

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 GRANTING COMPLAINT COUNSEL’S MOTION
TO COMPEL PRODUCTION OF DOCUMENTS**

I.

On December 9, 2022, Federal Trade Commission (“FTC” or “Commission”) Complaint Counsel filed a motion to compel production of documents (“Motion”) from Respondent Intuit, Inc. (“Respondent” or “Intuit”). Specifically, Complaint Counsel seeks to compel Respondent to produce documents in response to Complaint Counsel’s First Request for Production of Documents (“RFP”) number 22, described more fully below. Respondent filed an opposition to the Motion on December 19, 2022 (“Opposition”). Pursuant to an Order issued on December 21, 2022, directing a further response by Complaint Counsel, Complaint Counsel filed a Reply in Support of the Motion on December 28, 2022 (“Reply”).

As explained below, the Motion is GRANTED.

II.

Pursuant to Commission Rule 3.31(c)(1): “Parties may obtain discovery to the extent that it may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent.” 16 C.F.R. § 3.31(c)(1). Discovery shall be limited if the Administrative Law Judge determines that it is “unreasonably cumulative or duplicative,” or the “burden and expense of the proposed discovery . . . outweigh its likely benefit.” 16 C.F.R. § 3.31(c)(2)(i), (iii). “Unless the Administrative Law Judge determines that the objection is justified, the Administrative Law Judge shall order that . . . [responses] be made.” 16 C.F.R. § 3.38(a).

RFP 22, issued by Complaint Counsel to Respondent on September 12, 2022, requests Respondent to produce:

All data pertaining to customers and potential customers who interacted with a free TurboTax offer or product or service, as contained in your customer relationship management database (“CRM”), or any database(s) used to maintain customer and potential customer information, feedback, complaints and/or sales.

Declaration of Roberto Anguizola (Attachment to Motion, hereafter, Anguizola Decl.>) Exh. C at 33. In its response, served October 3, 2022, Respondent objected on the grounds that the material sought is irrelevant, overbroad, and unduly burdensome. Respondent further stated that based on those objections it would not produce responsive documents. *Id.* at 33-34.

The Complaint in this case alleges that, in connection with advertising and selling Intuit’s tax preparation products and services, Respondent made express and/or implied representations that consumers could file their taxes for free using TurboTax, but that in fact “in numerous instances Respondent does not permit consumers” to do so, and therefore made false or misleading representations in violation of the FTC Act. *See e.g.*, Complaint ¶¶ 119-122. Respondent denies that it made any false or misleading representations. Answer ¶¶ 119-122. In addition, in briefing before the Commission on Complaint Counsel’s Motion for Summary Decision, Respondent further contends that consumers are generally satisfied with Intuit’s products, and that survey and consumer satisfaction evidence shows reasonable consumers were not deceived by Respondent’s “free” tax filing representations. *See* Respondent’s Opposition to Complaint Counsel’s Motion for Summary Decision, August 30, 2022, at 19. Respondent also argues that the consumer complaints identified by Complaint Counsel “represent a miniscule proportion of TurboTax customers, compared to the significant number of consumers who have rated TurboTax highly.” *Id.* at 9.

III.

The CRM data sought by RFP 22 would show consumer complaints and other feedback received by Intuit regarding its free TurboTax offer, product, or service, and is therefore relevant to the allegations and the defenses in this case. Indeed, Respondent’s Opposition does not seriously contend otherwise. Therefore, Respondent’s objection to discovery on relevance grounds is rejected.

In its Opposition, Respondent raises for the first time an objection that the CRM data requested by RFP 22 is cumulative to documents provided by Respondent in response to Complaint Counsel’s RFP 19. By failing to raise this objection in Intuit’s October 3 Objections and Responses to Complaint Counsel’s RFP 22, the objection is waived.

Even if not waived, the objection is not valid. RFP 19 requested:

All documents related to complaints or negative feedback from consumers or potential consumers who expected to file their taxes for free using TurboTax but were not eligible to do so.

Anguizola Decl. Exh. C at 29. While production in response to RFP 19 should encompass documents from Respondent’s CRM, Respondent has refused to provide the CRM data.

Moreover, Respondent's objection that the CRM data would be cumulative to the consumer information requested by RFP 19 is not supported by evidence, but only a conclusory assertion that the data would be "largely duplicative." See Declaration of Derek Woodman (Attached to Opposition) ¶ 18. "Parties resisting discovery of relevant information carry a heavy burden of showing why discovery should be denied." *In re Daniel Chapter One*, 2009 WL 569694, at *2 (F.T.C. Jan. 9, 2009). General, unsupported allegations of burden do not meet that burden. *In re Sysco Corp.*, 2015 WL 3897396, at *3 (June 17, 2015). The motion papers and exhibits demonstrate that Intuit possesses two different data sets of consumer complaints and other interactions. The CRM data includes particular details, such as the specific consumer product being used, notes taken by customer service agents, and any further action or resolution by Intuit. The CRM data would also include consumers who began using the free TurboTax edition but ceased to do so when they learned they did not qualify.

Respondent's contention that producing the requested CRM data would be unduly burdensome is also unsupported by evidence. Respondent submits only conclusory allegations that production would be time consuming because it would require a privilege review. As noted above, such conclusory allegations are insufficient to bar discovery.

Finally, Respondent claims that discovery of the CRM data should be denied because Complaint Counsel's Motion was untimely under the Scheduling Order issued in this case. Respondent first asserts that Complaint Counsel failed to meet and confer with Respondent regarding Respondent's objections to producing the CRM data within five days of receipt of the objections, as set forth in Additional Provision 7 of the Scheduling Order ("Within five [business] days of serving any objections, the parties will meet and confer to attempt to resolve any disputes."). The motion papers and exhibits show that the parties first met and conferred on October 12, 2022, which is one business day beyond the allotted five-day period. However, the reasons for the one-day delay are not apparent. The Motion will not be denied solely on this one-day delay, considering the totality of the circumstances, including the relevance of the information sought and the fact that Complaint Counsel, as shown below, timely filed its Motion to Compel.

Respondent next contends that Complaint Counsel failed to file its Motion within five days of reaching an impasse in negotiations over production of the CRM data, as set forth in Additional Provision 8 of the Scheduling Order. That provision states in pertinent part:

Any motion to compel responses to discovery requests, or to seek certification of a request for court enforcement of a nonparty subpoena, shall be filed within 30 days of service of the responses and/or objections to the discovery requests or within 20 days after the close of discovery, whichever first occurs; except that, where the parties have been engaging in negotiations over a discovery dispute, including negotiations with any nonparty with regard to a subpoena, the deadline for the motion to compel shall be within 5 days of reaching an impasse.

The parties have submitted as exhibits to the motion papers substantial documentation of the parties' conferences on various discovery disputes, including the dispute over production of the CRM data. This documentation has been fully reviewed and considered. Based on this

evidence, Respondent has failed to demonstrate that Complaint Counsel failed to timely file the Motion. The evidence shows that the parties communicated about the CRM data on October 12, 26 and 28, November 23, and December 1, and exchanged other relevant emails during this period. Anguizola Decl. ¶¶ 7, 9-10, 18, 20. *See also* Opposition at 3-4 (acknowledging communications). The evidence demonstrates that while Respondent did not, in discussions with Complaint Counsel, expressly agree to produce the CRM data, Complaint Counsel persisted in attempting to obtain Respondent's compliance, including by significantly modifying the scope of the data requested.¹ Respondent did not make it clear that the parties were at an impasse until December 5, 2022, when it asserted that any motion to compel would be untimely. Anguizola Decl. Exh. K at 1. Complaint Counsel filed the Motion four days later, on December 9, 2022. *Compare In re Louisiana Real Estate Appraisers Board*, 2018 WL 1522512, at *2 (F.T.C. Mar. 13, 2018) (denying the respondent's motion to compel as untimely under scheduling order when motion was filed 11 days after the respondent declared in an email to Complaint Counsel that the parties were "at an impasse" over privilege claims).

Furthermore, Intuit is not prejudiced by being required to produce the requested CRM data at this stage of proceedings. Expert witness discovery is ongoing, and the CRM data will facilitate that discovery. Trial, currently set for March 27, 2023, is still months away.

IV.

For all the foregoing reasons, Complaint Counsel's Motion is GRANTED, as modified below. To allow sufficient time for Respondent to produce the CRM data, while enabling adequate expert witness discovery, it is hereby FURTHER ORDERED: (1) Respondent shall produce CRM data requested by RFP 22, as narrowed in scope by Complaint Counsel in its email to Respondent of December 1, 2022 (Anguizola Decl. Exh. J), no later than January 23, 2023; and (2) the fact discovery deadline set forth in the First Revised Scheduling Order dated September 12, 2022 is extended for the limited purpose of the document production ordered herein; and (3) expert witness reports may be modified as necessary to respond to the document production ordered herein; however, nothing in this Order extends the deadline under the First Revised Scheduling Order for completing expert witness depositions. A request for an extension of that deadline must be by motion in accordance with the requirements of Rule 3.21(c)(2).

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: December 30, 2022

¹ Specifically, in an email dated December 1, 2022, Complaint Counsel offered to narrow its request to certain subsets of CRM data, including customer identity, complaint date, product used, and complaint details, including service call notes. Anguizola Decl. Exh. J at 1-2.