

<https://www.ftc.gov/business-guidance/blog/2024/01/closer-look-ftcs-ruling-intuits-free-claims-deceived-consumers>

# A closer look at the FTC's ruling that Intuit's "free" claims deceived consumers

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Decades ago, the FTC described the advertising claim "free" as "a lure," "the bait," and "a powerful magnet," and its appeal continues to attract consumers. Need proof? Just look at how Intuit made "free" the centerpiece of its ad campaign for TurboTax, blanketing TV, radio, print media, and the internet with claims that consumers could use the company's TurboTax service to file their taxes not just for "free," but for "Free. Free. Free. Free."

What the company didn't clearly disclose was that approximately 100 million people – about 2/3 of filers – didn't qualify for "free" filing with TurboTax. Last year an FTC Administrative Law Judge reached the conclusion that Intuit had violated the law with its deceptive claims.

After independently evaluating the evidence, [the Federal Trade Commission has held that "Intuit has engaged in deceptive advertising in violation of the FTC Act"](#) and has issued a comprehensive order against Intuit to prevent the company from future truth-in-advertising violations. It's a major win for American consumers and a major wake-up call for companies that mislead people through the use of deceptive "free" claims.

You'll want to read the [Opinion](#) for more about the meticulous way the Commission evaluated the record on appeal, but certain conclusions stand out.

**"We find that Intuit's ads on their face, expressly or by strong implication, conveyed to reasonable consumers the message that they can file their taxes with TurboTax for free."**

The Commission concluded that the "central, primary message of Intuit's ads to consumers is that they can file their taxes for free with TurboTax." How does the FTC make that determination? For advertisers looking for a refresher on the law, the Opinion explains the step-by-step process. But here's a key part of it: "When claims are reasonably clear from the face of the advertisement, the finder of fact can rely 'on its own reasoned analysis' to determine what claims, including implied ones, are conveyed."

The Opinion examines in detail the seemingly limitless variations on how Intuit drove home its ubiquitous – and deceptive – "free" message.

For example, "[Y]ou can file on TurboTax for absolutely nothing." "TurboTax AbsoluteZero lets you file your taxes for free."

“That’s right. TurboTax is free. Free, free free free.”

“FREE guaranteed \$0 fed \$0 state \$0 to file.”

What’s more, it wasn’t just the Commission that found that Intuit’s ads conveyed that “free” message. According to the Opinion, Intuit’s own in-house copy testing was consistent with that conclusion.

- ***The message for marketers:*** “Free” claims remain a powerful draw for consumers, but like any other advertising representation, the claim must be truthful. Don’t describe your product or service as “free, free, free” when for many consumers, the more accurate characterization is “fee, fee, fee.”

“Respondent [Intuit] disputes that these ads conveyed to reasonable consumers that they could file for free with TurboTax because the ads also contained elements that, Respondent alleges, modified the message. . . . We find that these elements did not alter the overall message conveyed by the individual ads at issue.” Intuit pointed to phrases like “See if you qualify at turbotax.com” in some ads to claim that the company didn’t convey to consumers that they could file their taxes for free on TurboTax. The Commission found Intuit’s argument unpersuasive. First, not all TurboTax “free” ads contained those elements. What’s more, “the disclosures were too inconspicuous to have disclosed anything at all.” As the Commission stated, “Disclosures cannot change the net impression of an ad if they are not clear and readily visible.”

- ***The message for marketers:*** Fine print, fleeting superscripts, or other inconspicuous “disclosures” don’t really “disclose” anything. If you rely on certain phrases to modify your ad claims, ensure they’re effective.

“Disclaimers or qualifications are not adequate to avoid liability 'unless they are sufficiently prominent and unambiguous to change the apparent meaning of the claims and to leave an accurate impression. Anything less is only likely to cause confusion by creating contradictory double meanings.’” Certainly the prominence and placement of purported “disclosures” factor into whether they’re effective in modifying the net impression conveyed by an ad, but the language a company chooses is highly relevant, too. Here, the Commission wasn’t moved by Intuit’s argument. Intuit’s use of the phrase “simple returns” was insufficient to signal to consumers that its overarching “free, free, free” message applied to only a fraction of American tax filers. The Commission found the phrase “simple returns” to be subject to multiple meanings in consumers’ minds and that it was “anything but clear and unambiguous.” The bottom line: “[T]he phrase does not leave consumers with an accurate impression.”

- ***The message for marketers:*** It matters how concrete a purported disclosure is. The multiple meanings of the phrase “simple returns” rendered it ineffective in modifying Intuit’s predominant “free, free, free” message.

“Respondent’s claims of free filing are false for roughly two-thirds of U.S. taxpayers, who do not meet Intuit’s simple tax return qualifications and are therefore ineligible to file for free with TurboTax.” Even if a company’s promises may be accurate for a certain subcategory

of consumers, for advertising claims aimed at the general public, the advertiser violates the FTC Act if the representation is false for an appreciable number of others – and most certainly in this case for approximately 2/3 of filers. In addition, the Opinion includes a detailed analysis of the FTC’s long-standing “first-contact” rule – the court-adopted principle that an advertiser violates the FTC Act if it “induces the first contact through deception, even if the buyer later becomes fully informed before entering the contract.” Although Intuit argued that consumers were able to get accurate information by visiting the company’s website, the Commission concluded that the site was “inadequate to cure a misimpression from Intuit’s ads because consumers arriving on the TurboTax homepage would not have encountered clear and conspicuous disclosures but instead would have seen more claims touting free filing.”

- ***The message for marketers:*** Take care to qualify your claims appropriately and don’t send consumers on a potentially fruitless mission to find the truth buried somewhere on your website.

**“We agree that a cease-and-desist order is essential. Intuit’s deceptive advertising campaign has been widespread. It has lasted for years and continues to the present day. Intuit’s ‘free’ campaigns continued even after lawsuits and government investigations raised serious concerns about the lawfulness of Intuit’s tactics.”** The purpose of the remedies imposed in FTC law enforcement actions isn’t just to stop illegal conduct, but also to prevent the recurrence of those violations and related ones. The Opinion explains in detail its conclusion that a robust [Order](#) against Intuit with meaningful fencing-in provisions will help protect consumers in the future. The Commission agreed with the ALJ that an effective order that holds Intuit accountable for past violations and mandates substantial changes in how the company does business going forward is necessary to protect consumers. Aside from a modification related to space-constrained ads, the Commission adopted the ALJ’s order.

The [Opinion](#) includes insights into other advertising topics relevant to FTC law enforcement: for example, copy testing, survey design, and consumer complaints. The Commission also addressed in detail a number of purported affirmative defenses that Intuit raised. Savvy advertisers will clear time on their calendars, call up the Opinion on their screens, and give serious thought to what the Commission has to say about truth in advertising. In addition, you’ll also want to read a [statement from Bureau of Consumer Protection Director Samuel Levine](#).