

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

Complaint on Electronic Postmark®

Docket No. C2004-2

ANSWER OF THE UNITED STATES POSTAL SERVICE

(April 26, 2004)

Introduction and Background

On February 25, 2004, the Postal Rate Commission received a complaint filed by DigiStamp, Inc. By letter dated February 25, 2004, the Office of the Secretary, Postal Rate Commission, designated the docket number above and advised the General Counsel, United States Postal Service, of the Complaint's filing under title 39, United States Code, section 3662. The complaint is styled as "Complaint on Electronic Postmark," and its stated subject matter is the initiation of a service denominated as "Electronic Postmark®" (USPS EPM).

It is the view of the Postal Service that the concerns raised by DigiStamp are incapable of sustaining a legitimate complaint proceeding pursuant to section 3662. The Postal Service is filing concurrently with this Answer a Motion to Dismiss demonstrating why that is so. Notwithstanding its recommendations that the Commission summarily dispose of this complaint without hearings, however, the Postal Service provides the following Answer to the specific allegations of the complaint in accordance with Rule 84.

ANSWER

The Complaint consists of 57 numbered paragraphs, and includes citations to seven Exhibits. Pursuant to Rule 84 of the Rules of Practice and Procedure of the Postal Rate Commission (title 39, Code of Federal Regulations §3001.84), the Postal Service answers each paragraph of the Complaint as follows:

Paragraph 1

This paragraph simply identifies the complainant by name; the Postal Service considers this sentence procedural and not requiring a response.

Paragraph 2

This paragraph is denied, because USPS EPM is not a “document delivery service” and because USPS EPM service in its original configuration began in 1996, and USPS EPM service in its current configuration was launched in January, 2003.

Paragraph 3

This paragraph is admitted.

Paragraph 4

This paragraph is admitted.

Paragraph 5

This paragraph is denied. This first sentence of this paragraph is denied because it does not accurately quote the cited source, which actually reads as follows:

The USPS EMP service combines trusted time stamps with content authentication technology. This combination proves document authenticity when a resulting USPS EPM is associated with a document or transaction that can later be verified using the USPS EPM repository.

The truncation of the second quotation gives the misimpression that the E-SIGN legislation completely “made electronic signatures the legal equivalent of their paper counterparts,” by elliptically omitting the subsequent qualifier “in many situations.”

Paragraph 6

This paragraph accurately quotes the Postal Service press release appended to the Complaint as Exhibit A, but neglects to mention that the press release was issued in 1996, nearly 8 years ago. The Postal Service denies that Exhibit A accurately describes the current status of, or its current expectation regarding, the Postal Service’s programs in these areas.

Paragraph 7

This paragraph is denied, because it does not accurately quote the cited source. The quote would be accurate if the words “Microsoft and” were deleted. The referenced arrangement is with AuthentiDate, not with Microsoft.

Paragraph 8

This paragraph is admitted.

Paragraph 9

The first sentence of this paragraph is admitted. The Postal Service further admits that, at the time the Complaint was filed, the cited website included the quoted reference to 18 U.S.C. § 1341. That reference, however, appeared only because of inadvertent oversight in the review process for the content of the website. On March 1, 2004, the reference to that section was removed from the website, and the Postal Service therefore denies any continuing relevance of 18 U.S.C. § 1341 to this matter.

Paragraph 10

This paragraph is denied, because while a postal employee (Leo Campbell) and an official from AuthentiDate are both listed as contacts on the website, neither is designated as the “lead contact.”

Paragraph 11

The Postal Service admits that USPS EPM is a service provided by the United States Postal Service, but denies that the cited September 2003 white paper includes the assertion that “The U.S. Postal Inspection Service will investigate instances of tampering with EPM.” On page 1 of 11, the white paper includes the following statements:

The United States Postal Inspection Service protects the integrity of USPS operations and is authorized to investigate a variety of criminal activity. Any attempt to criminally interfere with the operation of the USPS EPM may be subject to investigation and prosecution under several federal statutes.

Paragraph 12

This first sentence of this paragraph appears to be garbled, and the Postal Service can therefore neither admit nor deny its allegations. Specifically, the relationship between the subject of this complaint and “an entrepreneurial market-based risk investment to provide a government service” is unclear. The intended purpose of the citation to Exhibit B is likewise unclear, and the Postal Service cannot be required to respond to the wide variety of unnumbered statements made in Exhibit B. The Postal Service denies that the second sentence of this paragraph accurately paraphrases the information contained within the Postal Service’s response to OCA/USPS-239, filed on December 17, 2001, in Docket No. R2001-1. Specifically, the cumulative figures

included in the interrogatory response purport to reflect information only through Quarter III of FY 2001, rather than through the filing date of the response.

Paragraph 13

The first sentence of this paragraph contains a legal conclusion, to which no response is required. To the extent that a response is deemed to be required, it is denied. With respect to the second sentence, the Postal Service is without information sufficient to permit it to form a belief as to the truth of the matters asserted in this sentence.

Paragraph 14

This paragraph is denied. In its current configuration, offered through a strategic alliance with AuthentiDate, FY04 YTD current operating revenues from USPS EPM are covering current operating expenses.

Paragraph 15

This paragraph is denied. In its current configuration, offered through a strategic alliance with AuthentiDate, FY04 YTD current operating revenues from USPS EPM are covering current operating expenses.

Paragraph 16

In its current configuration, offered through a strategic alliance with AuthentiDate, USPS EPM service has not incurred a large net loss since its initiation in January of 2003. In its earlier configuration, USPS EPM service did incur a large net loss in the time period between its inception in 1996, and the recent termination of support contracts for that configuration.

Paragraph 17

This paragraph states a legal conclusion, to which no answer is required. To the extent that an answer is deemed to be required, it is denied because USPS Electronic Postmark is not a class of mail or type of mail service under 39 U.S.C. § 3621.

Paragraph 18

This paragraph states a legal conclusion, to which no answer is required. To the extent that an answer is deemed to be required, it is denied.

Paragraph 19

This paragraph contains a legal conclusion and does not require a response.

Paragraph 20

This paragraph contains a legal conclusion and does not require a response.

Paragraph 21

This paragraph is denied. USPS EPM service is not “largely” an electronic service, because it is a totally electronic service. USPS EPM service functions as neither a type of mail, nor a service ancillary to mail. USPS EPM service does not, by itself, provide evidence of the time and date of a document transmission, although a third-party application may use it that way. USPS EPM service provides a means for the detection of tampering, but is not a security feature which prevents tampering.

Paragraph 22

This paragraph is denied. USPS EPM service is neither a mail service, nor a “mirror” mail service.

Paragraph 23

This paragraph is denied.

Paragraph 24

This paragraph is denied.

Paragraph 25

This paragraph is denied. The first sentence is denied because, although USPS EPM is not a service provided by the Postal Service exclusively on behalf of other government agencies, the implied legal premise (that only such services can constitute nonpostal services) is erroneous. The second sentence is predicated on the same faulty legal premise.

Paragraph 26

This paragraph states a legal conclusion, to which no answer is required. To the extent that an answer is deemed to be required, it is denied.

Paragraph 27

The Postal Service admits that it has not requested a recommended decision from the Commission with respect to USPS EPM, but denies any implication that it was under any obligation to do so.

Paragraph 28

This paragraph states a legal conclusion, to which no answer is required. To the extent that an answer is deemed to be required, it is denied.

Paragraph 29

This paragraph states a legal conclusion, to which no answer is required. To the extent that an answer is deemed to be required, it is denied.

Paragraph 30

This paragraph contains a legal conclusion and does not require a response.

Paragraph 31

This paragraph is denied.

Paragraph 32

This paragraph contains a legal conclusion and does not require a response.

Paragraph 33

The formulation of this paragraph (analogous to the “did you ever stop beating your wife” mode of cross-examination) precludes meaningful response.

Paragraph 34

The Postal Service denies that it has “never” revealed financial information concerning USPS EPM service that was comprehensive as of a given point in time. Such information was provided in the Docket No. R2001-1 in the interrogatory response cited in ¶ 12 of the Complaint, and was comprehensive through Quarter 3 of FY 2001. The Postal Service admits that USPS EPM is an evolving service, and that the financial information provided in Docket No. R2001-1 has not been publicly updated, although confidential information has subsequently been provided to GAO, and the Commission has received copies of that confidential information. With financial activity occurring on a daily basis, however, almost any allegation that “all” financial activity has “never” been reported is virtually tautological.

Paragraph 35

The Postal Service denies that it has “never” revealed financial information concerning USPS EPM service that was comprehensive as of a given point in time. Such information was provided in the Docket No. R2001-1 in the interrogatory response cited in ¶ 12 of the Complaint, and was comprehensive through Quarter 3 of FY 2001.

The Postal Service admits that USPS EPM is an evolving service, and that the financial information provided in Docket No. R2001-1 has not been publicly updated, although confidential information has subsequently been provided to GAO, and the Commission has received copies of that confidential information. With financial activity occurring on a daily basis, however, almost any allegation that “all” financial activity has “never” been reported is virtually tautological.

Paragraph 36

The Postal Service denies that it has “never” revealed financial information concerning USPS EPM service that was comprehensive as of a given point in time. Such information was provided in the Docket No. R2001-1 in the interrogatory response cited in ¶ 12 of the Complaint, and was comprehensive through Quarter 3 of FY 2001. The Postal Service admits that USPS EPM is an evolving service, and that the financial information provided in Docket No. R2001-1 has not been publicly updated, although confidential information has subsequently been provided to GAO, and the Commission has received copies of that confidential information. With financial activity occurring on a daily basis, however, almost any allegation that “all” financial activity has “never” been reported is virtually tautological.

Paragraph 37

The Postal Service denies that it has “never” revealed financial information concerning USPS EPM service that was comprehensive as of a given point in time. Such information was provided in the Docket No. R2001-1 in the interrogatory response cited in ¶ 12 of the Complaint, and was comprehensive through Quarter 3 of FY 2001. The Postal Service admits that USPS EPM is an evolving service, and that the financial

information provided in Docket No. R2001-1 has not been publicly updated, although confidential information has subsequently been provided to GAO, and the Commission has received copies of that confidential information. With financial activity occurring on a daily basis, however, almost any allegation that “all” financial activity has “never” been reported is virtually tautological.

Paragraph 38

This paragraph states a legal conclusion, to which no answer is required. To the extent that an answer is deemed to be required, it is denied.

Paragraph 39

The formulation of this paragraph (analogous to the “did you ever stop beating your wife” mode of cross-examination) precludes meaningful response.

Paragraph 40

This paragraph is denied, because discussion on the allocation of joint costs for eCommerce initiatives such as USPS EPM has been included with confidential information provided to the GAO, and the Commission has received copies of such information.

Paragraph 41

The “federal employees” referred to in Exhibits C and D to the Complaint are Postal Inspectors, and to the extent that this paragraph is intended to assert that Postal Inspectors are promoting the sale of USPS EPM services, the paragraph is denied. Moreover, as indicated in ¶ 7 of the Complaint itself (albeit as corrected above), under the current agreement between the Postal Service and AuthentiDate, primary responsibility for the marketing of USPS EPM to customers resides with AuthentiDate.

Postal personnel involved in the USPS EPM program, however, occasionally engage in activities intended to promote the use of the Postal Service's USPS EPM service by customers or potential customers.

Paragraph 42

This paragraph states a legal conclusion, to which no answer is required. To the extent that an answer is deemed to be required, it is denied.

Paragraph 43

This paragraph states legal conclusions, to which no answer is required. To the extent that an answer is deemed to be required, this paragraph is denied.

Paragraph 44

The Postal Service is without information sufficient to permit it to form a belief as to the truth of the matters asserted in this paragraph of the Complaint.

Paragraph 45

This paragraph states a legal conclusion, to which no answer is required. To the extent that an answer is deemed to be required, it is denied.

Paragraph 46

This paragraph contains a legal conclusion and does not require a response. To the extent that a response is required, the Postal Service denies that the provision of USPS EPM "leverages the assets of a monopoly business with providing a government service," or is contrary to Section 3622(b). The Postal Service lacks information sufficient to permit it to form a belief as to the truth of the matters asserted in the remainder of this paragraph.

Paragraph 47

Denied. This paragraph is premised on the assertion that the Postal Service cross-subsidizes USPS EPM with “monopoly revenue,” which the Postal Service denies.

Paragraph 48

This paragraph states a legal conclusion, to which no answer is required. To the extent that an answer is deemed to be required, it is denied.

Paragraph 49

To the extent that this paragraph states legal conclusions to which an answer is deemed to be required, they are denied. Otherwise, the Postal Service lacks information sufficient to permit it to form a belief as to the truth of the factual matters asserted in this paragraph.

Paragraph 50

This paragraph states a legal conclusion, to which no answer is required. To the extent that an answer is deemed to be required, it is denied.

Paragraph 51

This paragraph contains no factual allegations to which a response is required.

Paragraph 52

The Postal Service admits that it has not requested an advisory opinion from the Commission with respect to USPS EPM, but denies any implication that it was under any obligation to do so.

Paragraph 53

This paragraph states a legal conclusion, to which no answer is required. To the extent that an answer is deemed to be required, it is denied.

Paragraph 54

The first two sentences of this paragraph contain no factual allegations and therefore do not require a response. To the extent a response is required, the Postal Service denies the first and second sentences. The Postal Service is without information sufficient to permit it to form a belief as to the truth of the matters asserted in the third sentence of this paragraph.

Paragraph 55

The Postal Service admits that the letter from Rick Borgers dated January 21, 2004, and attached to the Complaint at Exhibit G, was sent to the Postmaster General. On February 19, 2004, in the week before the Complaint was filed, a letter from Doris Godinez-Phillips, the acting Managing Counsel of Marketing Law, was sent to Mr. Borgers in response to his letter to the PMG. A copy of that letter is attached to this answer as Attachment A. The letter from Ms. Godinez-Phillips apparently was not delivered to Mr. Borgers until after the Complaint had been filed.

Paragraph 56

This paragraph contains no factual allegations, and therefore does not require a response.

Paragraph 57

This paragraph is denied, because “requesting a recommended decision from the Commission” is not required to show that the provision of USPS EPM is in accordance with the policies and factors set forth in the Postal Reorganization Act.

The rest of the Complaint consists of a request for relief, to which no answer is required. To the extent that an answer is deemed to be required, the Postal Service denies that the requested relief is either warranted or appropriate. The Postal Service denies all other allegations of material fact which have not been answered specifically herein.

In accordance with Rule 84(b) and (c) of the Rules of Practice and Procedure of the Postal Rate Commission, the Postal Service further states as follows:

Jurisdiction

1. DigiStamp presents three “claims” detailing grounds on which it requests that the Commission consider its complaint. Each of these claims is premised on the assertion that the Postal Service’s USPS EPM service is a “postal” service within the Commission’s jurisdiction under chapter 36 of title 39. In a separate pleading (Motion of the United States Postal Service to Dismiss) being filed concurrently with this Answer, the Postal Service demonstrates that section 3662 does not confer jurisdiction on the Commission to entertain claims of the type submitted by DigiStamp. Accordingly, the Complaint should be dismissed for lack of jurisdiction. Nothing presented in this pleading should be construed as inconsistent with the Postal Service’s primary position, as set forth in that Motion, that the Commission lacks jurisdiction to entertain this complaint.

Recommended Disposition

2. For the reasons stated in the Postal Service's Motion to Dismiss, the Postal Service recommends that the instant Complaint be summarily dismissed, without hearings.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux
Chief Counsel
Ratemaking

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-2992/ FAX: -5402
April 26, 2004

Eric P. Koetting
Attorney

ATTACHMENT A

Letter from Doris Godinez-Phillips, Acting Managing Counsel of Marketing Law,
to Mr. Rick Borgers



Martin

February 19, 2004

Mr. Rick Borgers
CEO and Lead Developer
DigiStamp, Inc.
105 West Mill Valley Drive
Colleyville, TX 76034-3671

Dear Mr. Borgers:

Thank you for your letter of January 21 to Postmaster General Jack Potter, expressing your concerns about the USPS Electronic Postmark® (USPS EPM®) service.

You state that the arrangement between the Postal Service, your competitor Authentidate, and Microsoft makes the Postal Service a "commercial market provider with special advantages." That is not the case. Let me assure you that the Postal Service only develops products and services to meet the needs of postal patrons, and to leverage its existing resources as efficiently as possible, within the areas authorized to it by the Postal Reorganization Act. The USPS EPM is one such service. The advent of the Internet increased the need for efficient communication of electronic information with the same level of trust and value that the public has come to expect from the Postal Service in the physical environment. Consequently, the Postal Service has worked on the USPS EPM since the first demonstration pilots were authorized in 1996.

The House Report on H.R. 17070, which was to become the Postal Reorganization Act, stated:

The Postal Service is empowered to engage in research and development programs directed toward the expansion of present postal services and the development of new services responsive to the evolving needs of the United States.

H.R. Rep. No. 1104, 91st Cong. 2d Sess. 9 (1970). As progressive as this statement was in 1970, no one could have foreseen how comprehensive the

changes in postal needs would be, and how the needs have evolved in 34 years. The same House Report also noted that: "H.R. 17070 envisions a national postal service that is forever searching for new markets and new ways by which the communications needs of the American people may be served." *Id.* at 20.

You express concerns that the Postal Service is simply "giving its name" to Authentidate. That is not correct. As we state above, the USPS EPM was first launched in 1996 and continued in operation until the original system was shut down in 2003. Before shutting down the system, the Postal Service published an announcement for a USPS Electronic Post Mark Alliance Opportunity in "Commerce Business Daily" on October 16, 2001. The key requirements were that respondents to the announcement had to demonstrate an existing product solution, current usage, and market potential. Following a competitive process, the Postal Service entered into a contract with a supplier (Authentidate) to develop, operate, market, advertise, and sell a new version of the USPS EPM. This is the service that is being offered today. The contract under which the service was awarded is on a non-exclusive basis, and is subject to extensive postal control. The service is subject to postal policies and regulations; and the role of the Postal Inspectors, to which you also allude, is consistent with their very long-standing role of protecting the integrity of postal products, services, and operations.

Let me emphasize that in developing new services the Postal Service does not use taxpayer money to fund entry into new markets. As indicated above, the Postal Service only offers products and services related to its mandate under the Postal Reorganization Act. Moreover, very little taxpayer money is appropriated for the Postal Service, usually for special programs such as Free Matter for the Blind and anti-terrorism measures. Postal operations are funded by the revenue generated from all postal products and our operations are maintained on a "break-even" basis.

The Postal Service has the responsibility to create and implement new technologies to enable faster, more efficient communication to meet the changing needs of postal customers. We continue to be committed to work with the technology industry to find ways in which the communication systems of the nation can be strengthened.

Sincerely,



Doris Godinez-Phillips
Managing Counsel (A)

CERTIFICATE OF SERVICE

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

Eric P. Koetting

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-2992/ FAX: -5402
April 26, 2004