

ORDER NO. 1460

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

Before Commissioners: George Omas, Chairman;
 Dawn A. Tisdale, Vice Chairman;
 Ruth Y. Goldway; and
 Tony Hammond

Complaint on Stamped Stationery

Docket No. C2004-3

ORDER DENYING MOTION TO DISMISS
AND NOTICE OF PROCEEDING

(April 13, 2006)

The Commission has before it a complaint filed by Douglas F. Carlson (Carlson or Complainant) concerning stamped stationery¹ and a motion to dismiss the complaint filed by the Postal Service.² The central issue presented by these pleadings is whether stamped stationery is a postal or philatelic product. If the former, it is subject to the Commission's jurisdiction; if the latter, it is not.

The Postal Service's motion to dismiss is denied. This should not, however, be read as a finding on the merits on the jurisdictional question presented. The pleadings raise mixed questions of fact and law. Based solely on the pleadings, the Commission is disinclined to determine whether or not genuine issues of material fact remain in dispute. Accordingly, by this Order the Commission hereby notices the proceeding and, as discussed below, provides interested persons an opportunity to address whether or not genuine issues of material fact remain to be presented in this case. Following

¹ Douglas F. Carlson Complaint on Stamped Stationery, June 24, 2004 (Complaint).

² Motion of the United States Postal Service to Dismiss Complaint, January 18, 2006 (Motion to Dismiss).

submission of responsive pleadings, the Commission will determine whether to proceed with or without hearing. If no genuine material issue of fact is presented, the Commission will establish a briefing schedule affording participants an opportunity to address the principal legal issue whether or not stamped stationery is a postal service.

I. BACKGROUND

The Complaint. In his Complaint, filed pursuant to 39 U.S.C. § 3662, Carlson contends that stamped stationery is a postal service subject to the Commission's jurisdiction. The specific stationery in question consists of sheets of 6.25" x 14.31" paper imprinted with "*The Art of Disney: Friendship*" postage stamps or indicia. Each pre-stamped sheet has room for a message and address; the sheet is designed to be folded, sealed, and mailed.³

While Carlson makes several claims, the gravamen of his complaint is that stamped stationery is a postal service within the meaning of 39 U.S.C. §§ 3621, 3622, and 3623. *Id.* at 2, ¶ 10. In support, he compares stamped stationery to stamped envelopes and stamped cards, both of which are postal services. *Id.* at 3, ¶¶ 14-15. He observes that section 960 of the Domestic Mail Classification Schedule (DMCS) is entitled "Stamped Paper" and that it includes stamped envelopes and stamped cards. *Ibid.* ¶¶ 16-17. He contends that stamped stationery is a form of stamped paper within the meaning of section 960 of the DMCS. *Ibid.* ¶ 21. In addition, Carlson notes that the Postal Service describes stamped stationery in terms of its value as a means for sending correspondence.⁴

³ At the time the Complaint was filed, the stamped stationery sold in pads of 12 for \$14.95, while the face value of the postage was \$4.44. Complaint at 2, ¶ 8.

⁴ *Id.* at 2, ¶¶ 11-13. Complainant's remaining claims are derivatives of his principal claim that stamped stationery is a postal service. For example, he asserts that stamped stationery constitutes a change in the mail classification schedule and that the Postal Service is required to request a recommended decision from the Commission, pursuant to sections 3622 and 3623 of the Act, before either establishing a new classification for, or selling, stamped stationery. *Id.* at 4, ¶¶ 22-24. This claim is true if stamped stationery is found to be a postal product. The claim is premised on the belief that stamped stationery is postal and thus does not go to the nature of the product (or service) itself. Accordingly, the Commission finds it unnecessary to address this claim in detail at this stage of the proceeding. Carlson's other derivative claims are that the rate or fee for stamped stationery is inconsistent with the Act and unduly discriminates against stamp collectors. *Id.* at 4-5, ¶¶ 30-35. These

Pursuant to section 3662, Carlson requests that the Commission issue a recommended decision establishing fee and classification schedules for stamped stationery. Alternatively, he requests that, pursuant to section 3623(b), the Commission submit, on its own initiative, a recommended decision establishing a new classification for stamped stationery. *Id.* at 6.

Informal procedures. Upon its review of the Complaint, the Commission elected to employ informal procedures in an effort to facilitate settlement.⁵ To that end, the Director of the Office of the Consumer Advocate (OCA) was appointed settlement coordinator to facilitate efforts to resolve the complaint informally.⁶ OCA was charged with reporting on the status of negotiations. Pending the outcome of the negotiations, the due date for the Postal Service's answer to the complaint was postponed. In its second report, OCA informed the Commission that settlement could not be achieved.⁷ Subsequently, the Postal Service submitted its answer to the complaint, contending, among other things, that "[t]he stationery at issue is a philatelic item and mailing product which has much more in common with similar items over which the Commission does not assert jurisdiction than with the utilitarian stamped envelope product which is currently in the DMCS."⁸

The Postal Service's Motion to Dismiss. Pursuant to Order No. 1449, the Postal Service recently filed a motion to dismiss the Complaint.⁹ At the outset, the Postal Service asserts that the sale of "Disney stationery" falls within its statutory authority to

claims, too, are premised on the assumption that stamped stationery is a postal product and, likewise, need not be addressed for purposes of this Order. This is not to suggest, however, that claims do not raise factual or legal issues that may need to be addressed if the Commission concludes that stamped stationery is jurisdictional.

⁵ PRC Order No. 1412, July 8, 2004, at 2.

⁶ Notice Designating Settlement Coordinator, July 8, 2004.

⁷ Office of the Consumer Advocate Second Report on the Status of Negotiations for Informal Resolution of Complaint, August 12, 2004.

⁸ Answer of United States Postal Service, August 31, 2004, at 8 (Answer).

⁹ Motion to Dismiss, *supra*, January 18, 2006. See PRC Order No. 1449, Docket No. RM2004-1, January 4, 2006, at 30, n.88.

provide philatelic services.¹⁰ In support, it points to the Commission's decision in Docket No. R76-1 generally disclaiming jurisdiction over philatelic products. *Id.* at 1. Second, it argues that "Disney stationery is intended to be a philatelic item,"¹¹ distinguishable by its design and artwork from "utilitarian" stamped envelopes and cards which, it contends, have little inherent artistic or philatelic value.¹² Third, the Postal Service postulates that philatelic choices may be diminished if the Commission were to assert jurisdiction over Disney stationery, suggesting even the possibility that "no such future issuances might be able to occur." *Id.* at 4-5. Alternatively, it notes that it could "avoid the process" by selling unstamped stationery with a packet of stamps included. *Id.* at 5.

Lastly, the Postal Service infers comparability between stamped stationery and packaging supplies. The Postal Service disputes that its encouragement of buyers to use stamped stationery to write letters has any jurisdictional consequences. It observes that the Postal Service also sells packaging supplies, "presumably for the purpose of encouraging and making it easier for customers to send packages." *Ibid.* It concludes by noting that the Commission does not exercise jurisdiction over such supplies.

Carlson's opposition. Carlson opposes the Postal Service's motion to dismiss.¹³ Citing the Commission's recently adopted definition of the term postal service, Carlson argues that stamped stationery is a postal service because it "is incidental to the receipt,

¹⁰ *Id.* at 1. The Postal Service characterizes the Complaint as requesting the Commission to "assert jurisdiction over *The Art of Disney: Friendship* stamped stationery." *Ibid.* To that end, the Postal Service uses the phrase "Disney stationery," apparently reading the Complaint as limited to that issuance rather than to the issue of stamped stationery generally. The Commission does not read the Complaint so narrowly. To be sure, "Disney stationery" precipitated the Complaint. Carlson's arguments, however, concern stamped stationery generally, not that Disney stationery alone is a postal service. The relief requested, that the Commission recommend stamped stationery as a new classification, confirms this reading of the Complaint.

¹¹ *Ibid.*

¹² *Id.* at 2-3. In passing, the Postal Service argues that the caption to DMCS section 960, "Stamped Paper," has no substantive meaning beyond stamped envelopes and cards. *Id.* at 2.

¹³ Douglas F. Carlson Answer in Opposition to the Postal Service Motion to Dismiss Complaint, January 24, 2006 (Carlson Opposition).

transmission, and delivery by the Postal Service of correspondence, including letters.”¹⁴ In support of this contention, Carlson advances several arguments. First, he argues that the stamped stationery is specifically designed for mailing, including identifiable space for the mailing address and for a written message, and that, to facilitate mailing, it can be folded and sealed.¹⁵

Second, Carlson contends that if stamped cards and stamped envelopes are postal services then stamped stationery must be as well. He discusses Postal Service witness Needham’s testimony, sponsoring proposed fee increases in Docket No. R97-1, which detailed the benefits and value of stamped cards and stamped envelopes that facilitate the mailing of correspondence and letters. He contends that stamped stationery provides the same service incidental to the receipt, transmission, or delivery of correspondence as do these two acknowledged postal products. *Id.* at 5-6.

Third, Carlson also distinguishes between products with pre-affixed postage, such as stamped stationery and stamped cards, and those, such as packaging supplies, plain envelopes, and post cards, without it. He argues that the pre-affixed postage is significant because it entitles the purchaser to mailing services, which are not available to purchasers of unstamped envelopes, cards, or packaging supplies. *Id.* at 7-8.

The balance of Carlson’s Opposition responds to arguments that are largely peripheral to the central legal issue of whether stamped stationery is a postal service. These include, for example, the philatelic value associated with any postage item, including all postal stationery (*id.* at 10), and that for ratemaking purposes, the philatelic and design value of stamped stationery are irrelevant. *Id.* at 11-12.

¹⁴ *Id.* at 4. As historical background, Carlson provides a brief discussion of the use and development of stamped and unstamped letter sheets. He contends that what the Postal Service now calls stamped stationery is known generically as letter sheets. Distinguishing between stamped and unstamped letter sheets, he indicates that stamped letter sheets were not used by the Post Office Department until 1861. Further, he states that the Disney stamped stationery was the first domestic stamped letter sheets issued in more than a century. He argues that stamped letter sheets (stamped stationery) are, along with stamped envelopes and stamped cards, forms of postal stationery. *Id.* at 2-4.

¹⁵ *Id.* at 4. Carlson points to the Postal Service’s own advertising, which trumpets the benefits of correspondence using stamped stationery, as corroboration that stamped stationery is a postal service. *Id.* at 4-5.

II. PROCEEDINGS

Based on a review of the pleadings, the Commission concludes that the facts, as alleged in the pleadings, do not warrant a summary dismissal of the Complaint. In light of this finding, and given the failure of informal procedures to resolve the Complaint, the Commission finds it appropriate, under rule 86 of the Rules of Practice, to conduct a formal proceeding pursuant to section 3624 of the Act in this docket. In noticing the proceeding pursuant to rule 17, the Commission has made no determination of whether or not to hold hearings in this docket. That determination will be made after submission of the statements discussed below.

Section 3662 provides that, in response to a complaint, the Commission may in its discretion hold a hearing. Generally, hearings are held only if genuine issues of material fact are presented. In this proceeding, the Commission is disinclined to rule on that issue based solely on the pleadings. Consequently, each participant shall be given an opportunity to address the question of whether or not genuine issues of material fact are presented in this case. Each participant addressing this issue should identify with specificity each issue of material fact, if any, it believes is presented along with the reason(s) it believes that issue is material. Such statements are due no later than April 27, 2006. Replies to such statements may be filed no later than May 4, 2006.

Intervention. Any interested person may file a notice of intervention, consistent with the Commission's Rules of Practice, as a full or limited participant. See 39 CFR §§ 3001.20 and 3001.20a. The notice of intervention shall be filed using the Internet (Filing Online) at the Commission's website (www.prc.gov), unless a waiver is obtained for hardcopy filing. See 39 CFR §§ 3001.9(a) and 3001.10(a). Notices of intervention are due no later than April 27, 2006.

Representation of the general public. Having noticed the proceeding, the Commission finds it appropriate that the interests of the general public be represented in this proceeding and thus the Commission designates Shelley S. Dreifuss, Director of the Commission's Office of the Consumer Advocate, to represent those interests. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission

personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

It is ordered:

1. Statements of genuine issues of material fact as discussed in the body of this Order are due no later than April 27, 2006. Replies may be filed on or before May 4, 2006.
2. The deadline for filing notices of intervention is April 27, 2006.
3. Shelley S. Dreifuss, Director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public.
4. The Secretary shall arrange for publication of this notice and order in the *Federal Register*.

By the Commission
(SEAL)

Steven W. Williams
Secretary