

State AGs Support FTC Enforcement Action Against Intuit

Paul L. Singer, Abigail Stempson, Beth Bolen Chun

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Last week, a coalition of 22 state AGs filed an [amicus brief](#) in support of a Federal Trade Commission (FTC) cease-and-desist order that prohibits tax software giant Intuit (the creator of TurboTax) from certain advertising practices relating to its free tax preparation software. Intuit asserts that the FTC's decision is not supported by substantial evidence because its conduct was not deceptive. Further, Intuit argues that the FTC made legal errors in applying deceptive business practices standards. For example, Intuit asserts that the FTC improperly applied an unprecedented, heightened deception standard to advertisements containing a "free" message. In addition, since Intuit reached a prior multistate settlement, Intuit argues that the FTC Order should be overturned. In 2022, a coalition of 50 states and the District of Columbia secured \$141 million from Intuit as part of a [settlement](#) that resolved state investigations into claims that Intuit deceptively marketed and advertised TurboTax. In the brief, state AGs contend that the U.S. Court of Appeals for the 5th Circuit should reject Intuit's appeal of the FTC's order because:

- **The States Contend Concurrent Enforcement by the FTC and State Governments is a Common, Widely Accepted Practice that Does Not Undermine the Validity of the FTC Order.** State AGs contend that the FTC's order is not duplicative of the previous multistate settlement. For example, the FTC order prohibits Intuit from engaging in a wide range of misleading practices beyond the previous settlement's specific and enumerated prohibitions. Further, the FTC order requires Intuit to use specific language in advertisements claimed to ensure consumers are adequately informed that free service is available only for a limited group of taxpayers, going beyond the states' settlement. In terms of compliance duration, the FTC order requires 20 years, whereas the previous settlement required 10 years. Even if similarities are present with the previous settlement, state AGs argue that concurrent enforcement by the federal and state governments is a longstanding practice that is well-supported by principles of dual sovereignty that have complementary enforcement mechanisms.
- **The States Support FTC's Application of Net Impression Standard.** According to the state AGs' own enforcement experience, the FTC's order is consistent with longstanding principles of both state and federal consumer protection law. As explained by the FTC, assessing what claim is conveyed by an advertisement requires discerning the overall net impression of the advertisement for the reasonable consumer-viewer. The states explain that federal and some state consumer protection laws specifically require as part of a context-driven analysis for deception claims, that advertisements claiming a product is "free" clearly identify any conditions or disclaimers associated with that offer to ensure consumers properly understand the terms.

- **The States Argue the Alleged Conduct Was Deceptive and Harmful.** According to the brief, the states claim Intuit's advertisements consistently conveyed to consumers that they could file a tax return for free using a TurboTax product, even though that message was false for most taxpayers. They also argued that Intuit conducted search engine manipulation to promote its commercial TurboTax products, while steering consumers away from a different TurboTax product that was entirely free for many consumers at or below a certain income threshold. As a result, state AGs argue that millions of consumers were harmed through lost time or money (or both).

State AGs and the FTC have a [long history of working together](#) in their missions to protect consumers, whether it be through support by way of an amicus brief, coordinating on enforcement actions, or providing consumer education. Businesses should be aware of this relationship and recognize that action by one may not preclude other investigation or enforcement activity by others. This productive collaboration extends even where the states have already obtained relief against a defendant (e.g., Intuit), indicative of the states' willingness to opine and support additional FTC enforcement even after they've already settled their claims.