

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

_____)	
In the Matter of)	
Intuit, Inc.,)	
a corporation,)	Docket No. 9408
Respondent.)	
_____)	

**ORDER ON JOINT MOTION TO CONDUCT
EVIDENTIARY HEARING IN PERSON**

On January 24, 2023, Federal Trade Commission (“FTC”) Complaint Counsel and Respondent Intuit, Inc. filed a joint motion requesting that the evidentiary hearing in this matter, scheduled to begin on March 27, 2023, be conducted live and in person, rather than by video conference (“Joint Motion”).

The federal government is currently under a national health emergency related to the COVID-19 pandemic. On February 18, 2022, the President of the United States issued an executive proclamation declaring: “The COVID-19 pandemic continues to cause significant risk to the public health and safety of the Nation” and finding that the initial pandemic emergency declaration made on March 13, 2020 “must continue in effect . . .” Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (Covid-19) Pandemic, 87 Fed. Reg. 10289 (Feb. 18, 2022). In addition, on January 11, 2023, the Secretary of the United States Department of Health and Human Services renewed the numerous prior determinations, going back to January 20, 2020, that “a public health emergency exists . . . nationwide.” <https://aspr.hhs.gov/legal/PHE/Pages/covid19-11Jan23.aspx>. Moreover, at the FTC, numerous employees remain under extended telework agreements.

The Joint Motion does not mention any of the foregoing constraints. The parties contend only that “an in-person trial will allow the Court to best assess the credibility of th[e] witnesses” and will “free[] up the parties to focus on their respective arguments instead of the logistics of video.” These assertions are unsupported and are rejected. First, during the period that the above-referenced national emergency has been in effect, two evidentiary hearings have been conducted by video conference and initial decisions were subsequently issued. In both cases, video testimony readily enabled the presiding Administrative Law Judge to make credibility determinations. The parties fail to explain how live testimony is so markedly superior for assessing credibility as to override pandemic health concerns. Second, regarding logistics, both of the prior video trials proceeded smoothly with a minimum of disruptions. The parties fail to

support the assertion that presenting witness testimony by remote video will present more logistical issues than presenting witness testimony live. In fact, the logistics of bringing numerous witnesses and lawyers, as well as members of the press and the public, into the FTC building to attend a live evidentiary hearing were complex and burdensome prior to the pandemic. These have only increased with the addition of necessary pandemic precautions. It is also significant that many more members of the press and public can access the hearing, via telephone connection, than could attend an in-person hearing at the FTC building.

Furthermore, given pandemic work schedules and related complications, it is not apparent that the FTC is presently capable of providing the necessary courtroom security and related personnel to support conducting in-person proceedings. In this regard, it is noteworthy that, since the onset of the COVID-19 pandemic, the Commission's proceedings, including appellate oral arguments, and indeed, the hearing on Complaint Counsel's pending Motion for Summary Decision in the instant case, have been conducted through video conference.

For all the foregoing reasons, the Joint Motion is DENIED.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: January 30, 2023