

**BEFORE THE POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-001**

Removal of Customized Postage
from the Mail Classification Schedule

Docket No. MC2020-126

SUBMISSION OF STAMPS.COM'S COMMENTS

(May 18, 2020)

Pursuant to the Commission's May 4, 2020 "Notice and Order Concerning Removal of Customized Postage From the Mail Classification Schedule," Stamps.com Inc. ("Stamps.com") hereby submits its comments and suggestions on how the Commission ("PRC") can best fulfill its responsibilities to act in accordance with 39 CFR 3040.321. We thank the PRC for the opportunity to submit these brief comments. We want to continue our Customized Postage products and oppose removal of the program.

Stamps.com Background Information

Stamps.com specializes in bringing Internet technology to businesses, especially small business mailers and shippers. We are the leading vendor in the US Postal Service PC Postage program and have proudly partnered with USPS on the customized postage program ("Program") since its inception 15 years ago. We believe it is in the interest of all parties – and the general public – for the Program to continue. Stamps.com is currently the sole vendor authorized to offer Customized Postage. With authorization from USPS, we sell two Customized Postage products, PhotoStamps® labels and Custom NetStamps® labels.

PhotoStamps is a form of PC Postage that allows individual consumers, small businesses and nonprofit organizations to transform digital photos, designs or images into valid US postage. PhotoStamps is used as regular postage to send letters, postcards and packages. To order PhotoStamps, customers upload a digital photograph or image file, customize the look

and feel, select the value of postage, and place the order online. So long as their order complies with the content eligibility criteria of Stamps.com and USPS, their order is processed and they receive their PhotoStamps in the mail shortly thereafter. PhotoStamps is popular and widely associated with happy milestones and worthy causes. Customers use PhotoStamps to create customized images to celebrate the happiest moments of their lives, such as weddings, birthdays, anniversaries and the birth of children. The Program allows such customers to associate those happy moments in part with USPS – by creating a fun, creative, technologically advanced product that helps customers share their joy with their friends and family. More information is available at <https://photostamps.com>.

Custom NetStamps is our small business mailing Customized Postage product, and similarly allows customers to submit personalized images, such as business logos. Provided the images meet Stamps.com and USPS' content eligibility criteria, Stamps.com will print the image on blank labels with no postage value. When the customer is ready to use the Custom NetStamps, they can add the necessary postage value by running their Custom NetStamps through their home or office printer. Custom NetStamps are compatible with leading desktop printers, which make them very easy to use. Custom NetStamps is widely used by small businesses, especially very small businesses, for correspondence and marketing mail, commonly with their business logo or another marketing or branding message. It is mainly used for Single Piece First Class Mail. More information is available at https://store.stamps.com/Store/catalog/custom_netstamps_product.jsp?id=prodphotonetstamps.

Stamps.com's Responses to USPS' Arguments

We have carefully reviewed the formal request that USPS recently filed with the PRC to remove Customized Postage from the Mail Classification Schedule ("Request"). We respectfully disagree with many of the assertions USPS has made in support of its Request. With the detailed responses and new information below, we hope that USPS will reassess its assumptions and conclude that the Program should continue.

1. *The Elimination of the Program Will Hurt Small Businesses and Nonprofit Organizations.*

We strongly disagree with USPS' assertion that the elimination of the Program would only minimally impact consumers and small businesses. Under 39 U.S. Code Section 3642(3)(c) and 39 CFR Section 3040.132(h), PRC is required to consider the likely impact of the proposed action on small businesses. Based on our analysis, approximately 90% of our Customized Postage customers over the last three years are small businesses and non-profit organizations, measured by amount of postage. As mentioned above, Custom NetStamps is an innovative mail model that is particularly well suited for small businesses. We have received overwhelmingly positive feedback from small businesses that use Custom NetStamps to create more professional-looking stamped mail. These Custom NetStamps increase brand recognition by depicting, for example, business logos or company names on a Customized Postage stamp. We have a large array of small business customers from a variety of industries who use Custom NetStamps, from real estate agencies to insurance brokers to neighborhood restaurants. By providing small businesses the ability to print Customized Postage at home or at the office, and allowing them to print the quantities and specific postage value they need, we offer small businesses a solution to their mailing needs while simultaneously enhancing their marketing efforts. From 2017 to 2019, use of Custom NetStamps increased by 4%, at a time when other forms of correspondence mail decreased. We believe shutting down a growing channel of small business Single Piece First Class Mail is a mistake.

Similarly, our Customized Postage products are popular with nonprofit organizations that use PhotoStamps on the return envelopes they send to prospective donors to mail back donations. Nonprofits have provided positive feedback on the Program and it has helped increase the recognition of their brands and missions and made their fundraising efforts more successful. Customized Postage is used to raise money for important causes, such as helping wounded members of our military, the homeless and those living in poverty, and animal

welfare. USPS benefits financially from PhotoStamps purchased by nonprofits for their fundraising campaigns because only a small portion of the recipients of fundraising letters respond, allowing USPS to keep the value of the postage that was paid but not used. Postage is at full First Class, not nonprofit postage rates. Ending the Program could result in a lower rate of return on fundraising letters, which will negatively impact the communities these nonprofit organizations serve. In light of recent developments in the world, we urge USPS not to eliminate a successful and profitable program that also helps raise money for underserved communities experiencing unprecedented financial hardship during these uncertain times.

If USPS eliminates the Program, small businesses and nonprofit customers may be forced to use other forms of media – rather than mail – for their branding efforts to ensure they remain successful.

2. *Several of the Factors and Objectives of 39 USC Section 3622 are Directly Applicable to the Removal of the Customized Postage Program.*

Removal of the Program is inconsistent with several of the objectives and factors of 39 USC Section 3622 as should be considered per 36 CFR 3040.132(b). For example, one of the objectives set forth in 39 USC Code Section 3622(b)(1), is to “maximize incentives to reduce costs and increase efficiency.” Compared to the alternative USPS suggests, stamps, Customized Postage is lower cost because USPS does not pay for printing, distributing or selling the postage, and mail processing is also less costly. *See Order no. 5491.*

39 USC Code Section 3622(b)(5), sets an objective to “assure adequate revenues, including retained earnings, to maintain financial stability.” The decline of First Class Mail may be the greatest threat to financial stability. Eliminating a form of First Class Mail that appeals to youth, is consistent with the growing importance of the Internet and e-commerce to society, and is growing, undermines the effort to maintain financial stability.

39 USC Code Section 3622(b)(7), sets an objective to “enhance mail security and deter terrorism.” Customized Postage helps enhance mail security and deter terrorism because it uses sender-identifiable secure postage that reduces the amount of anonymous mail. In addition, the IBI barcodes provide real-time data on customer mailing and shipping behavior. The alternative USPS suggests, stamps, do not.

In addition, 39 USC Code Section 3622(c)(1) requires the PRC to take into account “the value of the mail service actually provided each class or type of mail service to both the sender and the recipient.” Customized images improve the value of mail to both sender and recipient. Wedding images of the bride and groom bring pleasure to the guests as well as the hosts. Having a marketing image on the postage to match a marketing campaign brings value to an advertiser. Sending greetings with a postage image customized for the recipient or sender enhances their respective experiences.

39 USC Code Section 3622(c)(4) requires the PRC to take into account “the available alternative means of sending and receiving letters and other mail matter at reasonable costs.” As an initial matter, the only alternative to Customized Postage USPS identifies is official U.S. stamps, which are generally not customizable. While we appreciate USPS’ creativity in generating new stamp designs, we disagree that they are a comparable alternative to Customized Postage. For example, a Love stamp is not a satisfactory substitute for a photo from a couple’s proposal or favorite photo together. Similarly, the Scooby Doo stamp is not the same as a Customized Postage stamp of the birthday boy or a beloved pet. A U.S. flag is not a comparable alternative to a customized image of a small business’ name or logo. Accordingly, no available alternative of similar “desirability” exists in the market. We also point out that stamps are a higher cost alternative, as explained above.

39 USC Code Section 3622(c)(5) requires the PRC to take into account “the degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon reducing costs to the Postal Service.” In Customized Postage, as compared to Stamps, the

mailer takes care of making, distributing, and selling the postage, the postage is uniquely barcoded, and the cost savings for the Postal Service described above also apply.

39 USC Code Section 3622(c)(8), requires the PRC to take into account “the relative value to the people of the kinds of mail matter entered into the postal system and the desirability and justification for special classifications and services of mail.” As described above for factor (c)(4), Customized Postage is more valuable, and desirable than stamps for many customers. In addition to paying the full postage value, our customers must pay us a premium for their customization. The willingness of millions of customers to pay us over the past fifteen years demonstrates that they value being able to customize their postage.

39 USC Code Section 3622(c)(11), requires the PRC to take into account “the educational, cultural, scientific, and informational value to the recipient of mail matter.” Customized Postage by its nature enables added value of each of these sorts to be provided to the recipient. The postage can have tailored images designed to enhance each.

39 USC Code Section 3622(c)(12) requires the PRC to take into account “the need for the Postal Service to increase its efficiency and reduce its costs, including infrastructure costs, to help maintain high quality, affordable postal services.” As described above, Customized Postage reduces Postal Service costs in making, distributing and selling postage, and mail processing.

39 USC Code Section 3622(c)(13) requires the PRC to take into account “the value to the Postal Service and postal users of promoting intelligent mail and of secure, sender-identified mail.” Unlike stamps, Customized Postage is intelligent mail, with each piece having an associated unique secure cryptographic digital signature and an Information Based Indicum barcode, making the piece sender-identified.

39 USC Code Section 3622(c)(14) requires the PRC to take into account “the policies of this title as well as such other factors as the Commission determines appropriate.” As described

further below, we believe the decision to eliminate Customized Postage violates the policy desire to limit the Postal Service from using its regulatory power for purposes with an anti-competitive impact, embodied in 39 USC 404a. Eliminating Customized Postage would eliminate the ability of this industry to compete with stamps. We believe some in the Postal Service were motivated in the decision to eliminate Customized Postage by a desire to avoid competition with commemorative stamps.

3. *Keeping the Program Is Financially Beneficial to USPS and Stamps.com Has a Strong Desire to Continue to Grow the Program with Minimal Effort from USPS.*

The Program generates revenue for USPS. Stamps.com pays the annual licensing fee of \$325,000 to USPS and incurs all the costs associated with producing, storing, distributing, and selling the postage and marketing the Program. USPS receives all the postage amounts our customers purchase through the Program and a large portion of the postage is never used at all.

Contrary to USPS' findings, our analysis shows that the demand for Customized Postage is strong and has increased over time. USPS gives a figure of \$10.45 million for customized postage in FY 2019. Our figures show the correct number is \$15.25 million. We believe it is possible USPS did not include Custom NetStamps in their numbers. While FY 2019 Customized Postage showed a decrease compared to FY 2018, we believe that is attributable to the five cent increase in the main Single Piece First Class rate, and the departure of another vendor from the Program. We believe the long term trend is for growth, especially when considered in comparison to the headwind of a general decrease in Single Piece First Class mail. We also believe the growth of the Program could be enhanced by allowing Forever status for Customized Postage, by allowing Customized Postage to be used for more mail classes, especially for bulk mailing, and with increased marketing and promotion.

The Program is popular, has seen a steady increase in orders in recent years, and has seen a surge in popularity in the last couple of months, also due in part by buzz generated by references to PhotoStamps by popular television shows like Last Week Tonight with John

Oliver and Full Frontal with Samantha Bee. We suggest the Commission and others read the recent Hollywood Reporter article available at <https://www.hollywoodreporter.com/live-feed/john-oliver-launches-branded-stamps-support-us-postal-service-1294112> to get a sense for how Customized Postage can be used to help the Postal Service.

There is a substantial need for Customized Postage products and Stamps.com urges USPS to continue the Program. We were greatly disappointed to receive a notice from USPS on April 15, 2020 terminating our authorization effective June 16, 2020. If USPS reconsiders its position and continues to offer the Program, we would gladly offer it to our customers and partners and make efforts to further grow the Program and its corresponding profits to USPS.

4. *USPS Can Continue to Offer the Customized Postage Program While Reducing Risk of Exposure.*

USPS states that the Program has been the subject of legal disputes; however, none of the authorized vendors of the Program sued in any of those lawsuits still participate in the Program. Most suits involved claims of intellectual property infringement by images. USPS was not a defendant in any of those lawsuits, and incurred no costs or liability. In fifteen years in the Program, Stamps.com, which carefully screens images for intellectual property clearance, has never been sued.

Stamps.com employs an experienced team of image reviewers whose full time job is to ensure that only images that meet both the Stamps.com and USPS content eligibility criteria are approved for printing. Our team is diligent in rejecting images that may be non-compliant, problematic or embarrassing to USPS. As a result, we have not contributed to any of the business risks that USPS identifies in its Request. We also note that eliminating the positions of these image reviewers and others who work in the Program at this time of economic hardship is wrong for the American economy.

In fifteen years, we believe USPS has faced just two lawsuits related to the Program. In the first, years ago resolved, a former participant in the Program had made mistakes in its image

review.

The more recent and still pending lawsuit is brought by a plaintiff who wants to order PhotoStamps with some pleasant, innocuous Christian images, and alleges that a USPS prohibition on any religious content in Customized Postage violates the First Amendment. In December 2017, USPS modified the Customized Postage regulations in 39 CFR § 501.21, to add the prohibition. In formal comments and informally, we opposed the change at the time, in part out of freedom of religion concerns, and pointed out that many stamps include religious images, which are especially popular for holiday card mailings. We think it is unfair competition for religious images to be allowed on Stamps, but not Customized Postage.

Prior to the modification to the Customized Postage regulations in 2017, we do not believe that USPS was ever sued due to its content restrictions. Rather than eliminating the entire Program to make this lawsuit moot, USPS should modify the regulations to remove the blanket prohibition on religious images, which would also make the case moot, allow the plaintiff to print the images she wants, and keep the Program intact. We believe this approach (described in our recommendation below) strikes the right balance of keeping the Program in place while protecting USPS from any legal risk.

5. *Eliminating Customized Postage violates 39 USC 404a.*

Elimination of Customized Postage constitutes a violation of 39 USC §404a, which states, in part, that the Postal Service may not “(1) establish any rule or regulation (including any standard) the effect of which is to preclude competition or establish the terms of competition unless the Postal Service demonstrates that the regulation does not create an unfair competitive advantage for itself or any entity funded (in whole or in part) by the Postal Service...” Terminating the Program will create an unfair competitive advantage for the USPS Stamps program and the Picture Permit Indicia program over Customized Postage, by eliminating the competition. USPS has a customized postage option of its own in the Picture Permit Imprint Indicia program, which as far as we know they are not

eliminating. This complete elimination of all competition to USPS' postage stamps and Picture Permit would constitute a violation of both the language and spirit of 39 USC §404a.

RECOMMENDATION

Keep the Program in place and modify the regulation

The best way for USPS to maintain the Program and eliminate legal risk is to remove the restriction on religious images that were added to the regulations in December 2017 under 39 CFR § 501.21(b)(2)(iii). The other image restrictions already in place are more than adequate. As an alternative, we would also support a return to the spirit of the regulations pertaining to religious images in place prior to the change to 39 CFR § 501.21 in December 2017. Specifically, we would support removing the outright prohibition of all religious images, which may result in the rejection of innocuous images that reference widely known historical religious figures and holidays, including images similar to USPS's own religious-themed holiday stamps, and modifying the regulation to prohibit only images that disparage religion. Stamps.com has its own eligibility content guidelines which prohibit the printing of controversial images, including content that is "obscene, offensive, blasphemous... harmful... or otherwise objectionable." If USPS eliminates the prohibition of religious content, Stamps.com could protect USPS by rejecting problematic images that place USPS and PhotoStamps and Custom NetStamps in a negative light.

At a minimum, we urge USPS to delay the termination date by at least two years. An extension would allow the new Postmaster General, Louis DeJoy, to weigh in on the decision to eliminate the Program. Also, it will allow for small businesses, nonprofit organizations and our partners to phase out their reliance on the Program. It would allow customers who previously ordered PhotoStamps for weddings, birthday celebrations, and anniversaries that were cancelled due to Covid-19 to get refunds on previous orders that included the wrong event date to re-order with the new date. Finally, it would allow those who could lose their jobs because of the eventual termination to maintain their employment to support their families during the pandemic and transition to another job without having to rely on government assistance.

Stamps.com works with the Postal Service in many ways. We wish only success and growth

for the Postal Service, and our general experience with the Postal Service, across the organization, is positive and constructive. We believe we are an example of how public private partnerships can help. We are proud of our relationship, and wish to continue to work constructively for growth. We are hopeful the additional information we have provided will persuade the Postal Service to take another renewed look at Customized Postage, and to reverse their decision to terminate. We would greatly appreciate the reconsideration.

Respectfully submitted,

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