

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

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

In the Matter of:

Intuit Inc., a corporation.

Docket No. 9408

**EXPEDITED
TREATMENT
REQUESTED**

**RESPONDENT INTUIT INC.'S EXPEDITED MOTION TO
EXTEND DEADLINES FOR FILING APPEAL BRIEFS**

Pursuant to Rules 3.22 and 3.52, 16 C.F.R. §§ 3.22, 3.52, Respondent Intuit Inc. moves for an order extending the deadlines for the parties' appeal briefs. Specifically, due to the complexity of the issues in this case, the size of the record, the length of the Initial Decision, and the availability of counsel, Intuit requests an order extending the briefing schedule as follows:

	Current Deadline	Proposed Deadline
Opening Briefs	September 18, 2023	October 13, 2023
Answering Briefs	20 days after Opening Briefs filed	45 days after Opening Briefs filed
Reply Briefs	10 days after Answering Briefs filed	21 days after Answering Briefs filed

Given the short time before opening briefs are due, Intuit further requests that the Commission decide this motion on an expedited basis, consistent with Rule 3.22(d) and (f), 16 C.F.R. § 3.22(d), (f).

I. PROCEDURAL HISTORY

The FTC's Administrative Complaint alleges that certain of Intuit's advertisements for its TurboTax tax-preparation products violate Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45. *See* Compl. ¶¶119-122 (March 28, 2022). While Complaint Counsel have never disputed that the challenged ads are for products that are genuinely free for people who are eligible to use them, they alleged that the challenged ads were deceptive because not every taxpayer can use the free products, and some people who saw the ads might have believed they could use a free product when they could not. The evidentiary hearing in this matter before the Honorable D. Michael Chappell, Administrative Law Judge, began on March 27 and concluded on April 12 (all dates in this motion are 2023 unless specified otherwise). Chief Judge Chappell closed the hearing record on April 27.

Following the hearing, Chief Judge Chappell issued an order on April 24 extending the deadlines for the parties to submit post-trial filings. In extending the deadlines, Chief Judge Chappell cited the "extensive" record from the multi-week trial, the "numerous witnesses," and the "thousands of exhibits" at issue. The parties completed post-trial briefing on June 20.

On August 29, Judge Chappell issued a 237-page Initial Decision and Order, which discusses many of the challenged advertisements as well as other evidence from the extensive record. Pursuant to Rule 3.52(a), 16 C.F.R. § 3.52(a), a notice of appeal is not required in this proceeding to perfect an appeal because the Commission sought preliminary relief in federal court under 15 U.S.C. § 53(b).¹

¹ Last month, the Commission published revised regulations governing the procedures for Part 3 proceedings, which purportedly became effective on June 5. *See* Rules of Practice, 88 Fed. Reg. 42,872 (July 5). The Commission clarified, however, that "[t]he rules of practice for adjudicative proceedings that were in effect before June 5, 2023 will govern all currently pending Commission adjudicative proceedings." *Id.* at 42,872. Accordingly, all references to FTC rules of practice are to the regulations in effect prior to June 5.

Complaint Counsel oppose the requested extension.

II. REQUESTED RELIEF

Rule 4.3(b) provides that the Commission may extend time limits “for good cause shown.” 16 C.F.R. § 4.3(b). Good cause exists here to extend the briefing schedule, including the substantial size of the record, which Chief Judge Chappell recognized was “extensive,” and the complexity of the issues presented. Order On Post-Trial Filings at 1 (Apr. 24). The evidentiary hearing in this matter lasted three weeks and included twelve witnesses, resulting in nearly 2,000 pages of trial transcripts. Over 2,400 exhibits were admitted into evidence, including over 40 deposition transcripts, many of which span hundreds of pages. And the parties collectively filed over 3,000 pages of post-trial briefing, including lengthy proposed findings of fact and conclusions of law. Commensurate with that extensive record, on August 29, Judge Chappell issued a 237-page Initial Decision and Order. Analyzing that lengthy decision and order (including its analysis of the extensive record), and properly presenting appellate issues to the Commission will require significant time.

In similar situations, the Commission has acknowledged that complex issues and a voluminous record constitute “good cause” to adjust the briefing schedule. *See, e.g.*, Order Extending Briefing Schedule, *Altria Group, Inc.*, No. 9393 (F.T.C. Mar. 2, 2022); Order Granting Extensions of Time to File Appellate Briefs and Increases in Word Count Limits, *Rambus, Inc.*, No. 9302 (F.T.C. Mar. 18, 2004). In *Altria*, for instance, the Commission granted extensions to the appeal briefing schedule “due to the volume and complexity of the record,” which similarly included thousands of exhibits, thousands of pages of trial transcripts, thousands of pages of post-trial briefing, and a lengthy Initial Decision. Order Extending Briefing Schedule, *Altria Group, Inc.*, No. 9393 (F.T.C. Mar. 2, 2022). And in *Rambus*, the Commission granted extensions to the briefing schedule based on the “lengthy and detailed” record—which

mirrored this proceeding in terms of the length of post-trial briefing but included *fewer* exhibits than here. *See* Order Granting Extensions of Time to File Appellate Briefs and Increases in Word Count Limits, *Rambus, Inc.*, No. 9302 (F.T.C. Mar. 18, 2004).

An upcoming holiday and additional scheduling constraints provide further good cause for the requested extension. Rosh Hashanah—observed by several of Intuit’s counsel—takes place from September 15 through September 18—immediately preceding the current September 18 deadline. Moreover, Intuit’s lead counsel is scheduled to take three expert depositions the week before the September 18 deadline, occupying a significant amount of the time that would otherwise be spent on the appeal briefing.

Finally, due to the short default time for filing opening briefs, Intuit requests that the Commission decide this on an expedited basis. The parties need to know their briefing deadlines sufficiently in advance of those deadlines to effectively brief this case. That need provides good cause to waive the time requirements under Rule 3.22 and expedite consideration of Intuit’s request. *See* 16 C.F.R. § 3.22(f) (“[T]he Commission may waive the requirements of this section as to motions for extensions of time.”).

Dated: August 31, 2023

Respectfully submitted,

By: /s/ David Z. Gringer

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**[PROPOSED] ORDER GRANTING RESPONDENT INTUIT INC.'S
EXPEDITED MOTION TO EXTEND DEADLINES FOR FILING APPEAL BRIEFS**

On August 29, 2023, Chief Administrative Law Judge D. Michael Chappell (“ALJ”) issued his Initial Decision in this matter. Pursuant to Commission Rule 3.52(a), 16 C.F.R. § 3.52(a), the Commission will review the Initial Decision without the filing of a notice of appeal.

On August 31, 2023, Respondent Intuit Inc. moved to extend the briefing schedule for appeal briefs. Under the motion’s proposal, the due dates would shift as follows:

	Current Deadline	Proposed Deadline
Opening Briefs	September 18, 2023	October 13, 2023
Answering Briefs	20 days after Opening Briefs filed	45 days after Opening Briefs due
Reply Briefs	10 days after Answering Briefs filed	21 days after Answering Briefs due

We have determined pursuant to Commission Rule 4.3(b), 16 C.F.R. § 4.3(b), to grant the motion for good cause shown. We find that a modest extension of the briefing schedule is appropriate in light of the voluminous record in this proceeding and will enable the parties to address the complexity of the issues presented.

Accordingly,

IT IS HEREBY ORDERED THAT Intuit’s Expedited Motion To Extend Deadlines For Filing Appeal Briefs is **GRANTED**; the briefs in this proceeding shall be due as follows:

Due On

Opening Briefs	October 13, 2023
Answering Briefs	November 27, 2023
Reply Briefs	December 18, 2023

IT IS FURTHER ORDERED THAT filing an opening appeal brief by October 13, 2023, will satisfy Commission Rule 3.52(a)(1), 16 C.F.R. § 3.52(a)(1), and will not result in the case being decided pursuant to Commission Rule 3.52(a)(2), 16 C.F.R. § 3.52(a)(2).

By the Commission.

April J. Tabor
Secretary

SEAL:
ISSUED: _____, 2023

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2023, I caused the foregoing document to be filed electronically using the FTC's E-Filing system, which will send notification of such filing to:

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I further certify that on August 31, 2023, I caused the foregoing document to be served via email to:

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Dated: August 31, 2023

Respectfully submitted,

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