

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

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POSTAL RATE AND FEE CHANGES, 1997 )

Docket No. R97-1PH '97  
Aug 29 4 31 PM '97

NASHUA PHOTO INC., DISTRICT PHOTO INC.,  
MYSTIC COLOR LAB, AND SEATTLE FILMWORKS, INC.

POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

MOTION TO COMPEL RESPONSE  
OF UNITED STATES POSTAL SERVICE

WITNESS CHARLES L. CRUM TO NDMS/USPS-T28-1(a)-(d) and (f)-(g)  
(August 29, 1997)

Pursuant to sections 21(a) and 25(d) of the Postal Rate Commission rules of practice and Rule 2.B. of the Special Rules of Practice in this docket, Nashua Photo Inc. ("Nashua"), District Photo Inc. ("District"), Mystic Color Lab ("Mystic"), and Seattle FilmWorks, Inc. ("Seattle") (hereinafter collectively referred to as "NDMS"), proceeding jointly herein through their undersigned counsel, hereby request the Postal Rate Commission to enter an order compelling the Postal Service's witness, Charles L. Crum (USPS T-28), to respond fully to interrogatory number 1 of the interrogatories propounded to him by NDMS in this matter (NDMS/USPS-T28-1(a) through (g)).

STATEMENT

On August 8, 1997, NDMS filed and served by hand-delivery Interrogatory and Request to Produce T28-1 to Postal Service Witness Fronk, *inter alia*, which asked the following question:

NDMS/USPS-T28-1

Please refer to your testimony at page 10, where you refer to LR-H-108.

- a. Did you prepare, or participate in any way in the preparation of, the study contained in LR-H-108?
- b. Unless your answer to preceding part (a) is an unqualified negative, please describe your role with respect to preparation and conduct of the study contained in LR-H-108.
- c. Are you sponsoring the study contained in LR-H-108?
- d. Please indicate whether any other witness in this docket is sponsoring LR-H-108.

- e. When did Christensen Associates commence the study in LR-H-108?
- f. The study in LR-H-108 is undated. When did Christensen Associates submit the final report that has been submitted as LR-H-108?
- g. Under terms of the contract for LR-H-108, did the Postal Service designate a technical representative to oversee the study? If so, were you the Postal Service's designated technical representative at any time during the term of this project?

The Postal Service has objected to subparts (a) through (d), and (f) through (g) of this interrogatory, and witness Crum has refused to answer those questions, on the ground that they seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. A copy of the Postal Service objection is attached hereto as Exhibit A.

Obviously, the interrogatory simply seeks information concerning the witness's role in creating Library Reference H-108 (a study which forms the basis for a portion of witness Crum's testimony in this proceeding), as well as the sponsorship and timing of the document in question, and the Postal Service does not wish to disclose any such information. The Postal Service does not contend that the requested information is privileged or unduly burdensome to produce, and has merely objected on the theory that such information would not be relevant. NDMS would respectfully disagree. NDMS submit that the requested information is clearly relevant and material to the issues in this proceeding, that the relevance argument raised by the Postal Service is erroneous, and that witness Crum (and/or any other appropriate Postal Service witness) should be ordered to answer the interrogatory, forthwith and in full.

### ARGUMENT

The NDMS interrogatories seek information pertaining to Library Reference H-108, upon which witness Crum substantially relies to support his testimony relative to the proposed residual shape surcharge for Standard A Mail. See USPS-T-28, pp. 10-12. Despite witness Crum's

repeated reference to Library Reference H-108, and his obvious reliance on that document, the Postal Service has taken the position that the information sought by NDMS is not relevant to this proceeding because the information either (a) has to do with witness Crum's participation, if any, in the preparation of Library Reference H-108, including whether witness Crum or anyone else was designated as technical representative, or (b) has to do with the sponsorship and timing of Library Reference H-108. According to the Postal Service, questions regarding the witness's role in the creation of Library Reference H-108, as well as questions regarding the sponsorship and timing of that document, are irrelevant to the issues in this proceeding. That position is unsupported by logic, however, at least if the Postal Service intends to ask the Commission to rely on witness Crum's testimony and/or the substance of Library Reference H-108 in this proceeding, and the Postal Service has provided nothing, in the way of argument or otherwise, to substantiate its position. It has simply asserted that the requested information is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence.

#### **Participation of the Witness in the Creation of Library Reference H-108**

The Postal Service has simply made the illogical assertion, without any substantive rationale whatsoever, that the role played by a witness in the creation of a study upon which he relies in support of his testimony is an irrelevant and impermissible subject of inquiry for a party seeking to understand, support, and/or challenge certain aspects of the study (including certain of the study's premises). If the Postal Service's contention were true, it would mean that the authors and sources of all studies could be withheld, precluding any understanding of the author's credentials, background, credibility, and understandings with respect to the purposes and foundations of such studies, as well as their actual methods and experiences in pursuing such studies. It may be, for example, that the author of a particular study has previously published

something inconsistent, or even at odds, with a particular study under examination. It might also be that a particular study was conducted by a person or firm without proper training or experience to undertake such a study. Such an approach could effectively shield the authors of studies as well as the Postal Service from cross-examination on information essential to evaluate the basic underpinnings of those studies. Any such results, of course, would frustrate the discovery provisions governing this docket and would run counter to the requirement of a fair and open hearing before the Commission.

As mentioned above, witness Crum clearly has relied on Library Reference H-108 as the foundation for certain aspects of his direct testimony in this matter, and his reliance on that document appears to constitute critical support for his recommendation for the residual shape surcharge for Standard A Mail proposed by the Postal Service in this proceeding. *See* USPS T-28, pp. 10-12. By refusing to disclose the information sought by NDMS regarding witness Crum's participation in the creation of Library Reference H-108, as a technical representative or otherwise, the Postal Service would be insulating the witness from meaningful inquiry into the bases for his testimony. This should not be permitted. If Witness Crum had no role in the preparation or creation of LR-H-108, he need only say so.

#### **Sponsorship and Timing of Library Reference H-108**

With respect to the sponsorship of Library Reference H-108, the situation is somewhat different. Sponsorship, as opposed to authorship, is not necessarily relevant or material unless the document has some relevant or material role to play in the proceeding. But if the document purports to have such a role, its sponsorship is clearly a relevant issue in this case. Rule 5 of the Special Rules of Practice in this proceeding expressly provides that "Library material is not

evidence unless and until it is designated and sponsored by a witness." The parties are entitled to know who such witnesses are.

Aside from the fact that sponsorship of a particular document would appear to be of obvious relevance in a case where the Postal Service has submitted the document in support of its request for rate changes, there are any number of particular reasons why parties might wish to know which witness sponsors a particular document. It could be, for example, that inquiring parties would be able to choose better which witnesses to interrogate if they knew who the sponsoring witnesses were. It could also be that disclosure of sponsorship would be relevant to the particular questions asked of a particular witness; or it could even be that inquiring parties would like to know if the Postal Service intends not to offer the document in evidence.

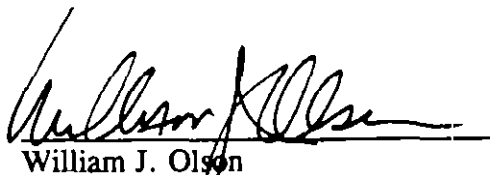
The Postal Service's position in making these objections is made even more difficult to understand when one sees that the Postal Service has already responded to identical interrogatories directed to witness Fronk. See response to NDMS/USPS - T32-1.

Failure to identify the sponsor of a particular document, it is submitted, should be tantamount to denying sponsorship with respect to that document. The consequences of not identifying the purported sponsors of a Library Reference, including Library Reference H-108, therefore, would include refusal to admit the Library Reference in evidence.

Although the Postal Service concedes that questions related to the time period during which the analysis was conducted are relevant (USPS Objection, p. 2), it has refused to answer subpart (f) of interrogatory 10 (relating to the timing of the final report submitted by Christensen Associates). But subpart (f) also relates to the timing of the study. Surely, it cannot be said to be irrelevant, and it reasonably could lead to the discovery of admissible evidence.

For the foregoing reasons, NDMS submit that an order should be entered directing witness Crum (and/or, if necessary, other appropriate Postal Service witness(es) with knowledge of the matter) to respond in full to NDMS-USPS-T-28-1(a)-(d) and (f)-(g).

Respectfully submitted,



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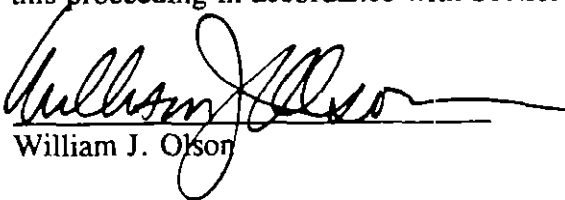
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Counsel for Nashua Photo Inc., District Photo Inc.,  
Mystic Color Lab, and Seattle FilmWorks, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served by hand delivery or mail the foregoing document upon all participants of record in this proceeding in accordance with Section 12 of the Rules of Practice.



William J. Olson

August 29, 1997

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



POSTAL RATE AND FEE CHANGES, 1997

Docket No. R97-1

OBJECTION OF THE UNITED STATES POSTAL SERVICE  
TO INTERROGATORY OF NASHUA PHOTO INC. ET AL.  
TO WITNESS CRUM (NDMS/USPS—T8-1(a)-(d), (f) & (g))  
(August 18, 1997)

The United States Postal Service hereby objects to interrogatory NDMS/USPS—T28-1(a)-(d), (f) & (g), filed on August 8, 1997, by Nashua Photo, Inc., et al. Parts (a) through (d) ask whether and to what extent witness Crum prepared or participated in the preparation of Library Reference H-108, and whether he or any other witness in this docket is "sponsoring" library reference H-108. Part (g) asks whether the Postal Service designated a technical representative to oversee the study and whether witness Crum was that designee. Part (f) asks when the contractor submitted the "final report that has been submitted as LR-H-108."

These questions are not reasonably calculated to lead to the discovery of admissible evidence. Witness Crum has answered and remains available to provide answers to questions concerning the library reference and his use of it. A library reference, by definition, needs no particular "sponsor." His role in the process, the particular terms of the contract and their execution with regard to the designation of a technical representative, and the date of provision of a "final report" to the Postal Service all are irrelevant to the actual issues in this proceeding. By contrast, witness Crum will be responding to part (e), which asks only when the study commenced, by providing the dates during which the analysis was conducted. Unlike the information

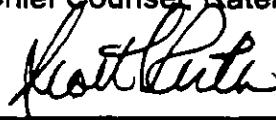
sought in the other questions, the time period could arguably be relevant to evaluating the analysis set forth in the library reference.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.  
Chief Counsel, Batemaking



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Scott L. Reiter

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.



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Scott L. Reiter

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August 18, 1997