

**PUBLIC**

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

**In the Matter of:**

**Intuit Inc.**, a corporation.

**Docket No. 9408**

**NOTICE OF DENIAL OF PRELIMINARY INJUNCTION**

Respondent Intuit Inc. files this Notice to apprise the Court of the recent decision by the U.S. District Court for the Northern District of California denying the Federal Trade Commission's Emergency Motion for Temporary Restraining Order and Preliminary Injunction. On March 28, 2022, the FTC filed a complaint and Emergency Motion for Temporary Restraining Order and Preliminary Injunction seeking to enjoin Intuit's allegedly deceptive marketing of its free commercial tax-preparation product pending the outcome of this administrative proceeding. *See FTC v. Intuit Inc.*, No. 3:22-cv-01973-CRB (N.D. Cal.), ECF Nos. 1, 6. Intuit filed its opposition to the motion on April 4, 2022 (ECF No. 45), and the FTC filed its reply on April 8, 2022 (ECF No. 48). The district court held a hearing on April 21, 2022. On April 22, 2022, the district court issued an order denying the FTC's request for both a TRO and preliminary injunction. *See FTC v. Intuit Inc.*, No. 3:22-cv-01973-CRB, ECF No. 66. A copy of the district court's decision is attached to this notice as Exhibit A.

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Dated: April 25, 2022

Respectfully submitted,

*/s/ David Z. Gringer*

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# **EXHIBIT A**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

INTUIT INC.,

Defendant.

Case No. [22-cv-01973-CRB](#)

**ORDER DENYING MOTION FOR  
EMERGENCY RELIEF**

Plaintiff Federal Trade Commission (FTC) moves for a Temporary Restraining Order and a Preliminary Injunction under Section 13(b) of the FTC Act, arguing that Defendant Intuit Inc. is deceptively advertising TurboTax Free Edition in violation of Section 5(a). See Emergency Mot. (dkt. 28); Compl. (dkt. 1). The FTC alleges that Intuit advertises that TurboTax Free Edition is “free free free free” and includes only a small and vague disclaimer that it is “for simple returns only” or to “see details at TurboTax.com.” Taxpayers whose returns do not meet Intuit’s definition of “simple” eventually run into a message on the TurboTax website informing them that they must pay to file.

Under Section 13(b) of the FTC Act, a district court may grant a preliminary injunction “[u]pon a proper showing that, weighing the equities and considering the Commission’s likelihood of ultimate success, such action would be in the public interest.” 15 U.S.C. § 53(b); see *FTC v. Affordable Media*, 179 F.3d 1228, 1233 (9th Cir. 1999). A defendant engages in deceptive acts or practices under Section 5(a) of the FTC Act if it (1) made a representation, omission, or practice, (2) which was likely to mislead consumers acting reasonably under the circumstances, and (3) which was material. FTC v. Stefanchik, 559 F.3d 924, 928 (9th Cir. 2009); 15 U.S.C. § 45(a).

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1 The Court denies the FTC’s motion for emergency relief for three reasons. First,  
 2 Tax Day, which was April 18, 2022, has passed. Most taxpayers have already filed their  
 3 taxes. Intuit represented in its briefing and at oral argument that its advertising is largely  
 4 done for this tax season. See Opp. (dkt. 45) at vi. Any prospective harm is therefore  
 5 attenuated. Second, even before Tax Day, Intuit had removed several of the most  
 6 plausibly deceptive advertisements—that is, three videos that repeated the word “free” a  
 7 dozen or more times over 30 seconds before a very brief disclaimer. See Shiller decl. (dkt.  
 8 7-13, GX 301) ¶¶ 16-31 (describing these ads); Ryan decl. (dkt. 45-3) ¶¶ 16-26 (noting  
 9 their removal). Third, to the extent other advertisements might violate the FTC Act, the  
 10 Court notes that the FTC has brought an administrative proceeding against Intuit, with a  
 11 hearing set for September 14, 2022. See 15 U.S.C. § 45(b); AMG Cap. Mgmt., LLC v.  
 12 Fed. Trade Comm’n, 141 S. Ct. 1341, 1346 (2021) (detailing the administrative process).  
 13 An Administrative Law Judge (ALJ) with expertise in these matters will hear (and likely  
 14 rule) before Intuit resumes its advertising campaign in the lead-up to Tax Day 2023.

15 For the foregoing reasons, the Court DENIES the FTC’s Emergency Motion for a  
 16 Temporary Restraining Order and a Preliminary Injunction.<sup>1</sup> However, if Intuit resumes  
 17 its full advertising campaign before the ALJ releases her § 45(b) report, or the facts on the  
 18 ground change significantly, the FTC may return to this Court to request relief.

19 **IT IS SO ORDERED.**

20 Dated: April 22, 2022

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 23 CHARLES R. BREYER  
 24 United States District Judge

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<sup>1</sup> The administrative motion for emergency relief on the briefs (dkt. 50) is DENIED AS MOOT.

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 26, 2022, I filed the foregoing document 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  
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ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell  
600 Pennsylvania Ave., NW, Rm. H-110  
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I further certify that on April 26, 2022, I caused the foregoing document to be served via email to:

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Administrative Law Judge  
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Dated: April 26, 2022

Respectfully submitted,

*/s/ David Z. Gringer*  
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