

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

COMPLAINT ON STAMPED STATIONERY

Docket No. C2004-3

**MOTION OF THE UNITED STATES POSTAL SERVICE
TO DISMISS COMPLAINT**

Pursuant to Order No. 1449, the Postal Service hereby files its motion to dismiss this complaint, in which Douglas F. Carlson seeks to have the Commission assert jurisdiction over *The Art of Disney: Friendship* stamped stationery. The complaint is inconsistent with the plain language of the Postal Reorganization Act and its interpretation by the Commission.

Sale of the Disney stationery falls within the authority of the Postal Service under 39 U.S.C. § 404(a)(5) to provide philatelic services. The Commission therefore does not assert authority over the sale of philatelic items on its understanding that “providing philatelic services is not so closely related to the carriage of mail that it can be considered a special postal service within the meaning of § 3622.”¹ Moreover, when the Commission first considered the matter of stamped envelopes, it noted that it remained “arguable that the service is essentially a sale of stationery and is not a strictly postal operation.”²

The Disney stationery is intended to be a philatelic item, given its unique design and acclaimed Disney artwork. Indeed, this fact is an implicit basis of the complaint.³

¹ PRC Op., R76-1, App. F, at 20.

² PRC Op., R76-1, App. F, at 16.

³ See Complaint ¶ 35 and discussion below.

The Disney stationery is simply not comparable to a utilitarian stamped envelope for which the Commission recommends fees above postage based solely on the actual costs of the envelope. Most of the value the Disney stationery has above the face value of the stamps is due to the value placed by the public on the artwork and design, *i.e.*, its philatelic value. Indeed, in order for the Commission to properly discern the artistic and design value of such products, entirely new disciplines—namely, the valuation of artwork and the appraisal of design features—would have to be introduced into Commission proceedings. As the Commission implicitly recognized many years ago, consideration of such matters is beyond the scope of its responsibilities under the Postal Reorganization Act. Moreover, it would be inconsistent with the Commission's efficient administration of its responsibilities.⁴

Mr. Carlson argues that the title “Stamped Paper” in DMCS 960 has relevance to the issue in this case.⁵ While clever, his argument has no substantive merit. That title was added in Docket No. R97-1 as an umbrella heading for two related special services, “Stamped Envelopes” and “Stamped Cards.” This heading was recommended along with six other headings in order to group the existing special services into seven categories. As Postal Service witness Needham stated in that docket, “[t]hese categories serve as organizational tools”⁶ Thus, the “Stamped Paper” heading was not intended to have any substantive meaning beyond “envelopes” and “cards” and cannot, in and of itself, resolve the instant complaint.

⁴ One is nevertheless amused by the vision of competing art and design professors battling it out in rate proceedings. It would no doubt make costing and volume estimation seem like child's play. As discussed above, however, the reverie has no legal basis.

⁵ Complaint ¶ 19.

To clarify this matter, the Postal Service had considered, following the filing of the complaint, the inclusion in the last omnibus rate case of a request for a change in the DMCS title from “Stamped Paper” to the more accurate “Stamped Envelopes and Stamped Cards.”⁷ Given the nature of the last rate case, however, consideration of requesting this change was deferred, with all other potential classification changes, until the next omnibus case.

Mr. Carlson’s further assertion that “[s]tamped stationery is substantially similar to stamped envelopes and stamped cards,”⁸ is factually incorrect, as is clear to even a casual observer. Stamped envelopes and cards are utilitarian, and, unlike the Disney stationery, have little inherent artistic or philatelic value beyond the stamp designs printed on them.

The heart of Mr. Carlson’s complaint actually undermines the other arguments he makes to support his contention that sale of the stationery is so closely related to the transmission of mail that it is a “postal service”:

The fee for stamped stationery unduly and unreasonably discriminates against *stamp collectors*, who are users of the mail and *may feel compelled to purchase *The Art of Disney: Friendship* stamped stationery to avoid a gap or omission in their *stamp collections*.*⁹

The problem Mr. Carlson alleges is not that it costs too much to buy Disney stamped stationery to mail a letter. He does not, and cannot, allege that one is compelled to buy Disney stationery in order to send a letter; mailers have many options to do so, all of which include the need for some level of expenditure above postage for paper,

⁶ Docket No. R97-1, USPS-T-39, at 102.

⁷ The timing of the development of that process was the primary cause of the unusual delay in filing this motion.

⁸ Complaint ¶ 21.

envelopes, and the like. Rather, Mr. Carlson is apparently objecting to the price because he “may feel compelled” to buy the stationery *not to mail* it, but in order to complete his *philatelic* collection. Regulating the philatelic value of items—beyond the original face value of the stamp itself¹⁰—is not an area over which the Commission exercises jurisdiction. In determining not to assert jurisdiction over philatelic items, the Commission specifically discussed commemorative stamps—which are more closely related to Disney stationery than are utilitarian stamped envelopes—and noted that:

Commemorative stamps bear some relation to the transmission of mail since they represent purchase of postage just as regular stamps do. They do not replace regular stamps, however, and as a service in addition to the sale of regular stamps, they are offered primarily for reasons other than payment of postage.

PRC Op., R76-1, App. F, at 19-20. Disney stationery does not replace other, ordinary means of First-Class Mail letter postage, and is offered primarily for other reasons, including the heritage represented by the artwork, and the encouragement of children to sit down, take out their pens, and engage in good old-fashioned letter writing.¹¹

Moreover, if the Commission were to assert jurisdiction over the Disney stationery, it might ultimately result in a diminution of philatelic choices. The prospect of the need for Commission proceedings in advance of issuance of stamped stationery could have an unintended, but real, chilling effect on the process, including negotiating with licensors and the timing of production, such that no such future issuances might be

⁹ Complaint ¶ 35 (emphasis added).

¹⁰ To be precise, the Commission’s jurisdiction is over the price of a First-Class Mail one-ounce letter (and many other types of mail). While that price has a significant influence on the matter, it is the Postal Service that determines, in accordance with its philatelic authority, what face value to assign to particular stamps and other indicia.

¹¹ They might also feel compelled to decorate their walls with it.

able to occur. Alternatively, in order to avoid the process, the Postal Service could decide to sell unstamped stationery with a packet of stamps included, which would decrease customer convenience and the potential success of the marketing effort. In either case, the result would be less choice for consumers and the attenuation of what the Postal Service believes to be a valuable educational tool.

Finally, the fact that the Postal Service may encourage buyers of the stamped stationery to use them to write letters¹² has no bearing on the issue of Commission jurisdiction. The Postal Service also sells packaging supplies, presumably for the purpose of encouraging and making it easier for customers to send packages. The Commission does not exercise jurisdiction over the offering of such supplies.

In conclusion, while the Disney stationery is a novel item, the legal issues raised by the complaint are long-settled. Even assuming the truth of every fact alleged in the complaint (and not requiring a legal conclusion), the complaint would have no legal basis, and should be dismissed.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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¹² Complaint ¶¶ 11-13.

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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