

**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

ORDER EXTENDING DEADLINES FOR FILING APPEAL BRIEFS

On August 29, 2023, Chief Administrative Law Judge D. Michael Chappell issued an Initial Decision and Order in this matter, finding that Intuit Inc. (“Intuit”) engaged in deceptive advertising in violation of Section 5 of the FTC Act. On August 31, 2023, Respondent filed an Expedited Motion to Extend Deadlines for Filing Appeal Briefs, which, *inter alia*, asks the Commission to extend the time to file opening briefs and answering briefs to 45 days instead of 20 days, the default provided in Commission rules. Respondent argues that good cause for the extension is provided by the size of the record as well as a religious holiday and competing demands on Intuit’s lead counsel in the days immediately before the deadline for opening briefs. Complaint Counsel oppose the extension, except to extend the initial deadline for opening briefs by 3 days to accommodate the religious holiday. Complaint Counsel dispute that the size and complexity of the record justify extending the briefing schedule and contend that other counsel for Intuit could shepherd Respondent’s brief to the Commission. Complaint Counsel also express concern that deadline extensions could cause the Commission opinion to be delayed into the upcoming tax year.

Commission Rule 4.3(b) provides that the Commission may extend time limits “for good cause shown.” 16 C.F.R. § 4.3(b). Here, we find that there is good cause to modify the briefing deadlines from the time limits provided under Commission Rules. We note that the briefing schedule for the appeal in this matter is accelerated because the Commission previously sought a temporary restraining order in federal court. *See* 16 C.F.R. § 3.52(a)(1) (providing 20 days for opening briefs, 20 days for answering briefs, and 5 days for reply briefs in proceedings in which the Commission has sought preliminary relief in federal court).¹ The timing in this case differs

¹ The Commission amended Commission Rule 3.52, 16 C.F.R. § 3.52, effective as of July 5, 2023. *See* Rules of Practice, 88 Fed. Reg. 42872, 42873 (July 5, 2023) (corrected by notice, 88 Fed. Reg. 45063

from most deceptive advertising cases, in which staff typically do not seek preliminary relief in federal court; in such cases timing is dictated by Commission Rule 3.52(b)(2), 16 C.F.R. § 3.52(b)(2), which provides 30 days for opening briefs, 30 days for answering briefs, and 7 days for reply briefs. We find that the record in this matter provides good cause to establish a briefing schedule that parallels the schedule typically applicable to deceptive advertising cases. Here, the record consists of nearly 2000 pages of trial transcripts, 2350 exhibits, and 41 witnesses, including 6 experts. *See* Respondent's Motion at 3, Initial Decision at 2. This record is comparable to other deceptive advertising cases where parties have briefed the Commission under the deadlines provided by Commission Rule 3.52(b)(2). *See, e.g.*, ECM BioFilms, Inc., <https://www.ftc.gov/system/files/documents/cases/150206ecmdecision-1.pdf>, at 3 (Initial Decision) (describing record with 3006 pages of trial transcript, 1760 exhibits, and 29 witnesses); POM Wonderful LLC, <https://www.ftc.gov/sites/default/files/documents/cases/2012/05/120521pomdecision.pdf>, at 2 (Initial Decision) (describing record with 3273 pages of trial transcript, nearly 2000 exhibits, 24 witnesses, 14 expert reports, and 46 scientific studies).

Accordingly,

IT IS HEREBY ORDERED THAT Respondent's Expedited Motion to Extend Deadlines for Filing Appeal Briefs is **GRANTED IN PART AND DENIED IN PART**.

IT IS FURTHER ORDERED THAT opening briefs shall be filed by September 28, 2023. Answering briefs shall be filed within 30 days of service of the opening briefs, and reply briefs shall be filed within 7 days of service of answering briefs. *See* 16 C.F.R. § 4.3(a), (c).

IT IS FURTHER ORDERED THAT the filing of an opening brief by September 28, 2023, will constitute the timely filing of objections to the Initial Decision pursuant to Commission Rule 3.52(a)(1), 16 C.F.R. § 3.52(a)(1).

By the Commission, Chair Khan not participating.²

April J. Tabor
Secretary



SEAL:
ISSUED: September 11, 2023

(July 14, 2023)). The amendments do not apply to Commission adjudicative proceedings that were pending as of that effective date, *id.* at 42872, so they do not govern this proceeding.

² Respondent has petitioned for the recusal of Chair Lina M. Khan in this matter, a petition that remains pending before the Commission as of the date of this Order. Chair Khan's decision not to participate in this expedited motion bears no relationship to its merits.