

**BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001**

**Experimental Periodicals
Co-Palletization Dropship
Discounts For High Editorial
Publications**

) **Docket No. MC2004-1**

**MOTION OF AMERICAN BUSINESS MEDIA
TO COMPEL RESPONSES TO INTERROGATORIES ABM/USPS-T1-11 AND
ABM/USPS-T1-13
(April 1, 2004)**

Pursuant to Rule 26(d) of the Commission's Rules of Practice, American Business Media hereby moves to compel Postal Service responses to interrogatories ABM/USPS-T1-11 and ABM/USPS-T1-13. Unfortunately, the Postal Service did not avail itself of informal means to resolve its objections, as called for by Rule 25(b). The formal objection was the first time that American Business Media was made aware of the Postal Service's perceived problems.

The text of the interrogatories to which the Postal Service objects is set forth below:

ABM/USPS-T1-11. Please identify the "one printer/consolidator" referred to at page 2, line 14.

ABM/USPS-T1-13. Please identify the printers/consolidators that were participating in the existing co-palletization program (a) as of the end of FY 2003 and (b) now.

The Postal Service claims—correctly we would note—that the identity of mailers and their entry patterns have been recognized as sensitive information, and it goes on to explain why. American Business Media does not disagree with

the proposition that, at certain times and in certain contexts, certain individual mailer data can be properly withheld. But American Business Media submits that, in general, and certainly as to the information sought here, such matters may be sensitive if at all only to the mailers, and not to the Postal Service itself. Stated more bluntly, the Postal Service may not claim confidentiality in this instance if the mailers have no objection to release of their identities.

Yet there is no indication from the Postal Service that it has even bothered to ask the single printer whose identity is sought in interrogatory AB/USPS-T1-11 and the very few covered by interrogatory ABM/USPS-T1-13 whether they would object to being identified. In our experience, printers with the wherewithal to co-palletize and coordinate all of the necessary paperwork do not seek to hide that fact from potential customers, and that information is clearly known to their competitors. Rather, it would seem, they might welcome the “free advertising” that could be available in this docket.

We do not know, and neither, apparently, does the Postal Service. It bases its objection on the statement (at 2, emphasis added) that it “*believes* that the participants would not want to be identified. . . .” If it *knew* that they choose to remain unnamed, the Postal Service presumably would have said so.

On the other hand, American Business Media does not wish to cause the release of truly sensitive information that the mailer reasonably wishes to keep confidential. Therefore, if the Postal Service will certify that it has contacted the single printer that is the object of AMB/USPS-T1-11, that it has provided that

printer with the question, and that the printer wishes its identity to remain confidential, American Business Media will not further oppose this objection.

We cannot make the same commitment with respect to ABM/USPS-T1-13, where no individual printer information can possibly be identified. The Postal Service (at 2) waves off the notion that data related to these multiple printers will be available only in aggregate form, yet that is a crucial and dispositive distinction. The Postal Service has not identified a single possible harm that can come to one of several co-palletizing printers when only aggregate data for the group are available, and there is none. What's more, there can be nothing confidential about the mere fact that particular printers engage in co-palletization (and the Postal Service does not allege that there is). Finally, as with interrogatory ABM/USPS-T1-11, the Postal Service appears to be raising the issue of commercial sensitivity on behalf of those that may have no problem with the disclosure sought. For these reasons, there is no basis for the confidentiality objection to ABM/USPS-T1-13, and it need not even be considered unless the Postal Service can make a representation with respect to these printers similar to that sought above. Even with that representation, however, American Business Media submits that there is no rational basis for deeming the names and aggregate data to be commercially sensitive.

The Postal Service also devotes a single sentence (at 2) to support for its make weight assertion that the information sought is not relevant, contending, it seems, that information about the characteristics of the participants would be more relevant. That may be true, but even if other information may be more

relevant, that hardly renders the information sought irrelevant. Moreover, as the Postal Service well knows, the test of relevance for purposes of defining boundaries for discovery is not whether information is relevant but whether it is likely to lead to the production of relevant information, as set forth in Section 26(a) of the Commission's rules. It cannot be disputed that gaining knowledge of who the participants are will assist American Business Media in obtaining information about their "characteristics," a matter the Postal Service concedes is relevant. Perhaps American Business Media might wish to contrast the operations of these printers with others that cannot co-palletize, might wish to discuss their co-palletization experience with these printers, or even take depositions, yet doing so is rendered rather difficult if we are not to be told who they are.

The Postal Service introduced information about the level of co-palletization under the present experiment into the record (Taufique at 2-3), and it links the existing experiment to that proposed (Taufique at 18). There can be no legitimate claim that probing the facts related to that existing co-palletization could not lead to the discovery of relevant information, especially since, as American Business Media has already made clear in this docket, it challenges the Postal Service's forecast of volumes under the proposed experiment.¹

¹ When it was on the other side of a similar dispute, the Postal Service understood the relevance of using current information to assess forecasts, arguing: "The Postal Service is interested in comparing witness Boggs' forecasts of future use of PC postage to E-Stamp's and Stamps.com's available data concerning current use, in order to come to a judgement about the reasonableness of the forecasts." Motion of United States Postal Service to Compel E-Stamps and Stamps.com to Respond to Information Request, filed in Docket No. R2000-1 on July 19, 2000.

For these reasons, unless the Commission is prepared to grant this motion on the basis of the available information, it should defer ruling on the objections and this motion until the Postal Service produces certifications that the printers whose identities would be revealed in response to the challenged interrogatories object to being identified. Presumably, it may do so in its response to this motion. Even if they do object, however, American Business Media submits that there is good cause to grant this motion as to interrogatory ABM/USPS-T1-13.

Respectfully submitted,

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April 1, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April, 2004, a copy of the foregoing document was served in accordance with Section 12 of the Commission's Rules of Practice.

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