax (i.e., complainants who directly explain that they did not file with TurboTax, or complainants who submitted their complaint on behalf of a TurboTax customer but did not file with TurboTax themselves).

APPENDIX E
INDEPENDENT CODING ANALYSIS

Appendix E Independent Coding Analysis

I. INDEPENDENT CODING PROCESS

1. This section describes my independent coding process and the steps that were completed in order to generate the coding results discussed in **Section IV.A**.
2. First, personnel at Analysis Group, working under my direction and guidance, recruited two independent coders who did not have any prior awareness or understanding of the allegations in this case, nor my specific assignment. This “blind” methodology reflects as much as possible an unbiased review of the complaints.
3. Then, the coders were provided with a copy of my independent coding instructions (*see Appendix D*) and a list of the complaints included in Complaint Counsel’s Revised Production. In this stage, personnel at Analysis Group met with the coders to ensure that there were no questions about the independent coding instructions. Following this meeting, in which there were no questions asked by the coders, the independent review of the complaints began.
4. After the coders completed classifying the complaints into each of the 11 complaint types, they then met to “tiebreak” any discrepancies between their coding results. For any complaints about which there was disagreement for a particular complaint type, the two independent coders discussed their determinations directly, without any guidance from me or Analysis Group personnel, and jointly recoded the response. If the two coders were unable to reach a consensus, additional personnel at Analysis Group, working under my direction and guidance, reviewed the complaint and made the final determination. Analysis Group personnel were responsible for breaking ties in only 18 instances out of the 4,356 classifications (396 complaints multiplied by 11 complaint types) that the independent coders made. I reviewed 17 of these 18 instances as well and agree with the final determinations in all of these 17 instances.¹

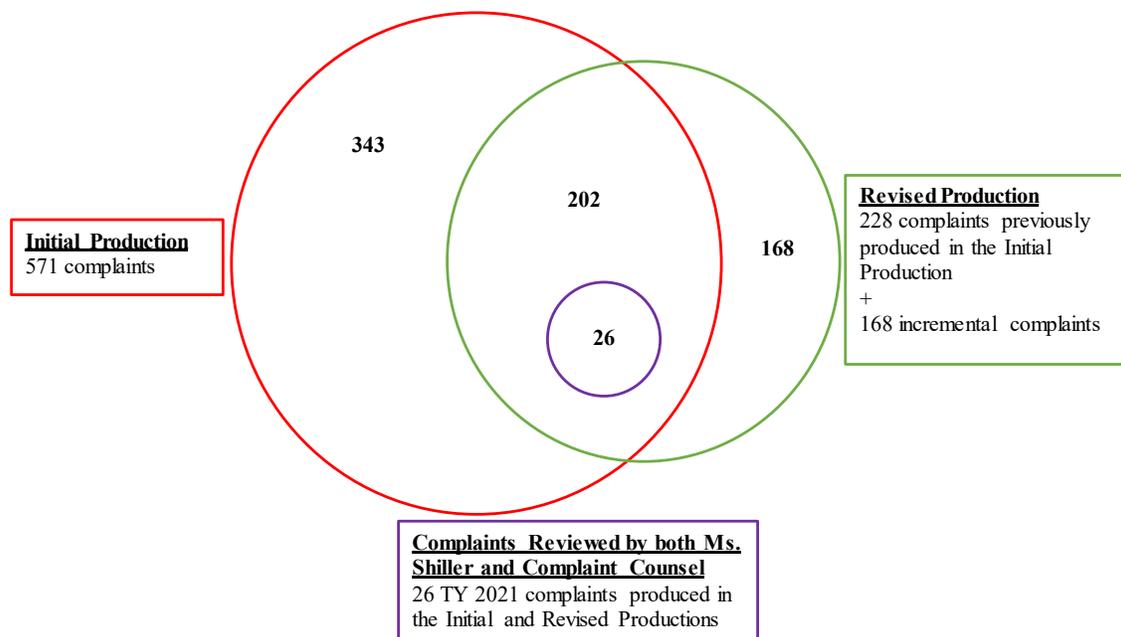
¹ One of the complaints that was elevated was in Spanish. The coders used a translation program and a fluent Spanish speaker also reviewed and confirmed the coding. I do not speak Spanish and therefore did not review and confirm this coding.

II. INDEPENDENT CODING ANALYSIS

5. **Figure E-1** below displays the overlap between Complaint Counsel’s Initial Production and Complaint Counsel’s Revised Production.

Figure E-1

Relationship Between Initial and Revised Productions



Notes:

[1] The 571 complaints in the Initial Production were filed between February 8, 2016 and March 27, 2022, including 60 complaints from TY 2021 (10.5 percent) that Ms. Shiller reviewed in her declaration.

[2] The Revised Production includes two sets of complaints: 228 complaints that were previously produced by Complaint Counsel in the Initial Production and 168 incremental complaints that Complaint Counsel did not produce in the Initial Production. The 228 complaints previously produced in the Initial Production were filed between February 9, 2016 and March 27, 2022, including 26 complaints from TY 2021 (11.4 percent) that Complaint Counsel reviewed as part of their Revised Production. The 168 incremental complaints in the Revised Production were filed between March 29, 2022 and August 29, 2022, all of which are from TY 2021 (100 percent).

6. **Figure E-2** below presents Ms. Shiller’s, Complaint Counsel’s, and the independent coders’ classification of the complaints from TY 2021 that were included in both the Initial and Revised Productions.

Figure E-2

Classification of TY 2021 Complaints Included in Both the Initial and Revised Productions

Shiller Complaint Types	Ms. Shiller's Classifications		Complaint Counsel's Classifications		Independent Coders' Classifications	
	Count	Percentage	Count	Percentage	Count	Percentage
Classification Count						
Customers who thought they were filing for free ("Free") ^[2]	25	96%	26	100%	26	100%
Customers who mentioned they saw advertising indicating their tax filing will be free ("Advertising") ^[3]	19	73%	22	85%	21	81%
Customers who paid TurboTax when they thought their filing will be free ("Paid") ^[4]	23	88%	20	77%	23	88%
Classified into "Free" and "Advertising" ^[5]	18	69%	22	85%	21	81%
Classified into "Free," "Advertising," and "Paid" ^[6]	16	62%	16	62%	18	69%

Notes:

[1] The agreement rate between two parties (e.g., Ms. Shiller and the independent coders) is the number of identical complaints that they code in the same way for the same complaint type, divided by the total number of complaints.

[2] The agreement rate for the "Free" complaint type is 96 percent between Ms. Shiller and Complaint Counsel, 96 percent between Ms. Shiller and the independent coders, and 100 percent between Complaint Counsel and the independent coders. I note that Complaint Counsel changed Ms. Shiller's complaint type "Consumers [who] thought they were filing for free" to "Consumers [who] indicated that they believed or TurboTax communicated that filing taxes with TurboTax would be free." Similarly, I instructed independent coders to flag "Complainants who expected that they would be able to file for free."

[3] The agreement rate for the "Advertising" complaint type is 88 percent between Ms. Shiller and Complaint Counsel, 85 percent between Ms. Shiller and the independent coders, and 88 percent between Complaint Counsel and the independent coders. I note that Complaint Counsel changed Ms. Shiller's complaint type "Consumers [who] mentioned they saw advertising indicating their tax filing will be free" to "Consumers [who] mentioned advertising about a free TurboTax option." Similarly, I instructed independent coders to flag "Complainants who mentioned they saw advertising indicating their tax filing would be free."

[4] The agreement rate for the "Paid" complaint type is 88 percent between Ms. Shiller and Complaint Counsel, 92 percent between Ms. Shiller and the independent coders, and 88 percent between Complaint Counsel and the independent coders. I note that Complaint Counsel changed Ms. Shiller's complaint type "Consumers [who] paid TurboTax when they thought their tax filing will be free" to "Consumers [who] indicated they were charged for or paid for TurboTax." Similarly, I instructed independent coders to flag "Complainants who paid TurboTax when they expected that they would be able to file for free."

[5] The agreement rate for both the "Free" and "Advertising" complaint types (i.e., parties must agree on both complaint types to be classified as agreeing) is 85 percent between Ms. Shiller and Complaint Counsel, 81 percent between Ms. Shiller and the independent coders, and 88 percent between Complaint Counsel and the independent coders.

[6] The agreement rate between the "Free," "Advertising," and "Paid" complaint types (i.e., parties must agree on all three complaint types to be classified as agreeing) is 77 percent between Ms. Shiller and Complaint Counsel, 77 percent between Ms. Shiller and the independent coders, and 77 percent between Complaint Counsel and the independent coders.

APPENDIX F
METHODOLOGY FOR IDENTIFYING BENCHMARK COMPANIES
USED IN CUSTOMER COMPLAINT ANALYSES AND REVIEW OF
AD DISCLOSURES

Appendix F

Methodology for Identifying Benchmark Companies Used in Customer Complaint Analyses and Review of Ad Disclosures

1. This appendix summarizes the methodology used to determine a list of benchmark companies for the purposes of contextualizing the number of complaints that Intuit has received on the BBB website¹ and the disclosures that Intuit makes in its TV and social media ads. I identified four groups of benchmark companies, detailed in **Section I** of this appendix: (1) direct Intuit competitors; (2) wireless carriers; (3) TV service providers; and (4) automobile insurance providers. I also use a group of companies investigated by the FTC and/or ProPublica as an additional sensitivity, detailed in **Section II** of this appendix.

I. BENCHMARK COMPANIES

A. Direct Intuit Competitors

2. Rationale for Benchmark Group: The first group of benchmark companies is direct competitors of Intuit in the tax preparation services business. Direct competitors are the most comparable potential benchmark to Intuit: they are in the same business, provide similar services, and often have similar business models. To the extent that dissatisfied customers seek out alternative options for tax preparation, many of them are likely to select from one of Intuit's direct competitors. If consumers are particularly prone to filing complaints due to the nature of filing one's taxes, comparing Intuit with other tax preparation firms will put this fact into context. Similarly, reviewing TV and social media ads of other companies in the tax preparation services business will help evaluate Intuit's marketing of free offers and its associated disclosures.
3. Determination of List: I reviewed Intuit's SEC Form 10-K for the fiscal year ended July 31, 2021,² in which Intuit cites its primary competitors for the Consumer (tax) segment as

¹ "Better Business Bureau," <https://www.bbb.org/> ("Better Business Bureau"), accessed December 20, 2022.

² I also reviewed Intuit's SEC Form 10-K for the fiscal year ended July 31, 2022, in which Intuit cites competitors for its business as a whole, rather than the Consumer (tax) segment specifically. Intuit identifies additional competitors offering enterprise and accounting solutions, in competition with its QuickBooks product. Intuit does not identify any incremental tax prep competitors. See "SEC Form 10-K (for the fiscal year ended July 31, 2022)," *Intuit Inc.*, July 31, 2022, <https://www.sec.gov/ix?doc=/Archives/edgar/data/896878/000089687822000028/intu-20220731.htm> ("SEC Form 10-K (for the fiscal year ended July 31, 2022)"), INTUIT-FTC-PART3-000599641, p. 10.

H&R Block, TaxAct (owned by Blucora), FreeTaxUSA (owned by TaxHawk), TaxSlayer, and Square. I include all these companies in my benchmark list except for Square, which I do not consider a relevant benchmark company for Intuit's tax preparation business. Square is primarily a business-to-business ("B2B") provider of payment processing, and its complaints and customer numbers would not be comparable to that of a primarily business-to-consumer ("B2C") tax preparation provider like Intuit. However, Square is the parent company of Cash App Taxes (formerly Credit Karma Taxes),³ which has its own BBB page and relates more directly to the tax preparation business. Therefore, I have included Cash App Taxes among the benchmark companies. In addition, I consider one additional company whose business is focused almost entirely on tax preparation and is [REDACTED] [REDACTED] Jackson Hewitt.⁴

4. Final List: H&R Block, TaxAct, FreeTaxUSA,⁵ TaxSlayer, Cash App Taxes, and Jackson Hewitt.
5. Sources:
 - a. "SEC Form 10-K for the fiscal year ended July 31, 2021," *Intuit Inc.*, available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/896878/000089687821000233/intu-20210731.htm>, INTUIT-FTC-PART3-000599641, p. 11.
 - b. Intuit, "[REDACTED]," February 2021, INTUIT-FTC-PART3-000602321, slides 32-34.

B. Wireless Carriers

6. Rationale for Benchmark Group: The second group of benchmark companies is wireless carriers. Just as nearly all adult income-earners are required to file their taxes every year,

³ Rowan, Lisa, "Square Will Buy Credit Karma's Free Tax Prep Service. What Does That Mean for Consumers?," *Forbes*, November 25, 2020, <https://www.forbes.com/advisor/credit-score/square-will-buy-credit-karmas-free-tax-prep-service-what-does-that-mean-for-consumers/> ("Square Will Buy Credit Karma's Free Tax Prep Service. What Does That Mean for Consumers?"), INTUIT-FTC-PART3-000600825.

⁴ For example, [REDACTED] Intuit, "[REDACTED]," February 2021, INTUIT-FTC-PART3-000602321, slides 32-34.

⁵ FreeTaxUSA is owned by parent company TaxHawk. See "About FreeTaxUSA," *FreeTaxUSA*, <https://www.freetaxusa.com/about.jsp?thn=3EEFE20943C213FECD8AAB04918F20C4> ("About FreeTaxUSA"), INTUIT-FTC-PART3-000599417.

virtually all adult consumers today have cell phones.⁶ Cell phones are not required but ubiquitous enough to be essentially required. Like filing one's taxes, purchasing cell phone service is also an involving process that may be revisited on a yearly basis where customers typically have one account on an ongoing basis, meaning that the number of "customers" is a comparable metric. I also note that another aspect in which wireless carriers are similar to Intuit is that these companies often advertise promotional or introductory pricing offers, including disclosures that detail the terms and conditions of those offers.

7. Determination of List: There are only three dominant wireless carriers in the United States, so I include all three in my list of benchmark companies.
8. Final List: AT&T,⁷ Verizon Wireless, and T-Mobile USA.
9. Source: "Wireless subscriptions market share by carrier in the U.S.," *Statista*, October 22, 2021, available at <https://www.statista.com/statistics/199359/market-share-of-wireless-carriers-in-the-us-by-subscriptions/>, INTUIT-FTC-PART3-000600803.

C. TV Service Providers

10. Rationale for Benchmark Group: The third group of benchmark companies is TV service providers. While not required, the majority of adult consumers have cable or satellite TV service.⁸ Like filing one's taxes, selecting a TV service provider is also an involving process (e.g., selecting between types of providers like cable or satellite or selecting among different plans) that may be revisited on a yearly basis. In addition, customers typically have one account on an ongoing basis, meaning that the number of "customers" is a comparable metric.

⁶ According to Pew Research Center, 97 percent of Americans own a cell phone of some kind. See "Mobile Fact Sheet," *Pew Research Center*, April 7, 2021, <https://www.pewresearch.org/internet/fact-sheet/mobile/> ("Mobile Fact Sheet"), INTUIT-FTC-PART3-000600245.

⁷ This includes AT&T's wireless business and other AT&T businesses as the complaints on the BBB website include all AT&T-related complaints and do not differentiate by sector.

⁸ According to Pew Research Center, 56 percent of Americans watch TV via cable or satellite. See Rainie, Lee, "Cable and Satellite TV Use Has Dropped Dramatically in the U.S. Since 2015," *Pew Research Center*, March 17, 2021, <https://www.pewresearch.org/fact-tank/2021/03/17/cable-and-satellite-tv-use-has-dropped-dramatically-in-the-u-s-since-2015/> ("Cable and Satellite TV Use Has Dropped Dramatically in the U.S. Since 2015"), accessed November 10, 2022, INTUIT-FTC-PART3-000600262.

11. Determination of List: I identified the four largest TV providers by total number of subscribers.
12. Final List: Comcast, DirecTV,⁹ Charter Spectrum, and Dish Network.
13. Source: “Pay TV providers ranked by the number of subscribers in the United States as of December 2021,” *Statista*, May 18, 2022, available at <https://www.statista.com/statistics/251793/pay-tv-providers-with-the-largest-number-of-subscribers-in-the-us/>, INTUIT-FTC-PART3-000600079.

D. Automobile Insurance Providers

14. Rationale for Benchmark Group: The last group of benchmark companies I chose is automobile insurance providers. Just as all adult income-earners are required to file their taxes every year, nearly all adult vehicle owners in the U.S. are required by law to purchase automobile insurance.¹⁰ This includes a majority of American households.¹¹ Like filing one’s taxes, selecting an automobile insurance provider is also an involving process that may be revisited on a yearly basis where customers have one account on an ongoing basis, meaning that the number of “customers” is a comparable metric.
15. Determination of List: I identified the five largest automobile insurance providers in the United States by market share.
16. Final List: State Farm, Geico, Progressive, Allstate, and USAA.
17. Sources:
 - a. “The 50 Largest Auto Insurance Companies,” *Forbes*, February 4, 2022, available at <https://www.forbes.com/advisor/car-insurance/largest-auto-insurance-companies/>, INTUIT-FTC-PART3-000599407.

⁹ DirecTV was formerly known as AT&T TV. See “AT&T TV Is Now DIRECTV STREAM,” *AT&T*, <https://www.att.com/tv/> (“AT&T TV Is Now DIRECTV STREAM”), INTUIT-FTC-PART3-000599008.

¹⁰ Auto insurance is required in all states in the U.S. except for New Hampshire and Virginia. See Moore, Will, “States Where Car Insurance Is Not Mandatory (2022),” *Motor 1.com*, December 15, 2021, <https://www.motor1.com/reviews/403859/states-where-car-insurance-is-not-mandatory/> (“States Where Car Insurance Is Not Mandatory (2022)”), accessed August 25, 2022, INTUIT-FTC-PART3-000600031.

¹¹ According to Pew Research Center, 88 percent of Americans own a car. See Poushter, Jacob, “Car, Bike, or Motorcycle? Depends on Where You Live,” *Pew Research Center*, <https://www.pewresearch.org/fact-tank/2015/04/16/car-bike-or-motorcycle-depends-on-where-you-live/> (“Car, Bike, or Motorcycle? Depends on Where You Live”), INTUIT-FTC-PART3-000600842.

- b. Norman, K., “The Top 10 Largest Auto Insurance Companies,” *NerdWallet*, June 1, 2022, available at <https://www.nerdwallet.com/article/insurance/largest-auto-insurance-companies>, INTUIT-FTC-PART3-000600873.

II. ADDITIONAL COMPANIES

18. Rationale for Additional Companies: I also reviewed companies investigated by the FTC and/or ProPublica. This group of companies does not closely resemble Intuit with respect to its business model, products, or customer base, and therefore is not a true benchmark. However, these companies were also investigated by the FTC and/or ProPublica for alleged consumer deception, and their complaint rates may provide context for Intuit’s.
19. Determination of List: I reviewed FTC cases that, on the FTC website, are categorized as “deceptive/misleading conduct” investigations by the FTC and were reported online within the last two years. I also reviewed articles published by ProPublica within the last 2 years that relate to consumer deception.¹² I sought to identify companies with products and services marketed directly to end consumers, in order to more appropriately benchmark the customer complaints filed against these companies on the BBB website.
20. Final List: MoneyGram, Dun & Bradstreet, Fleetcor Technologies, Perdoceo Education Corporation, and Chime Financial.¹³
21. Sources:
- a. “Claims Process Opens for Consumers Who Were Victimized by Fraudulent MoneyGram Transfers,” *Federal Trade Commission*, June 1, 2021, available at <https://www.ftc.gov/news-events/news/press-releases/2021/06/claims-process->

¹² I reviewed FTC cases and ProPublica articles published online from January 1, 2021, to August 30, 2022.

¹³ The FTC investigated MoneyGram for failing to comply with FTC’s comprehensive fraud prevention program, leading to fraudulent money transfers that affected customers. The FTC investigated Dun & Bradstreet for deceiving businesses about the true value of its products and failing to correct errors on credit reports. The FTC investigated Fleetcor Technologies for charging customers with mystery fees related to their fuel cards. The FTC investigated Perdoceo Education Corporation for deceiving customers into enrolling at Career Education Corporation (CEC) schools by pretending to be affiliated with the military and falsely promising to assist with job placements. ProPublica published an exposé of Chime Financial for abruptly closing the accounts of customers in an attempt to crack down on fraudulent deposits. While the investigations of these companies were related to consumer deception or misleading conduct, none were related to the advertising of free offers.

opens-consumers-who-were-victimized-fraudulent-moneygram-transfers,
INTUIT-FTC-PART3-000600901.

- b. “Federal Trade Commission Finalizes Order Against Dun & Bradstreet for Deceiving Businesses and Failing to Update Errors on Business Credit Reports,” *Federal Trade Commission*, April 7, 2022, available at <https://www.ftc.gov/news-events/news/press-releases/2022/04/federal-trade-commission-finalizes-order-against-dun-bradstreet-deceiving-businesses-failing-update>, INTUIT-FTC-PART3-000599421.
- c. “FTC Sues FleetCor and Its CEO for Fleecing Small Businesses With Mystery Fuel Card Fees,” *Federal Trade Commission*, August 11, 2021, available at <https://www.ftc.gov/news-events/news/press-releases/2021/08/ftc-sues-fleetcor-its-ceo-fleecing-small-businesses-mystery-fuel-card-fees>, INTUIT-FTC-PART3-000600898.
- d. “FTC Sends Nearly \$30 Million in Refunds to People Tricked into Enrolling by School Operator’s Lead Generators,” *Federal Trade Commission*, June 9, 2021, available at <https://www.ftc.gov/news-events/news/press-releases/2021/06/ftc-sends-nearly-30-million-refunds-people-tricked-enrolling-school-operators-lead-generators>, INTUIT-FTC-PART3-000600896.
- e. Kessler, C., “A Banking App Has Been Suddenly Closing Accounts, Sometimes Not Returning Customers’ Money,” *ProPublica*, July 6, 2021, available at <https://www.propublica.org/article/chime>, INTUIT-FTC-PART3-000600887.

APPENDIX G
BENCHMARKING OF INTUIT'S BBB COMPLAINTS

Appendix G Benchmarking of Intuit's BBB Complaints

I. BENCHMARK COMPANIES

1. This appendix provides the detailed methodology and results of my analysis that benchmarks the number of complaints that Intuit has received on the BBB website.¹
2. Having identified the benchmark companies as discussed in **Appendix F**, I then evaluated the number of customer complaints filed against each of them on the BBB website. I benchmarked the number of complaints, on both an absolute and relative basis, in comparison to BBB complaints filed against Intuit. For each company, I analyzed the total number of complaints submitted to the BBB in the last three years as of January 3, 2023. These complaints are publicly available on the BBB website.
3. On an absolute basis, I compare the total number of complaints filed against Intuit relative to the total number of complaints for each benchmark company.
4. On a relative basis, I normalized the total number of complaints filed against each company based on the total number of customers that each company reports in their public filings or other materials.² I divide the total number of complaints for each company by the reported total number of customers. I then arrive at a rate of BBB complaints for Intuit and for each benchmark company. Comparing these rates allows for a more accurate comparison that is unaffected by the relative number of customers for each company.
5. The following tables, **Figure G-1** and **Figure G-2**, include the summarized and detailed results of my analysis with the full list of benchmark companies, number of complaints filed on the BBB website, number of customers, calculated rate of complaints (complaints per million customers), and detailed notes and sources for this information. I determined

¹ "Complaints," *Better Business Bureau*, <https://www.bbb.org/process-of-complaints-and-reviews/complaints>, accessed July 13, 2022, INTUIT-FTC-PART3-000599022.

² I note that the units of the number of customers for each benchmark company may vary depending upon the type of business and data available. Number of customers may represent number of customer accounts, where a single customer account may include multiple individuals (e.g., joint tax filing of a married couple, wireless carrier contract for a family plan, TV service provided to a household). For automobile insurance providers, number of customers represents number of insurance policies, where a single individual or household may have multiple insurance policies. See, **Figure G-2**.

the total number of customers currently served in the U.S. by Intuit and each of the benchmark companies by consulting SEC filings (i.e., form 10-K) or company websites. If this information was unavailable from these sources, I reviewed reputable third-party sources (e.g., Statista, Forbes) as an alternative.

Figure G-1
Benchmarking of Intuit’s BBB Complaints

	Total Customers (in Millions)	Complaints per Million Customers
Intuit²	100	31.3
		Average Number of Complaints per Million Customers³
Benchmark Group	Total Customers (in Millions)	Median Complaints per Million Customers⁴
Direct Intuit Competitors⁵	44	58.9
Wireless Carriers⁶	441	223.9
TV Service Providers⁷	90	495.8
Automobile Insurance Providers⁸	224	86.7
All Benchmark Companies		191.2
		135.9

Notes:

[1] Number of customers for Intuit and all benchmark companies are approximations based on publicly available sources.

[2] Intuit customers include customers for all Intuit products, e.g., TurboTax, QuickBooks, etc.

[3] Average Number of Complaints per Million Customers is calculated by dividing the sum of the number of complaints per million customers for each company by the number of companies in each benchmark group.

[4] Median Complaints per Million Customers is the median of the number of complaints per million customers for each benchmark group.

[5] Direct Intuit Competitors include Jackson Hewitt, TaxAct, H&R Block, TaxSlayer, TaxHawk, and Cash App Taxes.

[6] Wireless Carriers include Verizon Wireless, AT&T, and T-Mobile USA.

[7] TV Service Providers include Comcast, DirecTV, Charter Spectrum, and Dish Network.

[8] Automobile Insurance Providers include Progressive, Geico, USAA, Allstate, and State Farm.

6. I then performed a one sample t-test for the null hypothesis that the average number of BBB complaints per million customers computed across the benchmark companies (191.2) is equal to the Intuit average (31.3). The two-tailed test rejects the null hypothesis of

equality at the 1% significance level (p-value of 0.0022). A one-tailed test demonstrates that the average number of BBB complaints is greater for benchmark companies than for Intuit (p-value of 0.0011).

Figure G-2
Benchmarking of Intuit's BBB Complaints

<u>Company</u>	<u>Benchmark Group</u>	<u>Number of Customers (Million)</u> [A]	<u>Number of BBB Complaints</u> [B]	<u>Number of Complaints per Million Customers</u> [C] = [B] / [A]	<u>BBB Complaints Source</u>	<u>Number of Customers Source</u>	<u>Number of Customers Note</u>
Intuit	N/A	100	3,131	31.3	“Intuit Inc., Complaints,” Better Business Bureau, available at https://www.bbb.org/us/ca/mountain-view/profile/computer-hardware/intuit-inc-1216-202832/complaints , accessed on January 3, 2023.	“SEC Form 10-K for the fiscal year ended July 31, 2021,” <i>Intuit Inc.</i> , available at https://www.sec.gov/ix?doc=/Archives/edgar/data/896878/000089687821000233/intu-20210731.htm (“Intuit 10-K”), INTUIT-FTC-PART3-000599641, at p. 5 (“We serve approximately 100 million customers across our product offerings and platforms.”).	All customers, globally; “international net revenue was less than 5% of consolidated total net revenue for the twelve months ended July 31, 2021.” <i>See</i> , Intuit 10-K, at p. 7.
Cash App Taxes	Direct Intuit Competitors	1	232	155.3	“Cash App Taxes, Inc., Complaints,” Better Business Bureau, available at https://www.bbb.org/us/ca/san-francisco/profile/tax-return-preparation/cash-app-taxes-inc-1116-879545/complaints , accessed on January 3, 2023.	“ProPublica Analysis of IRS Electronic Filing Data,” <i>ProPublica</i> , available at https://www.documentcloud.org/documents/6788961-ProPublica-Analysis-of-IRS-Electronic-Filing-Data.html , INTUIT-FTC-PART3-000600261 (“Credit Karma: 1,493,802 # of Filings as of Mid-Year 2019.”).	Tax returns filed in 2019.
Jackson Hewitt	Direct Intuit Competitors	2	233	116.5	“Jackson Hewitt, Complaints,” Better Business Bureau, available at https://www.bbb.org/us/nj/jersey-city/profile/tax-return-preparation/jackson-hewitt-tax-services-of-america-inc-0221-22001064/complaints , accessed on January 3, 2023.	Macfarlane, G., “The Path Forward for America's Outdated Tax System,” <i>Jackson Hewitt</i> , May 17, 2021, available at https://www.jacksonhewitt.com/about-jackson-hewitt/news-and-events/opinion-the-path-forward-for-americas-outdated-tax-system/ , INTUIT-FTC-PART3-000600870 (“Jackson Hewitt is responsible for preparing over 2 million federal, state, and local income-tax returns every year.”).	Tax returns filed.
TaxAct	Direct Intuit Competitors	6	189	33.8	“TaxAct, Complaints,” Better Business Bureau, available at https://www.bbb.org/us/ia/cedar-rapids/profile/computer-software-developers/taxact-0664-22001061/complaints , accessed on January 3, 2023.	“SEC Form 10-K for the fiscal year ended December 31, 2021,” <i>Blucora, Inc.</i> , available at https://www.sec.gov/ix?doc=/Archives/edgar/data/1068875/000106887522000042/bcor-20211231.htm , INTUIT-FTC-PART3-000599029, at p. 6 (“For the year ended December 31, 2021, TaxAct powered approximately 3.2 million consumer e-files directly through end-users and another 2.4 million professional e-files through approximately 21,000 tax professionals who used TaxAct.”).	Tax returns filed. Non-tax prep services are largely ancillary services sold to tax prep customers.
H&R Block	Direct Intuit Competitors	22	499	23.1	“H&R Block Inc., Complaints,” Better Business Bureau, available at https://www.bbb.org/us/mo/kansas-city/profile/tax-return-preparation/h-r-block-inc-us-headquarters-0674-46030004/complaints , accessed on January 3, 2023.	“SEC Form 10-K for the fiscal year ended April 30, 2021,” <i>H&R Block, Inc.</i> , available at https://www.sec.gov/ix?doc=/Archives/edgar/data/12659/000183886221000028/hrb-20210430.htm , INTUIT-FTC-PART3-000599525, at p. 2 (“During fiscal year 2021, we prepared 21.6 million U.S. tax returns.”).	Tax returns filed. Non-tax prep services are largely ancillary services sold to tax prep customers.
TaxHawk	Direct Intuit Competitors	4	58	15.9	“TaxHawk, Complaints,” Better Business Bureau, available at https://www.bbb.org/us/ut/provo/profile/tax-return-preparation/taxhawk-inc-1166-22009863/complaints , accessed on January 3, 2023.	“ProPublica Analysis of IRS Electronic Filing Data,” <i>ProPublica</i> , available at https://www.documentcloud.org/documents/6788961-ProPublica-Analysis-of-IRS-Electronic-Filing-Data.html , INTUIT-FTC-PART3-000600261 (“TaxHawk: 3,656,385 # of Filings as of Mid-Year 2019”).	Tax returns filed in 2019.
TaxSlayer	Direct Intuit Competitors	10	91	9.1	“TaxSlayer, Complaints,” Better Business Bureau, available at https://www.bbb.org/us/ga/evans/profile/tax-software/taxslayercom-0743-9390/complaints , accessed on January 3, 2023.	“TaxSlayer Offers New Resources to Help Taxpayers File in 2021,” <i>TaxSlayer</i> , February 8, 2021, available at https://www.taxslayer.com/media-room/prdetails?articleID=122508 , INTUIT-FTC-PART3-000600861 (“TaxSlayer...successfully completed more than 10 million state and federal e-filed tax returns in 2020.”).	Tax returns filed.
Verizon Wireless	Wireless Carriers	114	29,866	261.3	“Verizon Wireless, Complaints,” Better Business Bureau, available at https://www.bbb.org/us/nj/basking-ridge/profile/cell-phone-supplies/verizon-wireless-0221-1001468/complaints , accessed on January 3, 2023.	“SEC Form 10-K for the fiscal year ended December 31, 2021,” <i>Verizon Communications Inc.</i> , available at https://www.sec.gov/ix?doc=/Archives/edgar/data/732712/000073271222000008/vz-20211231.htm , INTUIT-FTC-PART3-000600605, at p. 5 (“As of December 31, 2021, we had 24 million prepaid connections...Approximately 79% of our Consumer wireless retail connections were postpaid connections as of December 31, 2021.”).	Verizon Wireless Consumer prepaid and postpaid customers.
AT&T	Wireless Carriers	218	52,055	238.8	“AT&T, Complaints,” Better Business Bureau, available at https://www.bbb.org/us/tx/dallas/profile/long-distance-phone-service/att-0875-7935/complaints , accessed on January 3, 2023.	“SEC Form 10-K for the fiscal year ended December 31, 2021,” <i>AT&T Inc.</i> , available at https://www.sec.gov/ix?doc=/Archives/edgar/data/732717/000073271722000015/t-20211231.htm , INTUIT-FTC-PART3-000598808, at p. 4-5 (“At December 31, 2021, we served 202 million Mobility subscribers...We offer broadband and internet services to approximately 16 million customer locations.”).	AT&T Mobility (wireless services and equipment) and Consumer Wireline customers.

**Figure G-2
Benchmarking of Intuit’s BBB Complaints**

<u>Company</u>	<u>Benchmark Group</u>	<u>Number of Customers (Million)</u> [A]	<u>Number of BBB Complaints</u> [B]	<u>Number of Complaints per Million Customers</u> [C] = [B] / [A]	<u>BBB Complaints Source</u>	<u>Number of Customers Source</u>	<u>Number of Customers Note</u>
T-Mobile USA	Wireless Carriers	109	18,667	171.7	“T-Mobile USA, Complaints,” Better Business Bureau, available at https://www.bbb.org/us/wa/bellevue/profile/cell-phone-supplies/t-mobile-usa-inc-1296-27026359/complaints , accessed on January 3, 2023.	“SEC Form 10-K for the fiscal year ended December 31, 2021,” <i>T-Mobile US, Inc.</i> , available at https://www.sec.gov/ix?doc=/Archives/edgar/data/1283699/000128369922000018/tmus-20211231.htm , INTUIT-FTC-PART3-000600293, at p. 5 (“As of December 31, 2021, we provide wireless services to 108.7 million postpaid and prepaid customers.”).	T-Mobile wireless services prepaid and postpaid customers.
Comcast	TV Service Providers	34	21,724	635.2	“Comcast Corporation, Complaints,” Better Business Bureau, available at https://www.bbb.org/us/pa/philadelphia/profile/cable-tv/comcast-corporation-0241-80003221/complaints , accessed on January 3, 2023.	“SEC Form 10-K for the fiscal year ended December 31, 2021,” <i>Comcast Corporation</i> , available at https://www.sec.gov/ix?doc=/Archives/edgar/data/1166691/000116669122000009/cmcsa-20211231.htm , INTUIT-FTC-PART3-000599202, at p. 2 (“Total customer relationships: 34.2 [million]”).	Total customer relationships (residential and business services).
Charter Spectrum	TV Service Providers	32	15,390	480.9	“Charter Spectrum, Complaints,” Better Business Bureau, available at https://www.bbb.org/us/ct/stamford/profile/cable-tv/charter-spectrum-0111-110075917/complaints , accessed on January 3, 2023.	“About Charter,” <i>Charter Spectrum</i> , available at https://corporate.charter.com/about-charter , INTUIT-FTC-PART3-000599174 (“Charter Communications, Inc. (NASDAQ: CHTR) is a leading broadband connectivity company and cable operator serving more than 32 million customers in 41 states through its Spectrum brand.”).	Total customers.
DirecTV	TV Service Providers	15	7,254	470.7	“DirecTV Inc., Complaints,” Better Business Bureau, available at https://www.bbb.org/us/ca/el-segundo/profile/cable-tv/directv-inc-1216-81000357/complaints , accessed on January 3, 2023.	“Pay TV providers ranked by the number of subscribers in the United States,” <i>Statista</i> , December 2021, available at https://www.statista.com/statistics/251793/pay-tv-providers-with-the-largest-number-of-subscribers-in-the-us/ , INTUIT-FTC-PART3-000600079 (“AT&T Premium TV: 15.41 million subscribers”).	Total customers for “AT&T Premium TV” which is now “DirecTV Stream.” See “AT&T TV is now DIRECTV STREAM,” <i>AT&T</i> , available at https://www.att.com/tv/ .
Dish Network	TV Service Providers	8	3,258	396.4	“Dish Network LLC, Complaints,” Better Business Bureau, available at https://www.bbb.org/us/co/englewood/profile/cable-tv/dish-network-llc-1296-6370/complaints , accessed on January 3, 2023.	“Pay TV providers ranked by the number of subscribers in the United States,” <i>Statista</i> , December 2021, available at https://www.statista.com/statistics/251793/pay-tv-providers-with-the-largest-number-of-subscribers-in-the-us/ , INTUIT-FTC-PART3-000600079 (“Dish Network: 8.22 million subscribers”).	Total customers.
Progressive	Automobile Insurance Providers	20	4,037	197.9	“Progressive Corporation, Complaints,” Better Business Bureau, available at https://www.bbb.org/us/oh/mayfield-vlg/profile/insurance-companies/progressive-corporation-0312-15000696/complaints , accessed on January 3, 2023.	“About Us,” <i>Progressive</i> , available at https://www.progressive.com/about/ , INTUIT-FTC-PART3-000600252 (“Policies in Force: 20.4 million”).	Total number of all insurance policies.
Geico	Automobile Insurance Providers	18	1,860	103.3	“Geico, Complaints,” Better Business Bureau, available at https://www.bbb.org/us/md/chevy-chase/profile/insurance-companies/geico-0241-8768/complaints , accessed on January 3, 2023.	“GEICO At A Glance,” <i>Geico</i> , July 2022, available at https://www.geico.com/about/corporate/at-a-glance/ , INTUIT-FTC-PART3-000599482 (“More than 18 million auto policies”).	Total number of all insurance policies.
Allstate	Automobile Insurance Providers	50	2,788	55.9	“Allstate Insurance, Complaints,” Better Business Bureau, available at https://www.bbb.org/us/il/northbrook/profile/insurance-companies/allstate-insurance-0654-12014144/complaints , accessed on January 3, 2023.	“Notice of 2022 Annual Meeting and Proxy Statement,” <i>Allstate</i> , available at https://www.allstate.com/resources/allstate/attachments/annual-report/allstate-year-end-report-combo-2021.pdf , INTUIT-FTC-PART3-000598535, at p. 10 (“Policies in Force: 49.9M Excluding Allstate Protection Plans”).	Total number of all insurance policies.
USAA	Automobile Insurance Providers	49	2,643	54.4	“USAA, Complaints,” Better Business Bureau, available at https://www.bbb.org/us/tx/san-antonio/profile/insurance-companies/usaa-0825-23452/complaints , accessed on January 3, 2023.	“Corporate Overview,” <i>USAA</i> , available at https://www.usaa.com/inet/wc/about_usaa_corporate_overview_main?akredirect=true , INTUIT-FTC-PART3-000593231 (“48.6 million total products”).	Total number of all insurance policies.

**Figure G-2
Benchmarking of Intuit’s BBB Complaints**

<u>Company</u>	<u>Benchmark Group</u>	<u>Number of Customers (Million)</u> [A]	<u>Number of BBB Complaints</u> [B]	<u>Number of Complaints per Million Customers</u> [C] = [B] / [A]	<u>BBB Complaints Source</u>	<u>Number of Customers Source</u>	<u>Number of Customers Note</u>
State Farm	Automobile Insurance Providers	87	1,897	21.8	“State Farm Insurance Co., Complaints,” Better Business Bureau, available at https://www.bbb.org/us/il/bloomington/profile/insurance-companies/state-farm-insurance-company-0724-6000391/complaints , accessed on January 3, 2023.	“2021 by the numbers,” <i>State Farm</i> , February 25, 2022, available at https://newsroom.statefarm.com/2021-by-the-numbers-infographic , INTUIT-FTC-PART3-000600279 (“87M+ policies and accounts serviced throughout the U.S.”).	Total number of all insurance policies.

Notes:

- [1] See discussion in **Appendix F** for background and methodology on selection of benchmark groups and companies.
- [2] Number of customers is an approximation and generally represents the total number of customers served annually by the business represented on the BBB website, where available. See “Number of Customers Source” and “Number of Customers Note” columns for exact details.
- [3] Number of BBB complaints represents the total number of complaints each business received through the BBB website in the 3-year period ending January 3, 2023 for all companies.

Sources:

- [1] See **Appendix F** for sources relating to selection of benchmark groups and companies.
- [2] See individual company rows for source for number of customers.
- [3] Better Business Bureau website, available at <https://www.bbb.org/>, INTUIT-FTC-PART3-000603020 and individual company webpages.

II. ADDITIONAL COMPANIES

7. As discussed in **Appendix F**, I also sought to identify a group of companies that were also investigated by the FTC and/or ProPublica for alleged consumer deception, as an additional sensitivity. I identified MoneyGram, Dun & Bradstreet, Fleetcor Technologies, Perdoceo Education Corporation, and Chime Financial as potential comparators.
8. Upon review of the BBB website and research on customer numbers, I found that Dun & Bradstreet, Fleetcor Technologies, Perdoceo Education Corporation, and MoneyGram had insufficient data to generate reliable complaint rates. Specifically:
 - a. Dun & Bradstreet and Fleetcor Technologies are B2B businesses whose customer numbers would not generate comparable rates of complaints.³
 - b. Perdoceo Education Corporation has a very minimal BBB presence (0 customer reviews and 3 complaints).⁴ In my August Declaration, I reported a complaint rate for Perdoceo Education Corporation based on this minimal presence.⁵ Using the same approach, I arrive at a complaint rate for Perdoceo Education Corporation of 74.3 complaints per million customers (higher than Intuit's rate). However, given the very minimal presence, this statistic may not be reliable.
 - c. I was unable to locate an estimate of MoneyGram's U.S. customer base. In my August Declaration, I reported a complaint rate for MoneyGram based on MoneyGram's total international customer base, representing customers in at least 180 countries.⁶ Using the updated set of complaints publicly available on the BBB

³ "Dun & Bradstreet, Complaints," *Better Business Bureau*, available at <https://www.bbb.org/us/fl/jacksonville/profile/credit-reporting-agencies/dun-bradstreet-0332-3137/complaints>, accessed on July 1, 2022. "Fleetcor Technologies, Complaints," *Better Business Bureau*, available at <https://www.bbb.org/us/ga/norcross/profile/credit-cards-and-plans/fleetcor-technologies-llc-0443-7005062/complaints>, accessed on January 3, 2023.

⁴ "Perdoceo Education Corp., Complaints," *Better Business Bureau*, available at <https://www.bbb.org/us/il/schaumburg/profile/college-and-university/perdoceo-education-corporation-0654-9003047/complaints>, accessed on January 3, 2023.

⁵ Declaration of Peter Golder, PhD., *In the Matter of: Intuit Inc., a corporation.*, Docket No. 9408, August 30, 2022 ("August Golder Declaration"), Appendix E, Figure E-1.

⁶ August Golder Declaration, Appendix E, Figure E-1.

website as of January 3, 2023,⁷ and the same estimate of MoneyGram's total international customer base, I arrive at a complaint rate for MoneyGram of 16.0 complaints per million customers. However, because MoneyGram has such a large international presence and the BBB reports only U.S. complaints, this likely substantially undercounts MoneyGram's rate of complaints.

9. For Chime Financial, I calculated a complaint rate of 589.8 complaints per million customers. Chime Financial had approximately 13 million active banking customers in 2022⁸ and generated 7,667 complaints on the BBB website.⁹ This complaint rate of 589.8 complaints per million customers is substantially higher than that of Intuit, which had only 31.3 complaints per million customers.

⁷ "MoneyGram, Complaints," *Better Business Bureau*, available at <https://www.bbb.org/us/tx/dallas/profile/money-orders/moneygram-0875-90246426/complaints>, accessed on January 3, 2023.

⁸ Curry, D., "Chime Revenue and Usage Statistics (2022)," *Business of Apps*, May 4, 2022, available at <https://www.businessofapps.com/data/chime-statistics/>, INTUIT-FTC-PART3-000599389 ("Chime is considered the most popular neobank in the US, with over 13 million active customers.").

⁹ "Chime Financial Inc., Complaints," *Better Business Bureau*, available at <https://www.bbb.org/us/ca/san-francisco/profile/financial-technology/chime-financial-inc-1116-530173/complaints>, accessed on January 3, 2023.

APPENDIX H
INTUIT AND BENCHMARK COMPANY COMPLAINT
KEYWORD ANALYSIS

Appendix H

Intuit and Benchmark Company Complaint Keyword Analysis

I. KEYWORD SELECTION METHODOLOGY

1. To select a list of keywords for my analysis in **Section IV.B.2**, I isolated a subset of words that Complaint Counsel use when describing Intuit’s alleged business practices in its Complaint.¹ I then used my judgement to expand this list to a set of keywords related to deceptive advertising. Searches retrieved any word containing the string of letters searched. That is, searches for “advertise” also retrieved complaints that included the string “advertise” such as “advertisement” and/or “advertised.”
2. Throughout this process, I focused on including words that are agnostic to Intuit as well as to the benchmark companies. Doing so ensures a comparison across Intuit and benchmark companies that is based on keywords related to deceptive advertising rather than on their specific industries or customers. For example, “return” may be applicable to Intuit, but not automobile insurance companies and “deductible” may be applicable to automobile insurance companies but not Intuit, so I did not include either of these words. Following the approach described above, I classified these keywords in six categories shown in **Figure H-1** below:

¹ Complaint, *United States of America before the Federal Trade Commission in the Matter of: Intuit Inc., A Corporation*, Docket No. 9408, March 28, 2022 (“FTC Administrative Complaint”).

**Figure H-1
Keyword Category List**

Category	Key Words / Phrases
Advertising	“advertise,” “advertising,” “commercial,” “marketed,” “marketing,” “markets,” “promotion,” “television,” “TV”
Price / Charge	“bill,” “charge,” “charging,” “cost,” “expense,” “expensive,” “fee,” “free,” “order,” “pay,” “price,” “purchase,” “waste of money”
Deception	“bait and switch,” “cheat,” “deceive,” “deceiving,” “deception,” “deceptive,” “door opener,” “false,” “fool,” “foot in door,” “fraud,” “hoax,” “hustle,” “mislead,” “misled,” “misrepresent,” “promise,” “promising,” “rip off,” “robbery,” “scam,” “steal,” “take advantage,” “taken advantage,” “theft,” “thieve,” “too late,” “trick”
Forced to Upgrade / Pay More	“financial information,” “force,” “forcing,” “lock in,” “locked in,” “no choice,” “personal information,” “require,” “requiring,” “upgrade,” “upgrading”
Waste of Time	“annoy,” “bother,” “long time,” “pain,” “tedious,” “wait,” “waste of time”
Disclosure	“disclaimer,” “disclose,” “disclosure,” “disclosing,” “eligibility,” “eligible,” “fine print,” “limitations,” “qualification,” “qualifies,” “qualify,” “restrict”
Litigation	“Federal Trade Commission,” “FTC,” “legal,” “litigation,” “ProPublica,” “sue,” “suit”

3. Additionally, I introduced a limited set of exceptions to rules to improve the accuracy of my keyword analysis. These exceptions address false positives in certain situations and are either applied to all companies (rules “relating to all companies”) or to the benchmark companies but not Intuit (rules “relating to a specific set of companies”). As a result, these do not artificially lower Intuit’s keyword count relative to the benchmark companies.²

² Additionally, I ran my keyword analysis on the complaints included in Complaint Counsel’s Revised Production. As expected, every keyword does not appear in every complaint, but these complaints do include the keywords, typically at a higher rate than the BBB complaints.

**Figure H-2
Keyword Rules**

Rule	Companies Impacted
<i>Relating to All Companies</i>	
“long time” but not “long time customer” or “long time user” ^[1]	Intuit and all benchmark companies
“pay” but not “payroll” ^[2]	Intuit and all benchmark companies
“fee” but not “feel” ^[3]	Intuit and all benchmark companies
“order” but not “in order to” or “bordering” ^[4]	Intuit and all benchmark companies
“limitations” and “restrict” except when the complaint mentions “covid” ^[5]	Intuit and all benchmark companies
<i>Relating to a Specific Set of Companies</i>	
Remove keyword “pain” ^[6]	Allstate, Geico, Progressive, State Farm, and USAA
Remove keyword “TV” ^[7]	AT&T, Charter Spectrum, Comcast, DirecTV, and Dish Network

Notes:

- [1] This rule was implemented so that the keyword analysis does not flag complaints that mention “long time” in the context of using the given product/service for a long time rather than in the context of a “waste of time.”
- [2] This rule was implemented so that the keyword analysis does not consider mentions of the word “payroll” as a complaint about being charged.
- [3] This rule was implemented so that the keyword analysis does not consider mentions of the word “feel” as a complaint about the price of a product/service.
- [4] This rule was implemented so that the keyword analysis does not consider mentions of the phrases “in order to” or “bordering” as a complaint about being charged.
- [5] This rule was implemented so that the keyword analysis does not consider mentions of the words “restrict” and “limitations” when the complaint is talking about covid restrictions or covid limitations.
- [6] This rule was implemented because complaints against automobile insurance providers may contain the word “pain” in the context of physical pain rather than a “waste of time.” Removing this keyword prevents any complaint against automobile insurance companies with the keyword and stem “pain” to be flagged as related to deceptive advertising.
- [7] This rule was implemented because AT&T and TV service providers may contain the word “TV” when describing their service in general, rather than potentially deceptive ads. Removing this keyword prevents any complaint against AT&T and TV service providers with the keyword and stem “TV” to be flagged as related to deceptive advertising.

II. KEYWORD ANALYSIS SENSITIVITY

- 4. In this section, **Figure H-3** shows that my results in **Section IV.B.2** are robust to the inclusion of BBB complaints that mention litigation-related keywords.

Figure H-3
Mentions of Keywords in the BBB Complaints for Intuit and Benchmark Companies³

Category	Intuit ^[1]		Direct Intuit Competitors ^[2]		TV Providers ^[3]		Automobile Insurance Providers ^[4]		Wireless Carriers ^[5]	
	Count ^[6]	Percentage	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage
All complaints/reviews	2,678	100%	545	100%	11,297	100%	7,377	100%	21,505	100%
Advertising ^[7]	215	8%	34	6%	1,119	10%	180	2%	3,785	18%
Price / Charge	1,980	74%	331	61%	9,430	83%	4,989	68%	18,052	84%
Deception	682	25%	106	19%	2,459	22%	1,380	19%	6,382	30%
Forced to Upgrade / Pay More	424	16%	62	11%	1,285	11%	753	10%	3,666	17%
Waste of Time	377	14%	77	14%	1,246	11%	1,051	14%	3,210	15%
Disclosure	127	5%	19	3%	372	3%	191	3%	1,513	7%
Litigation	879	33%	128	23%	2,983	26%	1,905	26%	7,014	33%

Notes:

- [1] These data were procured by scraping all Intuit complaints from the BBB website.
- [2] These data were procured by scraping all complaints from the BBB website for the following companies: Cash App Taxes, H&R Block, Jackson Hewitt, Tax Act, Tax Hawk, and Tax Slayer.
- [3] These data were procured by scraping all complaints from the BBB website for the following companies: Charter Spectrum, Comcast, Direct TV, and Dish Network.
- [4] These data were procured by scraping all complaints from the BBB website for the following companies: Allstate, Geico, Progressive, State Farm, and USAA.
- [5] These data were procured by scraping all complaints from the BBB website for the following companies: AT&T, T-Mobile USA, and Verizon Wireless.
- [6] Counts for each category are based on the number of unique complaints which contain any of the specified search terms in that category.
- [7] Searches retrieved any word containing the string of letters searched. That is, searches for “advertise” also retrieved complaints that included the string “advertise” such as “advertisement” and/or “advertised.”

Source:

- [1] Better Business Bureau complaints for Intuit and benchmark companies, as of January 3, 2022. See **Appendix G**, Figure G-2.

³ As discussed in **Appendix F**, I also considered a set of companies that were investigated by the FTC and/or ProPublica. These are not included in this analysis as it is more appropriate to compare the content of Intuit’s BBB complaints with that of non-investigated companies in order to determine if Intuit’s rates of keywords are in line with other businesses.

APPENDIX I
TV AD BENCHMARKING ANALYSIS

Appendix I TV Ad Benchmarking Analysis

I. AD AND DISCLOSURE SELECTION

1. To assess Intuit's TurboTax ads, I compared the at-issue ads and their disclosures with ads and disclosures from competitors and other benchmark companies. As discussed in **Section V.C**, I analyzed 18 benchmark companies, including 6 tax preparation competitors and 12 other benchmarks.¹
2. For each benchmark company, I selected the three most recent TV ads available as of July 11, 2022 (going back to 2020), that met the following criteria: (1) were 30-second; (2) had a disclosure; and (3) pertained to a free offer, price of a product or service, or eligibility criteria for a product or service. Where it was not possible to find a TV ad that met all three criteria, I satisfied criteria (1) and (2); that is, not all ads pertained to a free offer, price of a product or service, or eligibility criteria for a product or service. I replaced one ad from DirecTV and one ad from Dish Network that are no longer available on YouTube or iSpot.tv, since submitting my August declaration.²
3. I reviewed ads available on YouTube and iSpot.tv for benchmark companies. I began my search by finding companies' YouTube channels and viewing the most recent ads. For companies that did not feature three recent ads, I reviewed the company's ads on iSpot.tv. iSpot.tv is a platform that measures "brand and business impact of TV and streaming advertising," and provides free, public access to companies' recent TV commercials.³

¹ In my August declaration, I also considered available ads for five companies that had been investigated by the FTC or ProPublica for deceptive or misleading conduct. I only found ads available for two companies, MoneyGram and Chime Financial. However, these companies were investigated for deceptive or misleading conduct unrelated to advertising. Furthermore, I note that these companies are not truly comparable to Intuit, as discussed in **Appendix F**, and for the purposes of benchmarking Intuit's ads against acceptable industry standards, it is more appropriate to exclude these investigated companies.

² DirecTV's "Get your TV Together: Wonder feat. Serena Williams: 30" and Dish Network's "Voice Search Across Live TV and Streaming Apps," which I reviewed in my August declaration, are no longer available. To replace these ads, I chose the most recent television ad available that was (1) 30 seconds; and (2) had a disclosure for DirecTV and Dish Network. See August Golder Declaration, **Appendix G**, Figure G-1.

³ "What We Do: The New Standard for TV Ad Measurement," *iSpot.tv*, <https://www.ispot.tv/about> ("What We Do: The New Standard for TV Ad Measurement"), accessed July 26, 2022, INTUIT-FTC-PART3-000600796.

Using the combination of these two platforms, I was able to find at least one ad that met the criteria I established for this analysis for 16 of the 18 benchmark companies.⁴

4. I reviewed all ads referred to by Complaint Counsel in their interrogatory responses.⁵ As there were several ads without 30-second versions over these years, I analyzed all ad durations reasonably expected to have appeared on television.⁶
5. When assessing ads that met the criteria of the analysis, I focused on the claims being made and the corresponding disclosures.⁷ In cases where an ad contained more than one disclosure, I analyzed the disclosure related to the free offer, price of the product or service, or eligibility criteria. In cases where there was no disclosure that met these criteria, I analyzed the last disclosure that appears in the ad. In cases where there were multiple disclosures related to the free offer, price of the product or service, or eligibility criteria, I analyzed all applicable disclosures. I kept record of the exact disclosure language as well as the claim voiceover — audio statements about the characteristics or benefits of the product or service — for reference as I reviewed other aspects of the ad.
6. *See Figure I-1* for the benchmarking metrics for TurboTax ads. *See Figure I-2* for the benchmarking metrics for benchmark companies. I discuss the results in **Section V.C**.

II. METRICS SELECTION AND MEASUREMENT

7. In the subsections that follow, I use FTC Guidelines and Complaint Counsel’s specific allegations in this matter to develop relevant metrics for the purposes of comparing Intuit’s TV ads to the benchmark company ads.

⁴ I could not find any 30-second ads for TaxHawk or Cash App Taxes. For Jackson Hewitt, I was only able to find one ad that met the analysis criteria.

⁵ Complaint Counsel’s Supplemental Responses to Intuit’s First and Second Set of Interrogatories, *In the matter of: Intuit Inc., A Corporation*, No. 9408, December 22, 2022 (“Complaint Counsel’s Supplemental Responses to Intuit’s First and Second Set of Interrogatories, December 22, 2022”).

⁶ I considered any ad length from 15 to 60 seconds as being reasonably expected to have appeared on television. The durations of ads included were 15, 30, 45, and 60 seconds.

⁷ I define a claim as a verbal or written statement “about the benefits, characteristics, and/or performance of a product or service designed to persuade the customer to make a purchase.” *See* “Advertising Claim,” *Marketing Accountability Standards Board Common Language Dictionary*, <https://marketing-dictionary.org/a/advertising-claim/> (“Advertising Claim”), INTUIT-FTC-PART3-000598534.

A. Proximity and Placement

8. According to the FTC Guidelines relating to online consumer disclosures, “[a] disclosure is more effective if it is placed near the claim it qualifies or other relevant information.”⁸ This is consistent with the FTC’s earlier guidance specific to TV advertising. In 1970, the FTC’s standards for “clear and conspicuous” TV advertising stated, “[t]he disclosure should be presented simultaneously in both the audio and video portions of the television advertisement.”⁹ Complaint Counsel did not specifically take issue with the proximity or placement of Intuit’s disclosures in its ads.
9. To assess proximity and placement, I measured: (1) whether the disclosure was on the screen at the same time the claim was made; and (2) where the disclosure was placed on the screen.
10. **Is the disclosure on the screen at the same time the claim is made?** If at least one claim is voiced over or displayed while the related disclosure is on the screen, I considered the answer to be “Yes.”
11. **Disclosure placement.** I noted where the disclosure was located on the screen. If the disclosure was located at the bottom of the screen, I categorized the metric as “Bottom of the screen.”

B. Prominence

12. The FTC Guidelines relating to online consumer disclosures suggest that disclosures should be “display[ed]... prominently so they are noticeable to consumers. The size, color, and graphics of the disclosure affects its prominence.”¹⁰ In the TV-specific guidance published in 1970, the FTC advised, “the disclosure must contain letters of sufficient size so that it can be easily seen and read on all television sets.”¹¹ Regarding the color of the

⁸ “.Com Disclosures: How to Make Effective Disclosures in Digital Advertising,” *FTC*, March 2013, <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf> (“FTC Guidelines, 2013”), INTUIT-FTC-PART3-000600903, p. 8.

⁹ “Commission Enforcement Policy Statement in Regard to Clear and Conspicuous Disclosure in Television Advertising,” *FTC*, October 21, 1970, https://www.ftc.gov/system/files/documents/public_statements/288851/701021tvad-pr.pdf (“FTC TV Guidelines, 1970”), INTUIT-FTC-PART3-000600859, p. 1.

¹⁰ *FTC Guidelines*, 2013, p. 17.

¹¹ *FTC TV Guidelines*, 1970, p. 1.

disclosure in TV ads, the FTC advised, “The video portion of the disclosure should contain letters of a color or shade that readily contrasts with the background. The background should consist of only one color or shade.”¹²

13. Complaint Counsel have argued that Intuit’s disclosures were not sufficiently prominent; specifically, that the font is too small relative to the size of the marketing message and it is not visually prominent relative to the background.¹³
14. To assess prominence, I measured: (1) the height of the disclosure relative to the total height of the screen; and (2) the color of the disclosure text and background.
15. Complaint Counsel also note the difference in size between the disclosure and other claim text on the screen, saying Intuit’s disclosures “[a]re disproportionately small and not readable...compared to the prominent text emphasizing that the service is free.”¹⁴ This comparison obscures the fact that the size of the actual disclosure is not dependent on the size of the claim text: if Intuit makes the TurboTax logo larger or smaller, it does not impact the readability of the disclosure. Therefore, my comparison of disclosure height to screen height is a more appropriate metric. However, I note that Intuit internal marketing guidance as of September 2021 stated that marketers should “[e]nsure offer eligibility is no more than 10% smaller text than core messaging.”¹⁵
16. **Disclosure height vs. total screen height.** I considered disclosure height to be the height of the disclosure relative to the total height of the screen. To calculate disclosure height, I measured the height of one line of the disclosure text and divided it by the total height of the screen. If there were multiple disclosures in an ad, I calculated the disclosure height for each unique disclosure, by taking the average disclosure height of each time the same disclosure appeared in the ad. For example, the same disclosure appears twice in T-Mobile’s “Please Listen: Switch and Get \$1000” ad. I take the average disclosure height

¹² FTC TV Guidelines, 1970, p. 1.

¹³ Complaint Counsel’s Motion for Summary Decision, *In the Matter of: Intuit Inc., A Corporation*, Docket No. 9408, August 22, 2022 (“Motion for Summary Decision”), pp. 25, 27.

¹⁴ Motion for Summary Decision, p. 28.

¹⁵ Intuit, “TY21 TurboTax September X-Agency Meeting,” September 27, 2021, INTUIT-FTC-PART3-000490342, p. 32.

for each occurrence $(2.71\% \text{ and } 2.04\%)/2 = 2.38\%$. The precise steps I took to measure disclosure height are as follows:

- a. *Screen capture*: For YouTube ads, I viewed the video in “Theater Mode” and using the Web capture feature in Microsoft Edge, took a full-page web capture of the screen. For iSpot.tv ads and the TY 2021 TurboTax TV ads, I viewed the video in full-screen mode and took a screenshot (using the desktop app “Snipping Tool” in Window Snip mode) of the whole screen.
 - b. *Convert to PDF*: I converted the web captures and screenshots from JPEG or PNG files to PDFs using Adobe Acrobat.
 - c. *Take measurement*: Using the Adobe Measuring Tool, I measured (in centimeters) the total height of the screen and the height of the first letter in the disclosure text.¹⁶
17. **Color of disclosure text and background.** To determine whether there was a contrast between the color of the disclosure text and background, I noted the color of the disclosure text and the color of the screen behind the disclosure. In cases where the disclosure was presented on top of a changing background, I categorized the background color as “Moving Background.”

C. Distracting Factors

18. The FTC Guidelines relating to online consumer disclosures specifically discuss what constitutes a distracting factor using the example of TV ads. According to the FTC, “[o]n television, moving visuals behind text message make the text hard to read and may distract

¹⁶ In ads where the progress bar covers the first line of the disclosure text, I measure the height of the first letter of the second line of the disclosure text. In a single instance – TaxAct ad called “Bear: Taxes Aren’t Scary” – the disclosure text starts with a number instead of a letter, so I measure the height of the first number. Ads in which the progress bar covers the first line of the disclosure text are the following: “Cloudy with a Chance of TaxAct - Version A,” *TaxAct TV Ad*, January 3, 2022, <https://youtu.be/inVk3O8sXIk> (“Cloudy with a Chance of TaxAct - Version A”), accessed July 13, 2022, INTUIT-FTC-PART3-000602942; “File Your Taxes for Free With the Biggest Refund Possible,” *TaxSlayer TV Ad*, January 2, 2020, <https://www.youtube.com/watch?v=zYgk8TtqJu4> (“File Your Taxes for Free With the Biggest Refund Possible”), accessed July 13, 2022, INTUIT-FTC-PART3-000602992; “Monsters: Dinner,” *Charter Spectrum TV Ad*, February 3, 2022, <https://www.youtube.com/watch?v=6-nsCJ54TkQ> (“Monsters: Dinner”), accessed July 12, 2022, INTUIT-FTC-PART3-000602970; “Bear: Taxes Aren’t Scary,” *TaxAct TV Ad*, January 4, 2021, <https://www.ispot.tv/ad/tzw7/taxact-bear-taxes-arent-scary> (“Bear: Taxes Aren’t Scary”), accessed July 13, 2022, INTUIT-FTC-PART3-000602976.

consumers' attention from the message.”¹⁷ Complaint Counsel did not specifically take issue with distracting factors in Intuit's ads.¹⁸

19. To assess distracting factors, I measured whether the background of the disclosure was solid or moving. Most of Intuit's ads include a moving background behind the disclosure text;¹⁹ however, this was a common methodology among benchmark companies as well.
20. Notably, when Intuit's ads do include a moving background behind the disclosure, they also include a solid background for an equivalent amount of time, removing the distracting factor.²⁰ I expanded upon the TV ad benchmarking analysis in my August declaration to compare the duration of time the disclosure is on a moving background to the duration that the disclosure appears on the screen.
21. Additionally, I reviewed whether the TV ad included multiple disclosures discussing free, price of product, or eligibility. As discussed in **Section V.B**, providing detailed information (or similarly, multiple disclosures) in TV ads is often not the most effective way to disseminate information to consumers.
22. **Solid or moving background.** I noted if the disclosure was presented on top of moving video or a stationary background. If the disclosure was presented on top of moving video, I categorized the background as “Moving.” If the disclosure was presented on a stationary background, with either one solid color or multiple colors, I categorized this metric as “Solid.”
23. **Duration the disclosure is on a solid screen vs. duration of the disclosure.** I calculate the time the disclosure is on a solid screen by dividing the time the disclosure is on a solid screen by the total duration the disclosure is on the screen.

¹⁷ FTC Guidelines, 2013, p. 19.

¹⁸ Motion for Summary Decision, pp. 27-29.

¹⁹ If the disclosure text was ever presented on top of a moving video, I conservatively categorize the ad as having a “Moving” background.

²⁰ Three out of four of the Intuit disclosures begin with a “Moving” background for the first second but end on a “Solid” background for the last three seconds, giving the viewer an opportunity to read the disclosure without distracting factors. I conservatively categorize these three ads as having a “Moving” background even if they appear on a “Solid” background for more than half of the disclosure duration. *See* Ad, Intuit TV, “Copy of Dance Workout,” QTTX0023000H; Ad, Intuit TV, “Dog Show,” QTT2159H, INTUIT-FTC-PART3-000602935; Intuit TV Ad, “Auctioneer: 30 seconds,” QTTX001900H, INTUIT-FTC-PART3-000602934.

D. Repetition

24. The FTC Guidelines suggest that “[i]t may be necessary to disclose information more than once.”²¹ However, “the disclosure need not be repeated so often that consumers would ignore it or it would clutter the ad.”²² These guidelines specifically suggest to “[r]epeat disclosures on lengthy [web]sites and applications, as needed” and “[r]epeat disclosures with repeated claims, as needed.”²³
25. Complaint Counsel have argued that Intuit should have voiced over the disclosure in its entirety, rather than including the text disclosure and an alternate audio disclosure directing viewers to the website for more details.²⁴
26. To assess repetition, I measured: (1) whether there was a voiceover of the disclosure text; and (2) whether the disclosure was repeated (or expanded upon) on the company webpage.
27. **Is there a voiceover of the disclosure text?** If the disclosure text was voiced over exactly as written, I considered there to be a voiceover of the disclosure text.
28. **Is the disclosure repeated on the company website?** I reviewed each company’s Homepage unless the ad directed the customer to a specific webpage. If the information on the Homepage or specified webpage aligned with the disclosure text or provided additional detail, I considered the disclosure to be repeated on the company website. I also considered disclosures that were linked on the Homepage or specified webpage to be repeated on the company’s website.

E. Multimedia Messages and Campaigns

29. The 2013 FTC Guidelines relating to online consumer disclosures also include guidelines that are specific to the ad medium. For TV ads, the FTC suggests to “display visual disclosure for a sufficient duration...for consumers to notice, read, and understand them.”²⁵ Similarly, the FTC’s 1970s TV guidelines suggest, “[t]he video portion of the disclosure

²¹ FTC Guidelines, 2013, p. 19.

²² FTC Guidelines, 2013, p. 19.

²³ FTC Guidelines, 2013, p. 19.

²⁴ Motion for Summary Decision, pp. 27-28.

²⁵ FTC Guidelines, 2013, p. 20.

should appear on the screen for a sufficient duration to enable it to be completely read by the viewer.”²⁶

30. Complaint Counsel argue that Intuit’s disclosures did not appear on the screen for a sufficient duration.²⁷
31. To assess this multimedia specific guideline, I measured the duration for which the disclosures appeared on the ad. All of the benchmark ads that I reviewed were 30-second ads; for Intuit I reviewed ads that were 15-, 30-, 45-, and 60-second ads.
32. **Duration of the disclosure.** I calculated the total duration the disclosure was on screen in seconds. If the same unique disclosure was repeated during the ad, I considered the duration to be the total time the disclosure was on screen.
33. **Duration of the disclosure vs. duration of the ad.** I also calculate the duration of the disclosure relative to the total length of the ad. I calculate the duration of the disclosure by dividing the duration the disclosure is on the screen by the total duration of the ad.

F. Understandable Language

34. I discuss and evaluate this component of the FTC’s guidelines with respect to Complaint Counsel’s allegations in **Section V.B.**

²⁶ FTC TV Guidelines, 1970, p. 2.

²⁷ Motion for Summary Decision, p. 29.

Figure I-1
Detailed TV Ad Benchmarking
TurboTax

																Multimedia Specific
Proximity and Placement						Prominence			Distracting Factors in Ads			Repetition			Guidelines	
Company	Ad Name	Ad Length (seconds)	Tax Year	Time the disclosure appears	Disclosure on the screen the same time the claim is made ⁵	Disclosure Placement	Disclosure Height (Disclosure letter height as a percent of total screen height) ⁵	Disclosure Text	Color of Background ⁵	Solid or Moving Background?	Total duration disclosure is on a solid screen (seconds)	Duration disclosure is on screen (seconds)	Percent of disclosure duration that disclosure is on a solid screen	Is there a voiceover of the disclosure text?	Is the disclosure repeated on the company website ⁸	Percent of ad length that disclosure is on the screen
TurboTax	Boston Tea Party	60	2015	54	Yes	Bottom of the screen	2.79%	White	Moving Background	Moving	0.0	3.0	0%	No	Yes	5%
TurboTax	Never a Sellout	30	2016	17	Yes	Bottom of the screen	2.63%	White	Moving Background	Moving	0.0	4.0	0%	No	Yes	13%
TurboTax	Fish	30	2017	2	No	Bottom of the screen	2.26%	White	Moving Background	Moving	0.0	4.0	0%	No	Yes	13%
TurboTax	Fish	15	2017	2	No	Bottom of the screen	1.96%	White	Moving Background	Moving	0.0	5.0	0%	No	Yes	33%
TurboTax	Cruise	30	2017	1	No	Bottom of the screen	2.26%	White	Moving Background	Moving	0.0	5.0	0%	No	Yes	17%
TurboTax	Guzman	15	2017	4	Yes	Bottom of the screen	2.31%	White	Moving Background	Moving	0.0	7.0	0%	No	Yes	47%
TurboTax	Baby	15	2017	7	Yes	Bottom of the screen	1.95%	White	Moving Background	Moving	0.0	5.0	0%	No	Yes	33%
TurboTax	Anthem	45	2017	1	No	Bottom of the screen	2.07%	White	Moving Background	Moving	0.0	3.0	0%	No	Yes	7%
TurboTax	Big Kick	30	2018	26	Yes	Bottom of the screen	2.74%	White	Moving Background	Moving	2.0	4.0	50%	No	Yes	13%
TurboTax	Big Kick	60	2018	57	Yes	Bottom of the screen	2.37%	White	Moving Background	Moving	1.0	3.0	33%	No	Yes	5%
TurboTax	Lawyer	30	2018	26	Yes	Bottom of the screen	2.74%	White	Moving Background	Moving	2.0	4.0	50%	No	Yes	13%
TurboTax	Lawyer	60	2018	56	Yes	Bottom of the screen	2.25%	White	Moving Background	Moving	2.0	4.0	50%	No	Yes	7%
TurboTax	Court Reporter	15	2018-2019	11	Yes	Bottom of the screen	2.67%	White	Moving Background	Moving	2.0	4.0	50%	No	Yes	27%
TurboTax	Crossword	15	2018-2019	11	Yes	Bottom of the screen	2.89%	White	Moving Background	Moving	2.0	4.0	50%	No	Yes	27%
TurboTax	Movie Credits	15	2018-2019	12	Yes	Bottom of the screen	2.86%	White	Moving Background	Moving	2.0	3.0	67%	No	Yes	20%
TurboTax	Movie Credits	30	2018-2019	26	Yes	Bottom of the screen	2.88%	White	Moving Background	Moving	3.0	4.0	75%	No	Yes	13%
TurboTax	Movie Credits	30	2018-2019	27	Yes	Bottom of the screen	2.23%	White	Moving Background	Moving	2.0	3.0	67%	No	Yes	10%
TurboTax	Game Show	30	2018-2019	26	Yes	Bottom of the screen	2.14%	White	Moving Background	Moving	2.0	4.0	50%	No	Yes	13%
TurboTax	Game Show	30	2018-2019	26	Yes	Bottom of the screen	2.02%	White	Moving Background	Moving	2.0	4.0	50%	No	Yes	13%
TurboTax	Game Show	15	2018-2019	11	Yes	Bottom of the screen	2.06%	White	Moving Background	Moving	2.0	4.0	50%	No	Yes	27%
TurboTax	Spelling Bee	15	2018-2019	11	Yes	Bottom of the screen	2.13%	White	Moving Background	Moving	2.0	4.0	50%	No	Yes	27%
TurboTax	Spelling Bee	30	2018-2019	26	Yes	Bottom of the screen	2.09%	White	Moving Background	Moving	2.0	4.0	50%	No	Yes	13%
TurboTax	Spelling Bee	30	2018-2019	27	Yes	Bottom of the screen	2.54%	White	Moving Background	Moving	2.0	3.0	67%	No	Yes	10%
TurboTax	Auctioneer	15	2020-2021	11	Yes	Bottom of the screen	2.25%	White	Moving Background	Moving	2.0	3.0	67%	No	Yes	20%
TurboTax	Auctioneer	30	2020-2021	26	Yes	Bottom of the screen	2.01%	White	Moving Background	Moving	3.0	4.0	75%	No	Yes	13%
TurboTax	Dog Show	15	2020-2021	11	Yes	Bottom of the screen	2.11%	White	Moving Background	Moving	2.0	3.0	67%	No	Yes	20%
TurboTax	Dog Show	30	2020-2021	26	Yes	Bottom of the screen	2.12%	White	Moving Background	Moving	3.0	4.0	75%	No	Yes	13%
TurboTax	Dance Workout	15	2020-2021	11	Yes	Bottom of the screen	1.99%	White	Moving Background	Moving	3.0	4.0	75%	No	Yes	27%
TurboTax	Dance Workout	30	2020-2021	26	Yes	Bottom of the screen	2.00%	White	Moving Background	Moving	3.0	4.0	75%	No	Yes	13%
TurboTax	Spit Take	15	2021	9	Yes	Bottom of the screen	1.90%	White	Blue	Solid	6.0	6.0	100%	No	Yes	40%
TurboTax	Spit Take	30	2021	26	Yes	Bottom of the screen	1.97%	White	Blue	Solid	4.0	4.0	100%	No	Yes	13%
TurboTax	Young Love	15	2021	11	Yes	Bottom of the screen	2.10%	White	Moving Background	Moving	3.0	4.0	75%	No	Yes	27%
TurboTax	Echo	15	2021	11	Yes	Bottom of the screen	2.09%	White	Moving Background	Moving	3.0	4.0	75%	No	Yes	27%
TurboTax	Freeloader	15	2021	4	Yes	Bottom of the screen	2.12%	White	Moving Background	Moving	3.0	6.0	50%	No	Yes	40%
TurboTax	Freeloader	30	2021	12	Yes	Bottom of the screen	1.97%	White	Moving Background	Moving	3.0	7.0	43%	No	Yes	23%
Average of TurboTax (All)							2.3%					4.1	48.1%			19.5%
Average of TurboTax (30-second)							2.3%					4.1	51.6%			13.8%
Average of TurboTax (TY 2021)							2.1%					4.4	73.0%			23.1%

Figure I-2
Detailed TV Ad Benchmarking
Benchmark Companies

		Proximity and Placement						Prominence			Distraction Factors in Ads				Repetition		Multimedia Specific Guidelines		
Benchmark Category	Company	Ad Name	Ad Length (seconds)	Tax Year	Time the disclosure appears	Disclosure on the screen the same time the claim is made ⁵	Disclosure Placement	Disclosure Height (Disclosure letter height as a percent of total screen height) ⁸	Color of Disclosure Text	Color of Background ⁶	Solid or Moving Background?	Total Duration disclosure is on a solid screen (seconds)	Duration disclosure is on screen (seconds)	Percent of disclosure duration that disclosure is on a solid screen	Is there a voiceover of the disclosure text?	Is the disclosure repeated on the company website? ⁸	Percent of ad length that disclosure is on the screen		
Tax Competitor	H&R Block	Max Refund	30	2021	19	Yes	Bottom of the screen	1.68%	White	Moving Background	Moving	0.0	5.0	0%	No	Yes	17%		
Tax Competitor	H&R Block	Help on Your Terms	30	2021	24	Yes	Bottom of the screen	1.74%	White	Green	Solid	3.0	3.0	100%	No	N/A	10%		
Tax Competitor	H&R Block	File Virtually	30	2021	19	Yes	Bottom of the screen	2.12%	White	Moving Background	Moving	0.0	3.0	0%	No	Yes	10%		
Tax Competitor	TaxAct	Cloudy with a Chance of TaxAct - Version A	30	2021	26	No	Bottom of the screen	2.12%	White	Black	Solid	5.0	5.0	100%	No	Yes	17%		
Tax Competitor	TaxAct	The Fixer: 30	30	2021	27	No	Bottom of the screen	2.49%	White	Dark Purple	Solid	4.0	4.0	100%	No	Yes	13%		
Tax Competitor	TaxAct	Bear: Taxes Aren't Scary	30	2021	21	Yes	Bottom of the screen	2.43%	White	Moving Background	Moving	5.0	5.0	100%	No	Yes	17%		
Tax Competitor	TaxSlayer	Cash Cow: 30	30	2021	23	Yes	Bottom of the screen	2.12%	White	Dark Blue	Solid	4.0	4.0	100%	No	Yes	13%		
Tax Competitor	TaxSlayer	Anthem-Simply Free	30	2021	26	No	Bottom of the screen	1.92%	Gray	White	Solid	4.0	4.0	100%	No	Yes	13%		
Tax Competitor	TaxSlayer	File Your Taxes for Free with the Biggest Refund Possible	30	2021	26	No	Bottom of the screen	1.73%	Black	White	Solid	4.0	4.0	100%	No	Yes	13%		
Tax Competitor	Jackson Hewitt	Break Free	30	2021	25	Yes	Bottom of the screen	1.97%	White	Purple	Solid	5.0	5.0	100%	No	Yes	17%		
Tax Competitor	TaxHawk	Not able to find any ads																	
Tax Competitor	CashApp Taxes	Not able to find any ads																	
Average of Tax Competitors								2.0%				3.4	4.2	80.0%			14.0%		
Wireless Carriers	AT&T	Plays	30	2021	22	Yes	Bottom of the screen	1.74%	White	Blue	Solid	7.0	7.0	100%	No	Yes	23%		
Wireless Carriers	AT&T	Lily + Matthew: Interview Featuring Matthew Stafford	30	2021	23	Yes	Bottom of the screen	1.84%	White	Blue	Solid	4.0	4.0	100%	No	Yes	13%		
Wireless Carriers	AT&T	Always Right: Up to \$800 Off Smartphones	30	2021	21	Yes	Bottom of the screen	1.80%	White	Blue	Solid	3.0	3.0	100%	No	Yes	10%		
					25	Yes	Bottom of the screen	1.83%	White	Blue	Solid	3.0	3.0	100%	No	Yes	10%		
					0	Yes	Bottom of the screen	2.11%	White	Moving Background	Moving	0.0	2.0	0%	No	Yes	7%		
					2	Yes	Bottom of the screen	3.07%	White	Moving Background	Moving	0.0	4.0	0%	No	Yes	13%		
Wireless Carriers	Verizon	More Star Wars	30	2021	7	Yes	Bottom of the screen	1.58%	White	Moving Background	Moving	0.0	4.0	0%	No	Yes	13%		
					16	Yes	Bottom of the screen	3.03%	White	Moving Background	Moving	0.0	2.0	0%	No	Yes	7%		
					22	Yes	Bottom of the screen	1.44%	White	Moving Background	Moving	0.0	4.0	0%	No	Yes	13%		
Wireless Carriers	Verizon	Show the Love: Customers for Years and Switchers	30	2021	11	Yes	Bottom of the screen	3.07%	White	Moving Background	Moving	0.0	3.0	0%	No	Yes	10%		
					30	2021	19	Yes	Bottom of the screen	1.38%	Black	Moving Background	Moving	4.0	6.0	67%	No	Yes	20%
Wireless Carriers	Verizon	Holiday Better: What's Better	30	2021	22	Yes	Bottom of the screen	1.58%	White	Moving Background	Moving	0.0	6.0	0%	No	Yes	20%		
					16	Yes	Bottom of the screen	1.91%		Magenta	Solid	2.0	2.0	100%	No	Yes	7%		
Wireless Carriers	T-Mobile	iPhone 13: Hide and Seek	30	2021	18	Yes	Bottom of the screen	2.49%	White	Magenta	Solid	4.0	4.0	100%	No	Yes	13%		
					26	Yes	Bottom of the screen	2.58%	White	Magenta	Solid	2.0	2.0	100%	No	Yes	7%		
					14	Yes	Bottom of the screen	1.73%	White	Moving Background	Moving	0.0	4.0	0%	No	Yes	13%		
Wireless Carriers	T-Mobile	Please Listen: Switch and Get \$1000	30	2021	10	Yes	Bottom of the screen	2.71%	White	Moving Background	Moving	3.0	3.0	0%	No	Yes	10%		
					22	Yes	Bottom of the screen	2.04%	White	Magenta	Solid	0.0	3.0	100%	No	Yes	10%		
								2.38%				3.0	6.0	50%			20%		
Wireless Carriers	T-Mobile	Value: Mom's Birthday	30	2021	17	Yes	Bottom of the screen	1.61%	White	Magenta	Solid	2.0	2.0	100%	No	Yes	7%		
					24	Yes	Bottom of the screen	2.04%	White	Magenta	Solid	5.0	5.0	100%	No	Yes	17%		
Average of Wireless Carriers								2.1%				2.1	3.8	53.5%			12.8%		
TV Service Provider	Directv	Get Your TV Together Fan	30	2021	23	N/A	Bottom of the screen	1.90%	White	Moving Background	Moving	0.0	7.0	0%	No	Yes	23%		
					9	Yes	Bottom of the screen	1.48%	White	Moving Background	Moving	0.0	2.0	0%	No	Yes	7%		
TV Service Provider	Directv	Feel the Energy of the Big Leagues \$23.33	30	2021	17	Yes	Bottom of the screen	1.35%	White	Moving Background	Moving	0.0	2.0	0%	No	Yes	7%		
					20	Yes	Bottom of the screen	1.42%	White	Moving Background	Moving	0.0	2.0	0%	No	Yes	7%		
					26	Yes	Bottom of the screen	1.72%	White	Multiple Colors	Solid	4.0	4.0	100%	No	Yes	13%		
TV Service Provider	Directv	GOATbusters	30	2021	26	Yes	Bottom of the screen	1.58%	White	Dark Blue	Solid	4.0	4.0	100%	No	Yes	13%		
TV Service Provider	Comcast/Xfinity	Our Way of Showing Appreciation	30	2021	27	No	Bottom of the screen	1.97%	White	Moving Background	Moving	0.0	3.0	0%	No	Yes	10%		
TV Service Provider	Comcast/Xfinity	Gateway Upgrade	30	2021	5	Yes	Bottom of the screen	1.86%	White	Moving Background	Moving	0.0	3.0	0%	No	Yes	10%		
					24	Yes	Bottom of the screen	1.84%	White	Moving Background	Moving	0.0	3.0	0%	No	Yes	10%		
TV Service Provider	Comcast/Xfinity	Get it All	30	2021	5	Yes	Bottom of the screen	1.77%	White	Moving Background	Moving	0.0	9.0	0%	No	Yes	30%		
					17	Yes	Bottom of the screen	1.73%	White	Moving Background	Moving	0.0	5.0	0%	No	Yes	17%		
TV Service Provider	Charter Spectrum	Monsters: Dinner	30	2021	27	Yes	Bottom of the screen	1.81%	White	Blue	Solid	4.0	4.0	100%	No	Yes	13%		
TV Service Provider	Charter Spectrum	Monsters: Gamers	30	2021	26	Yes	Bottom of the screen	1.82%	White	Blue	Solid	4.0	4.0	100%	No	Yes	13%		
TV Service Provider	Charter Spectrum	We Are Local: Madison	30	2021	28	Yes	Bottom of the screen	1.82%	White	Moving Background	Moving	0.0	2.0	0%	No	Yes	7%		
TV Service Provider	Dish Network	DISH makes TV easy with Prime Video - DISH	30	2021	26	Yes	Bottom of the screen	1.97%	Grey	White	Solid	5.0	5.0	100%	No	N/A	17%		
TV Service Provider	Dish Network	HBO Max	30	2021	25	No	Bottom of the screen	2.16%	White	Purple	Solid	5.0	5.0	100%	No	Yes	17%		
TV Service Provider	Dish Network	Get 99% signal reliability with DISH	30	2021	6	Yes	Bottom of the screen	1.85%	Grey	White	Solid	4.0	9.0	44%	No	Yes	30%		
Average of TV Service Providers								1.77%				1.8	4.3	37.9%			14.3%		

Figure I-2
Detailed TV Ad Benchmarking
Benchmark Companies

		Proximity and Placement			Prominence			Distracting Factors in Ads			Repetition			Multimedia Specific Guidelines			
Benchmark Category	Company	Ad Name	Ad Length (seconds)	Tax Year	Time the disclosure appears	Disclosure on the screen the same time the claim is made ⁵	Disclosure Placement	Disclosure Height (Disclosure letter height as a percent of total screen height) ⁶	Color of Disclosure Text	Color of Background ⁶	Solid or Moving Background?	Total Duration disclosure is on a solid screen (seconds)	Duration disclosure is on screen (seconds)	Percent of disclosure duration that disclosure is on a solid screen	Is there a voiceover of the disclosure text? ⁷	Is the disclosure repeated on the company website? ⁸	Percent of ad length that disclosure is on the screen
Auto Insurance	State Farm	Ronnie's Options	30	2021	6	Yes	Bottom of the screen	2.07%	White	Moving Background	Moving	0.0	4.0	0%	No	Yes	13%
Auto Insurance	State Farm	Fake Streamer	30	2021	12	Yes	Bottom of the screen	1.62%	White	Moving Background	Moving	0.0	3.0	0%	No	Yes	10%
Auto Insurance	State Farm	Yours Now	30	2021	17	Yes	Bottom of the screen	1.73%	White	Moving Background	Moving	0.0	3.0	0%	No	Yes	10%
Auto Insurance	GEICO	Life in a Victorian Home	30	2021	15	Yes	Bottom of the screen	2.11%	White	Moving Background	Moving	0.0	3.0	0%	No	Yes	10%
Auto Insurance	GEICO	Lamp Problems	30	2021	28	No	Bottom of the screen	1.51%	White	Moving Background	Moving	0.0	2.0	0%	No	Yes	7%
Auto Insurance	GEICO	Open Floor Plan Problems	30	2021	14	Yes	Bottom of the screen	2.12%	White	Moving Background	Moving	0.0	4.0	0%	No	Yes	13%
Auto Insurance	Progressive	Love and Other Bundles	30	2021	15	Yes	Bottom of the screen	2.39%	White	Moving Background	Moving	0.0	3.0	0%	No	Yes	10%
			30	2021	6	N/A	Bottom of the screen	2.60%	White	Moving Background	Moving	0.0	4.0	0%	No	Yes	13%
			30	2021	29	N/A	Bottom of the screen	2.37%	White	Moving Background	Moving	1.0	1.0	100%	No	Yes	3%
Auto Insurance	Progressive	Table for Two	30	2021	6	No	Bottom of the screen	2.38%	White	Moving Background	Moving	0.0	4.0	0%	No	Yes	13%
			30	2021	14	Yes	Bottom of the screen	2.73%	White	Moving Background	Moving	0.0	4.0	0%	No	Yes	13%
Auto Insurance	Progressive	Old Flame	30	2021	28	N/A	Bottom of the screen	2.71%	White	Moving Background	Moving	0.0	2.0	0%	No	Yes	7%
			30	2021	9	No	Bottom of the screen	2.73%	White	Moving Background	Moving	0.0	5.0	0%	No	Yes	17%
Auto Insurance	Allstate	Metaverse	30	2021	19	No	Bottom of the screen	1.81%	White	Moving Background	Moving	0.0	4.0	0%	No	Yes	13%
Auto Insurance	Allstate	Tight Squeeze	30	2021	21	Yes	Bottom of the screen	1.66%	White	Moving Background	Moving	0.0	5.0	0%	No	Yes	17%
Auto Insurance	Allstate	Working From Home	30	2021	19	No	Bottom of the screen	2.00%	White	Moving Background	Moving	3.0	3.0	100%	No	Yes	10%
Auto Insurance	USAA	Gronk and Frank	30	2021	27	Yes	Bottom of the screen	1.63%	White	Dark Blue	Solid	3.0	3.0	100%	No	Yes	10%
Auto Insurance	USAA	Too exclusive	30	2021	25	Yes	Bottom of the screen	1.45%	White	Dark Blue	Solid	5.0	5.0	100%	No	Yes	17%
Auto Insurance	USAA	Member Number	30	2021	26	Yes	Bottom of the screen	1.85%	White	Dark Blue	Solid	4.0	4.0	100%	No	Yes	13%
Average of Automobile Insurance Providers								2.1%				0.8	3.4	25.0%			11.3%
Average of Benchmark Companies								2.0%				1.8	3.9	44.9%			12.9%

Notes:

- [1] For each benchmark company, I selected the three most recent TV ads available as of July 11, 2022 (going back to 2020) that met the following criteria: (1) were 30-second; (2) were about a discount/free offering or discussed eligibility; and (3) had a disclosure. Where it was not possible to find a TV ad that met all three criteria, I satisfied criteria (1) and (3): that is, not all companies I reviewed had a discount/free offering or discussed eligibility. If there was more than one disclosure within an ad, I chose the disclosure focusing on a free promotion, discount, rate or eligibility criteria. Where multiple disclosures met this criterion, I evaluated each unique disclosure that appeared in the ad. Where this criterion could not be met, I chose the last disclosure of the ad.
- [2] The disclosure was at the bottom of the screen for every ad included in this analysis.
- [3] A disclosure is considered to be on the screen the same time the claim is made, if any part of a related claim is on screen or voiced over while the disclosure is shown.
- [4] Disclosure height is calculated by dividing the height of one line of disclosure text (cm) by the total height of the screen (cm).
- [5] Some disclosures are presented on top of the ad video, as opposed to a stationary background, so there is no consistent background color. In these cases, I have categorized the color of the background as "Moving Background."
- [6] H&R Block and Dish Network each include disclosures that qualify claims not included on the website because the specific deal is no longer featured on the website, or the claim is irrelevant to the website content.
- [7] There are no ads that were 30-seconds long for TaxHawk.
- [8] There are no TV ads for Cash App Taxes.

Sources:

- [1] Intuit TV Ad, "Copy of Dance Workout," 30 seconds, QTTX0023000H, INTUIT-FTC-PART3-000594976, GX 620.
- [2] Intuit TV Ad, "Dog Show," 30 seconds, QTT2159H, INTUIT-FTC-PART3-000602935, GX 604.
- [3] Intuit TV Ad, "Spit Take," 30 seconds, QTTX0157000H, INTUIT-FTC-PART3-000603030, GX 309.
- [4] Intuit TV Ad, "Auctioneer," 30 seconds, QTTX001900H, INTUIT-FTC-PART3-000602934, GX 606.
- [5] Intuit TV Ad, "Boston Tea Party," 60 seconds, GX 321.
- [6] Intuit TV Ad, "Never a Sellout," 30 seconds, GX 323.
- [7] Intuit TV Ad, "Anthem," 45 seconds, INTUIT-FFA-FTC-000528211, GX 347.
- [8] Intuit TV Ad, "Baby," 15 seconds, INTUIT-FFA-FTC-000528210, GX 346.
- [9] Intuit TV Ad, "Cruise," 30 seconds, INTUIT-FFA-FTC-000169117, GX 345.
- [10] Intuit TV Ad, "Fish," 15 seconds, INTUIT-FFA-FTC-000528212, GX 325.
- [11] Intuit TV Ad, "Fish," 30 seconds, INTUIT-FFA-FTC-000169116, GX 324.
- [12] Intuit TV Ad, "Guzman," 15 seconds, INTUIT-FFA-FTC-000528209, GX 344.
- [13] Intuit TV Ad, "Big Kick," 30 seconds, GX 670.
- [14] Intuit TV Ad, "Big Kick," 60 seconds, QTTX12976H, INTUIT-FFA-FTC-000169119, GX 349.
- [15] Intuit TV Ad, "Court Reporter," 15 seconds, GX 348.
- [16] Intuit TV Ad, "Game Show," 30 seconds, GX 59.
- [17] Intuit TV Ad, "Lawyer," 30 seconds, INTUIT-FFA-FTC-000528222, GX 300.
- [18] Intuit TV Ad, "Lawyer," 60 seconds, QTTX12996H, INTUIT-FFA-FTC-000169120, GX 328.
- [19] Intuit TV Ad, "Movie Credits," 15 seconds, GX 331.
- [20] Intuit TV Ad, "Movie Credits," 30 seconds, QTTX13063H, INTUIT-FFA-FTC-000169121, GX 299.

- [21] Intuit TV Ad, "Spelling Bee," 15 seconds, GX 671.
- [22] Intuit TV Ad, "Spelling Bee," 30 seconds, QTTX13083H, INTUIT-FFA-FTC-000169122, GX 350.
- [23] Intuit TV Ad, "Crossword," 15 seconds, GX 326.
- [24] Intuit TV Ad, "Game Show," 15 seconds, GX 356.
- [25] Intuit TV Ad, "Game Show," 30 seconds, QTTX12353H, INTUIT-FFA-FTC-000169118, GX 669.
- [26] Intuit TV Ad, "Movie Credits," 30 seconds, GX 330.
- [27] Intuit TV Ad, "Spelling Bee," 30 seconds, GX 351.
- [28] Intuit TV Ad, "Auctioneer," 15 seconds, QTTX0021000H, INTUIT-FTC-PART3-000000536, GX 202.
- [29] Intuit TV Ad, "Dog Show," 15 seconds, QTTX1899H, INTUIT-FTC-PART3-000000530, GX 204.
- [30] Intuit TV Ad, "Spit Take," 15 seconds, QTTX0256000H, INTUIT-FTC-PART3-000000537, GX 622.
- [31] Intuit TV Ad, "Dance Workout," 15 seconds, INTUIT-FTC-PART3-000000523, GX 608.
- [32] Intuit TV Ad, "Young Love," 15 seconds, INTUIT-FTC-PART3-000000544, GX 629.
- [33] Intuit TV Ad, "Echo," INTUIT-FTC-PART3-000000524, GX 609.
- [34] Intuit TV Ad, "Freeloader," 15 seconds, INTUIT-FTC-PART3-000000518, GX 603.
- [35] Intuit TV Ad, "Freeloader," 30 seconds, INTUIT-FTC-PART3-000000529, GX 614.
- [36] H&R Block TV Ad, "Max Refund," February 14, 2021, available at <https://www.youtube.com/watch?v=FnkYy3nGNkk>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602955.
- [37] H&R Block TV Ad, "Help on Your Terms," February 14, 2021, available at <https://www.youtube.com/watch?v=1TtOBbUKzAA>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602954.
- [38] H&R Block TV Ad, "File Virtually," March 21, 2021, available at <https://www.youtube.com/watch?v=7GDqBfbLVLg>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602953.
- [39] TaxAct TV Ad, "Cloudy with a Chance of TaxAct - Version A," January 3, 2022, available at <https://youtu.be/inVk3O8sXIk>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602942.
- [40] TaxAct TV Ad, "The Fixer: 30," February 10, 2022, available at <https://youtu.be/z5liW8zTS1c>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602977.
- [41] TaxAct TV Ad, "Bear: Taxes Aren't Scary," January 4, 2021, available at <https://www.ispot.tv/ad/tzw7/taxact-bear-taxes-arent-scary>, accessed on July 13, 2022.
- [42] TaxSlayer TV Ad, "Commercial 'Cash Cow' (Official TV Ad: 30)," January 4, 2022, available at <https://youtu.be/nSaryc0WZB0>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602979.
- [43] TaxSlayer TV Ad, "Anthem-Simply Free," February 8, 2022, available at <https://www.youtube.com/watch?v=SCb2njAteeQ>, accessed on July 20, 2022, INTUIT-FTC-PART3-000602978.
- [44] TaxSlayer TV Ad, "File Your Taxes for Free with the Biggest Refund Possible," January 2, 2020, available at <https://www.youtube.com/watch?v=zYgk8TtqJu4>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602992.
- [45] Jackson Hewitt TV Ad, "Break Free," August 4, 2020, available at https://www.ispot.tv/ad/n_JU/jackson-hewitt-tax-debt-resolution-break-free, accessed on July 13, 2022, INTUIT-FTC-PART3-000602956.
- [46] AT&T TV Ad, "Plays," August 18, 2021 available at <https://www.youtube.com/watch?v=sWEP4zZU37A>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602939.
- [47] AT&T TV Ad, "Lily + Matthew: Interview Featuring Matthew Stafford," April 4, 2022, available at <https://www.ispot.tv/ad/b1k1/at-and-t-wireless-lily-matthew-interview-featuring-matthew-stafford>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602938.

- [48] AT&T TV Ad, “Always Right: Up to \$800 Off Smartphones,” January 21, 2022, available at <https://www.ispot.tv/ad/qcf7/at-and-t-wireless-always-right-up-to-800-off-smartphones>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602937, INTUIT-FTC-PART3-000618436.
- [49] Verizon TV Ad, “More Star Wars: Disney+,” March 28, 2022, available at <https://www.ispot.tv/ad/bqgX/verizon-5g-unlimited-is-going-ultra-star-wars-included>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602986, INTUIT-FTC-PART3-000618450.
- [50] Verizon TV Ad, “Show the Love: Customers for Years and Switchers,” May 12, 2022, available at <https://www.ispot.tv/ad/bylk/verizon-show-the-love-customers-for-years-and-switchers>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602987, INTUIT-FTC-PART3-000618433.
- [51] Verizon TV Ad, “Holiday Better: What's Better? Featuring Kate McKinnon,” November 25, 2021, available at <https://www.ispot.tv/ad/qN3d/verizon-holiday-better-whats-better-featuring-kate-mckinnon>, accessed on July 13, 2022, , INTUIT-FTC-PART3-000602985.
- [52] T-Mobile TV Ad, “iPhone 13: Hide and Seek: New Line and Apple TV+,” June 6, 2022, available at <https://www.ispot.tv/ad/bN4X/t-mobile-iphone-13-hide-and-seek-new-line-and-apple-tv-song-by-tina-turner>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602981, INTUIT-FTC-PART3-000618439.
- [53] T-Mobile TV Ad, “Please Listen: Switch and Get \$1000,” May 27, 2022, available at <https://www.ispot.tv/ad/bMCU/t-mobile-please-listen-switch-and-get-1000-featuring-ben-barnes>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602982, INTUIT-FTC-PART3-000618437.
- [54] T-Mobile TV Ad, “Value: Mom's Birthday,” May 5, 2022, available at <https://www.ispot.tv/ad/bpj3/t-mobile-value-moms-birthday-families-get-up-to-1000-song-by-billy-idol>, accessed on July 12, 2022, INTUIT-FTC-PART3-000602983, INTUIT-FTC-PART3-000618446.
- [55] DirecTV TV Ad, “Get Your TV Together: Fan :30,” October 7, 2022, available at <https://www.youtube.com/watch?v=N4f1Gwf0LDE>, accessed on December 6, 2022, INTUIT-FTC-PART3-000618442.
- [56] DirecTV TV Ad, “Feel the Energy of the Big Leagues \$23.33,” April 17, 2022, available at <https://www.ispot.tv/ad/bT7N/directv-feel-the-energy-of-the-big-leagues-2333>, accessed on July 12, 2022, INTUIT-FTC-PART3-000602944, INTUIT-FTC-PART3-000618443.
- [57] DirecTV TV Ad, “GOATbusters,” April 21, 2022, available at <https://www.youtube.com/watch?v=uUou6r0y3uI>, accessed on July 6, 2022, INTUIT-FTC-PART3-000602951.
- [58] Comcast/Xfinity TV Ad, “Our Way of Showing Appreciation,” March 14, 2022 available at <https://www.ispot.tv/ad/boUL/xfinity-rewards-our-way-of-showing-appreciation>, accessed on July 12, 2022, INTUIT-FTC-PART3-000602968.
- [59] Comcast/Xfinity TV Ad, “Gateway Upgrade,” June 2, 2022, available at <https://www.ispot.tv/ad/bNI1/xfinity-internet-gateway-upgrade-featuring-ed-helms>, accessed on July 12, 2022, INTUIT-FTC-PART3-000602947, INTUIT-FTC-PART3-000618441.
- [60] Comcast/Xfinity TV Ad, “Get it All,” May 15, 2022, available at <https://www.ispot.tv/ad/bl69/xfinity-3-for-1-bundle-get-it-all>, accessed on July 12, 2022, INTUIT-FTC-PART3-000602950, INTUIT-FTC-PART3-000618435.
- [61] Charter Spectrum TV Ad, “Monsters: Dinner,” February 3, 2022, available at <https://www.youtube.com/watch?v=6-nsCJ54TkQ>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602970.
- [62] Charter Spectrum TV Ad, “Monsters: Gamers,” March 30, 2022, available at <https://www.youtube.com/watch?v=VMfAMWWPMJA>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602971.
- [63] Charter Spectrum TV Ad, “We Are Local: Madison,” February 18, 2022, available at <https://www.youtube.com/watch?v=GquwRDvCFWU>, accessed on July 13, 2022, INTUIT-FTC-PART3-000602972.
- [64] Dish Network TV Ad, “DISH makes TV easy with Prime Video - DISH,” October 18, 2021, available at https://www.youtube.com/watch?v=_L-9jGUxrMM, accessed on July 12, 2022, INTUIT-FTC-PART3-000602945.
- [65] Dish TV Ad, “HBO Max,” August 11, 2021, available at <https://www.youtube.com/watch?v=Kwitzmgpu-s>, accessed on December 7, 2022.
- [66] Dish Network TV Ad, “Get 99% signal reliability with DISH,” January 21, 2022, available at <https://www.youtube.com/watch?v=SoH8FfoxqWo>, accessed on July 12, 2022, INTUIT-FTC-PART3-000602948.

- [67] State Farm TV Ad, "Ronnie's Options :30," June 9, 2022, available at <https://www.youtube.com/watch?v=8Q48t3mw3fk>, accessed on June 24, 2022, INTUIT-FTC-PART3-000602969.
- [68] State Farm TV Ad, "Fake Streamer :30," May 10, 2022, available at <https://www.youtube.com/watch?v=Ek6xUMEG6Ic>, accessed on June 24, 2022, INTUIT-FTC-PART3-000602946.
- [69] State Farm TV Ad, "Yours Now :30," May 10, 2022, available at https://www.youtube.com/watch?v=Wd2WH_6Zsoo, accessed on June 24, 2022, INTUIT-FTC-PART3-000602991.
- [70] GEICO TV Ad, "Life in a Victorian Home," March 28, 2022, available at <https://www.youtube.com/watch?v=IRE9GBihEXU>, accessed on June 24, 2022, INTUIT-FTC-PART3-000602958.
- [71] GEICO TV Ad, "Lamp Problems," April 8, 2022, available at <https://www.youtube.com/watch?v=QEs3U6qfY1E>, accessed on June 27, 2022, INTUIT-FTC-PART3-000602957.
- [72] GEICO TV Ad, "Open Floor Plan Problems," February 7, 2022, available at <https://www.youtube.com/watch?v=EBPuXpdmIO0>, accessed on June 24, 2022, INTUIT-FTC-PART3-000602967.
- [73] Progressive TV Ad, "Love and Other Bundles," May 18, 2022, available at <https://www.youtube.com/watch?v=SwCUCptHrCg>, accessed on June 24, 2022, INTUIT-FTC-PART3-000602959, INTUIT-FTC-PART3-000618431.
- [74] Progressive TV Ad, "Table for Two," June 6, 2022, available at <https://www.youtube.com/watch?v=G04ZjRA9Pk>, accessed on June 27, 2022, INTUIT-FTC-PART3-000602973, INTUIT-FTC-PART3-000618447.
- [75] Progressive TV Ad, "Old Flame," May 23, 2022, available at <https://www.youtube.com/watch?v=wizwmIOrGZU>, accessed on June 27, 2022, INTUIT-FTC-PART3-000602965, INTUIT-FTC-PART3-000618449.
- [76] Allstate TV Ad, "Metaverse," June 15, 2022, available at <https://www.youtube.com/watch?v=WnKtYCSSVSk>, accessed on June 26, 2022, INTUIT-FTC-PART3-000602963.
- [77] Allstate TV Ad, "Tight Squeeze," May 10, 2022, available at https://www.youtube.com/watch?v=FnJZor_E2M8, accessed on June 26, 2022, INTUIT-FTC-PART3-000602980.
- [78] Allstate TV Ad, "Working From Home," April 4, 2022, available at <https://www.youtube.com/watch?v=9ZLVXGVkrdY>, accessed on June 27, 2022, INTUIT-FTC-PART3-000602990.
- [79] USAA TV Ad, "Gronk and Frank," September 9, 2021, available at <https://www.youtube.com/watch?v=Dpqk10L4Ndl&list=PLY9SiBc9Cl4ltWaeCq5GHf9J7DltEnUK>, accessed on June 26, 2022, INTUIT-FTC-PART3-000602952.
- [80] USAA TV Ad, "Too exclusive," July 29, 2021, available at <https://www.ispot.tv/ad/O83u/usaa-too-exclusive>, accessed on July 9, 2022, INTUIT-FTC-PART3-000602984.
- [81] USAA TV Ad, "Member Number - Gronk," September 9, 2021, available at https://www.youtube.com/watch?v=sssnV1_89qo&list=PLY9SiBc9Cl4ltWaeCq5GHf9J7DltEnUK&index=2, accessed on June 26, 2022, INTUIT-FTC-PART3-000602962.
- [82] "Let's find the right tax solution for you," *TurboTax*, available at <https://turbotax.intuit.com/personal-taxes/online/>, accessed on July 20, 2022.
- [83] "Tax Preparation Services Company," *H&R Block*, available at www.hrblock.com, accessed on July 22, 2022, INTUIT-FTC-PART3-000600565.
- [84] "Guarantees," *H&R Block*, available at <https://www.hrblock.com/guarantees/>, accessed on July 22, 2022, INTUIT-FTC-PART3-000593237.
- [85] "TaxAct Guarantees," *TaxAct*, available at <https://www.taxact.com/company/guarantees>, accessed on July 19, 2022, , INTUIT-FTC-PART3-000593227.
- [86] "File Taxes Online," *TaxAct*, available at <https://www.taxact.com/>, accessed on July 19, 2022, INTUIT-FTC-PART3-000593229.

- [87] “Free Tax Filing,” *TaxAct*, available at <https://www.taxact.com/individual-taxes/online/free/>, accessed on July 19, 2022, INTUIT-FTC-PART3-000593228.
- [88] “TaxSlayer,” *TaxSlayer*, available at <https://www.taxslayer.com/>, accessed on July 11, 2022.
- [89] “Free Tax Filing Online,” *TaxSlayer*, available at <https://www.taxslayer.com/products/taxslayer-free-tax-filing/>, accessed on July 12, 2022, INTUIT-FTC-PART3-000600956.
- [90] “Tax Preparation Services,” *Jackson Hewitt*, available at <https://www.jacksonhewitt.com/>, accessed on July 12, 2022, INTUIT-FTC-PART3-000593215.
- [91] “Tax Resolution Services: IRS Tax Issue Relief,” *Jackson Hewitt*, available at <https://www.jacksonhewitt.com/tax-resolution/>, accessed on July 12, 2022, INTUIT-FTC-PART3-000593216.
- [92] “AT&T Official Site,” *AT&T*, available at att.com, accessed on July 25, 2022, INTUIT-FTC-PART3-000603027.
- [93] “Verizon: Plans, Services & Solutions,” *Verizon*, available at <https://www.verizon.com/>, accessed on July 12, 2022, INTUIT-FTC-PART3-000593217.
- [94] “The Disney Bundle: On Us,” *Verizon*, available at <https://www.verizon.com/solutions-and-services/disneyplus/>, accessed on July 12, 2022, INTUIT-FTC-PART3-000593218.
- [95] “T-Mobile & Sprint merged to create America's 5G Leader in coverage,” *T-Mobile*, available at <https://www.t-mobile.com/>, accessed on July 12, 2022, INTUIT-FTC-PART3-000600280.
- [96] “Streaming Services & Satellite TV,” *DirecTV*, available at <https://www.directv.com/>, accessed on July 12, 2022, INTUIT-FTC-PART3-000593219.
- [97] “Watch MLB on DIRECTTV STREAM,” *DirecTV*, available at <https://www.directv.com/stream/sports/mlb/>, accessed on July 12, 2022, INTUIT-FTC-PART3-000593220.
- [98] “Internet, TV, Phone Smart Phone Smart Home,” *Xfinity*, available at <https://www.xfinity.com/overview>, accessed on July 12, 2022, INTUIT-FTC-PART3-000593221.
- [99] “Charter Spectrum Official,” *Charter Spectrum*, available at <https://official.spectrum.com/lfo-7n>, accessed on July 12, 2022, INTUIT-FTC-PART3-000593222.
- [100] “Dish Satellite TV - Official Site,” *Dish Network*, available at <https://www.dish.com/>, accessed on July 13, 2022, INTUIT-FTC-PART3-000593226.
- [101] “State Farm Auto Insurance & More for 100 Years,” *State Farm*, available at <https://www.statefarm.com/>, accessed on July 13, 2022, INTUIT-FTC-PART3-000593225.
- [102] “An Insurance Company For Your Car and More,” *Geico*, available at <https://www.geico.com/>, accessed on July 13, 2022, INTUIT-FTC-PART3-000593224.
- [103] “An Insurance Company You Can Rely On,” *Progressive*, available at <https://www.progressive.com/>, accessed on July 27, 2022, INTUIT-FTC-PART3-000593223.
- [104] “Allstate Insurance Company,” *Allstate*, available at <https://www.allstate.com/>, accessed on July 13, 2022, INTUIT-FTC-PART3-000593223.
- [105] “Insurance, Banking, Retirement & Investment Services,” *USAA*, available at <https://www.usaa.com/>, accessed on July 13, 2022, INTUIT-FTC-PART3-000603003.
- [106] “Get HBO Max - Access Unique HBO Max Channels, Streaming Content,” available at <https://www.dish.com/programming/packages/add-ons/premium-channels/hbo-max/>, accessed on December 6, 2022, INTUIT-FTC-PART3-000618434.

APPENDIX J
SOCIAL MEDIA AD BENCHMARKING ANALYSIS

Appendix J Social Media Ad Benchmarking Analysis

I. AD AND DISCLOSURE SELECTION

1. In her review of social media ads, Ms. Shiller accessed the Meta Ad Library,¹ a public repository of ads displayed across Meta products, such as Facebook. According to Meta, the ad library offers “a comprehensive, searchable collection of all ads currently running from across Meta technologies.”² In Q3 of 2022, 3.71 billion monthly users accessed one of Meta’s products (including Facebook, Instagram, Messenger, and/or WhatsApp).³ To assess Intuit’s social media ads for TurboTax, I have therefore used the Meta Ad Library to benchmark Intuit’s social media ads.⁴ Specifically, I have compared Intuit’s at-issue Meta ads and their disclosures with Meta ads and disclosures from the 18 benchmark companies discussed in **Section IV.B**, including 6 tax preparation competitors and 12 other benchmarks.⁵
2. The ads on the Meta Ad Library consist of three main types: video, moving, and stationary. Video ads are typically versions of TV ads with a shorter duration that is more appropriate for social media and mobile app settings; moving ads consist of moving text and images that play on a short duration loop with sound; and stationary ads are a single, still image. For the purposes of my benchmarking analysis, I excluded video ads because they are largely redundant to TV ad content.

¹ Declaration of Diana F. Shiller, *In the matter of: Intuit Inc., a corporation*, Docket No. 9408, May 6, 2022 (“Shiller Declaration”), GX 342, ¶ 159.

² “Ad Library,” *Meta*, https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&media_type=all (“Ad Library”), accessed December 5, 2022.

³ “Cumulative number of monthly Meta product users as of 3rd quarter 2022,” *Statista*, <https://www.statista.com/statistics/947869/facebook-product-mau/> (“Cumulative number of monthly Meta product users as of 3rd quarter 2022”).

⁴ Ms. Shiller and Complaint Counsel identified three TurboTax ads that were displayed on Facebook, two from TY 2020 and one from TY 2021, accessed via the Meta Ad Library. I note that I was unable to find these ads when accessing the Meta Ad Library. I understand that the Meta Ad Library only shares ads that are currently running on Meta platforms, and therefore, old ads are inaccessible.

⁵ I could not find ads for Geico, TaxSlayer, TaxHawk, and Cash App Taxes on Meta Ad Library.

3. Ms. Shiller identified three TurboTax ads using the Meta Ad Library.⁶ I was unable to find these ads when accessing the Meta Ad Library. I understand that the Meta Ad Library only shares ads that are currently running on Meta platforms, and therefore, old ads are inaccessible. I identified the three TurboTax ads referred to by Ms. Shiller in the following manner:
 - a. “Get your taxes done right,” a stationary ad from TY 2020. I assessed this ad based on the screenshot in the Shiller Declaration.⁷
 - b. “Foam finger,” a moving ad from TY 2021. I identified an ad in the production with the same height and width and the same two images included as screenshots in the Shiller Declaration and assessed this ad.⁸
 - c. “Dance workout,” a short version of the Dance Workout TV ad from TY 2020.⁹ As discussed above, I did not include video ads in my social media benchmarking because they are largely redundant to TV ad content, but I assessed this ad as part of the TV benchmarking in **Appendix I**.
4. At the time of my Meta Ad Library review, there was one additional TurboTax stationary ad available with a free offer. I also included this ad in my benchmarking analysis.
5. For the benchmark companies, I selected the three most recent Meta ads available by published date that met the following criteria: (1) were written in English; and (2) pertained to a free offer, price of a product or service, and/or eligibility criteria for a product or service. I excluded video ads as discussed above. If none of the company’s ads met these criteria, I selected the three most recent “non-video” ads written in English.

⁶ Shiller Declaration, ¶¶ 114-115, 159-160.

⁷ TurboTax’s “Get your taxes done right” ad and similar creatives are also included in the following exhibits in Complaint Counsel’s Response to Interrogatory 1: GX 508 - INTUIT-FTC-PART3-00000031 - CONFIDENTIAL, GX 549 - INTUIT-FTC-PART3-000000185 - CONFIDENTIAL; GX 550 - INTUIT-FTC-PART3-000000188 - CONFIDENTIAL; GX 600 - INTUIT-FTC-PART3-000000500 – CONFIDENTIAL. Shiller Declaration, ¶ 114.

⁸ TurboTax’s “Foam Finger” ad is included in Complaint Counsel’s Response to Interrogatory 1 as INTUIT-FTC-PART3-000000252, Shiller Declaration, ¶ 159.

⁹ Shiller Declaration, ¶ 116 and ¶ 117.

6. When assessing ads that met the criteria of the analysis, I focused on the claims being made and the corresponding disclosures. In cases where an ad contained more than one disclosure, I analyzed each disclosure. In cases where there was no disclosure, or no disclosure that met these criteria, I included the most recent ad but noted that there was no disclosure. I kept record of the exact disclosure language. In cases where there were two groups of disclosure text (one larger and one smaller towards the bottom of the ad creative), I noted the exact language of the larger disclosure text and noted that there was additional smaller disclosure text and the number of lines. For each Meta ad, in addition to the metrics included below, I tracked the time the disclosure appeared in the ad, the number of creatives of the ad included with the specific campaign on the Meta Ad Library,¹⁰ whether the ad was stationary or moving, and whether the ad pertained to a free offer, price of product, and/or eligibility.

II. METRICS SELECTION AND MEASUREMENT

7. Complaint Counsel has not provided detailed critiques of Intuit’s social media or display ads.¹¹ I developed metrics to benchmark based on the same FTC Guidelines I used to assess Intuit’s TV ads (*see Appendix I*). As discussed in **Section V.C**, the FTC Guidelines help businesses verify their ads’ disclosures are not deceptive in their communications by focusing on six key areas: proximity and placement,¹² prominence,¹³ limited distractors,¹⁴ the use of repetition for key disclosures,¹⁵ consideration of disclosures across different

¹⁰ The Meta Ad Library sometimes associates multiple creatives with the same ad campaign. In those instances, I benchmarked the first creative.

¹¹ The FTC critiques Intuit’s TV “commercials” and “purported website ‘disclaimers’” but does not explicitly address social media ads. Complaint Counsel Motion for Summary Decision, pp. 25-33.

¹² “.Com Disclosures: How to Make Effective Disclosures in Digital Advertising,” *FTC*, March 2013, <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf> (“FTC Guidelines, 2013”), INTUIT-FTC-PART3-000600903, p. 8.

¹³ FTC Guidelines, 2013, p. 17.

¹⁴ FTC Guidelines, 2013, p. 19.

¹⁵ FTC Guidelines, 2013, p. 19 (“It may be necessary to disclose information more than once to convey a non-deceptive message. Repeating a disclosure makes it more likely that a consumer will notice and understand it and will also increase the likelihood that it will be seen by consumers who may be entering the website at different points.”).

forms of media,¹⁶ and the need to use simple and direct language.¹⁷ I focus on five of the six areas which are relevant to social media ads: proximity and placement, prominence, multimedia, distracting factors, and the need to use simple and direct language. I note that repetition is less relevant to social media ads, which are often stationary images, do not include a voiceover, and/or are very short in duration.

A. Proximity and Placement

8. Complaint Counsel takes issue with the disclosure text in Intuit’s Meta ads, referring to it as “smaller, fainter print underneath” the claim.¹⁸ To assess proximity and placement, I measured: (1) whether ads conveyed additional information through a disclosure on the ad creative or a hyperlink; (2) whether there was prominent disclosure text near the claim; and (3) whether there was a disclosure at the bottom of the ad creative.
9. In my review of benchmark companies’ social media ads, I noticed that some benchmark companies included both prominent disclosure text placed near the claim and additional smaller disclosure text that was often smaller in size towards the bottom of the ad creative. **Figure J-1** is an example from a Verizon ad that I reviewed. The prominent disclosure text is “With select 5G Unlimited plans” and describes eligibility requirements for the discount advertised. The additional disclosure text at the bottom of the ad creative gives more details describing the discount’s eligibility requirements. In my analysis, I make the distinction between “prominent” disclosure text and smaller disclosure text.

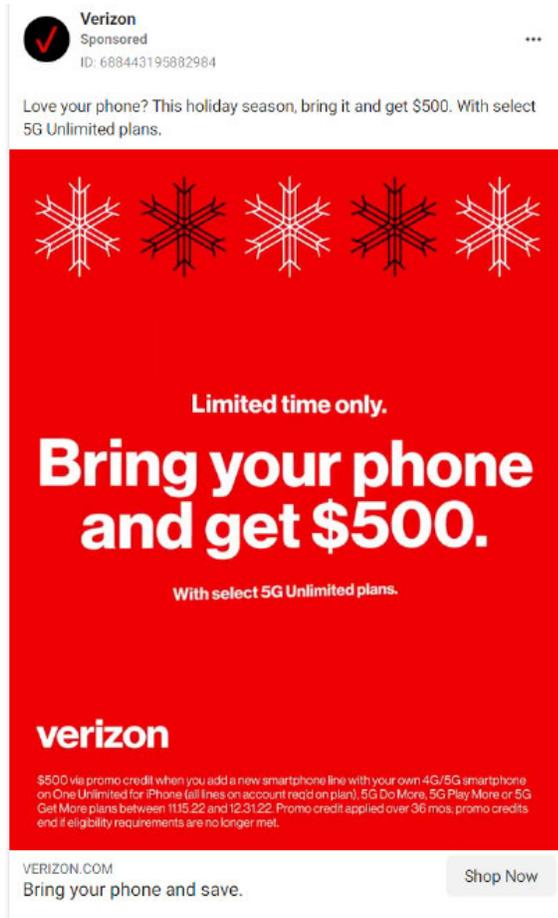
¹⁶ FTC Guidelines, 2013, p. 20 (“Display visual disclosures for a sufficient duration. Visual disclosures presented in video clips or other dynamic portions of online ads should appear for a duration sufficient for consumers to notice, read, and understand them. As with brief video superscripts in television ads, fleeting online disclosures are not likely to be effective.”).

¹⁷ FTC Guidelines, 2013, p. 21 (“Advertisers should use clear language and syntax and avoid legalese or technical jargon. Disclosures should be as simple and straightforward as possible.”).

¹⁸ Complaint Counsel’s Motion for Summary Decision, *In the Matter of: Intuit Inc., A Corporation*, Docket No. 9408, August 22, 2022 (“Motion for Summary Decision”), p. 14.

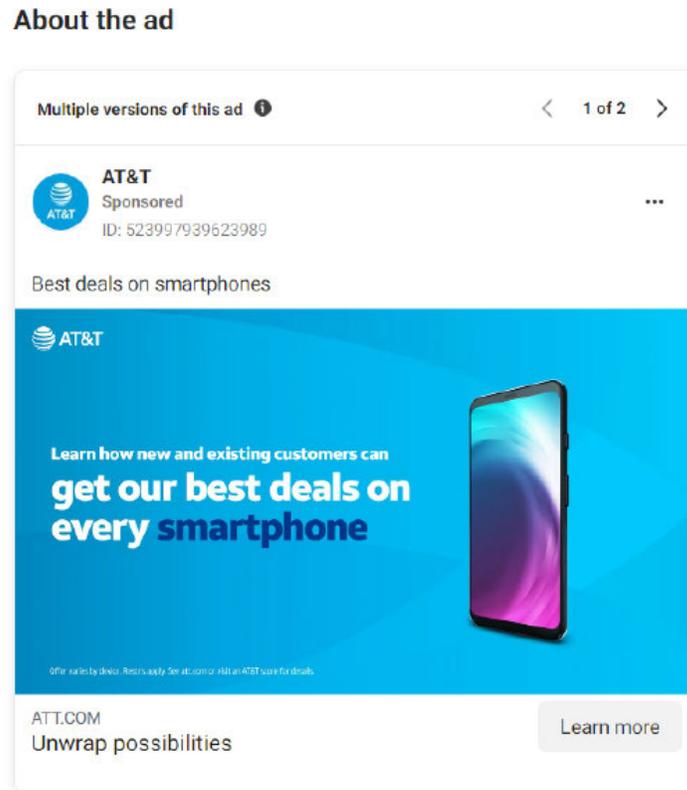
Figure J-1

**Verizon Meta Ad: “Love your phone? This holiday season, bring it and get \$500.
With select 5G Unlimited plans.”**



10. This type of “prominent” disclosure, similar to the “simple tax returns only” disclosures found in Intuit’s Meta ads, is larger and more proximate to the claim than the smaller disclosures found at the bottom of many benchmark company ads.
11. **Does the ad convey additional information through a disclosure in the ad creative or hyperlink?** The Meta Ad Library includes a button on the bottom right of the ad including a hyperlink to another page including additional information. *See Figure J-2* below for an example from AT&T’s “Best deal on smartphones” ad. If the ad included a disclosure and a hyperlink, then I categorized the metric as “Disclosure and Hyperlink”.

Figure J-2
AT&T’s Best Deals on Smartphones Ad



12. **If the ad includes a disclosure, what is the largest disclosure text?** For this metric, I record the exact disclosure language for the largest disclosure text in the ad creative. If the only disclosure is the disclosure that is smaller in height and towards the bottom of the ad creative, I note the exact text of the smaller disclosure.
13. **Is there a smaller disclosure at the bottom of the ad creative? If so, how many lines?** I noted if an ad included a smaller disclosure at the bottom of the ad creative and also noted the length, in lines, of that disclosure.
14. **If the ad includes a hyperlink, what is the hyperlink label?** I note the exact language written above the button overlaying the hyperlink. For the AT&T ad in **Figure J-2**, for example, the hyperlink label is “Learn more.”
15. **What is on the “click-through” page?** The “click-through” page is the page (often with additional information about a specific product or deal) that viewers see if they click on the hyperlink. I include a short description of what is on the page for this metric.

B. Prominence

16. To assess prominence, I measured the height of the disclosure relative to the total height of the ad creative.
17. **Disclosure height as a percentage of total ad creative height:** Consistent with the TV ad benchmarking analysis, I considered disclosure height to be the height of the disclosure relative to the total height of the ad creative. To calculate disclosure height, I measured the height of one line of the disclosure text and divided it by the total height of the ad creative. In cases where there were two groups of disclosure text, (one larger and one smaller towards the bottom of the ad creative), I measured the larger disclosure text in the ad creative. If there were multiple prominent disclosures in an ad, I calculated the disclosure height for each unique disclosure, by taking the average disclosure height of each time the same disclosure appeared in the ad. For example, the disclosure “AT&T may temporarily slow data speeds if the network is busy” appears twice in AT&T’s “Thinking about making the switch during the holidays? (6 second)” ad. In those cases, I measured the height of each appearance of the disclosure $(0.30 \text{ cm}/21.84 \text{ cm}) = 1.37\%$ and $(0.36 \text{ cm}/21.72 \text{ cm}) = 1.66\%$ and calculated the average disclosure height across both appearances (1.52%). The precise steps I took to measure disclosure height are as follows:
 - a. *Screen capture:* If the Meta ad was moving, I viewed the ad in full-screen mode and used Loom.com to take a screen recording of the moving ad. I made sure that the length of the video was shown in each screen recording.
 - b. *Download the video from Loom.com library:* I viewed the video in full-screen mode and took a screenshot (using the desktop app “Snipping Tool” in Window Snip mode) of the whole screen.
 - c. *Convert to PDF:* I converted the web captures and screenshots from JPEG or PNG files to PDFs using Adobe Acrobat.
 - d. *Take measurement:* Using the Adobe Measuring Tool, I measured (in centimeters) the total height of the ad creative and the height of the first letter in the disclosure text.

18. If the Meta ad was stationary, I used the “GoFullPage” chrome extension to take a full screen PDF and used the Adobe Measuring Tool to measure the total height of the ad creative and the height of the first letter in the disclosure text.

C. Distracting Factors

19. The FTC Guidelines state that it is important to consider “the extent to which items in other parts of the advertisement might distract attention from the disclosure.”¹⁹ Specifically, the FTC outlines that “moving visuals behind a text message make the text hard to read” and “flashing images or animated graphics may reduce the prominence of a disclosure.”²⁰
20. To assess distracting factors, I measured: (1) whether there are multiple disclosures in moving ads; and (2) whether there is moving claim text in the ad creative in moving ads.
21. **Is this a still or moving ad? If moving, what is moving?** I noted whether the ad was moving or still. If the ad was moving, I also noted what specifically was moving (the disclosure, the claim text, the background, the people in the ad creative).
22. **If the ad is moving, are there multiple disclosures (prominent disclosure text near the claim only)?** For moving ads, I note whether there are multiple prominent disclosures at different times during the ad. (If there is a prominent disclosure and a small print disclosure in the ad creative at the same time, this is captured in the proximity and prominence metrics.)

D. Multimedia Specific Guidelines

23. The 2013 FTC Guidelines relating to online consumer disclosures also include guidelines that are specific to the ad medium. For TV ads, the FTC suggests to “display visual disclosure for a sufficient duration...for consumers to notice, read, and understand them.”²¹ I applied this concept to the moving ads.
24. To assess this multimedia-specific guideline, I measured the duration for which the disclosures appeared on the ad in comparison to the total length of the moving ad.

¹⁹ FTC Guidelines, 2013, p. 7.

²⁰ FTC Guidelines, 2013, p. 19.

²¹ FTC Guidelines, 2013, p. 20.

25. **If the ad is moving, how long is the disclosure on the screen and what is the duration of the ad?** For moving ads, I note the duration that the disclosure is on the screen compared to the overall duration of the ad. To compare the disclosure duration and the total duration of the ad, I divided the disclosure duration by the total length of the ad. I calculate the duration of the disclosure on the screen by unique disclosure. In cases where the same disclosure text appears multiple times in the same ad, I sum the durations of the duplicate disclosures. For example, the same disclosure in AT&T’s “Thinking about making the switch during the holidays? (6 second)” ad appears twice for two seconds each. Therefore, I report the disclosure duration as a percent of the total duration of the ad as (4 out of 6 seconds) = 66.7%. If there are multiple unique disclosures in one ad, I report each unique disclosure’s duration.

E. Understandable Language

26. I discuss and evaluate this component of the FTC’s guidelines with respect to Complaint Counsel’s allegations in **Section V.B.**

III. SOCIAL MEDIA AD BENCHMARKING RESULTS

A. Proximity and Placement

27. Intuit’s Meta ads convey additional information through both a disclosure in the ad creative and a hyperlink, compared to 7 out of 14 benchmark companies.²² Intuit’s Meta ads also include prominent disclosure text near the claim and do not use additional small print disclosure text at the bottom of the ad creative. Only one other benchmark company, Jackson Hewitt, conveys information through a prominent disclosure without using additional small print disclosure text. When comparing TurboTax to other tax competitors, H&R Block’s ads do not use prominent disclosure text and sometimes rely upon small print disclosure text at the bottom of the ad creative. TaxAct Meta ads include references to “basic federal returns for free,” “the help you need. Included for free,” and “Xpert Assist. Now included for free,” all without disclosures.²³ Therefore, my review

²² I was unable to find non-video ads for Geico, TaxSlayer, TaxHawk, and Cash App Taxes on Meta Ad Library.

²³ TaxAct Ad, “It’s okay to ask for help.”; TaxAct Ad, “Simple Resolution”; TaxAct Ad, “We’ve got plans for everyone.”

indicates that Intuit's disclosures are comparable to benchmark companies on proximity and placement metrics.

B. Prominence

28. Intuit's Meta ads have an average disclosure height as a percentage of the total ad creative height of approximately 4.7 percent. This figure is greater than the upper bound of the range for benchmark companies of 1.2 percent to 2.8 percent, with a mean of 1.7 percent. Intuit's disclosure height is not statistically significantly different from those of benchmark companies.²⁴ Therefore, my review indicates that Intuit's disclosures are consistent with those of benchmark companies on prominence metrics.

C. Distracting Factors

29. The one moving Meta ad I reviewed for Intuit includes multiple disclosures. 5 out of 12 benchmark companies with moving ads including disclosures also included multiple disclosures in their moving ads.²⁵ In addition, all benchmark companies, as well as Intuit, included moving claim text in moving ads. Overall, my review indicates that Intuit's disclosures are consistent with benchmark companies on distracting factors metrics.

D. Multimedia Specific Guidelines

30. The one moving Meta ad I reviewed for Intuit includes disclosures which appear on the screen for 50.0% of the total duration of the ad. For benchmark companies, disclosures appeared on the screen for an average of 43.8% of the total length of the ad. Intuit's disclosure duration is not statistically significantly different than those of benchmark companies.²⁶ Therefore, my review indicates that Intuit's disclosures are comparable to those of benchmark companies on multimedia-specific dimensions.

²⁴ I performed a two-sample t-test for the null hypothesis of equality between the average disclosure height as a percentage of the total ad creative height for benchmark companies and the same average computed for Intuit's Free social media ads. The two-tailed t-test fails to reject the null hypothesis of equality between the averages computed across the two groups at the 5% significance level (p-value of 0.055).

²⁵ The TaxAct and Jackson Hewitt ads benchmarked are stationary and are therefore not relevant to this analysis.

²⁶ I performed a one sample t-test for the null hypothesis of equality between the average number of seconds in which the disclosure is on the screen as a percentage of the total ad duration for benchmark companies and the same metric computed for Intuit's Free social media ad. Note that for other metrics I use a two sample t-test, but there is only one moving Intuit Free social media ad in my benchmark set and therefore only one Intuit data

point for this metric and a two-sample t-test requires more than one data point for both groups. The two-tailed test fails to reject the null hypothesis of equality between the averages computed across the two groups at the 5% (p-value of 0.3674), showing that Intuit's Free social media ad has a disclosure that is shown on the screen as a percentage of the total ad duration in line with those of benchmark companies.

Figure J-1
Detailed Social Media Ad Benchmarking

Benchmark Group	Company	Ad Name	Disclosure ID	Proximity and Placement						Prominence	Distracting Factors		Multimedia	
				If moving, time the disclosure first appears on screen	Does the ad convey additional information through a disclosure in the ad creative or hyperlink?	If disclosure, what is the largest disclosure text?	Is there a small disclosure at the bottom of the ad creative? If so, how many lines?	If hyperlink, what is the hyperlink label?	What is on the "click-through" page?	Average Disclosure Height by Unique Disclosure (Disclosure height as a percent of total ad creative height)	Is this a still or moving ad? If moving, what is moving? (Disclosure, Claim Text, Background, People)	If the ad is moving, are there multiple disclosures?	If the ad is moving, how long is the unique disclosure on the screen and what is the duration of the ad?	If moving, duration of unique disclosure on screen (disclosure duration as a percent of total duration of ad)
Intuit	TurboTax	Get your taxes done right. Pay \$0 to file Fed and State with TurboTax. Simple tax returns only	1	N/A	Disclosure and Hyperlink	Simple tax returns only	No	Install Now	Unable to see	3.16%	Still	Still	Still	Still
Intuit	TurboTax	Start for Free - America's #1 Free Tax Prep Provider	1	0:05	Disclosure and Hyperlink	Simple tax returns only	No	Download	Unable to see	4.33%	Moving (Claim Text, Screen)	Yes	2 out of 10 seconds	20.0%
			2	0:07		Simple tax returns only	No			6.34%			3 out of 10 seconds	30.0%
										5.34%			50.0%	
Intuit	TurboTax	Get live help from tax experts — FREE. File for \$0 with TurboTax Live Assisted. Simple tax returns only. See if you qualify.	1	N/A	Disclosure and Hyperlink	Simple tax returns only. See if you qualify.	No	Install Now	TurboTax App Store Page	5.70%	Still	Still	Still	Still
Average of Intuit										4.73%			50.0%	
Tax Competitor	H&R Block	You could get a Refund Advance with 0% APR and no loan fees	1	0:00	Disclosure and Hyperlink	This is an optional tax refund-related loan from Pathward, N.A., it is not your tax refund. Loans are offered in amounts of \$250, \$500, \$750, \$1,250, or \$3,500. Approval and loan amount based on expected refund amount, eligibility criteria, and underwriting. If approved, funds will be loaded on a prepaid card and the loan amount will be deducted from your tax refund, reducing the amount paid directly to you. Tax returns may be e-filed without applying for this loan. Fees for other optional products or product features may apply. Limited time offer at participating locations. HRB Maine License No. FRA2. OBTP#B13696. C2022 HRB Tax Group, Inc.	Yes (8 lines)	Learn More	H&R Block Emerald Advance Product Page	1.23%	Moving (Claim Text)	No	6 out of 6 seconds	100.0%
Tax Competitor	H&R Block	To get where you're going in life, sometimes you need a little boost. You could get a line of credit up to \$1000 at H&R Block. Click the link in our bio to learn more. ^By Pathward, N.A.; Terms Apply.	1	No Disclosures	Disclosure and Hyperlink	N/A	No	Learn more	H&R Block Emerald Advance Product Page	No Disclosure	Moving (Claim Text, Screen)	No Disclosure	No Disclosure	No Disclosure
Tax Competitor	H&R Block	To get where you're going in life, sometimes you need a little boost. You could get a line of credit up to \$1000 at H&R Block. Click the link in our bio to learn more. ^By Pathward, N.A.; Terms Apply.	1	No Disclosures	Disclosure and Hyperlink	N/A	No	Learn more	H&R Block Emerald Advance Product Page	No Disclosure	Moving (Claim Text, Screen)	No Disclosure	No Disclosure	No Disclosure
Tax Competitor	H&R Block	Ever wonder what the best states for paying fewer taxes are? We've put together a little guidebook of states that have the lowest tax rates. Of the 48 states that participate in the national lottery, these are the 12 states that do not collect taxes on national lottery winnings in the U.S.	1	No Disclosures	Neither	N/A	No	N/A	N/A	No Disclosure	Moving (Claim Text, Screen)	No Disclosure	No Disclosure	No Disclosure
Tax Competitor	TaxAct	It's okay to ask for help, and our team is here to support you. They can even give your return a quick review before you file.	1	N/A	Hyperlink	N/A	No	Learn More	TaxAct Home Page	No Disclosure	Still	Still	Still	Still
Tax Competitor	TaxAct	Simple resolution: Have our tax experts answer questions and quickly review your return. Xpert Assist is now included for free.	1	N/A	Hyperlink	N/A	No	Learn More	TaxAct Product Page	No Disclosure	Still	Still	Still	Still
Tax Competitor	TaxAct	We've got plans for everyone. Meaning you really can file basic federal returns for free.	1	N/A	Hyperlink	N/A	No	Learn More	TaxAct Home Page	No Disclosure	Still	Still	Still	Still

Figure J-1
Detailed Social Media Ad Benchmarking

Benchmark Group	Company	Ad Name	Disclosure ID	Proximity and Placement				Prominence	Distracting Factors		Multimedia			
				If moving, time the disclosure first appears on screen	Does the ad convey additional information through a disclosure in the ad creative or hyperlink?	If disclosure, what is the largest disclosure text?	Is there a small disclosure at the bottom of the ad creative? If so, how many lines?		If hyperlink, what is the hyperlink label?	What is on the "click-through" page?	Is this a still or moving ad? If moving, what is moving? (Disclosure, Claim Text, Background, People)	If the ad is moving, are there multiple disclosures?	If the ad is moving, how long is the unique disclosure on the screen and what is the duration of the ad?	If moving, duration of unique disclosure on screen (disclosure duration as a percent of total duration of ad)
Tax Competitor	TaxSlayer						No ads available on Meta Ad Library							
Tax Competitor	Jackson Hewitt	Don't chance it. Choose an expert to do your taxes and get your biggest refund, guaranteed.	1	N/A	Disclosure and Hyperlink	Most offices are independently owned and operated.	No	Book Now	Refund Advance Product Page	2.84%	Still	Still	Still	Still
Tax Competitor	TaxHawk						No ads available on Meta Ad Library							
Tax Competitor	Cash App Taxes						No ads available on Meta Ad Library							
Average of Tax Competitors										2.03%				100.0%
Wireless Carrier	AT&T	Thinking about making the switch during the holidays? (6 second)	1	0:05	Disclosure and Hyperlink	AT&T may temporarily slow data speeds if the network is busy.	Yes (5 lines)	Learn More	Save 25% on unlimited wireless plans Deal Page	1.37%	Moving (Claim Text)	Yes	2 out of 6 seconds	33.3%
			2	0:01		AT&T may temporarily slow data speeds if the network is busy.	No			1.66%			2 out of 6 seconds	33.3%
										1.52%			66.7%	
Wireless Carrier	AT&T	Thinking about making the switch during the holidays? (15 second)	1	0:11	Disclosure and Hyperlink	AT&T may temporarily slow data speeds if the network is busy.	Yes (3 lines)	Learn More	Save 25% on unlimited wireless plans Deal Page	1.81%	Moving (Claim Text, Screen, People)	Yes	2 out of 15 seconds	13.3%
			2	0:03		AT&T may temporarily slow data speeds if the network is busy.	No			2.39%			6 out of 15 seconds	40.0%
										2.10%			53.3%	
Wireless Carrier	AT&T	Best deals on smartphones	1	0:10	Disclosure and Hyperlink	Offer varies by device. Restr's apply. See att.com or visit an AT&T store for details.	No	Learn more	Apple iPhone 14 Product Page	2.06%	Moving (Claim Text, Screen)	No	2 out of 15 seconds	13.3%
Wireless Carrier	Verizon	This holiday, give the gift of iPhone 14 Pro Max with 5G	1	0:01	Disclosure and Hyperlink	When you add a line. With select trade-in and select 5G Unlimited plans.	Yes (4 lines)	Shop Now	Apple iPhone 14 Pro Max Product Page	2.39%	Moving (Text, Screen)	Yes	1 out of 7 seconds	14.3%
			2	0:06		Limited time only.	No			3.03%			2 out of 7 seconds	28.6%
Wireless Carrier	Verizon	Love your phone? This holiday season, bring it and get \$500. With select 5G Unlimited plans.	1	0:01	Disclosure and Hyperlink	Limited time only. With select 5G Unlimited plans.	Yes (4 lines)	Shop Now	Bring your device and save deal page	2.39%	Moving (Text, Screen)	No	2 out of 7 seconds	28.6%
Wireless Carrier	Verizon	Switch and get an Amazon Echo Show 10, on us. When you switch to a 5G Home Plus plan.	1	N/A	Disclosure and Hyperlink	*Plus \$300 off a Stream TV Soundbar. All when you switch to a 5G Home Plus plan. Stream TV Soundbar retails for \$399.99.*	Yes (3 lines)	Learn more	Get 5G Home Internet product page	0.95%	Still	Still	Still	Still
Wireless Carrier	T-Mobile	Play, connect, share, effortlessly with SyncUP KIDS Watch	1	0:02	Disclosure and Hyperlink	With 24 month bill credits when you add a qualifying line. For well-qualified customers; plus tax. If you cancel wireless service before receiving 24 bill credits, credits stop and balance on required finance agreement is due (e.g. \$174 - SyncUP Kids Watch). Resp. qualifying service, app, at least one separate voice line, & a compatible smartphone.	No (Small text on bottom of screen only)	Shop Now	SyncUP KIDS Watch Product Page	1.51%	Moving (Text)	No	8 out of 9 seconds	88.9%
Wireless Carrier	T-Mobile	Still lookin' for the perfect gift? We got you. Get the Samsung Galaxy Chromebook Go FREE when you add a line at T-Mobile	1	0:03	Disclosure and Hyperlink	With 24 mo. bill credits when you add a 5GB+ mobile internet line.*Tax. If you cancel wireless service before receiving 24 bill credits, credits stop and balance on required finance agreement is due (e.g. \$359.99 - Samsung Galaxy Chromebook Go).	No (Small text on bottom of screen only)	Shop Now	Samsung Galaxy Chromebook Go Product Page	1.19%	Moving (Claim Text, Screen, People)	No	3 out of 13 seconds	23.1%

Figure J-1
Detailed Social Media Ad Benchmarking

Benchmark Group	Company	Ad Name	Disclosure ID	If moving, time the disclosure first appears on screen	Does the ad convey additional information through a disclosure in the ad creative or hyperlink?	If disclosure, what is the largest disclosure text?	Proximity and Placement			Prominence	Distracting Factors		Multimedia	
							Is there a small disclosure at the bottom of the ad creative? If so, how many lines?	If hyperlink, what is the hyperlink label?	What is on the "click-through" page?	Average Disclosure Height by Unique Disclosure (Disclosure height as a percent of total ad creative height)	Is this a still or moving ad? If moving, what is moving? (Disclosure, Claim Text, Background, People)	If the ad is moving, are there multiple disclosures?	If the ad is moving, how long is the unique disclosure on the screen and what is the duration of the ad?	If moving, duration of unique disclosure on screen (disclosure duration as a percent of total duration of ad)
Wireless Carrier	T-Mobile	Home sweet home just got sweeter.	1	0:01	Disclosure and Hyperlink	With 3 lines on Essentials, Magenta or MAX with 3rd line free via mo. bill credits vs. comparable plans; plan features & taxes & fees may vary. Credits stop if you cancel any lines.*	No (Small text on bottom of screen only)	Sign Up	Coverage and value with no trade-offs, See coverage for yourself	1.35%	Moving (Claim Text, Screen, People)	Yes	4 out of 8 seconds	50.0%
			2	0:03		Guarantees regular mo. Rate plan price of current on-network talk, text & data for new accounts with qualifying service. See exclusions & details.				0.81%			2 out of 8 seconds	25.0%
Average of Wireless Carriers										1.76%			39.2%	
TV Service Provider	DirecTV	Never miss a moment of entertainment with DIRECTV - Don't miss out	1	0:03	Disclosure and Hyperlink	With CHOICE™ or Ultimate Package Offer subject to change. Auto-renews after 3 mos. HBO Max is used under license. Cinemax and related channels and service marks are the property of Home Box Office, Inc. STARZ and related channels and service marks are the property of Starz Entertainment, L.L.C. Visit starz.com for airtimes/times. Separate SHOWTIME subscription required. SHOWTIME and related marks are trademarks of Showtime Networks Inc., a Paramount Company. All rights reserved. Individual programs, devices, and marks are the property of their respective owners. All rights reserved. EPIX is a registered trademark of EPIX Entertainment LLC.	No (Small text on bottom of screen only)	Shop Now	TV Packages Product Page	1.24%	Moving (Claim Text, Screen)	Yes	2 out of 5 seconds	40.0%
			2	0:01		HBO Max is used under license. Separate SHOWTIME subscription required. SHOWTIME is a registered trademark of Showtime Networks Inc., a Paramount Company. All rights reserved.				1.32%			2 out of 5 seconds	40.0%
TV Service Provider	DirecTV	Your favorites. Your schedule. Get the best of live TV and on demand anytime, anywhere	1	N/A	Disclosure and Hyperlink	Offers may vary. New customers only. Select sales channels only. Restr's apply. *Available only in the U.S. (excl. Puerto Rico & U.S.V.I). Req's compatible device & data collection. Limited to 3 concurrent out-of-home streams.	No (Small text on bottom of screen only)	Shop Now	DirecTV Stream Product Page	1.65%	Still	Still	Still	Still
TV Service Providers	DirecTV	We have every FIFA World Cup™ match so you can cheer on your country all long	1	0:08	Disclosure and Hyperlink	Offers may vary. New customers only. Select sales channels only. Restr's apply.	No (Small text on bottom of screen only)	Learn More	Soccer on DirecTV Stream Product Page	1.09%	Moving (Claim Text, People, Screen)	No	4 out of 12 seconds	33.3%
TV Service Provider	Comcast/Xfinity	Come back for entertainment that starts at free.	1	N/A	Disclosure and Hyperlink	Separate subscriptions required for streaming services.	No (Small text on bottom of screen only)	Learn More	Xfinity Flex Product Page	1.67%	Still	Still	Still	Still
TV Service Provider	Comcast/Xfinity	Come back and get Gig-speed internet, streaming and mobile with the Supersonic Bundle.	1	0:03	Disclosure and Hyperlink	Separate subscriptions required for streaming services.	No (Small text on bottom of screen only)	Learn More	Supersonic Bundle Product Page	1.34%	Moving (Claim Text)	No	3 out of 6 seconds	50.0%
TV Service Provider	Comcast/Xfinity	Get fast, reliable, FREE Internet at home when you qualify and enroll in Internet Essentials Plus 1 and the ACP.	1	N/A	Disclosure and Hyperlink	When you qualify for and enroll in ACP and Internet Essentials Plus.	No	Learn More	Accordable Connectivity Program Page	1.47%	Still	Still	Still	Still
TV Service Provider	Charter Spectrum	Have two or more Unlimited lines? Add 2 more Unlimited lines at no extra cost for 12 months	1	N/A	Disclosure and Hyperlink	Spectrum Internet required. Restrictions apply.	No (Small text on bottom of screen only)	Shop now	Add Two Unlimited Lines Deal Page	1.25%	Still	Still	Still	Still
TV Service Provider	Charter Spectrum	Have an Unlimited Line? Add a 2nd line for only \$15 more per month, and get a 3rd line Free for 12 mos.	1	N/A	Disclosure and Hyperlink	Spectrum Internet required. Restrictions apply.	No (Small text on bottom of screen only)	Shop Now	Unbeatable Mobile Deal - Add a Line, Get a Free Line for 12 Months Deal Page	2.19%	Still	Still	Still	Still

Figure J-1
Detailed Social Media Ad Benchmarking

Benchmark Group	Company	Ad Name	Disclosure ID	Proximity and Placement				If disclosure, what is the largest disclosure text?	Is there a small disclosure at the bottom of the ad creative? If so, how many lines?	If hyperlink, what is the hyperlink label?	What is on the "click-through" page?	Average Disclosure Height by Unique Disclosure (Disclosure height as a percent of total ad creative height)	Is this a still or moving ad? If moving, what is moving? (Disclosure, Claim Text, Background, People)	If the ad is moving, are there multiple disclosures?	If the ad is moving, how long is the unique disclosure on the screen and what is the duration of the ad?	Multimedia	If moving, duration of unique disclosure on screen (disclosure duration as a percent of total duration of ad)
				If moving, time the disclosure first appears on screen	Does the ad convey additional information through a disclosure in the ad creative or hyperlink?												
TV Service Provider	Charter Spectrum	Get more this holiday season. Add one line, get another line free for 12 months	1	0:07		Disclosure and Hyperlink	Limited time offer, subject to change; valid to qualified residential customers with no outstanding obligations to Charter. Free Unlimited line reflected with up to 12 months credit on bill statement; standard rates apply after promo period. Requires purchase of new Mobile Unlimited line; limited to one free Unlimited line per account; standard Mobile rates apply if purchased Unlimited line cancelled or downgraded. Offer applies to second Mobile Unlimited line purchased at the same time as the first line and cannot be applied to existing lines on customer account.	No (Small text on bottom of screen only)	Learn more	Nationwide 5G Product Page	1.52%	Moving (Claim Text and Screen)	Yes	2 out of 15 seconds	13.3%		
			2	0:12			Per line activation fee, visit spectrum.com/mobile/plans for details. UNLIMITED. Smartwatch does not qualify as a line. Reduced speeds after 20 GB of usage per line. Spectrum Internet Required. Auto-pay required. Service not available in all areas. Restrictions apply. C 2022 Charter Communications.	No (Small text on bottom of screen only)			1.59%			3 out of 15 seconds	20.0%		
TV Service Provider	Dish Network	Get DISH and get a reliable signal every time you turn on the TV, plus unmatched recording power and DVR storage.	1	No Disclosures	Hyperlink	N/A	N/A	Learn more	Enjoy 99% Reliability Guarantee Page	No Disclosure	Moving (Claim Text and Screen)	No Disclosure	No Disclosure	No Disclosure			
TV Service Provider	Dish Network	Sign up for DISH and get one On Demand movie included each month. Restrictions apply.	1	N/A	Disclosure and Hyperlink	Restrictions apply.	No (Small text on bottom of screen only)	Shop now	The Best Value in Satellite TV Offer Page	1.88%	Still	Still	Still	Still			
TV Service Provider	Dish Network	No matter how you look at it, DISH beats DirecTV. Find out how much you could save when you switch to DISH.	1	No Disclosures	Hyperlink	N/A	N/A	Learn more	Compare Dish v. DirecTV	No Disclosure	Moving (Claim Text and Screen)	No Disclosure	No Disclosure	No Disclosure			
Average of TV Service Providers											1.52%				32.8%		
Auto Insurance Provider	State Farm	A fresh coat of paint to protect your walls is like a fresh insurance policy to help protect your small business. Get a quote!	1	No Disclosures	Hyperlink	N/A	N/A	Learn more	Small Business insurance Product Page	No Disclosure	Moving (People, Claim Text, Screen)	No Disclosure	No Disclosure	No Disclosure			
Auto Insurance Provider	State Farm	Get a customized quote for your small business in a flash! Talk with your local State Farm agent today	1	No Disclosures	Hyperlink	N/A	N/A	Learn more	Small Business insurance Product Page	No Disclosure	Moving (Claim Text, People, Screen)	No Disclosure	No Disclosure	No Disclosure			
Auto Insurance Provider	State Farm	Changing degrees means fresh fall khakis	1	No Disclosures	Neither	N/A	N/A	N/A	N/A	No Disclosure	Moving (People)	No Disclosure	No Disclosure	No Disclosure			
Auto Insurance Provider	GEICO	No non-video ads available															
Auto Insurance Provider	Progressive	It's safe to say, good drivers can save with Progressive Snapshot.		N/A	Hyperlink	N/A	N/A	Get quote	Snapshot discount calculator	No Disclosure	Still	Still	No Disclosure	No Disclosure			
Auto Insurance Provider	Progressive	It's not an illusion. Nearly \$700 average savings for new customers who save.	1	No Disclosures	Hyperlink	N/A	N/A	Get quote	Nearly \$700 average savings - Quote calculator for home and auto bundle	No Disclosure	Moving (Claim Text, Screen and People)	No Disclosure	No Disclosure	No Disclosure			
Auto Insurance Provider	Progressive	We <3 to save you money	1	No Disclosures	Hyperlink	N/A	N/A	Get quote	Nearly \$700 average savings - Quote calculator for home and auto bundle	No Disclosure	Moving (Claim Text, Screen and People)	No Disclosure	No Disclosure	No Disclosure			
Auto Insurance Provider	Allstate	Your portrait may look appetizing, but it won't cover your family's groceries when you're gone. Get life insurance online, no in-person medical exam	1	No Disclosures	Hyperlink	N/A	N/A	Get quote	Life insurance overview, get a quote page	No Disclosure	Moving (Claim Text)	No Disclosure	No Disclosure	No Disclosure			

Figure J-1
Detailed Social Media Ad Benchmarking

Benchmark Group	Company	Ad Name	Disclosure ID	Proximity and Placement				Prominence	Distracting Factors			Multimedia		
				If moving, time the disclosure first appears on screen	Does the ad convey additional information through a disclosure in the ad creative or hyperlink?	If disclosure, what is the largest disclosure text?	Is there a small disclosure at the bottom of the ad creative? If so, how many lines?	If hyperlink, what is the hyperlink label?	What is on the "click-through" page?	Average Disclosure Height by Unique Disclosure (Disclosure height as a percent of total ad creative height)	Is this a still or moving ad? If moving, what is moving? (Disclosure, Claim Text, Background, People)	If the ad is moving, are there multiple disclosures?	If the ad is moving, how long is the unique disclosure on the screen and what is the duration of the ad?	If moving, duration of unique disclosure on screen (disclosure duration as a percent of total duration of ad)
Auto Insurance Provider	Allstate	Your heirloom may keep your family timely, but it won't pay their bills on-time when you're gone. Get life insurance online for pennies a day.	1	No Disclosures	Hyperlink	N/A	N/A	Get quote	Life insurance overview, get a quote page	No Disclosure	Moving (Claim Text)	No Disclosure	No Disclosure	No Disclosure
Auto Insurance Provider	Allstate	Your trinkets can decorate your family's home, but they won't help pay for it when you're gone. Get life insurance online for pennies a day.	1	No Disclosures	Hyperlink	N/A	N/A	Get quote	Life insurance overview, get a quote page	No Disclosure	Moving (Claim Text)	No Disclosure	No Disclosure	No Disclosure
Auto Insurance Provider	USAA	We've been proudly serving the military and their eligible families	1	0:00	Disclosure and Hyperlink	USAA means United Services Automobile Association and its affiliates, San Antonio, Texas. 285994-0522	No (Small text on bottom of screen only)	Learn more	Join USAA Page	1.57%	Moving (Claim Text and Screen)	No	6 out of 6 seconds	100.0%
Auto Insurance Provider	USAA	Some people think we only offer insurance or banking. But we can help with investing, retirement and lots more.	1	N/A	Disclosure and Hyperlink	Investments/Insurance: Not a Deposit, Not FDIC Insured, Not Bank Insured, Guaranteed or Underwritten, May Lose Value	No	Learn more	Join USAA Page	3.48%	Still	Still	Still	Still
Auto Insurance Provider	USAA	New to Medicare? Get the benefits you deserve with a Medicare Advantage plan, like the Humana Honor plans, available to all but built with Veterans in mind.		No Disclosures	Hyperlink	N/A	N/A	Learn more	Humana Medicare Advantage Page	No Disclosure	Still	Still	Still	No Disclosure
Average of Automobile Insurance Providers										2.52%				100.0%
Average of Benchmark Companies										1.73%				43.8%

APPENDIX K
REVIEW OF TURBOTAX WEBSITE IN
TY 2015 – TY 2020

Appendix K Review of TurboTax Website in TY 2015 - TY 2020

1. In addition to my review of the TurboTax website in TY 2021 and TY 2022, I also reviewed the TurboTax homepage, Simple Returns Pop-up, Free Edition Landing Page, and Products & Pricing Page as they existed in prior years, from TY 2015 to TY 2020. Throughout this time period, Intuit has consistently included disclosures on the homepage, the Products & Pricing Page, and the Free Edition Landing Page proximate to any references to a free offer and/or Free Edition, as well as links to the Simple Returns Pop-up describing more information about the relevant qualification requirements.
2. **Figure K-1** summarizes the disclosures present on each of these pages by year.
3. **Homepage:** From TY 2015 to TY 2022, the homepage has always included a disclosure indicating the limits of Free Edition eligibility. Prior to the TY 2018 Tax Cuts and Jobs Act, these disclosures referenced forms 1040EZ/A. Following the TY 2018 tax reform, which eliminated the 1040EZ/A forms, the disclosures referenced “simple tax returns.” Starting in TY 2016, the homepage also included a link to the Simple Returns Pop-up, describing the eligibility requirements in more detail. Starting in TY 2022, the homepage has also included “see if you qualify” language.
4. **Free Edition Landing Page:** From TY 2015 to TY 2022, the Free Edition Landing Page has always included a disclosure indicating the limits of Free Edition eligibility. This disclosure has consistently used the word “simple” to describe “simple tax returns,” “simple tax situations,” or “simple 1040EZ/1040A tax returns.” Starting in TY 2017, the Free Edition Landing Page has also included at least one link to the Simple Returns Pop-up, describing the eligibility requirements in more detail. Starting in TY 2022, the Free Edition Landing Page has also included “see if you qualify” language.
5. **Products & Pricing Page:** From TY 2015 to TY 2022, the Products & Pricing Page has always included a disclosure indicating the limits of Free Edition eligibility. This disclosure has consistently referred to “simple tax returns,” with an additional reference to forms 1040EZ/1040A when those forms existed. Starting in TY 2017, the Products & Pricing Page has also included at least one link to the Simple Returns Pop-up, describing the

eligibility requirements in more detail. Starting in TY 2022, the Products & Pricing Page has also included “see if you qualify” language.

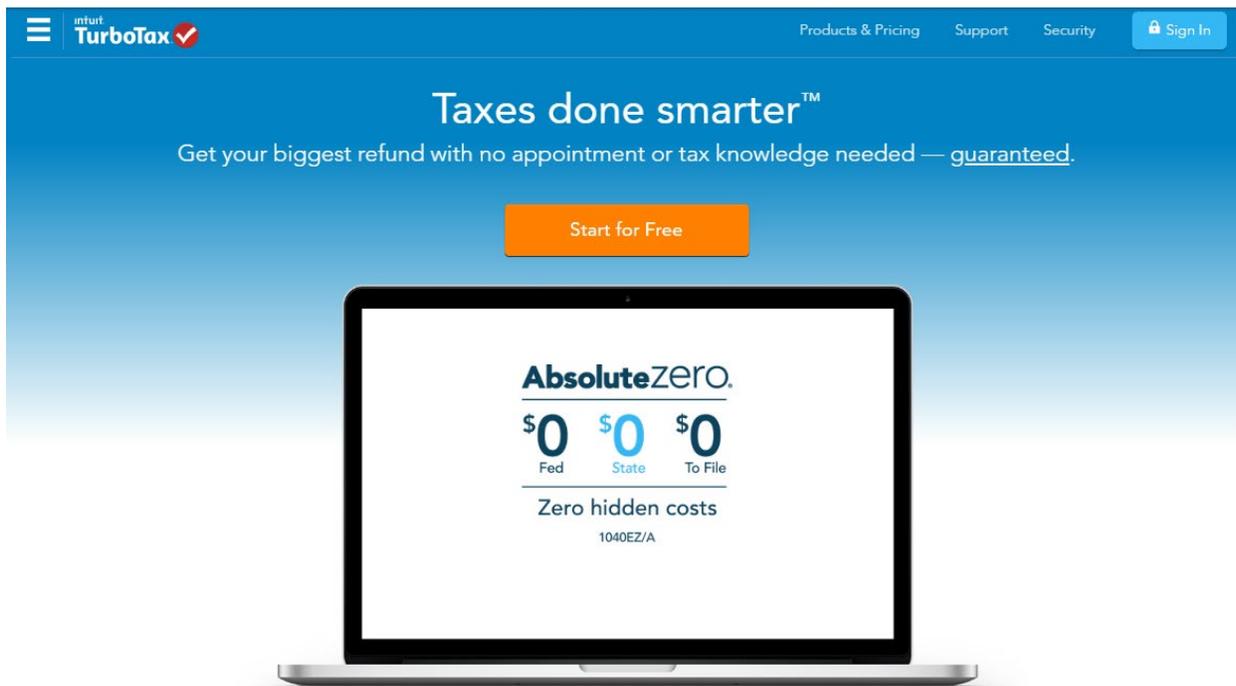
**Figure K-1
Summary of Historical Intuit Webpages**

Tax Year	Homepage			Products & Pricing Page			Free Edition Landing Page		
	Disclosure Regarding Free Edition Eligibility	Pop-up Link Text	Number of Simple	Disclosure Regarding Free Edition Eligibility	Pop-up Link Text	Number of Simple	Disclosure Regarding Free Edition Eligibility	Pop-up Link Text	Number of Simple
			Returns			Returns			Returns
			Pop-ups			Pop-ups			Pop-ups
2015	"1040EZ/A"	---	0	"Simple tax returns (1040EZ/1040A)"	"AbsoluteZero"	1	"Simple/1040EZ/A tax returns"	"AbsoluteZero"	1
2016	"1040EZ/A"	"No catch, here's why"	1	"Simple tax returns (1040EZ/1040A)"	"AbsoluteZero"	1	"Simple 1040EZ/1040A tax returns"	"AbsoluteZero"	1
2017	"Forms 1040EZ/1040A, limited time only. Returns must be filed before offer ends."	"See why it's free"	1	"Simple tax returns (1040EZ/1040A)" "See why it's free"	"1040EZ/1040A" x 2 "See why it's free" x 2	4	"Simple tax returns (1040EZ/1040A)"	"AbsoluteZero" "pay absolutely nothing"	2
2018	"Easily and accurately file your simple tax returns for FREE. See why it's free"	"See why it's free"	1	"Simple tax returns" "You'll pay nothing to file your federal and state taxes if you have a simple tax return." "See why it's free"	"Simple tax returns" "simple tax return" "See why it's free"	3	"Simple tax returns" "See why it's free"	"Simple tax returns" "See why it's free"	2
2019	"Easily and accurately file your simple tax returns for FREE"	"simple tax returns"	1	"Simple tax returns" "You'll pay absolutely nothing to file your federal and state taxes if you have a simple tax return."	"Simple tax returns" "simple tax return" "simple federal and state tax returns"	3	"Simple tax situations" "Simple tax returns" "You'll pay nothing to file your federal and state taxes with TurboTax Free Edition if you have a simple tax return."	"Simple tax returns" "simple tax return"	2
2020	"Limited time only. Must file by 2/15." "Simple tax returns only"	"Simple tax returns only"	1	"For simple tax returns only" "You'll pay absolutely nothing to file your federal and state taxes if you have a simple tax return only."	"For simple tax returns only" x 2 "simple tax return only" "simple federal and state tax returns only"	4	"For simple tax returns only" "If you have a simple tax return, you can file your taxes online for free with TurboTax Free Edition."	"For simple tax returns only" "simple tax return"	2
2021	"Simple tax returns only" "Must file by 3/31"	"Simple tax returns only"	1	"For simple tax returns only" "You'll pay absolutely nothing to file your federal and state taxes if you have a simple tax return only." "Free filing of your simple federal and state tax returns only."	"For simple tax returns only" "simple tax return only" "simple federal and state tax returns only"	3	"For simple tax returns only" "If you have a simple tax return, you can file your taxes online for free with TurboTax Free Edition."	"For simple tax returns only" x 2 "simple tax return"	3
2022	"Simple tax returns only. See if you qualify. Must file by 3/31."	"See if you qualify."	1	"Simple tax returns only. See if you qualify" "You'll pay absolutely nothing to file your federal and state taxes if you have a simple tax return only." "Free filing of your simple federal and state tax returns only. See if you qualify."	"See if you qualify" x 3 "simple tax return only"	4	"For simple tax returns only. See if you qualify" "If you have a simple tax return, you can file your taxes online for free."	"See if you qualify" x 5 "simple tax return"	6

I. HOMEPAGE

A. TY 2015

Figure K-1
TurboTax Homepage in TY 2015¹



¹ “Homepage in Tax Year 2015,” *TurboTax*, <https://web.archive.org/web/20160115144229/https://turbotax.intuit.com/> (“Homepage in Tax Year 2015”).

Figure K-2 TurboTax Homepage in TY 2015 (continued)²

Ready to try TurboTax?

Start for Free

Pay only when you file



Security is built into everything we do

Here's how →

* Important Offer Details and Disclosures ^

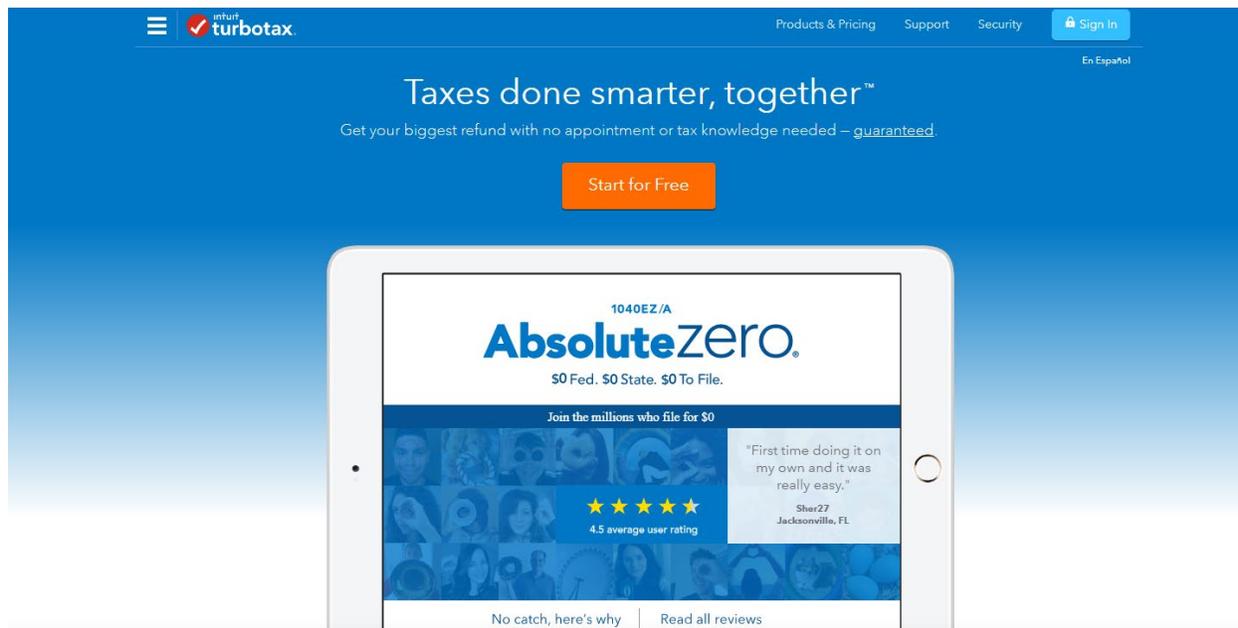
- **Try for Free/Pay When You File:** TurboTax online and mobile pricing is based on your tax situation and varies by product. Free 1040EZ/A + Free State offer only available with TurboTax Federal Free Edition; Offer may change or end at any time without notice. Actual prices are determined at the time of print or efile and are subject to change without notice. Savings and price comparisons based on anticipated price increase expected 3/18/16. Special discount offers may not be valid for mobile in-app purchases.
- **TurboTax CD/Download products:** Price includes tax preparation and printing of federal tax returns and free federal efile of up to 5 federal tax returns. Additional fees apply for efilng state returns. E-file fees do not apply to New York state returns. Savings and price comparison based on anticipated price increase expected 3/18/16. Prices subject to change without notice.
- **Anytime, anywhere:** Internet access required; standard message and data rates apply to download and use mobile app.
- **Fastest refund possible:** Fastest tax refund with efile and direct deposit; tax refund timeframes will vary.
- **Pay for TurboTax out of your federal refund:** A \$34.99 Refund Processing Service fee applies to this payment method. Prices are subject to change without notice.

Note: Additional offer details and disclosures not shown.

² Homepage in Tax Year 2015.

B. TY 2016

**Figure K-3
TurboTax Homepage in TY 2016^{3,4}**



³ “Homepage in Tax Year 2016,” *TurboTax*, <https://web.archive.org/web/20170121153604/https://turbotax.intuit.com/> (“Homepage in Tax Year 2016”).

⁴ The bottom of the page also includes a section titled “Important Offer Details and Disclosures” that further elaborates that the Free offer only applies to customers qualified for and using TurboTax Federal Free Edition, similar to the language shown in Figure K-3 for TY 2015.

C. TY 2017

Figure K-4
TurboTax Homepage in TY 2017^{5,6}

intuit turbo**tax**. Products & Pricing Tools & Tips After You File Help Security [Sign In](#)

En Español

AbsoluteZERO.

— GUARANTEED —

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

Forms 1040EZ/1040A, limited time only. Returns must be filed before offer ends.

[File for \\$0](#)

[See why it's free](#)

"Awesome! So easy to use, and it's absolutely free."
- Jaina C. PA (4.8/5 | 89,600 reviews)

⁵ "Homepage in Tax Year 2017," *TurboTax*, <https://web.archive.org/web/20180105033618/https://turbotax.intuit.com/> ("Homepage in Tax Year 2017").

⁶ The bottom of the page also includes a section titled "Important Offer Details and Disclosures" that further elaborates that the Free offer only applies to customers qualified for and using TurboTax Federal Free Edition, similar to the language shown in Figure K-3 for TY 2015.

D. TY 2018

Figure K-5
TurboTax Homepage in TY 2018^{7,8}

E-file now! Be among the first to get your biggest refund after IRS opens

intuit **turbotax.** Products & Pricing Tools & Tips After You File Help Security Tax Reform Sign In En Español

FREE
Guaranteed.
\$0 Fed. \$0 State. \$0 To File.
Easily and accurately file your simple tax returns for FREE.
See why it's free

File for \$0

NICE REFUND!
\$3,194
FEDERAL

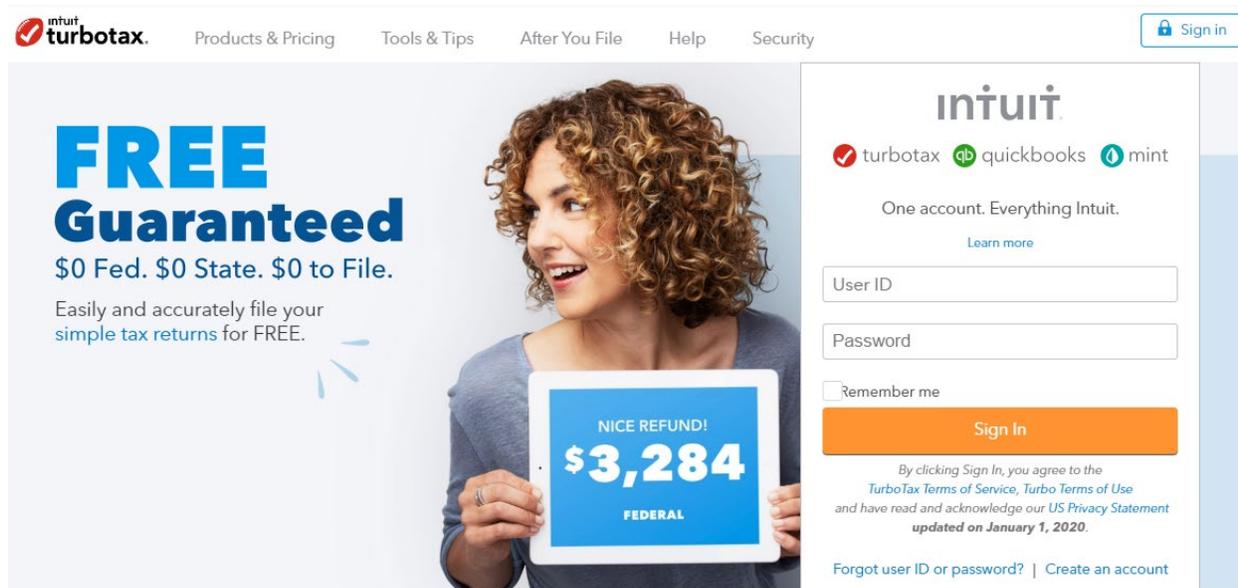
✓ **Maximum refund, guaranteed** ✓ **100% accurate calculations**

⁷ “Homepage in Tax Year 2018,” *TurboTax*, <https://web.archive.org/web/20190128061106/https://turbotax.intuit.com/> (“Homepage in Tax Year 2018”).

⁸ The bottom of the page also includes a section titled “Important Offer Details and Disclosures” that further elaborates that the Free offer only applies to customers qualified for and using TurboTax Federal Free Edition, similar to the language shown in Figure K-3 for TY 2015.

E. TY 2019

Figure K-6
TurboTax Homepage in TY 2019^{9,10}

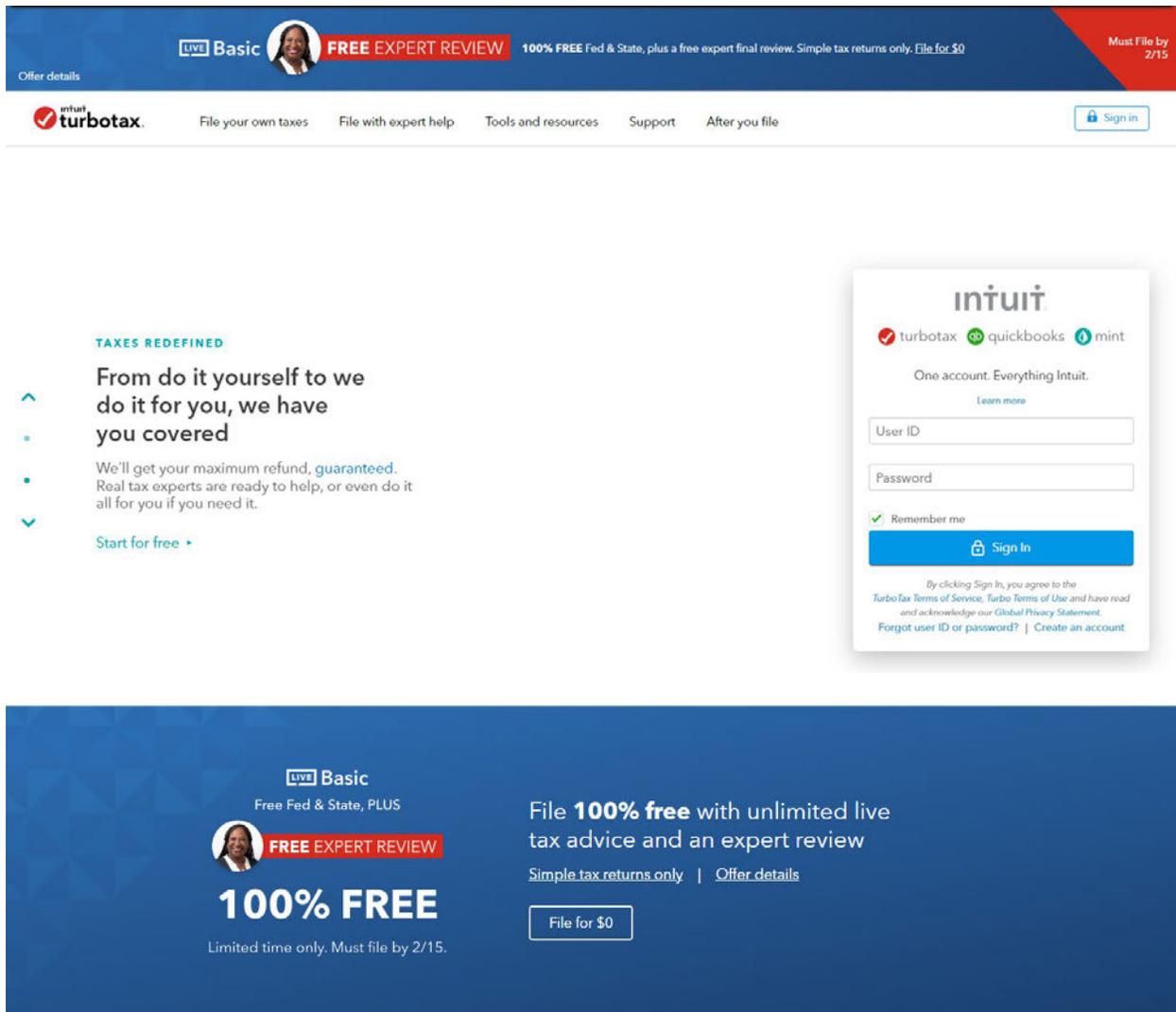


⁹ “Homepage in Tax Year 2019,” *TurboTax*, <https://web.archive.org/web/20200202081516/https://turbotax.intuit.com/> (“Homepage in Tax Year 2019”).

¹⁰ The bottom of the page also includes a section titled “Important Offer Details and Disclosures” that further elaborates that the Free offer only applies to customers qualified for and using TurboTax Federal Free Edition, similar to the language shown in Figure K-3 for TY 2015.

F. TY 2020

Figure K-7
TurboTax Homepage in TY 2020^{11,12}



¹¹ “Homepage in Tax Year 2020,” *TurboTax*, <https://web.archive.org/web/20210126000145/https://turbotax.intuit.com/> (“Homepage in Tax Year 2020”).

¹² The bottom of the page also includes a section titled “Important Offer Details and Disclosures” that further elaborates that the Free offer only applies to customers qualified for and using TurboTax Federal Free Edition, similar to the language shown in Figure K-3 for TY 2015.

II. FREE EDITION LANDING PAGE

A. TY 2015

Figure K-8
TurboTax Free Edition Landing Page in TY 2015¹³

TurboTax Federal Free Edition
 Simple/1040EZ/A tax returns
 ★★★★★ (4.5/5 | 3852 reviews)
AbsoluteZero
 Filing your state taxes is **free** this year with Absolute Zero®

[Start for Free](#)
[View all CD/download products >](#)

PERSONALIZED TO YOU
 We ask questions to get to know you. Then, we'll search for every tax break that applies to you.

SNAP. TAP. DONE.™
 Snap a photo of your **W-2** to automatically put your info into all the right forms. Or, we'll directly import your W-2 for you.

LIVE ON-SCREEN HELP
 Connect with an expert in a click and get answers when you need them with SmartLook™.

THOUSANDS OF ERROR CHECKS
 You won't miss a thing, we'll double-check your tax return for accuracy before you file.

BEYOND YOUR REFUND
 You could get up to \$2,000 in government benefits*. We'll let you know if you qualify before you apply.

ALWAYS UP-TO-DATE
 When **tax laws change**, we're on top of it, so you can be sure your tax return includes the latest IRS and state tax forms.

¹³ “Free Edition Landing Page in Tax Year 2015,” *TurboTax*, <https://web.archive.org/web/20160313113020/https://turbotax.intuit.com/personal-taxes/online/free-edition.jsp> (“Free Edition Landing Page in Tax Year 2015”).

Figure K-9
TurboTax Free Edition Landing Page in TY 2015 (continued)^{14,15}

Benefits		Video		Reviews		Tax Forms		Requirements	
----------	--	-------	--	---------	--	-----------	--	--------------	--

Tax Forms included with TurboTax Online products

Answer simple questions about your life, and we'll fill out the right forms for you.

Sort By Product Sort By Form

Commonly Filed Tax Forms and Schedules		Federal Free	Deluxe	Premier	Home & Business
1040A	U.S. Individual Income Tax Return	●	●	●	●
1040EZ	Income Tax Return for Single and Joint Filers With No Dependents	●	●	●	●
Schedule B	Interest and Dividend Income	●	●	●	●
Schedule EIC	Earned Income Credit	●	●	●	●
1040	U.S. Individual Income Tax Return		●	●	●
Schedule A	Itemized Deductions		●	●	●
Schedule D	Capital Gains and Losses			●	●
Schedule E	Supplemental Income and Loss, including rental property			●	●
Schedule C	Covers miscellaneous income and some related expenses (1099-MISC)				●
Schedule SE	Self-Employment Tax				●

Sort by Product Sort by Form

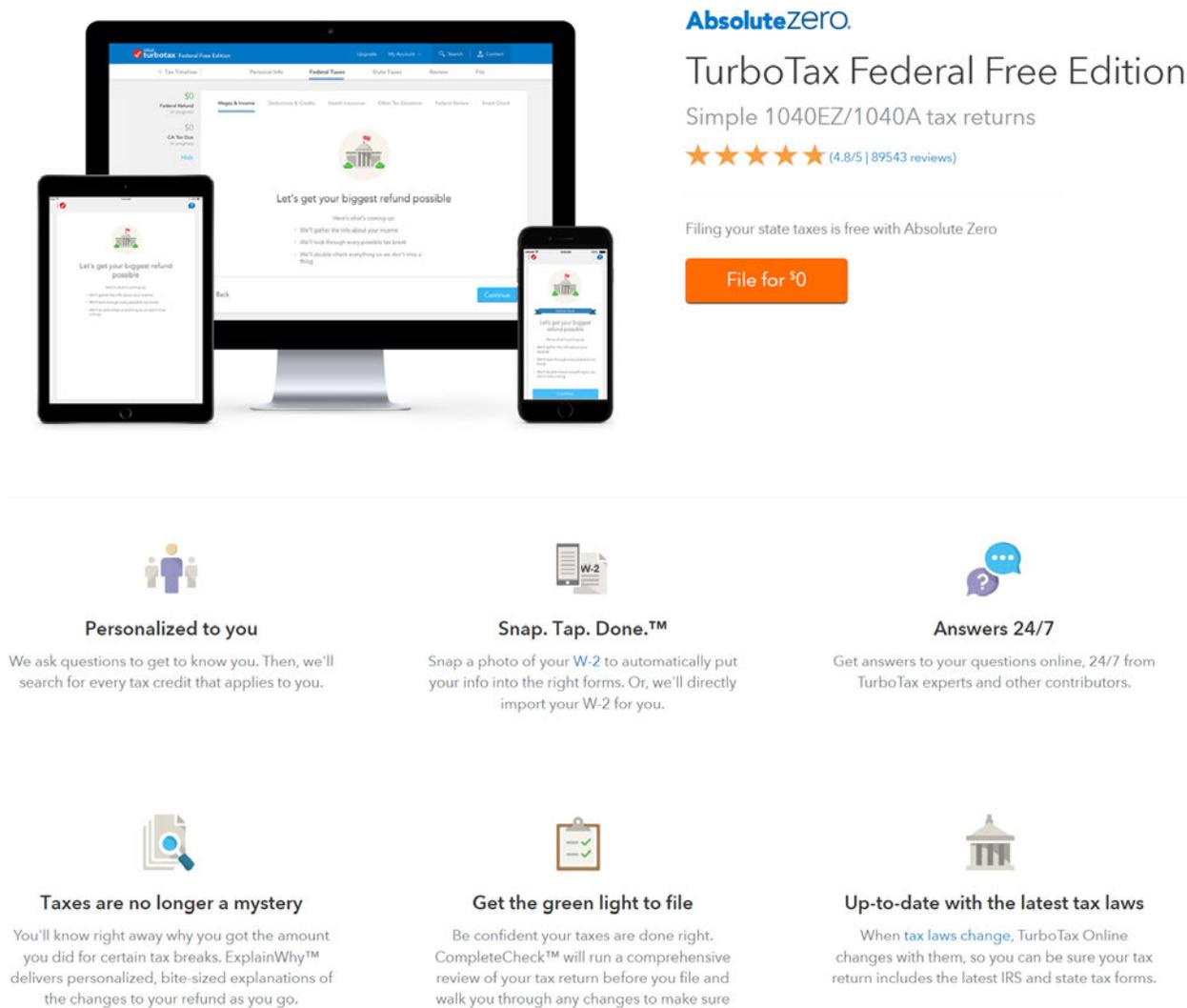
Other Tax Forms and Schedules		Federal Free	Deluxe	Premier	Home & Business
Form 1040-ES	Estimated Tax for Individuals	●	●	●	●
Form 1040-V	Payment Vouchers	●	●	●	●
Form 1040X	Amended U.S. Individual Income Tax Return	●	●	●	●

¹⁴ Free Edition Landing Page in Tax Year 2015.

¹⁵ There were 106 more forms listed under “Other Tax Forms and Schedules.”

B. TY 2016

**Figure K-10
TurboTax Free Edition Landing Page in TY 2016¹⁶**



¹⁶ “Free Edition Landing Page in Tax Year 2016,” *TurboTax*, <https://web.archive.org/web/20170126075134/https://turbotax.intuit.com/personal-taxes/online/free-edition.jsp> (“Free Edition Landing Page in Tax Year 2016”).

Figure K-11
TurboTax Free Edition Landing Page in TY 2016 (continued)^{17,18}

Benefits
Reviews
Tax Forms
Requirements

Tax Forms included with TurboTax Online products

Answer simple questions about your life, and we'll fill out the right forms for you.

Sort By Product
Sort By Form

Commonly Filed Tax Forms and Schedules		Federal Free	Deluxe	Premier	Self-Employed
1040A	U.S. Individual Income Tax Return	●	●	●	●
1040EZ	Income Tax Return for Single and Joint Filers With No Dependents	●	●	●	●
Schedule B	Interest and Dividend Income	●	●	●	●
Schedule EIC	Earned Income Credit	●	●	●	●
1040	U.S. Individual Income Tax Return		●	●	●
Schedule A	Itemized Deductions		●	●	●
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)				●

Sort by Product
Sort by Form

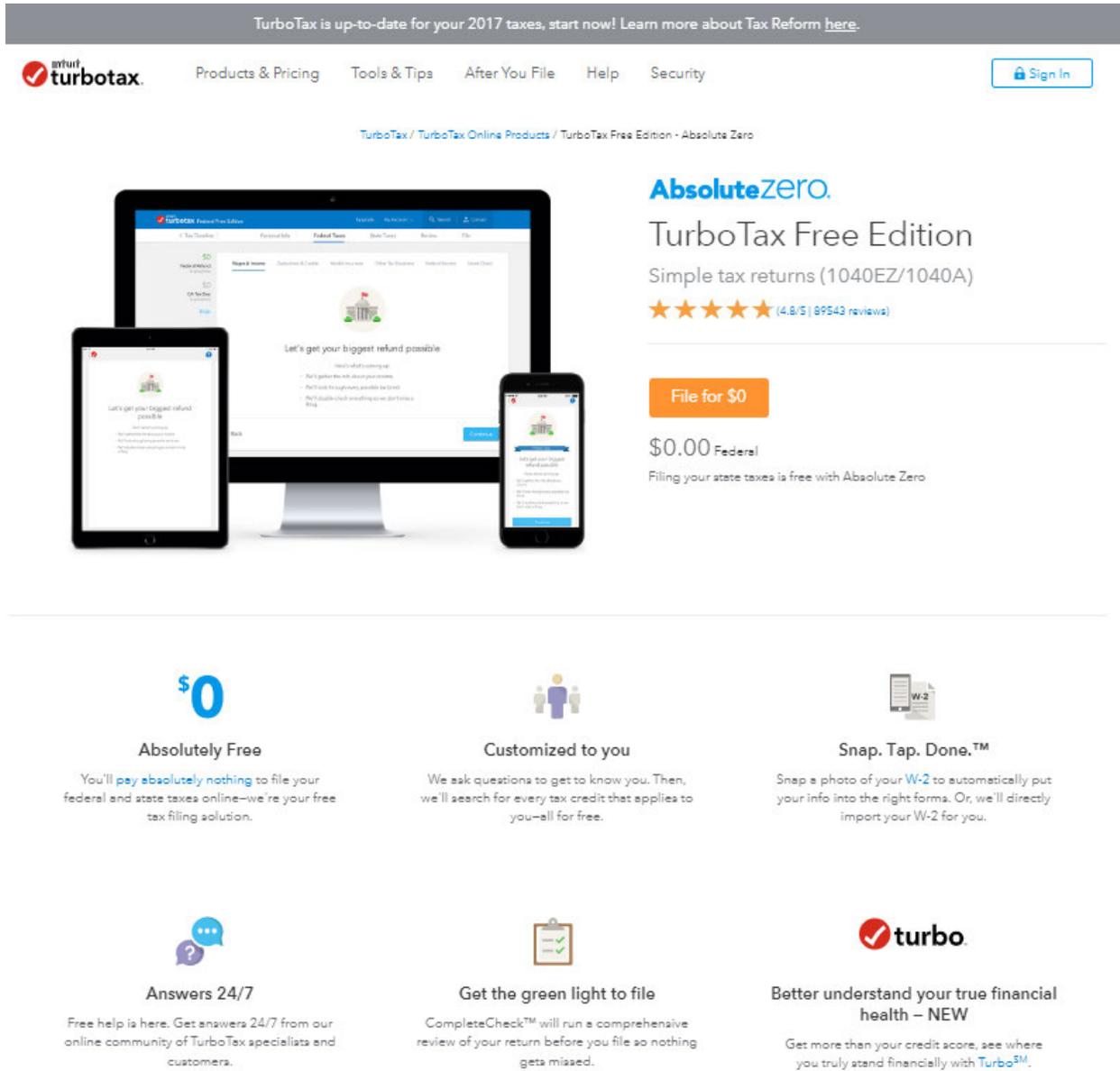
Other Tax Forms and Schedules		Federal Free	Deluxe	Premier	Self-Employed
Form 1040-ES	Estimated Tax for Individuals	●	●	●	●
Form 1040-V	Payment Vouchers	●	●	●	●

¹⁷ Free Edition Landing Page in Tax Year 2016.

¹⁸ There were 107 more forms listed under “Other Tax Forms and Schedules.”

C. TY 2017

Figure K-12
TurboTax Free Edition Landing Page in TY 2017¹⁹



¹⁹ “Free Edition Landing Page in Tax Year 2017,” *TurboTax*, https://web.archive.org/web/20180102211454mp_/https://turbotax.intuit.com/personal-taxes/online/free-edition.jsp (“Free Edition Landing Page in Tax Year 2017”).

Figure K-13
TurboTax Free Edition Landing Page in TY 2017 (continued)^{20,21}

		Benefits	Reviews	Tax Forms	Requirements	
<p>Tax Forms included with TurboTax Online products</p> <p>Answer simple questions about your life, and we'll fill out the right forms for you.</p>						
Sort By Product		Sort By Form		<input type="text" value="Search forms"/>		
Commonly Filed Tax Forms and Schedules		Free Edition	Deluxe	Premier	Self-Employed	TurboTax Live
1040A	U.S. Individual Income Tax Return	●	●	●	●	●
1040EZ	Income Tax Return for Single and Joint Filers With No Dependents	●	●	●	●	●
Schedule B	Interest and Dividend Income	●	●	●	●	●
Schedule EIC	Earned Income Credit	●	●	●	●	●
1040	U.S. Individual Income Tax Return		●	●	●	●
Schedule A	Itemized Deductions		●	●	●	●
Schedule C/C-EZ	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/C-EZ	Profit or Loss from Business (Expenses)				●	●
Other Tax Forms and Schedules		Free Edition	Deluxe	Premier	Self-Employed	TurboTax Live
Form 1040-ES	Estimated Tax for Individuals	●	●	●	●	●
Form 1040-V	Payment Vouchers	●	●	●	●	●

²⁰ Free Edition Landing Page in Tax Year 2017.

²¹ There were 107 more forms listed under “Other Tax Forms and Schedules.”

D. TY 2018

**Figure K-14
TurboTax Free Edition Landing Page in TY 2018²²**

IRS is now open! File now and get your biggest refund.

intuit **turbotax.** Products & Pricing Tools & Tips After You File Help Security Tax Reform [Sign In](#)

TurboTax / TurboTax Online Products / TurboTax Free Edition

TurboTax Free Edition

Simple tax returns
Free federal taxes and state taxes

★★★★★ (4.8/5 | 37954 reviews)

[File for \\$0](#)

\$0 Fed. \$0 State. \$0 File.
[See why it's free](#)

Free federal & state taxes

You'll pay nothing to file your simple federal and state taxes online—we're your free tax filing solution.

Customized to you

We ask questions to get to know you. Then we'll search for every tax deduction and credit that applies to you—all for free.

Snap. Tap. Done.™

Snap a photo of your W-2 to automatically put your info into all the right forms. Or we'll directly import your W-2 for you.

Answers 24/7

Free help is here. [Get answers online](#) from TurboTax specialists or other customers like you.

Get the green light to file

CompleteCheck™ will run a comprehensive review of your return before you file for free, so nothing gets missed.

Better understand your financial health

Get more than your credit score, see where you truly stand financially with TurboSM.

²² “Free Edition Landing Page in Tax Year 2018,” *TurboTax*, https://web.archive.org/web/20190201035237mp_/https://turbotax.intuit.com/personal-taxes/online/free-edition.jsp (“Free Edition Landing Page in Tax Year 2018”).

Figure K-15
TurboTax Free Edition Landing Page in TY 2018 (continued)^{23,24}

Benefits		Reviews		Tax Forms		Requirements	
----------	--	---------	--	-----------	--	--------------	--

Tax Forms included with TurboTax Online products
 Answer simple questions about your life, and we'll fill out the right forms for you.

Sort By Product Sort By Form

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	Tax		●	●	●
Schedule 3	Non-refundable Credits		●	●	●
Schedule 4	Other Taxes		●	●	●
Schedule 5	Other Payments and Refundable Credits		●	●	●
Schedule 6	Foreign Address and Third Party Designee		●	●	●
Schedule A	Itemized Deductions		●	●	●
Schedule B	Interest and Dividend Income		●	●	●
Schedule C/C-EZ	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/C-EZ	Profit or Loss from Business (Expenses)				●

Sort by Product Sort by Form

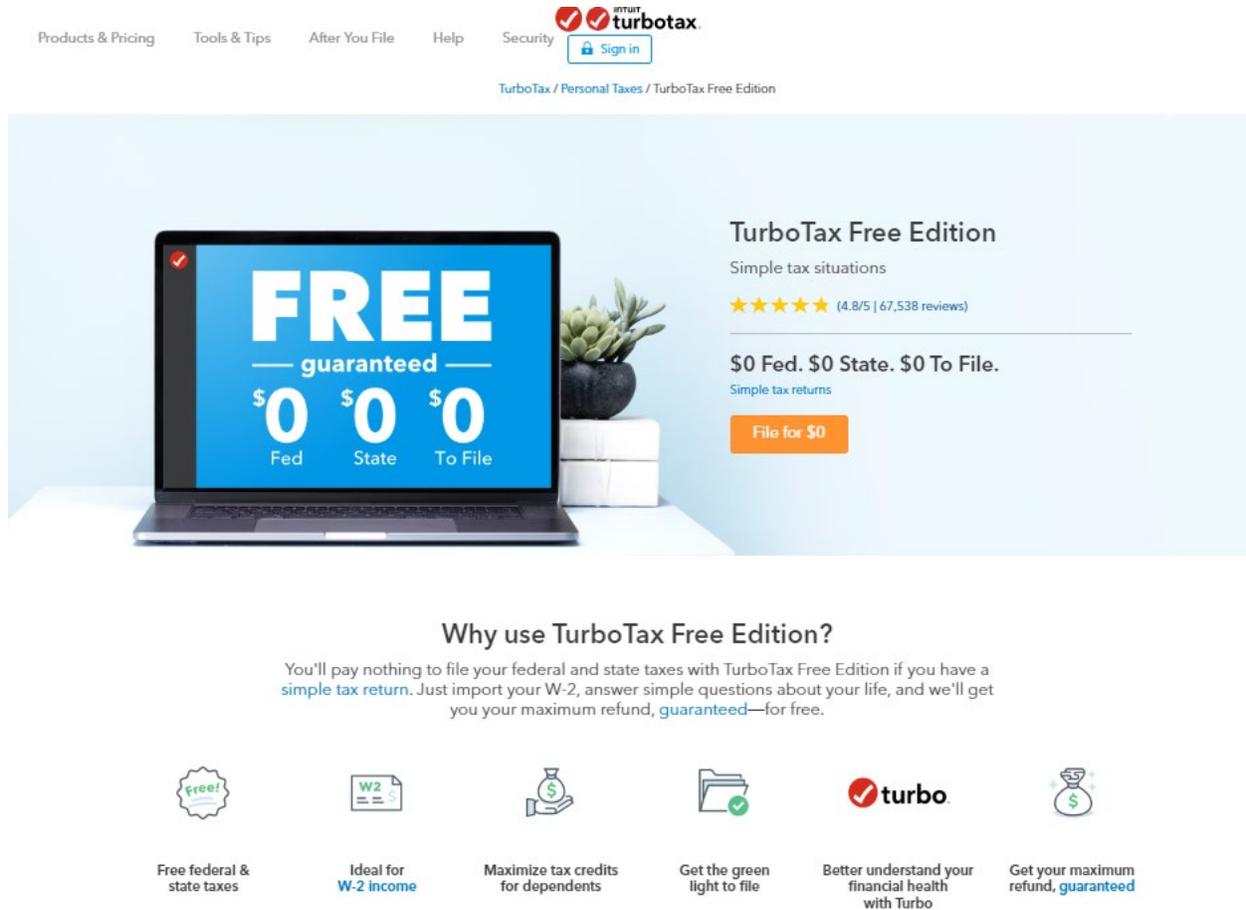
Other Tax Forms and Schedules		Free Edition Basic Live	Deluxe Deluxe Live	Premier Premier Live	Self Employed Self Employed Live
Form 1040-ES	Estimated Tax for Individuals	●	●	●	●
Form 1040-V	Payment Vouchers	●	●	●	●

²³ Free Edition Landing Page in Tax Year 2018.

²⁴ There were 107 more forms listed under “Other Tax Forms and Schedules.”

E. TY 2019

Figure K-16
TurboTax Free Edition Landing Page in TY 2019^{25,26}



²⁵ “Free Edition Landing Page in Tax Year 2019,” *TurboTax*, <https://web.archive.org/web/20200129212202/https://turbotax.intuit.com/personal-taxes/online/free-edition.jsp> (“Free Edition Landing Page in Tax Year 2019”).

²⁶ The TY 2019 Free Edition Landing Page included the same “Tax Forms” button as in prior years, but the version available through the Wayback Machine was not functional and therefore is not included here.

F. TY 2020

Figure K-17
TurboTax Free Edition Landing Page in TY 2020²⁷, ²⁸



²⁷ “Free Edition Landing Page in Tax Year 2020,” *TurboTax*, <https://web.archive.org/web/20210126032910/https://turbotax.intuit.com/personal-taxes/online/free-edition.jsp> (“Free Edition Landing Page in Tax Year 2020”).

²⁸ The TY 2020 Free Edition Landing Page included the same “Tax Forms” button as in prior years, but the version available through the Wayback Machine was not functional and therefore is not included here.

III. PRODUCTS & PRICING PAGE

A. TY 2015

Figure K-18
Products & Pricing Page in TY 2015^{29,30}

Tell us about you – we'll recommend the right product


 Single


 Have children/
dependents


 Own a home


 Maximize deductions
and credits


 Sold stock or bonds/
own rental property


 Self-employed/
independent contractor


View CD/Download products ▶

	We recommend Federal Free Edition	Deluxe	Premier	Home & Business
Compare our product features	Simple tax returns (1040EZ/1040A) Start for Free \$0 Fed \$0 State \$0 To File	Maximize your tax deductions Start for Free \$54.99 \$34.99* State additional	Investments and rental property Start for Free \$79.99 \$54.99* State additional	Self-employed and small business owners Start for Free \$104.99 \$79.99* State additional
		MOST POPULAR*		
Easy prep, print and e-file with 100% accurate calculations	●	●	●	●
Jumpstart your refund by automatically importing your W-2 tax forms	●	●	●	●
Searches 350+ tax deductions and credits (Schedule A)	●	●	●	●
Maximizes mortgage/property tax deductions (Schedule A)	●	●	●	●

²⁹ “Products & Pricing Page in Tax Year 2015,” *TurboTax*, <https://web.archive.org/web/20160218054940/https://turbotax.intuit.com/personal-taxes/online/> (“Products & Pricing Page in Tax Year 2015”).

³⁰ The table continued with 12 additional rows showing additional product features that were not available with Federal Free Edition but were available for Deluxe, Premier, and/or Home & Business.

B. TY 2016

**Figure K-19
Products & Pricing Page in TY 2016^{31,32}**

Tell us about you - we'll recommend the right product


 Single


 Have children/
dependents


 Own a home


 Maximize deductions
and credits


 Sold stock or bonds/
own rental property


 Self-employed/
independent contractor



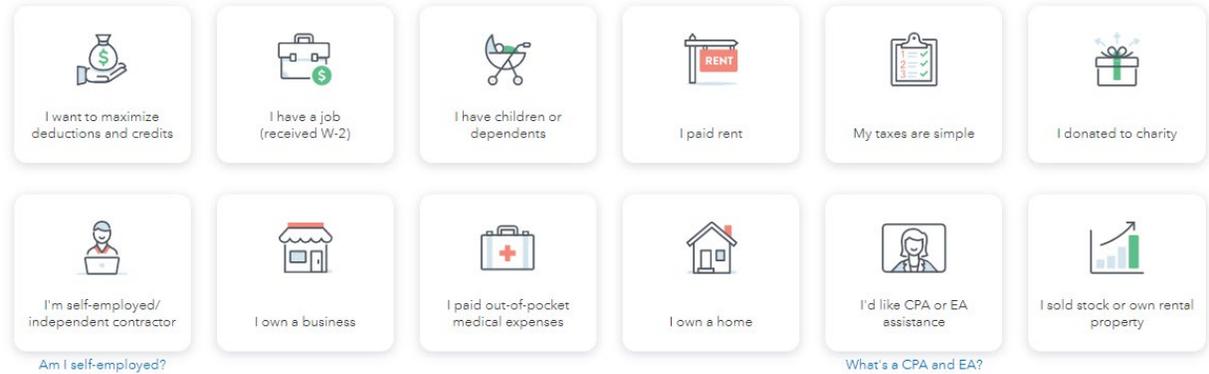
	We recommend Federal Free Edition	Deluxe	Premier	Self-Employed ⓘ
Compare our product features and benefits View CD/Download products >	Simple tax returns (1040EZ/1040A) <div style="background-color: #e67e22; color: white; padding: 5px; text-align: center; margin: 5px 0;">Start for Free</div> <div style="display: flex; justify-content: space-around; font-weight: bold; font-size: 1.2em;"> \$0 \$0 \$0 </div> <div style="display: flex; justify-content: space-around; font-size: 0.8em;"> Fed State To File </div>	Maximize tax deductions and credits <div style="background-color: #a6a6a6; color: white; padding: 5px; text-align: center; margin: 5px 0;">Start for Free</div> <div style="display: flex; justify-content: space-around; font-weight: bold; font-size: 1.2em;"> \$54.99 \$34.99* </div> <div style="display: flex; justify-content: space-around; font-size: 0.8em;"> State additional </div>	Investments and rental property <div style="background-color: #a6a6a6; color: white; padding: 5px; text-align: center; margin: 5px 0;">Start for Free</div> <div style="display: flex; justify-content: space-around; font-weight: bold; font-size: 1.2em;"> \$79.99 \$54.99* </div> <div style="display: flex; justify-content: space-around; font-size: 0.8em;"> State additional </div>	Personal & business income and expenses <div style="background-color: #a6a6a6; color: white; padding: 5px; text-align: center; margin: 5px 0;">Start for Free</div> <div style="display: flex; justify-content: space-around; font-weight: bold; font-size: 1.2em;"> \$114.99 \$89.99* </div> <div style="display: flex; justify-content: space-around; font-size: 0.8em;"> State additional </div>
	MOST POPULAR			
Easy prep, print and e-file with 100% accurate calculations guaranteed	●	●	●	●
Jumpstart your refund by automatically importing your W-2 tax forms	●	●	●	●
Expanded set of self-help tools and support from our tax community to get the answers you need 24/7	●	●	●	●

³¹ “Products & Pricing Page in Tax Year 2016,” *TurboTax*, https://web.archive.org/web/20170125154641mp_/https://turbotax.intuit.com/personal-taxes/online/ (“Products & Pricing Page in Tax Year 2016”).

³² The table continued with 13 additional rows showing additional product features that were not available with Federal Free Edition but were available for Deluxe, Premier, and/or Home & Business.

C. TY 2017

Figure K-20
Products & Pricing Page in TY 2017^{33,34}



<p>Free Edition AbsoluteZero.</p> <p>Simple tax returns (1040EZ/1040A)</p> <p>\$0 \$0 \$0 Fed State To File</p> <p>File for \$0</p> <p>★★★★★ (4.8/5 89545 reviews)</p>	<p>Deluxe MOST POPULAR</p> <p>Maximize tax deductions and credits</p> <p>\$59.99 \$39.99* State additional</p> <p>Start for Free Pay only when you file</p> <p>★★★★★ (4.7/5 123871 reviews)</p>	<p>Premier</p> <p>Investments and rental property</p> <p>\$79.99 \$59.99* State additional</p> <p>Start for Free Pay only when you file</p> <p>★★★★★ (4.6/5 24864 reviews)</p>	<p>Self-Employed</p> <p>Personal & business income and expenses</p> <p>\$149.99 \$89.99* State additional</p> <p>Start for Free Pay only when you file</p> <p>★★★★★ (4.6/5 23250 reviews)</p>	<p>NEW turbotaxlive.</p> <p>CPA or EA advice on demand and a final review</p> <p>\$179.99 \$149.99* State additional</p> <p>Start for Free Pay only when you file</p> <p>★★★★★ (4.7/5 71 reviews)</p>
Hide Details ▲	More Details ▼	More Details ▼	More Details ▼	More Details ▼

File for \$0, guaranteed

We guarantee you'll pay absolutely nothing to file your federal (1040EZ/1040A) and state taxes. Start by snapping a photo of your W-2, answer simple non-tax questions about your life and we'll help get you your maximum refund, **guaranteed**.

[See why it's free](#)

Forms 1040EZ/1040A
 Returns must be filed before offer ends. Limited time only.



- ✓ Free filing of your 1040EZ/1040A federal and state tax return, **guaranteed**
- ✓ Guidance in case of an audit backed by our **Audit Support Guarantee**
- ✓ **NEW** - Get more than your credit score, see where you truly stand financially with TurboSM
- ✓ Save time, easily import a PDF of last year's tax return from other major tax prep companies
- ✓ Get answers 24/7 from our online community of TurboTax specialists and customers

³³ “Products & Pricing Page in Tax Year 2017,” *TurboTax*, <https://web.archive.org/web/20180105034339/https://turbotax.intuit.com/personal-taxes/online/> (“Products & Pricing Page in Tax Year 2017”).

³⁴ Below the “More Details” panel, the Products & Pricing Page included a list of product features included in each product.

D. TY 2018

Figure K-21
Products & Pricing Page in TY 2018^{35,36}

The screenshot shows the TurboTax website interface for the 2018 tax year. At the top, there's a grid of 12 icons representing different user needs, such as maximizing deductions, having a job, paying rent, owning a home, having children, wanting a tax expert, donating to charity, paying student loans, owning rental property, being self-employed/freelancer, owning a small business, and having life changes. Below this is a navigation bar with the TurboTax logo and a 'turbotaxlive' banner. The main content area displays four product tiers: Free Edition, Deluxe (Most Popular), Premier, and Self-Employed. Each tier includes a price, a 'Start for Free' button, and a star rating. A detailed view of the 'File for \$0' offer is shown at the bottom, highlighting features like 'Free filing of your simple federal and state tax returns, guaranteed' and 'Covers W-2 income, Earned Income Tax Credit (EIC) and child tax credits'.

³⁵ “Products & Pricing Page in Tax Year 2018,” *TurboTax*, https://web.archive.org/web/20190126174512mp_/https://turbotax.intuit.com/personal-taxes/online/ (“Products & Pricing Page in Tax Year 2018”).

³⁶ Below the “More Details” panel, the Products & Pricing Page included a list of product features included in each product.

E. TY 2019

Figure K-22
Products & Pricing Page in TY 2019^{37,38}

File for \$0

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

FREE
 — guaranteed —
\$0 \$0 \$0
 Fed State To File

- ✓ Free filing of your simple federal and state tax returns, guaranteed
- ✓ 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

³⁷ “Products & Pricing Page in Tax Year 2019,” *TurboTax*, <https://web.archive.org/web/20201101232358/https://turbotax.intuit.com/personal-taxes/online/> (“Products & Pricing Page in Tax Year 2019”).

³⁸ Below the “More Details” panel, the Products & Pricing Page included a list of product features included in each product.

F. TY 2020

Figure K-23
Products & Pricing Page in TY 2020^{39,40}

Select all that apply:

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

³⁹ “Products & Pricing Page in Tax Year 2020,” *TurboTax*, https://web.archive.org/web/20210126091057mp_/https://turbotax.intuit.com/personal-taxes/online/live/ (“Products & Pricing Page in Tax Year 2020”).

⁴⁰ Below the “More Details” panel, the Products & Pricing Page included a list of product features included in each product.

You can do it



**Real tax experts help
or do it for you**

America's #1 brand of tax software

WE RECOMMEND			
<p>Free Edition</p> <p>For simple tax returns only</p> <hr/> <p>\$0 Fed. \$0 State. \$0 to File.</p> <div style="background-color: #00a651; color: white; text-align: center; padding: 5px; margin-top: 10px;">File for \$0</div> <div style="text-align: center; margin-top: 5px;">  <p>(4.9/5 7678 reviews)</p> </div> <div style="background-color: #00a651; color: white; text-align: center; padding: 5px; margin-top: 5px;">Hide details ^</div>	<p>Deluxe MOST POPULAR</p> <p>Maximize tax deductions and credits</p> <hr/> <p>\$60 \$40*</p> <p style="font-size: x-small;">State additional</p> <div style="background-color: #00a651; color: white; text-align: center; padding: 5px; margin-top: 10px;">Start for free <small>Pay only when you file</small></div> <div style="text-align: center; margin-top: 5px;">  <p>(4.6/5 5098 reviews)</p> </div> <div style="background-color: #00a651; color: white; text-align: center; padding: 5px; margin-top: 5px;">More details v</div>	<p>Premier</p> <p>Investments and rental property</p> <hr/> <p>\$90 \$70*</p> <p style="font-size: x-small;">State additional</p> <div style="background-color: #00a651; color: white; text-align: center; padding: 5px; margin-top: 10px;">Start for free <small>Pay only when you file</small></div> <div style="text-align: center; margin-top: 5px;">  <p>(4.7/5 281 reviews)</p> </div> <div style="background-color: #00a651; color: white; text-align: center; padding: 5px; margin-top: 5px;">More details v</div>	<p>Self-Employed</p> <p>Personal & business income and expenses</p> <hr/> <p>\$120 \$90*</p> <p style="font-size: x-small;">State additional</p> <div style="background-color: #00a651; color: white; text-align: center; padding: 5px; margin-top: 10px;">Start for free <small>Pay only when you file</small></div> <div style="text-align: center; margin-top: 5px;">  <p>(4.7/5 170 reviews)</p> </div> <div style="background-color: #00a651; color: white; text-align: center; padding: 5px; margin-top: 5px;">More details v</div>

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, guaranteed.

FREE

— guaranteed —

\$0
\$0
\$0

Fed State To File

For simple tax returns only

- ✓ Free filing of your simple federal and simple state tax returns only, guaranteed
- ✓ Covers W-2 income, unemployment 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

IV. SIMPLE RETURNS POP-UP

A. TY 2015

Figure K-24
 “AbsoluteZero” Pop-up TY 2015⁴¹

AbsoluteZero

What does **\$0 Fed \$0 State \$0 To File** really mean?
 It means you pay absolutely nothing to file your taxes—from start to finish.

What do I get with Absolute Zero?

You're getting last year's very popular Federal Free Edition with even more new free features. So, in addition to not paying for super-easy state and federal prep, we don't charge you for any of these features:

Claim the Earned Income Credit (\$2,300 2013 IRS average)	\$0
Cover any Affordable Care Act forms	\$0
Find possible government benefits up to \$2,000	\$0
Get a head start by importing your W-2	\$0
Have expert product and audit support	\$0
TOTAL	\$0

Seriously, pay nothing?
 Yes. With Absolute Zero, we're helping millions of hard-working Americans file their 1040EZ or 1040A for free with Federal Free Edition. No tax knowledge needed!

Who qualifies?
 If you're one of the 60 million Americans who file a 1040A/1040EZ, then you qualify. That means you have a taxable income of \$100,000 or less and you claim the standard deduction rather than itemizing deductions. It also means you can be a first-time filer, single or married, rent instead of own, have kids, or are currently a student. A few examples of people who won't qualify include: homeowners, independent contractors, or those with medical expenses.

Give it a try. If you start answering the simple questions and find you need a

⁴¹ “AbsoluteZero’ pop-up in 2015,” *TurboTax*, <https://web.archive.org/web/20160313113020/https://turbotax.intuit.com/personal-taxes/online/free-edition.jsp> (“AbsoluteZero’ pop-up in 2015”).

Figure K-25
“AbsoluteZero” Pop-up TY 2015 (continued)⁴²

intuit TurboTax Security Sign In

AbsoluteZero

Give it a try. If you start answering the simple questions and find you need a more robust TurboTax product for deductions or investments, you can easily upgrade and continue.

Why is TurboTax giving federal and state tax prep away for free when nobody else does?

We're turning tax prep on its head for you. Many of us live paycheck to paycheck, and tax returns are sometimes the biggest check of the year. We know how to maximize that check and believe you shouldn't pay a thing to get it. You've worked hard all year and every dollar matters. Easy software isn't enough, that's why we took our 4.6 star-rated Federal Free Edition product and for the first time ever, added state prep for free.

★★★★★
 (19,248 reviews)

Rated 4.6 out of 5 stars
 by our customers

How does TurboTax make any money? What's the catch?

There's really no catch. We're investing in you, by giving you the power to do your own taxes and take control of your finances. We're here to help—now, and in the future. So, down the road, if you have a baby, buy a house, or make investments, you'll be real comfortable doing your own taxes. We hope you'll choose one of our reasonably priced products like Deluxe or Premier to help you get your taxes done right and your maximum refund.

What now?

Benefits

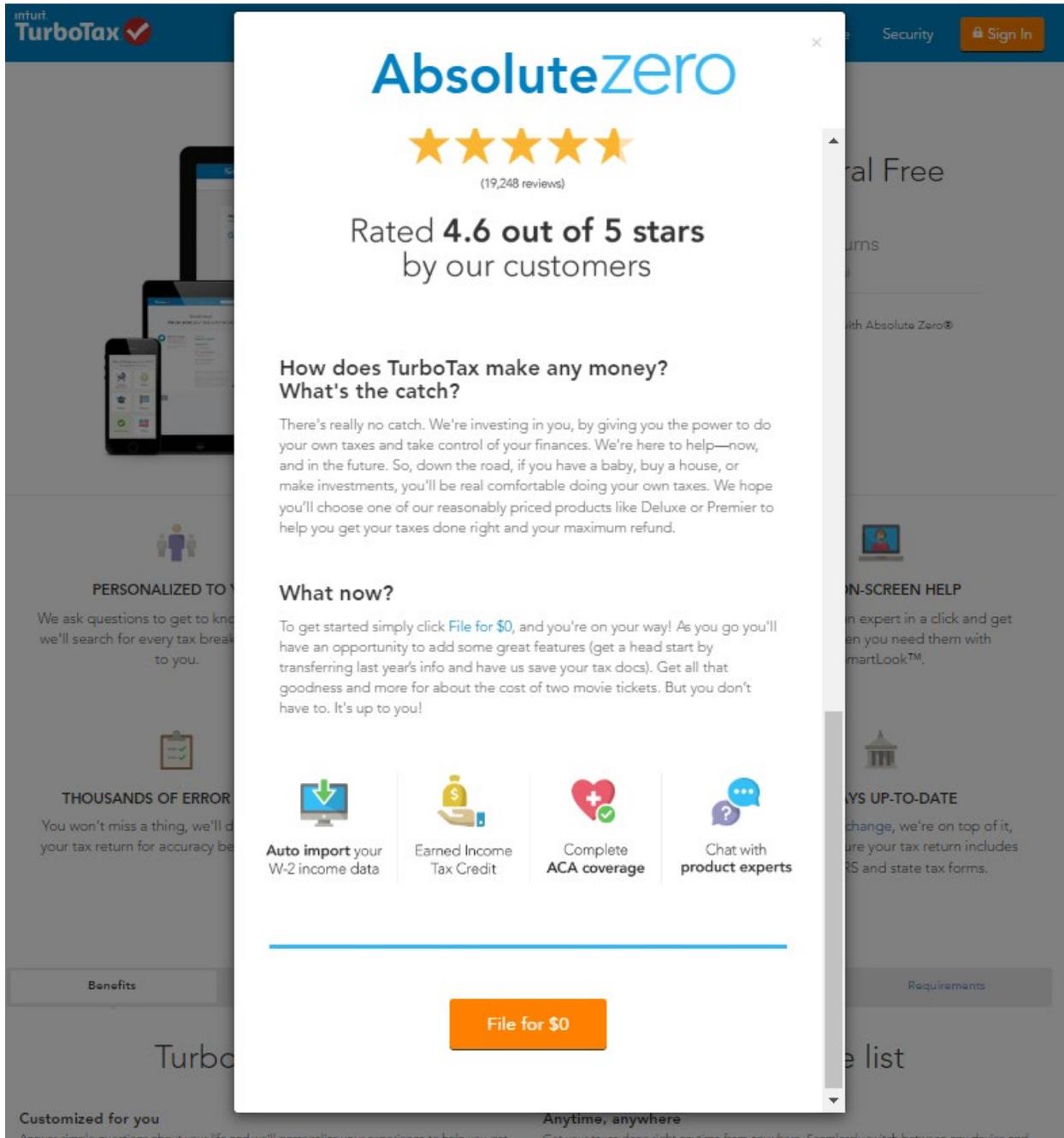
Anytime, anywhere

Customized for you: Answer simple questions about your life and we'll personalize your experience to help you get

Anytime, anywhere: Get your taxes done right anytime from anywhere. Seamlessly switch between any device and

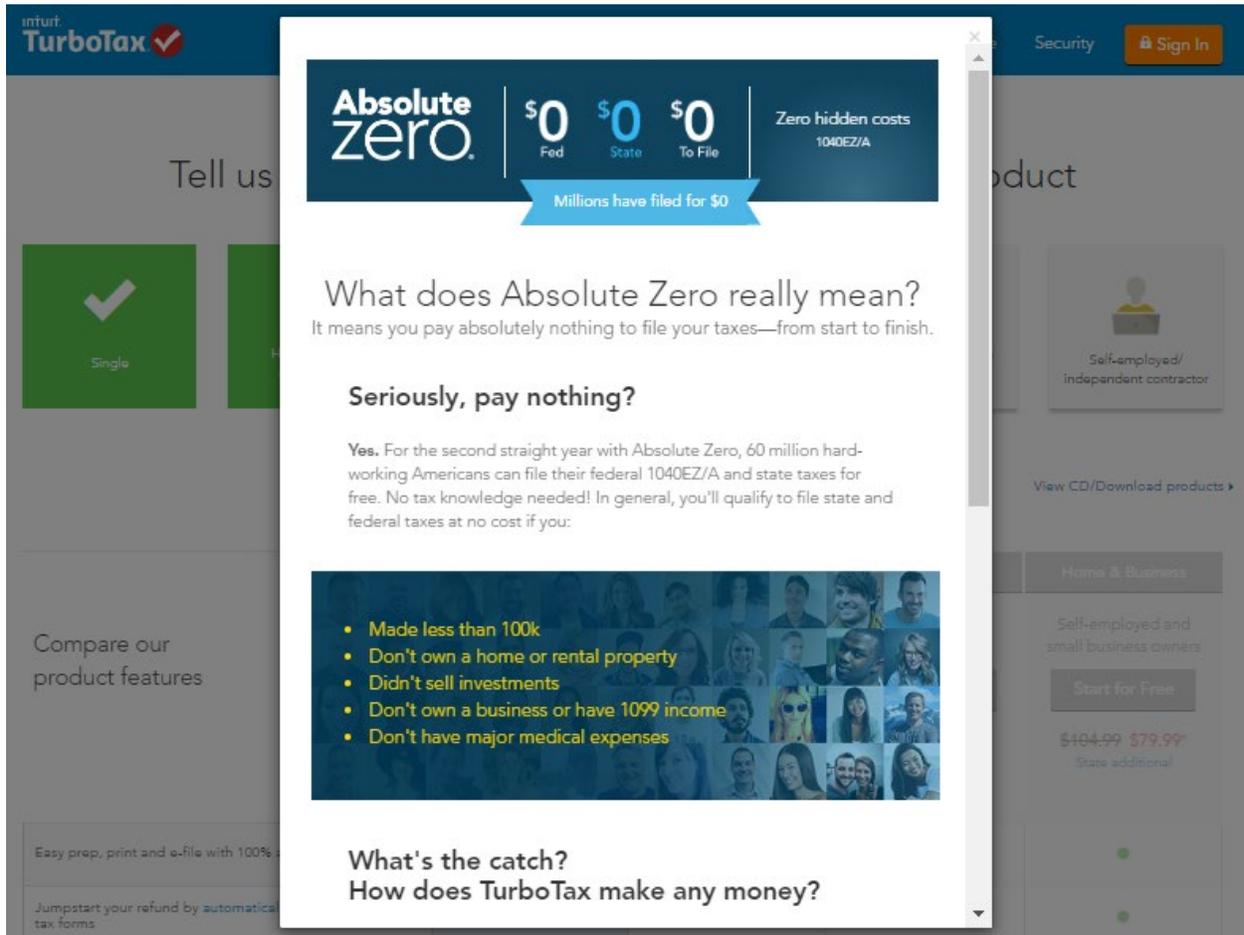
⁴² ‘AbsoluteZero’ pop-up in 2015.

Figure K-26
“AbsoluteZero” Pop-up TY 2015 (continued)⁴³



⁴³ ‘AbsoluteZero’ pop-up in 2015.

Figure K-27
“AbsoluteZero” Products & Pricing Page Pop-up TY 2015^{44,45}

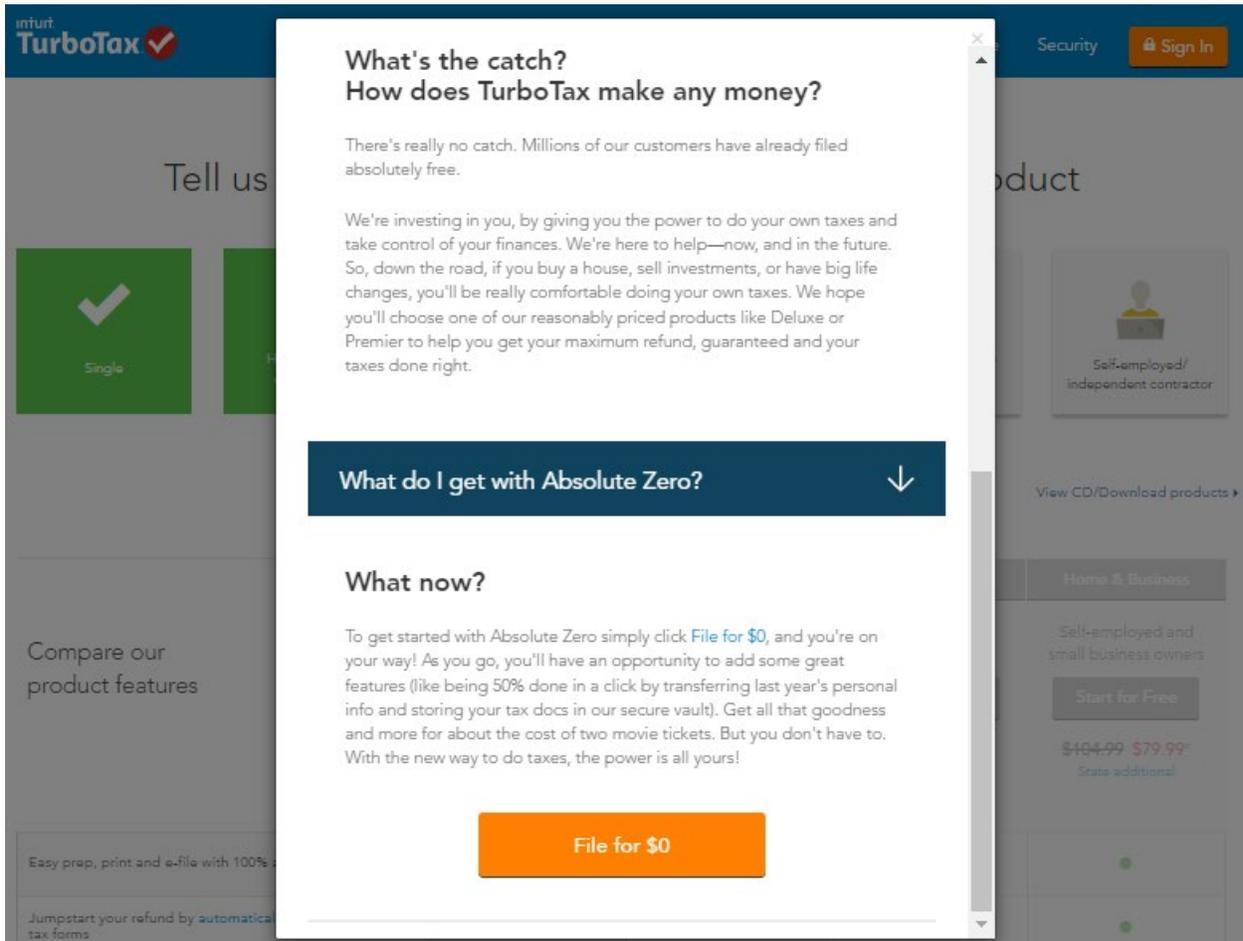


⁴⁴ ““AbsoluteZero’ Products & Pricing Page Pop-up TY 2015,” *TurboTax*, <https://web.archive.org/web/20160218054940/https://turbotax.intuit.com/personal-taxes/online/> (““AbsoluteZero’ Products & Pricing Page Pop-up TY 2015”).

⁴⁵ The pop-up appears above the Federal Free Edition column when selected attributes are input that lead to a recommendation to use Federal Free Edition.

Figure K-28

“AbsoluteZero” Products & Pricing Page Pop-up TY 2015 (continued)^{46,47}



⁴⁶ ‘AbsoluteZero’ Products & Pricing Page Pop-up TY 2015.

⁴⁷ The pop-up appears above the Federal Free Edition column when selected attributes are input that lead to a recommendation to use Federal Free Edition.

B. TY 2016

Figure K-29
“No catch, here’s why” Pop-up TY 2016⁴⁸

The screenshot shows a pop-up window from TurboTax. At the top, it asks "What does \$0 Fed \$0 State \$0 To File really mean?" and explains that it means paying absolutely nothing to file taxes. Below this is a blue box titled "What do I get with Absolute Zero?" which lists several features, each valued at \$0. At the bottom of the blue box, it says "TOTAL \$0". Below the blue box, it asks "Seriously, pay nothing?" and provides a brief explanation. Finally, it asks "Who qualifies?" and starts to explain the criteria.

Feature	Value
Claim the Earned Income Credit (\$2,300 2013 IRS average)	\$0
Cover any Affordable Care Act forms	\$0
Find possible government benefits up to \$2,000	\$0
Get a head start by importing your W-2	\$0
Have expert product and audit support	\$0
TOTAL	\$0

⁴⁸ “No catch, here’s why’ pop-up TY 2016,” *TurboTax*, <https://web.archive.org/web/20170121153604/https://turbotax.intuit.com/> (“No catch, here’s why’ pop-up TY 2016”).

Figure K-30
“No catch, here’s why” Pop-up TY 2016 (continued)⁴⁹

The screenshot shows a pop-up window from TurboTax. The window has a white background and a dark blue border. At the top left, the TurboTax logo is visible. The main content of the pop-up is as follows:

Seriously, pay nothing?
 Yes. With Absolute Zero, we're helping millions of hard-working Americans file their 1040EZ or 1040A for free with Federal Free Edition. No tax knowledge needed!

Who qualifies?
 If you're one of the 60 million Americans who file a 1040A/1040EZ, then you qualify. That means you have a taxable income of \$100,000 or less and you claim the standard deduction rather than itemizing deductions. It also means you can be a first-time filer, single or married, rent instead of own, have kids, or are currently a student. A few examples of people who won't qualify include: homeowners, independent contractors, or those with medical expenses.

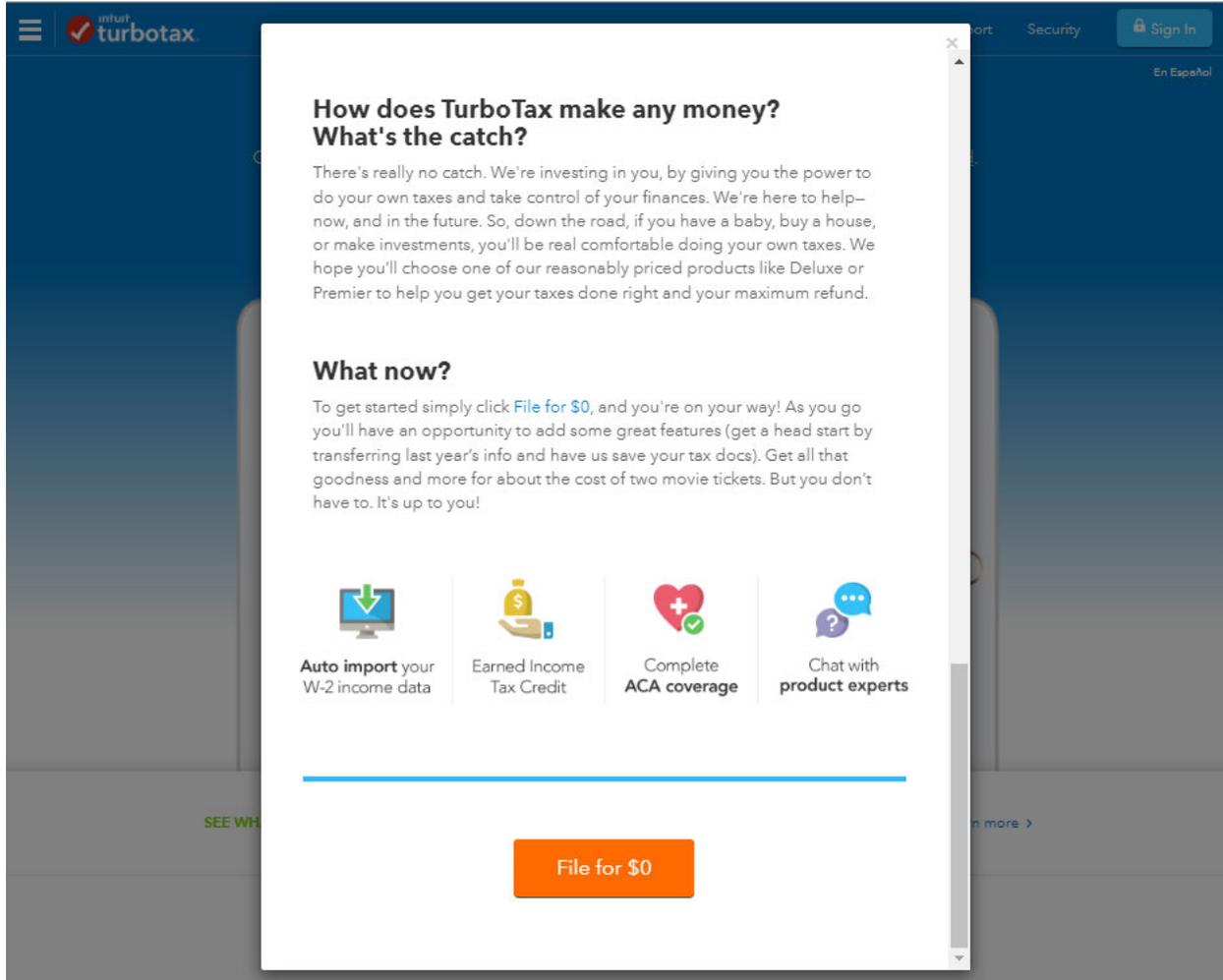
[Give it a try.](#) If you start answering the simple questions and find you need a more robust TurboTax product for deductions or investments, you can easily upgrade and continue.

Below the text is a row of four diverse people: a man in a red hoodie, a woman in a green top, a man in a grey hoodie, and a woman in a pink top.

Why is TurboTax giving federal and state tax prep away for free when nobody else does?
 We're turning tax prep on its head for you. Many of us live paycheck to paycheck, and tax returns are sometimes the biggest check of the year. We know how to maximize that check and believe you shouldn't pay a thing to get it. You've worked hard all year and every dollar matters. Easy software isn't enough, that's why we took our 4.6 star-rated Federal Free Edition product and for the first time ever, added state prep for free.

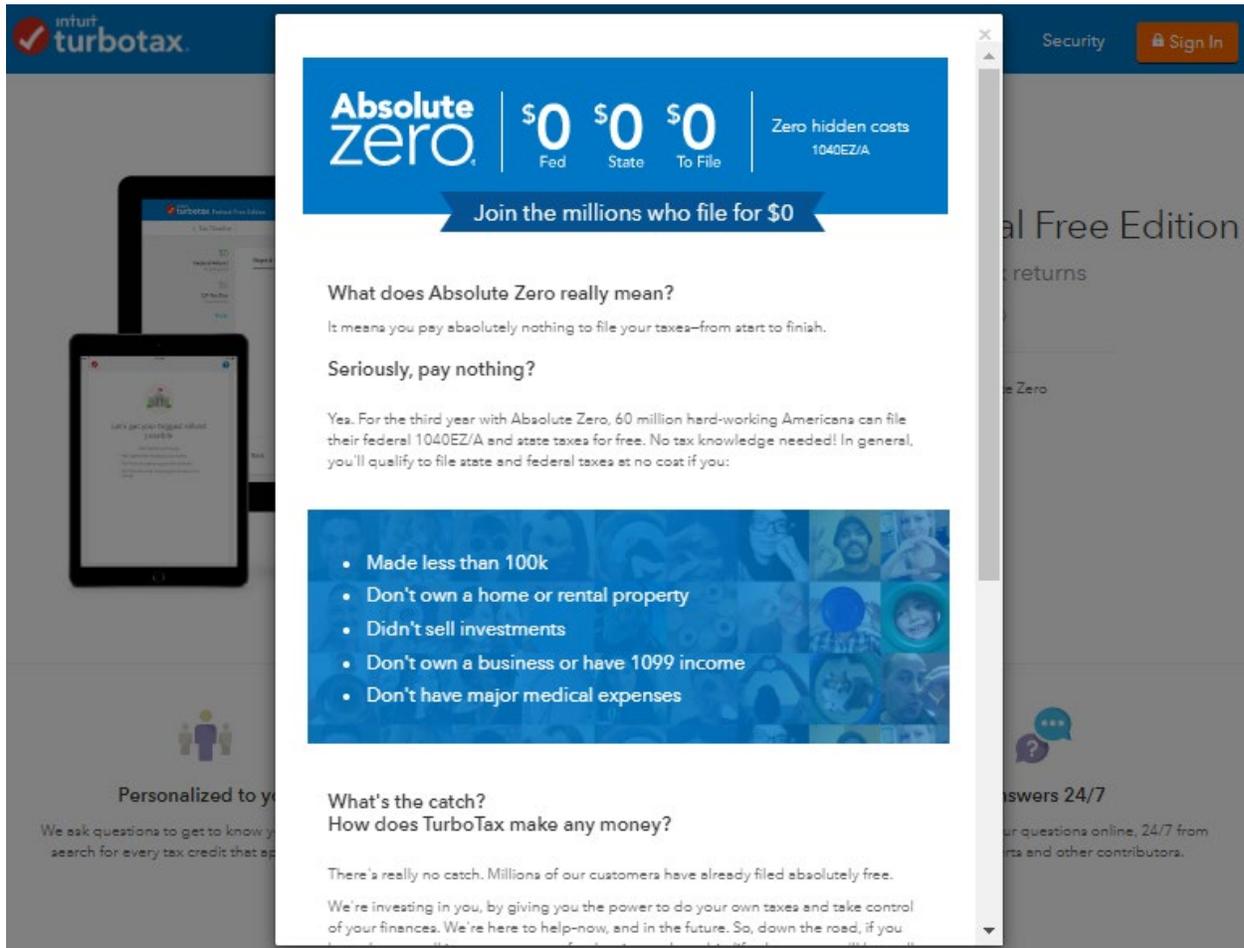
⁴⁹ 'No catch, here’s why’ pop-up TY 2016.

Figure K-31
“No catch, here’s why” Pop-up TY 2016 (continued)⁵⁰



⁵⁰ 'No catch, here’s why’ pop-up TY 2016.

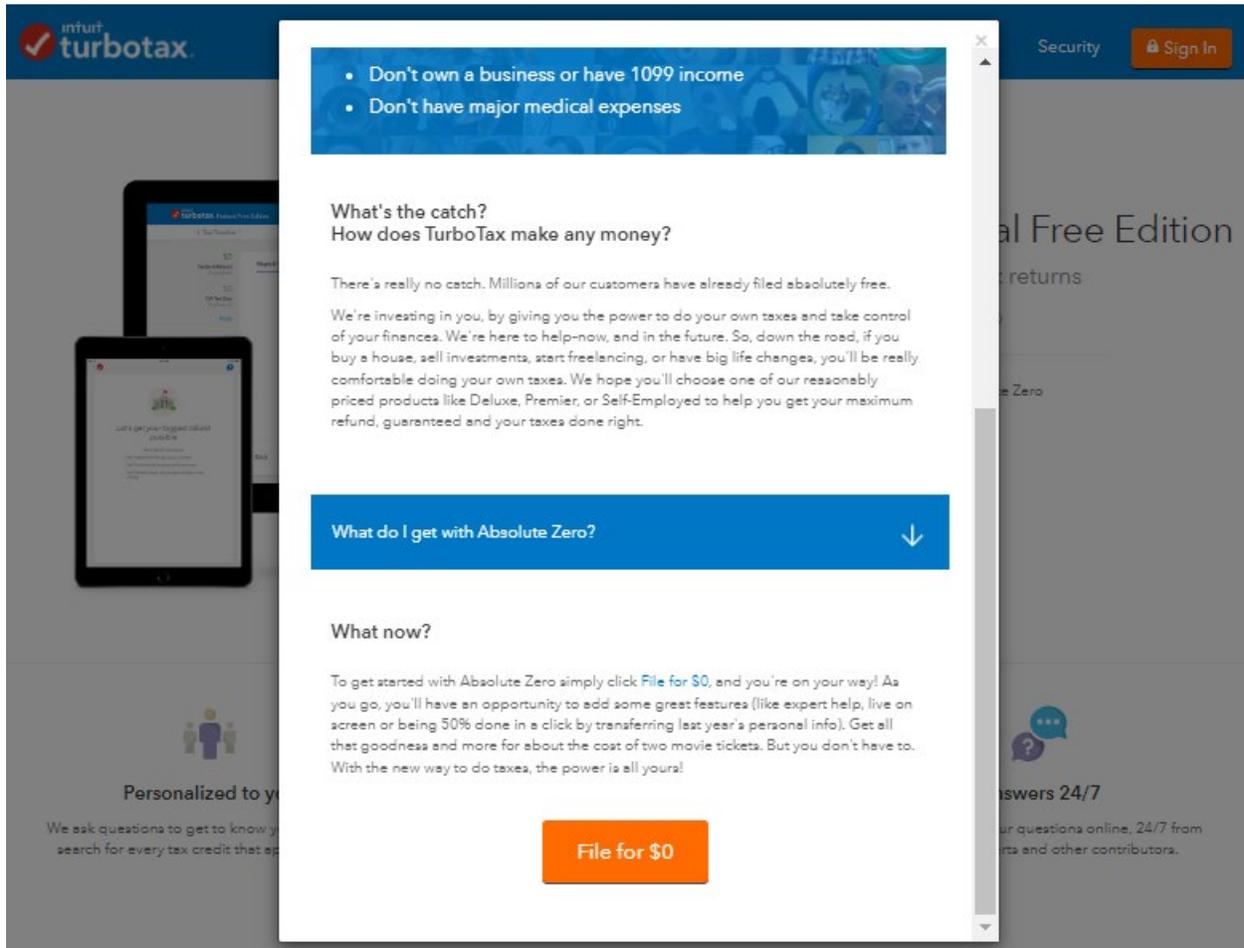
Figure K-32
“AbsoluteZero” Pop-up TY 2016^{51,52}



⁵¹ “‘AbsoluteZero’ pop-up in 2016,” *TurboTax*, <https://web.archive.org/web/20170126075134/https://turbotax.intuit.com/personal-taxes/online/free-edition.jsp> (“‘AbsoluteZero’ pop-up in 2016”).

⁵² An identical pop-up appears after clicking on the “AbsoluteZero” link on the Products & Pricing Page. That pop-up appears above the Federal Free Edition column when selected attributes are input that lead to a recommendation to use Federal Free Edition.

Figure K-33
“AbsoluteZero” Pop-up TY 2016 (continued)^{53,54}



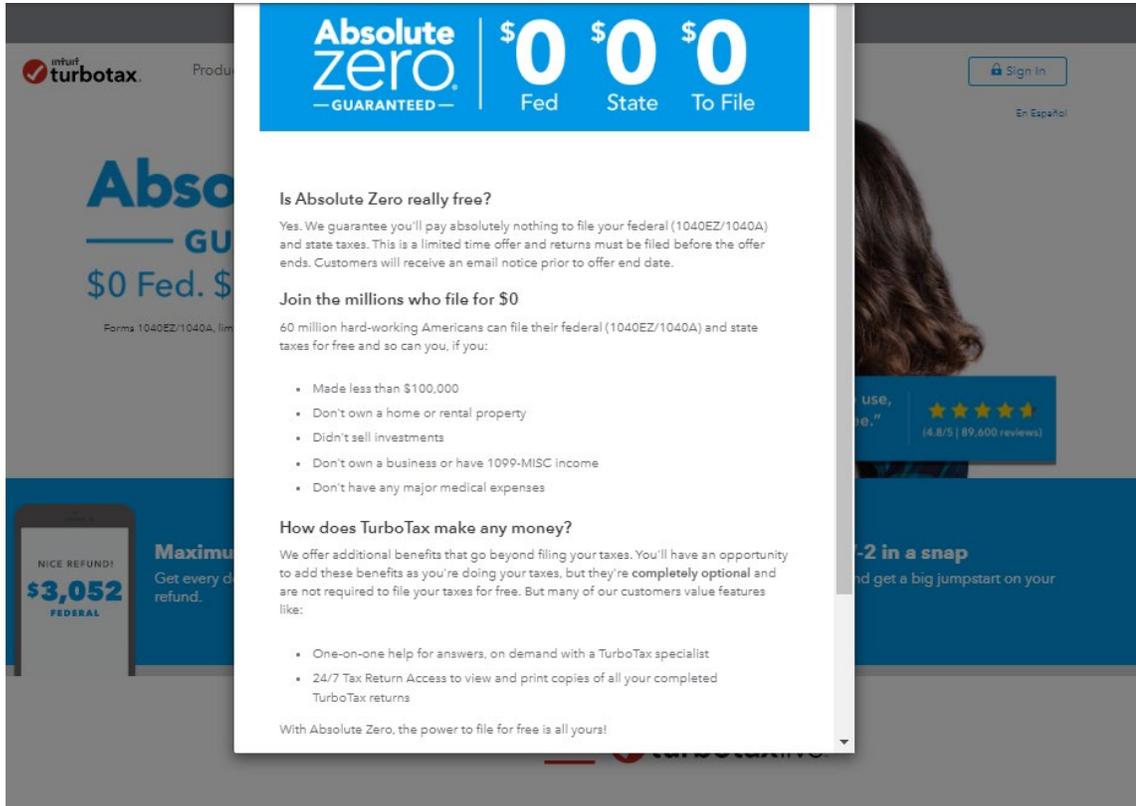
⁵³ ‘AbsoluteZero’ pop-up in 2016.

⁵⁴ An identical pop-up appears after clicking on the “AbsoluteZero” link on the Products & Pricing Page. That pop-up appears above the Federal Free Edition column when selected attributes are input that lead to a recommendation to use Federal Free Edition.

C. TY 2017

Figure K-34

“See why it’s free” Pop-up TY 2017^{55,56}

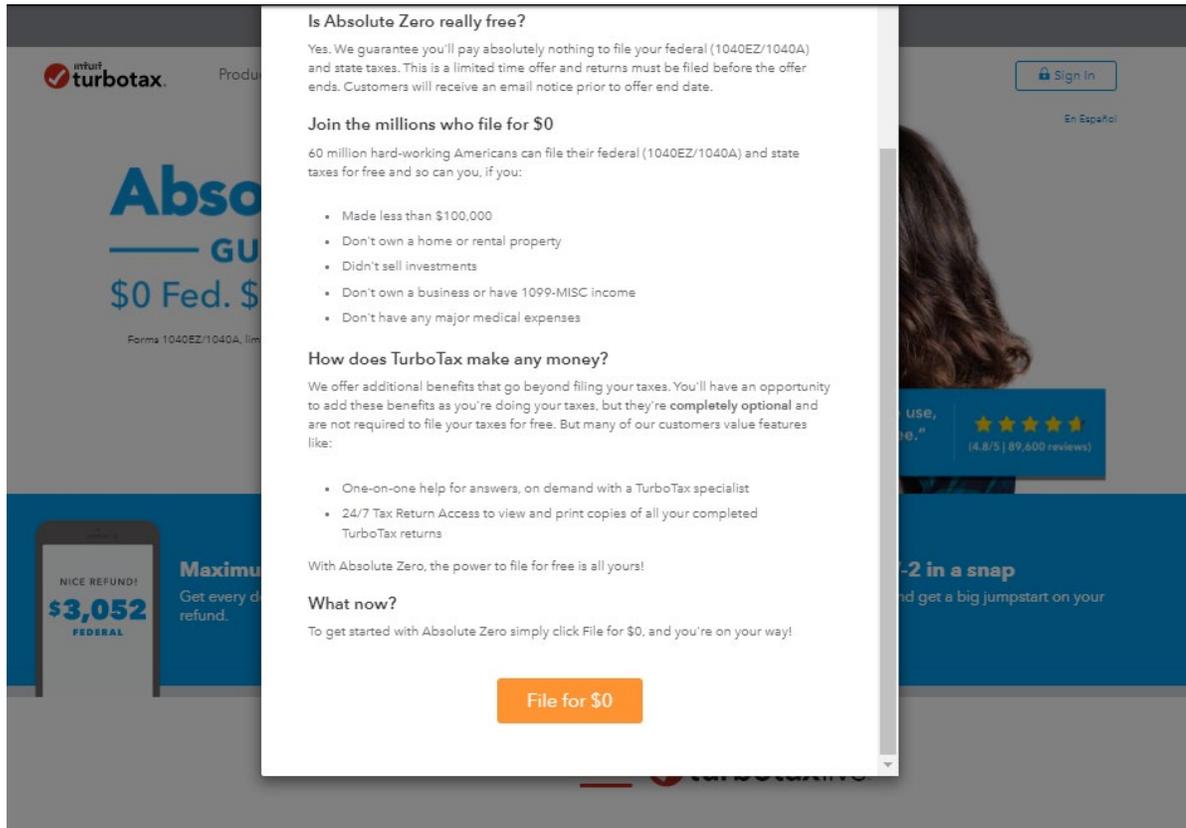


⁵⁵ ““See why it’s free’ pop-up TY 2017,” *TurboTax*, <https://web.archive.org/web/20180105033618/https://turbotax.intuit.com/> (““See why it’s free’ pop-up TY 2017”).

⁵⁶ An identical pop-up appears after clicking on the “See why it’s free,” “AbsoluteZero,” and “pay absolutely nothing” links on the Products & Pricing Page and the Free Edition Landing Page.

Figure K-35

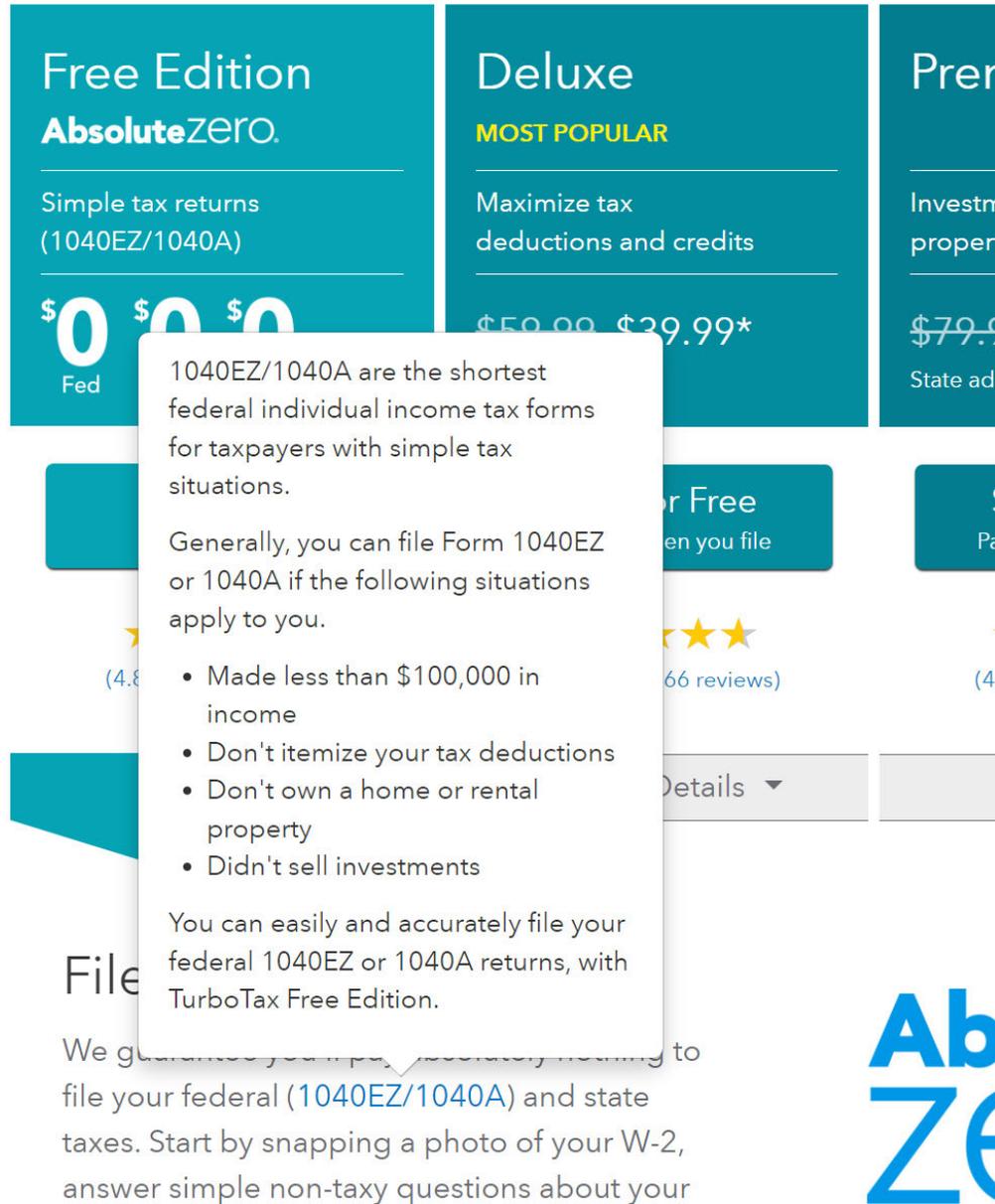
“See why it’s free” Pop-up TY 2017 (continued)^{57,58}



⁵⁷ “See why it’s free’ pop-up TY 2017.

⁵⁸ An identical pop-up appears after clicking on the “See why it’s free,” “AbsoluteZero,” and “pay absolutely nothing” links on the Products & Pricing Page and the Free Edition Landing Page.

Figure K-36
“1040EZ/1040A” Pop-Up TY 2017^{59,60}

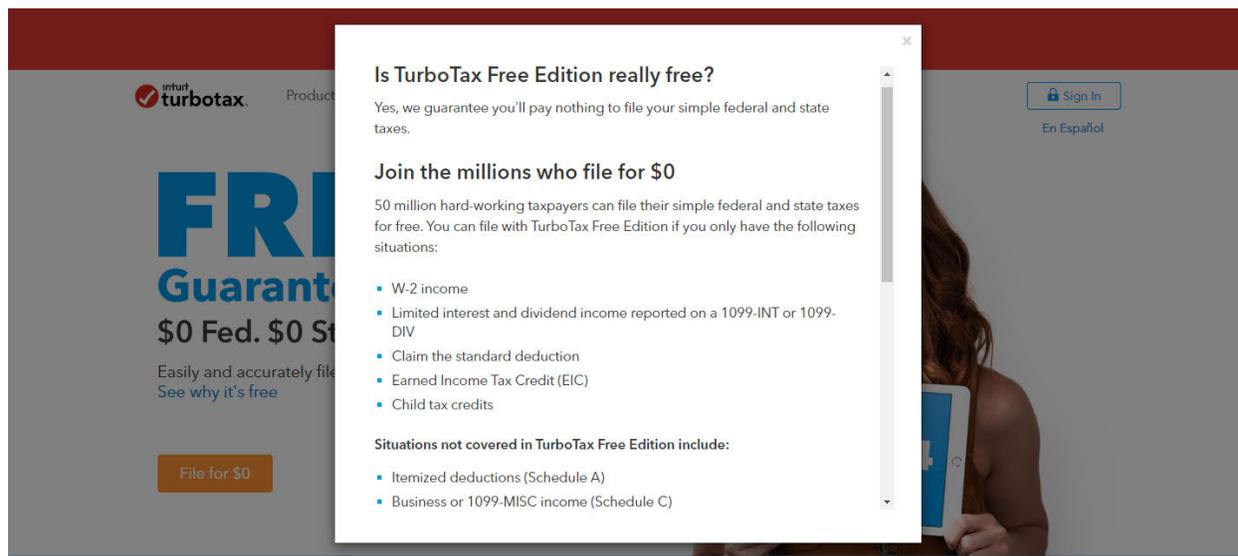


⁵⁹ ““1040EZ/1040A’ pop-up TY 2017,” *TurboTax*, [https://web.archive.org/web/20180105034339/https://turbotax.intuit.com/personal-taxes/online/ \(“1040EZ/1040A’ pop-up TY 2017”\)](https://web.archive.org/web/20180105034339/https://turbotax.intuit.com/personal-taxes/online/ (“1040EZ/1040A’ pop-up TY 2017”)).

⁶⁰ There were two instances on the Products & Pricing Page where hovering the mouse over “1040EZ/1040A” provided customers with a hover-over description of those tax forms and indications of whether they would likely qualify for TurboTax Free Edition, rather than the full Simple Returns Pop-up.

D. TY 2018

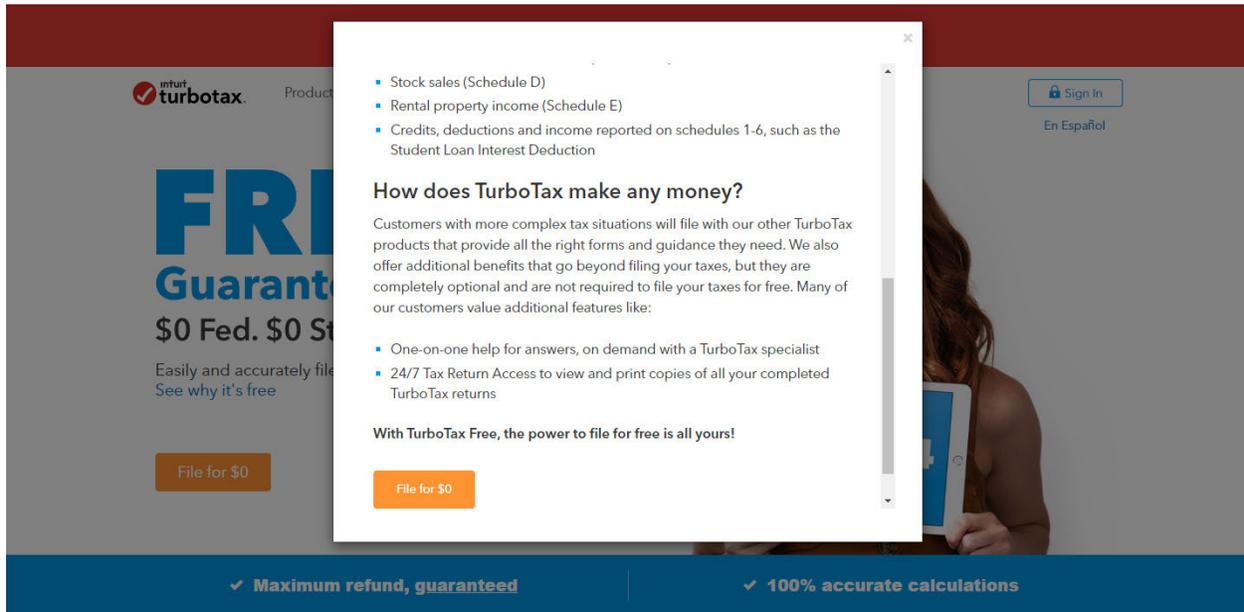
Figure K-37
“See why it’s free” Pop-up TY 2018^{61,62}



⁶¹ ““See why it’s free’ pop-up TY 2018,” *TurboTax*, <https://web.archive.org/web/20190128061106/https://turbotax.intuit.com/> (““See why it’s free’ pop-up TY 2018”).

⁶² An identical pop-up appears after clicking on the “See why it’s free” links on the Products & Pricing Page and the Free Edition Landing Page.

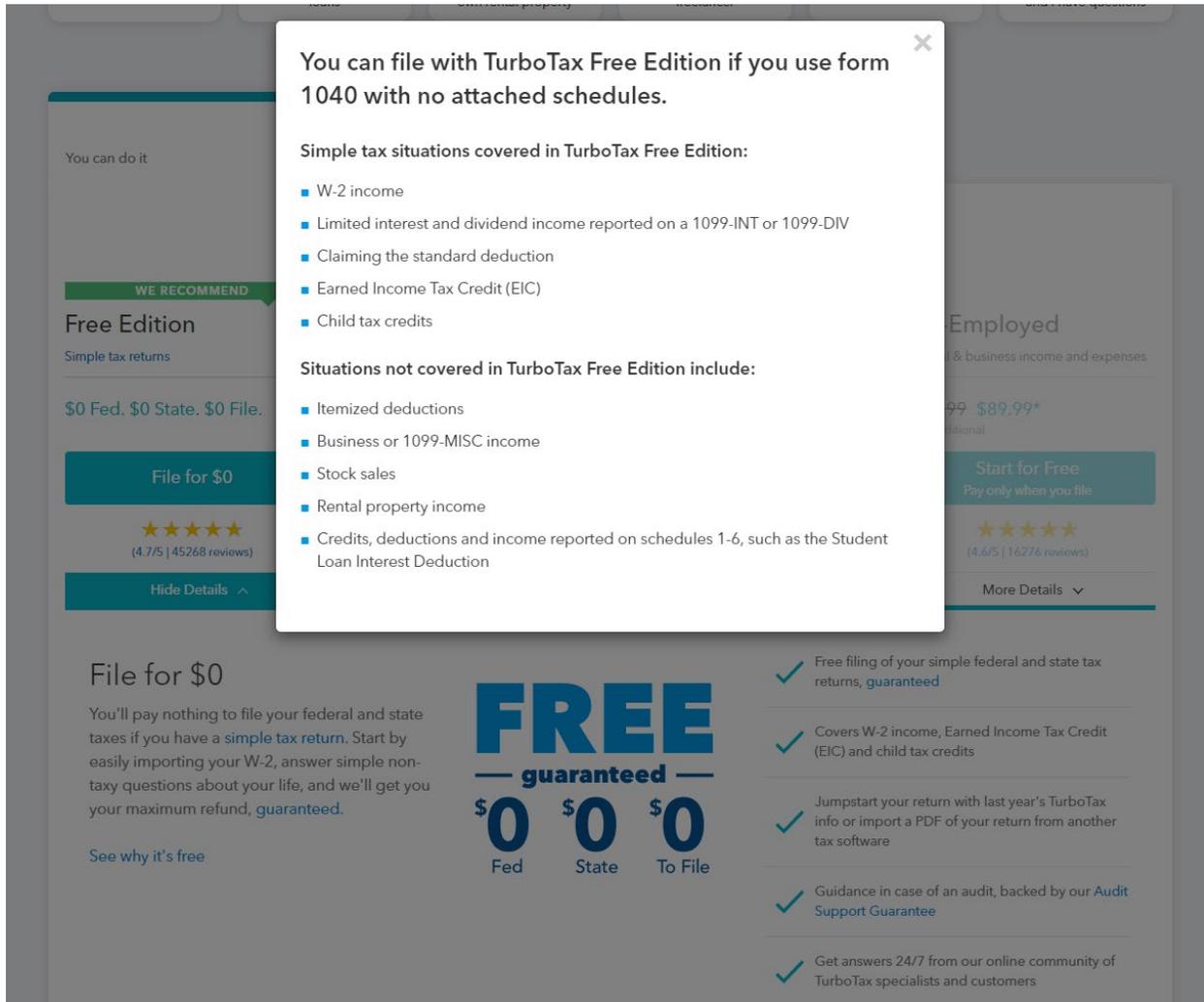
Figure K-38
“See why it’s free” Pop-up TY 2018 (continued)^{63,64}



⁶³ ‘See why it’s free’ pop-up TY 2018.

⁶⁴ An identical pop-up appears after clicking on the “See why it’s free” links on the Products & Pricing Page and the Free Edition Landing Page.

Figure K-39
“Simple tax returns” Pop-up in TY 2018^{65,66}



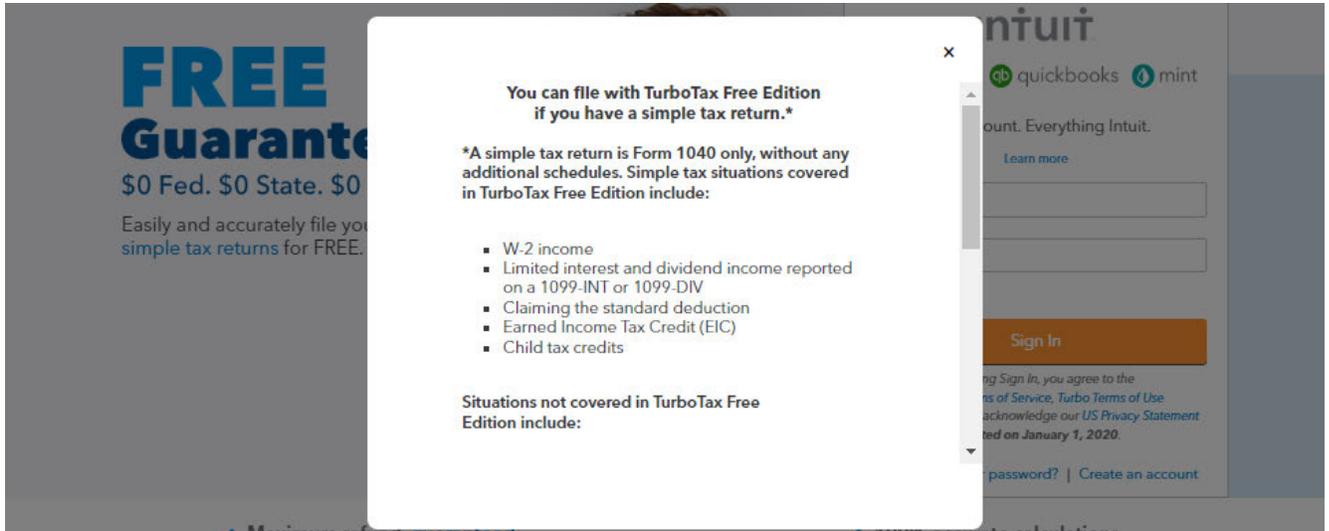
⁶⁵ ““Simple tax returns’ pop-up TY 2018,” *TurboTax*, https://web.archive.org/web/20190126174512mp_/https://turbotax.intuit.com/personal-taxes/online/ (“Simple tax returns’ pop-up TY 2018”).

⁶⁶ An identical pop-up appears after clicking on the “simple tax return” link on the Products & Pricing Page and the “Simple tax returns” link on the Free Edition Landing Page.

E. TY 2019

Figure K-40

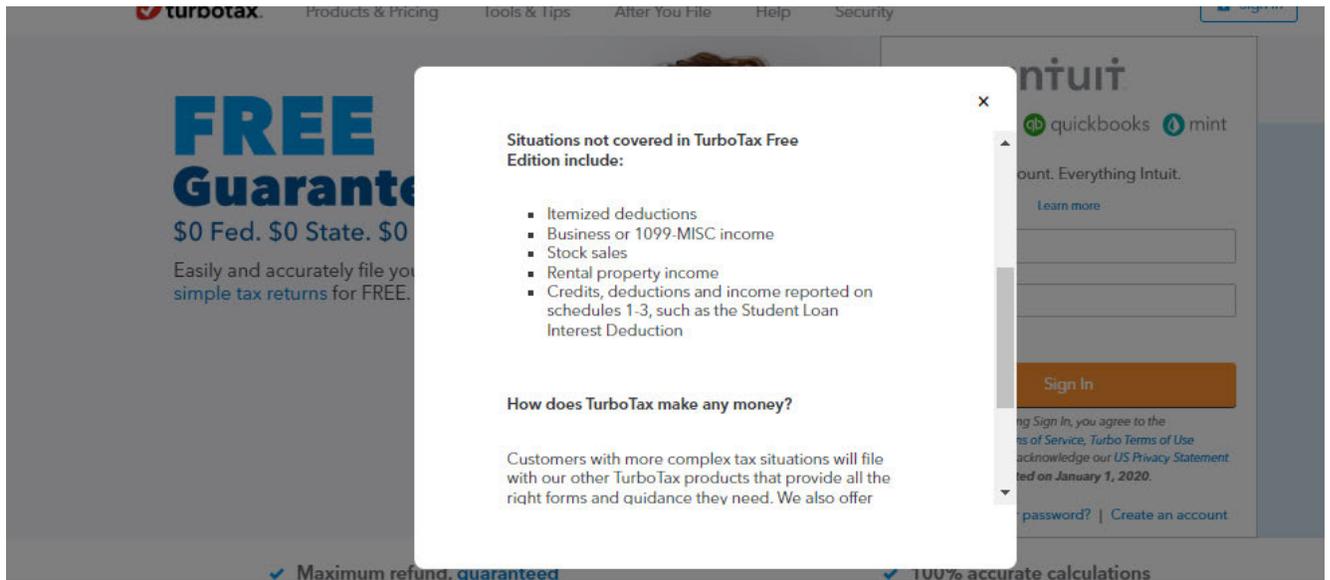
“Simple tax returns” Pop-up TY 2019^{67,68}



⁶⁷ ““Simple tax returns’ pop-up TY 2019,” *TurboTax*, <https://web.archive.org/web/20200202081516/https://turbotax.intuit.com/> (““Simple tax returns’ pop-up TY 2019”).

⁶⁸ An identical pop-up appears after clicking on the “Simple tax returns,” “simple tax return,” and “simple federal and state tax returns” links on the Products & Pricing Page and the Free Edition Landing Page.

Figure K-41
“Simple tax returns” Pop-up TY 2019 (continued)^{69,70}

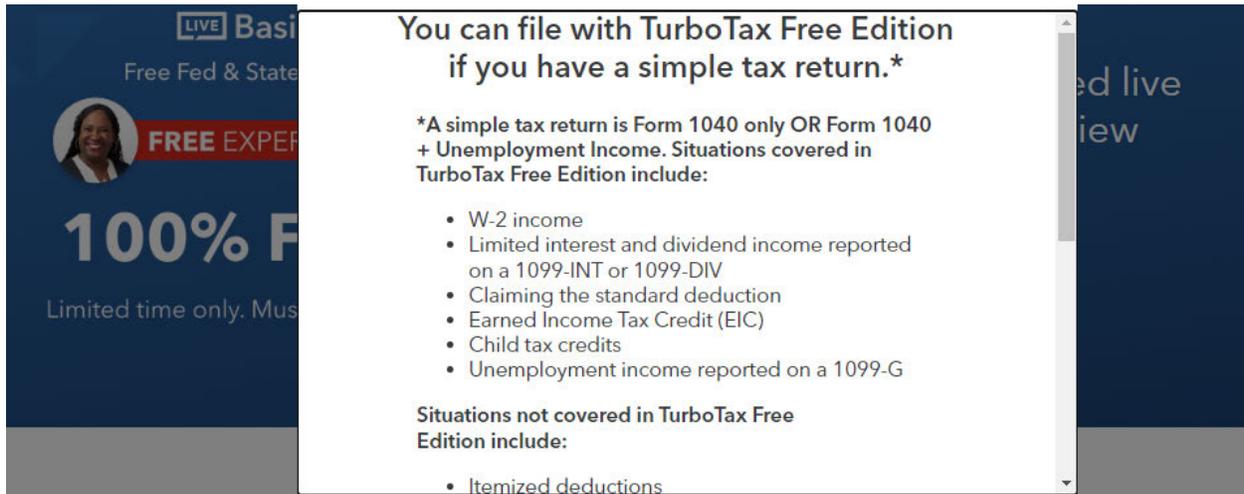


⁶⁹ ‘Simple tax returns’ pop-up TY 2019.

⁷⁰ An identical pop-up appears after clicking on the “Simple tax returns,” “simple tax return,” and “simple federal and state tax returns” links on the Products & Pricing Page and the Free Edition Landing Page.

F. TY 2020

Figure K-42
“Simple tax returns” Pop-up TY 2020^{71,72}

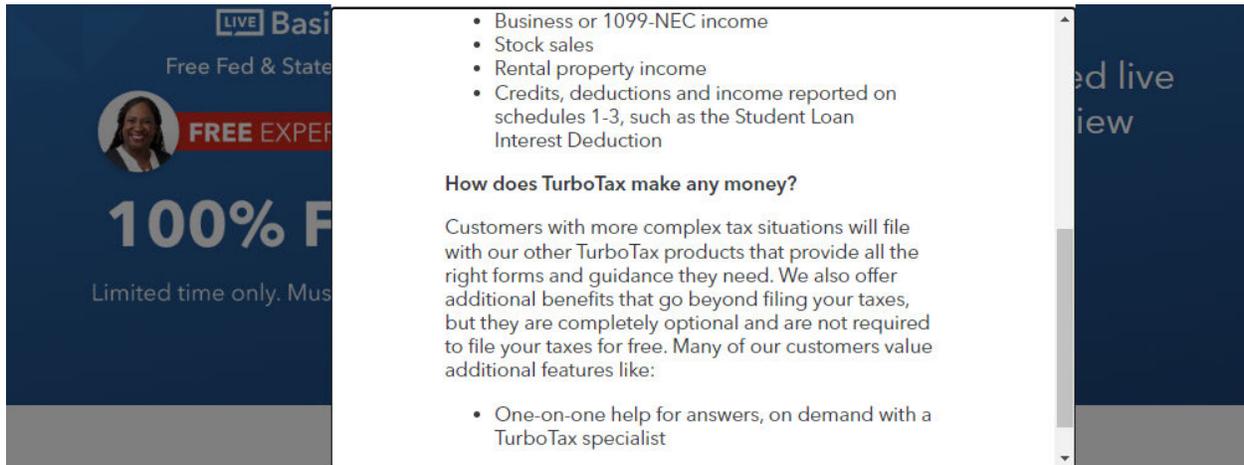


⁷¹ ““Simple tax returns’ pop-up TY 2020,” *TurboTax*, <https://web.archive.org/web/20210126000145/https://turbotax.intuit.com/> (“Simple tax returns’ pop-up TY 2020”).

⁷² An identical pop-up appears after clicking on the “For simple tax returns only,” “simple tax return only,” “simple federal and state tax returns only,” and “simple tax return” links on the Products & Pricing Page and the Free Edition Landing Page.

Figure K-43

“Simple tax returns” Pop-up TY 2020 (continued)^{73,74}



⁷³ ‘Simple tax returns’ pop-up TY 2020.

⁷⁴ An identical pop-up appears after clicking on the “For simple tax returns only,” “simple tax return only,” “simple federal and state tax returns only,” and “simple tax return” links on the Products & Pricing Page and the Free Edition Landing Page.

CERTIFICATE OF SERVICE

On February 24, 2023, I caused the foregoing to be filed electronically using the FTC's E-Filing system, which will send notification of such filing to:

April Tabor
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Suite CC-5610
Washington, DC 20580
ElectronicFilings@ftc.gov

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

On February 24, 2023, I also caused the foregoing to be served via email on:

Roberto Anguizola
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Email: ranguizola@ftc.gov
Tel: (202) 326-3284

Rebecca Plett
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Email: rplett@ftc.gov
Tel: (202) 326-3664

James Evans
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Email: jevans1@ftc.gov
Tel: (202) 326-2026

Sara Tonnesen
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Email: stonnesen@ftc.gov
Tel: (202) 326-2879

Counsel Supporting the Complaint

April Tabor
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Suite CC-5610
Washington, DC 20580
ElectronicFilings@ftc.gov

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

/s/ Derek Woodman
Derek Woodman