U.S. Department of Justice

Office of the Solicitor General

The Solicitor General *Washington, D.C. 20530*

June 9, 2026

The Honorable Mike Johnson
Speaker
U.S. House of Representatives
Washington, DC 20515

Re: *Intuit, Inc.* v. *Federal Trade Commission*, No. 24-60040 (5th Cir.)

Dear Mr. Speaker:

Consistent with 28 U.S.C. 530D, I am writing to advise you that the Department of Justice has decided not to file a petition for a writ of certiorari in the above-captioned case. A copy of the opinion issued by the United States Court of Appeals for the Fifth Circuit is enclosed.

Federal law prohibits "[u]nfair methods of competition" and "unfair or deceptive acts or practices." 15 U.S.C. 45(a)(1). Congress has authorized the Federal Trade Commission (FTC) to enforce that prohibition by issuing cease-and-desist orders in administrative adjudications, see 15 U.S.C. 45(b), and by seeking injunctive relief in court, see 15 U.S.C. 53(b)(1).

In 2022, the FTC issued an administrative complaint claiming that Intuit, Inc., had engaged in unfair or deceptive acts or practices by running advertisements that allegedly deceived consumers into believing that its tax-preparation products were free. After conducting an administrative adjudication, the FTC found that Intuit had violated the law and issued a cease-and-desist order.

The Fifth Circuit granted Intuit's petition for review and vacated the order on the ground that the FTC's adjudication violated Article III. The court explained that, under Article III, only courts may adjudicate disputes involving "private rights"—a category that includes any dispute that, " 'from its nature, is the subject of a suit at the common law, or in equity.' " C.A. Op. 4 (quoting *Murray's Lessee* v. *Hoboken Land & Improvement Co.*, 18 How. 272, 284 (1856)) (emphasis omitted). The court observed that, in *SEC* v. *Jarkesy*, 603 U.S. 109 (2023), the Supreme Court had held that securities-fraud claims involve private rights because securities-fraud claims and common-law fraud claims "target the same basic conduct," "employ the same terms of art," and "operate pursuant to similar legal principles." *Id.* at 7-8 (quoting *Jarkesy*, 603 U.S. at 134) (alterations and emphases omitted). The court determined that deceptive-advertising claims under 15 U.S.C. 45 likewise involve private rights because they target the same basic conduct as common-law and equitable suits for fraud and deceit, use the same terms of art as those suits, and operate under similar legal principles to those suits. See *id.* at 9-17.

The Department of Justice has concluded that a petition for a writ of certiorari is not warranted in this case. The Fifth Circuit's analysis largely tracks the Supreme Court's analysis in *Jarkesy*. Though *Jarkesy* involved civil penalties while this case involves a cease-and-desist order, arguments concerning the significance of that distinction—and the broader significance of the distinction between penalties and equitable remedies—have not been fully developed in this litigation. The Fifth Circuit's decision, which the court explicitly limited to "claims for deceptive advertising," also is narrow in scope. C.A. Op. 3 n.2. The decision does not address the FTC's authority to issue cease-and-desist orders prohibiting other types of unfair or deceptive acts or practices, or cease-and-desist orders prohibiting unfair methods of competition. In addition, while the decision precludes the FTC from pursuing deceptive-advertising claims in agency adjudications, it leaves the agency free to pursue those claims in federal court. See *id.* at 24.

A petition for a writ of certiorari in this case would be due June 18, 2026. Please let me know if I can be of any further assistance in this matter.

Sincerely,

D. John Sauer
Solicitor General