

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;
Michael Kubayanda, Vice Chairman;
Mark Acton;
Ann C. Fisher; and
Ashley E. Poling

Removal of Customized Postage
from the Mail Classification Schedule

Docket No. MC2020-126

ORDER APPROVING REMOVAL OF CUSTOMIZED POSTAGE
FROM MAIL CLASSIFICATION SCHEDULE

(Issued June 16, 2020)

On May 1, 2020, the Postal Service filed a request to remove Customized Postage from the Mail Classification Schedule (MCS).¹ For the reasons discussed below, the Commission approves the request.

¹ Request of the United States Postal Service to Remove Customized Postage from the Mail Classification Schedule, May 1, 2020 (Request).

I. BACKGROUND

The Customized Postage program allows authorized vendors to “offer customers the ability to personalize postage indicia using the customers’ own images or text.” Request at 1. The Postal Service states that this personalized indicia poses “unique risks” because they appear and function as though they were U.S. postage stamps. *Id.* at 1-2. Therefore, vendors are required to adopt certain eligibility criteria, as set forth in 39 C.F.R. § 501.21(b) “in order to safeguard the Postal Service’s legal, financial, and brand interests.” *Id.* at 2. If the Customized Postage product is deemed to constitute an unacceptable risk to the Postal Service, it can suspend or revoke a vendor’s authorization pursuant to 39 C.F.R. § 501.21(c)(7). *Id.*

The Postal Service asserts that over time, the eligibility criteria have become the source of customer complaints and the subject of legal disputes. *Id.* It goes on to state that the program’s revenue has declined due to reduction in demand and authorized vendors. *Id.* at 2-3. It maintains that although some industry participants would object to the Request, “the impact of the program’s removal on consumers and small businesses will be minimal.” *Id.* at 4.

On May 4, 2020, the Commission issued an order establishing this docket, appointing a Public Representative, and inviting comments from interested persons.²

² Notice and Order Concerning the Removal of Customized Postage from the Mail Classification Schedule, May 4, 2020 (Order No. 5499).

II. COMMENTS

The Commission received comments from the following interested parties: Minted,³ Stamps.com,⁴ the Alliance of Nonprofit Mailers (ANM),⁵ Otto E. Bergman,⁶ Douglas B. Quine,⁷ and the Public Representative.⁸

Minted states that it would experience a financial hardship from loss of the revenue stream associated with the Customized Postage program, which constitutes a material part of its revenue base. Minted Comments at 1. It also states that the program benefits the Postal Service's brand and urges a resolution that preserves the viability of the program. *Id.*

Stamps.com disagrees with the Postal Service's assertion that removal of the program will result in only a minimal impact on consumers and small businesses. Stamps.com Comments at 3. It notes that its analysis shows that "approximately 90% of [its] Customized Postage customers over the last three years are small businesses and non-profit organizations" and states that its customers would be adversely affected by the program's removal and may be forced to leave the mail. *Id.* at 3-4. Stamps.com further states that eliminating the Customized Postage program would violate 39 U.S.C. § 404a because it would "create an unfair competitive advantage for the USPS Stamps

³ Comment of Minted.com, May 18, 2020 (Minted Comments).

⁴ Submission of Stamps.com's Comments, May 18, 2020 (Stamps.com Comments).

⁵ Comments of the Alliance of Nonprofit Mailers, May 21, 2020 (ANM Comments). The ANM Comments were accompanied by a motion for late acceptance. Motion for Late Acceptance of the Comments of the Alliance of Nonprofit Mailers, May 21, 2020. The motion is granted.

⁶ Comments of Otto E. Bergman, June 1, 2020 (Bergman Comments). The Bergman Comments were accompanied by a motion for late acceptance. Motion for Late Acceptance of the Comments of Otto E. Bergman Submission Concerning Removal of Customized Postage from the Mail Classification Schedule, June 1, 2020. The motion is granted.

⁷ Comments of Douglas B. Quine, PhD, June 1, 2020 (Quine Comments). The Quine Comments were accompanied by a motion for late acceptance. Motion for Late Acceptance of Douglas B. Quine PhD Submission Concerning Removal of Customized Postage from the Mail Classification Schedule, June 1, 2020. The motion is granted.

⁸ Public Representative Comments, May 18, 2020 (PR Comments).

program and the Picture Permit Indicia program over Customized Postage, by eliminating the competition.” *Id.* at 9.

ANM concurs with Stamps.com and highlights the advantages of the Customized Postage program in improving the response rate of mailings to nonprofit corporations. ANM Comments at 2-3. It notes that the program positively impacts both the Postal Service’s revenue as well as providing monetary and non-monetary benefits for nonprofits. *Id.* at 3. Bergman and Quine both emphasize the value of the program to individual stamp collectors and urge the Postal Service to retain the Customized Postage program. Bergman Comments at 1; Quine Comments at 1.

The Public Representative identifies several inadequacies in the Postal Service’s supporting justification. PR Comments at 4-9. He does not reach a conclusion about whether the Commission should approve the removal of the program, but rather recommends that the Commission seek additional information to determine “whether the risk/reward balance justifies termination of the Customized Postage program.” *Id.* at 9. The Commission agreed that several of the Postal Service’s assertions in the Request required additional justification and explanation. To that end, on May 20, 2020, Chairman’s Information Request No. 1 was issued.⁹ The Postal Service filed a response to CHIR No. 1 with additional rationale and information on May 27, 2020.¹⁰

III. COMMISSION ANALYSIS

The Commission evaluates a request to remove a product from the list under 39 U.S.C. § 3642 and 39 C.F.R. § 3040.130 *et seq.* Section 3642 provides that the Postal Service may change the list of Market Dominant products under section 3621 by removing products from the list. 39 U.S.C. § 3642(a). Section 3642(b) states that all determinations by the Commission shall be made in accordance with criteria such as

⁹ Chairman’s Information Request No. 1, May 20, 2020 (CHIR No. 1).

¹⁰ Responses of the United States Postal Service to Chairman’s Information Request No. 1, May 27, 2020 (Response to CHIR No. 1).

whether the Postal Service exercises sufficient market power, whether a product is covered by the postal monopoly, and several additional considerations. 39 U.S.C. § 3642(b). The Commission's rules also require certain information to be provided in support of the request, including a demonstration of why the change is in accordance with the policies and applicable criteria of chapter 36 of title 39 of the United States Code. See 39 C.F.R. § 3040.132. Furthermore, the Commission recently stated that it would evaluate future requests to remove a product from the MCS by examining whether the request is a pretext for an abuse of market power and understanding the rationale for the discontinuation but will not simultaneously conduct a multi-factored review under section 3642 for a product removal while treating it as a rate change under section 3622.¹¹

Stamps.com alleges that removal of Customized Postage constitutes an abuse of the Postal Service's market power in violation of 39 U.S.C. § 404a. Stamps.com Comments at 9-10. It states that because the Postal Service can customize postage on its own via the Picture Permit Indicia program and the official stamp program, the elimination of Customized Postage will "create an unfair competitive advantage...by eliminating the competition." *Id.* at 9. This argument rests on the premise that the Postal Service is a direct competitor to its own customers for creation of personalized postage.

The financial benefits of all forms of personalized postage accrue to the Postal Service for any postage offering,¹² with Customized Postage merely being one in an array of offerings available to postal customers. Elimination of one of these programs does not constitute an abuse of market power because the Postal Service cannot create an unfair competitive advantage against itself. To conclude otherwise would lead to an

¹¹ Docket No. MC2015-8 *et al.*, Order Closing Dockets, August 29, 2019, at 3 (Order No. 5214).

¹² Stamps.com acknowledges that the Postal Service reaps the benefit of First-Class Mail postage from Customized Postage, and avers that it is likely lower cost than Postal Service stamps, because the Postal Service does not have costs for printing, selling, or distributing Customized Postage. *Id.* at 4.

illogical result where any postal product offered through a third party licensee could never be removed from the MCS, regardless of the alternate offerings available to the public. As the Postal Service notes in its Request, additional personalization options are available to postal customers from the private sector for envelopes, return address labels, and other aspects of the mailing. Request at 4.

As part of its Request, the Postal Service is also required to provide a description of the likely impact of the views of those who use the product as well as the impact of the product's removal on small business concerns. 39 C.F.R. § 3040.132(g), (h). An analysis of the comments received indicates to the Commission that the program is popular and intrinsically valued by small businesses and individual collectors alike. The commenters have provided important information on what makes a postal product beloved and valued by consumers, and the Commission encourages the Postal Service to take note of these defining characteristics for its balancing of customer preferences and the needs of the Postal Service when determining its product offerings.

Although the Postal Service states that the impact on small business concerns will likely be minimal, commenters provide statements that indicate the impact may be greater than the Postal Service acknowledges. Several commenters note that Customized Postage constitutes an important part of their revenue, increases brand recognition, and may drive increased response rates. However, the Commission must weigh this value against the other relevant considerations identified by the Postal Service in favor of discontinuing the program, balancing these sometimes competing interests with a view towards whether overall, the removal is consistent with all applicable statutory and regulatory requirements. 39 C.F.R. §§ 3040.132, .134.

The Postal Service provides volume and revenue data to support its assertion that the revenue earned by the Customized Postage program has declined significantly in the past 5 years. Response to CHIR No. 1, question 1. Revenue figures provided by the Postal Service show that in FY 2019, the Customized Postage program earned approximately \$15.7 million, the lowest revenue since its inception and a precipitous

decline from a high of \$45.5 million in FY 2017.¹³ The Postal Service's primary rationale for removal of the program from the MCS hinges on its assertion that revenue obtained from the program no longer outweighs the financial and brand risks of defending its brand against litigation and customer complaints related to the Customized Postage program's eligibility criteria. It identifies two pending lawsuits related to the program: *Zukerman v. United States Postal Serv.*, No. 19-5168, 2020 WL 3053344 (D.C. Cir. June 8, 2020) and *Fletcher v. United States Postal Serv.*, No. 19-CV-0925 (E.D. Tex.), with both plaintiffs presenting First Amendment challenges to the content restrictions of the Customized Postage program. Recently, the *Zukerman* panel found that the Postal Service's program eligibility criteria violated the First Amendment and remanded the case to the district court for further proceedings consistent with its ruling.¹⁴

The Postal Service also provides several examples of customer complaint and brand risk concerns, further noting that although nonprofit causes are deemed ineligible for the Customized Postage program, nonprofit views and content feature prominently in the comments submitted by both ANM and Stamps.com as exemplars of its value and success. Response to CHIR No. 1, questions 5 and 6. These examples underscore the difficulty faced by the Postal Service in ensuring that authorized vendors comply with the eligibility criteria in the Customized Postage program. The Commission does not question the comments reflecting the popularity of the program among a loyal segment of postal customers. However, the Commission does not substitute its judgment for that of the Postal Service's when balancing the risks and rewards of the value to its own brand. Given the lack of market power abuse by the Postal Service and after consideration of the available alternatives for postage and customization of mailings, the Commission has determined that the Postal Service has met the statutory and regulatory requirements for product removal. However, the Commission

¹³ *Id.* The Commission has not independently tracked revenue for the Customized Postage product and is reliant on the Postal Service's reporting.

¹⁴ *Zukerman*, 2020 WL 3053344, at *13-*15.

encourages the Postal Service to continue to explore and develop innovative mailpiece design to enhance the value of the mail and increase customer engagement.

Accordingly, the Commission approves the removal of the Customized Postage program from the MCS. The Commission also accepts the revisions to the MCS presented in the attachment to this Order. The Postal Service shall notify the Commission of its effective date.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Request of the United States Postal Service to Remove Customized Postage from the Mail Classification Schedule, filed May 1, 2020, is approved.
2. The revisions to the Mail Classification Schedule appear below the signature of this Order. The Postal Service shall notify the Commission of the effective date.

By the Commission.

Erica A. Barker
Secretary

Commissioner Acton concurring.

CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix A to 39 C.F.R. part 3040, subpart A—Market Dominant Product List. These changes reflect the Commission's order in Docket No. MC2020-126. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Appendix A to Subpart A of Part 3040—Market Dominant Product List

SPECIAL SERVICES*

~~Customized Postage~~

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

Part A—Market Dominants Product
1000 Market Dominant Product List

1500 Special Services

1500.2 Products Included in Class

- ~~Customized Postage (1555)~~

~~1555 Customized Postage~~

~~1555.1 Description~~

~~a. The Customized Postage program authorizes vendors to provide their customers with Postal Service authorized postage consisting of customer-selected images aligned with Postal Service approved indicia of postage payment. As a condition of participation, a vendor must comply with all Postal Service requirements, including the content of submitted images and specifications for postage indicia printing. The vendor must also allow Postal Service inspection to ensure compliance.~~

~~b. A vendor’s annual participation fee allows the vendor to print at two facilities. Additional print sites may be added at a reduced fee. The Postal Service does not control the price that the vendor charges its customers, beyond the applicable price for postage. The face amount of the postage is remitted to the Postal Service by the vendor.~~

~~1555.2 Prices~~

	(\$)
Annual Participation Fee (up to two printing facilities)	345,000.00
Additional Printing Sites (3-50 sites, each site)	58,000.00
Over 50 Printing Sites (each site)	5,800.00

CONCURRING OPINION OF COMMISSIONER MARK ACTON

As a Postal Regulatory Commissioner, I concur with my colleagues in finding that in this instant docket, the Postal Service request for removal of Customized Postage from the Mail Classification Schedule has met the lawful regulatory threshold in seeking Commission approval.

In this moment, I want to highlight the Commission's unanimous and bipartisan statement expressed in an April 2015 Minor Classification Change case, where we encouraged the Postal Service to continue to educate its employees and the public regarding Customized Postage stamp usage and value. In this docket, the Commission acknowledged a commenter's suggestion to "expand Forever stamp status to Customized Postage, and believe[d] the suggestion worthy of consideration by the Postal Service, but as the operator, the decision as to whether to pursue the proposal belongs to the Postal Service."¹

As an ardent PhotoStamp consumer, I continue to believe there is a vital marketplace for this product. Indeed, my latest PhotoStamp purchase was met with word that "due to overwhelming demand, some orders may be delayed."

It is my hope that one day soon, perhaps when the Postal Service is at last returned to a level of fiscal health, USPS management may revive the Customized Postage program – *and* as Forever stamps.

¹ Docket No. MC2015-42, Order Approving Minor Classification Change, April 9, 2015, at 4 (Order No. 2434).