

Before The
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Complaint on Electronic Postmark®

Docket No. C2004-2

OBJECTIONS OF DIGISTAMP WITNESS RICK BORGERS TO
INTERROGATORIES OF AUTHENTIDATE
AUTH/DS-T1-2-4,8(b),9-10
(June 5, 2006)

Pursuant to sections 26(c) of the Commission's rules of practice, DigiStamp hereby objects, on the grounds stated below, to the following interrogatory directed by Authentidate to DigiStamp's witness Rick Borgers. The interrogatories are stated verbatim and are followed by the specific objections.

Several of the specific objections are based on the grounds that it calls for commercially sensitive, proprietary and confidential information. The Commission has long held that, concerning commercially sensitive information, participants will not normally be required to disclose it, even under protective conditions, and especially to competitors.¹ See, e.g., *Presiding Officer's Ruling No. R94-1/64*, August 19, 1994 at 5 ("Numerical data revealing the disaggregated volumes, revenues and costs of a business' operations are clearly proprietary and commercially sensitive"); *Presiding Officer's Ruling No. R97- 1/104*, February 27,

¹ DigiStamp competes with Authentidate in the digital time stamp market.

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1998, at 1-2 (agreeing that “revenue[] and costing data” are “clearly proprietary, and commercially sensitive”); *Presiding Officer’s Ruling No. C99-1/23*, August 7, 2001, at 4 (similar).

As stated in *Presiding Officer’s Ruling No. R2000-1/102*, July 31, 2000:

The Commission’s policy regarding the discovery of intervenors’ commercially sensitive information has been reiterated in a series of rulings – *absent exceptional circumstances, such data need not be produced*. See POR R90-1/66, September 7, 1990, at 2 [“The Commission’s policy is to refrain, absent exceptional circumstances, from compelling participants to file data that can reasonably be found commercially sensitive.” *Id.*]; POR R94-1/64, August 19, 1994, at 5. See also POR R87-1/148, November 10, 1987, at 2.

In prior rate proceedings PSA, among others, has requested data concerning UPS’s domestic operations, e.g., volumes transported by air and ground transportation.... [M]otions to compel were denied not because the data requested were not relevant, but rather because PSA failed to demonstrate exceptional circumstances that would warrant the production of an intervenor’s commercially sensitive information [citing POR R94-1/64 at 5; and POR R97-1/104 at 3].

Plainly, the data PSA seeks are commercially sensitive. ... The balance between disclosure and commercial sensitivity rests, initially, on whether the data are *essential* for the Commission’s deliberations, including, importantly, evaluating the direct case of the party resisting disclosure. ... The Commission can resolve ... issues affecting Parcel Post Mail without recourse to the data PSA seeks. Consequently, ... disclosure is ... [not] required....

Id. at 2-4 (emphasis added; footnotes omitted). See also *Presiding Officer’s Ruling No. R2000-1/112*, August 10, 2000 (similar); *Presiding Officer’s Ruling No. R2000-1/97*, July 25, 2000, at 8 (“disclosure of sensitive information when direct competitors in the marketplace are parties must be given careful consideration to protect the interests of each party”); *Presiding Officer’s Ruling No. R90-1/29*, June 19, 1990, at 4 (a party’s “strong interest in protecting its commercial secrets prevails, regardless of the availability of protective

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conditions”); *Presiding Officer’s Ruling No. R94-1/22*, June 3, 1994, at 3-4 (“no evident justification for ordering its provision [even] under protective conditions”).

DigiStamp hereby objects, on the specific grounds stated below, to the following interrogatory directed by Authentidate to DigiStamp’s witness Rick

Borgers:

AUTH/DS-T1-2. Page 12 of the Direct Testimony of Rick Borgers states DigiStamp has already provided service to thousands of customers. Identify each customer of DigiStamp’s e-TimeStamp product by name and address. Include companies, research organizations and governments. Please explain fully.

- a. For each such customer, describe how that customer was using the e-TimeStamp product.
- b. For each customer, describe when the customer made its first purchase of the e-TimeStamp product.

DigiStamp objects to this interrogatory based on grounds that it calls for commercially sensitive, proprietary and confidential information that is not relevant, much less necessary, to the resolution of any issue before the Commission.

Additionally, the information requested is not relevant to the meaning of this particular section of testimony. The meaning of that testimony, in summary, is that the market is served by private industry thus removing the need for the government to enter this market as a competitor.

Even if the detailed customer information sought by Authentidate had some relevance, it is certainly not *essential* to the Commission’s resolution of any material issue before it. Under the Commission’s precedent, any attenuated relevance of such information is overborne by its commercial sensitivity.

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Moreover, the DigiStamp customer or perspective customer has an expectation that DigiStamp will maintain in private all information that DigiStamp might have collected about that customer; including: that they are a customer of DigiStamp, their transactions volumes and any information about why the particular customer is using our service. The customer's expectation is enforced by a published privacy statement at our web site here:

<http://www.digistamp.com/privacy.htm#privacy>

AUTH/DS-T1-3. Provide the number of employees of DigiStamp in each year from 1999 to the present.

DigiStamp objects to this interrogatory based on grounds that it calls for commercially sensitive, proprietary and confidential information that is not relevant, much less necessary, to the resolution of any issue before the Commission. Even if this information sought by Authentidate had some relevance, it is certainly not *essential* to the Commission's resolution of any material issue before it. Under the Commission's precedent, any attenuated relevance of such information is overborne by its commercial sensitivity.

AUTH/DS-T1-4. Provide revenue figures of DigiStamp in each year from 1999 through 2005 as such amounts appear on DigiStamp's tax returns. Please explain fully.

DigiStamp objects to this interrogatory based on grounds that it calls for commercially sensitive, proprietary and confidential information that is not relevant and not necessary to the resolution of any issue before the Commission. Even if the revenue information sought by Authentidate had some relevance, it is certainly not *essential* to the Commission's resolution of any material issue

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before it. Under the Commission's precedent, any attenuated relevance of such information is overborne by its commercial sensitivity.

AUTH/DS-T1-8. In how many time stamp transactions has DigiStamp's product been used? Please explain fully.

- a. What percentage of such transactions were communications?
- b. What was the total revenue derived from such transactions?

DigiStamp objects to the predicate question (concerning the number of DigiStamp time transactions), as well as item "b." of this interrogatory that asks "b. What was the total revenue derived from such transactions?" DigiStamp objects on grounds that it calls for commercially sensitive, proprietary and confidential information that is not relevant, much less necessary, to the resolution of any issue before the Commission.

The transaction volume information sought by Authentidate is commercially sensitive, proprietary and confidential. DigiStamp has and will continue to provide transaction data in the form of percentages instead of absolute numbers, where possible, that describes how our customers use the time stamps. To comply with present demand for the transaction volumes, this information would enable Authentidate to derive or closely estimate revenue information for DigiStamp's business. DigiStamp does not publicly release such commercially sensitive information, which it treats as confidential.

Even if the volume information sought by Authentidate had some relevance, it is certainly not *essential* to the Commission's resolution of any

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material issue before it. Under the Commission's precedent, any attenuated relevance of such information is overborne by its commercial sensitivity.

AUTH/DS-T1-9. Footnote 13 on page 9 of the Direct Testimony of Rick Borgers refers to DigiStamp's original business plan. Please provide the referenced business plan.

DigiStamp objects to this interrogatory based on grounds that it calls for commercially sensitive, proprietary and confidential information that is not relevant and not necessary to the resolution of any issue before the Commission. The scope of a business plan includes all aspects of the business – past revenue, key employee data, market intelligence, intellectual property, development plans, etc. Even if the information Authentidate sought had some relevance, it is certainly not *essential* to the Commission's resolution of any material issue before it. Under the Commission's precedent, any attenuated relevance of such information is overborne by its commercial sensitivity.

AUTH/DS-T1-10. Please identify DigiStamp's "costs" referred to in the first paragraph on page 13 of the Direct Testimony of Rick Borgers. Please explain fully.

DigiStamp objects to this interrogatory based on grounds that it calls for commercially sensitive, proprietary and confidential information that is not relevant, much less necessary, to the resolution of any issue before the Commission. The information requested is not relevant to the meaning of this particular section of testimony, in summary, the meaning of this testimony: the

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EPM program at the Postal Service has operated at a loss and that the Postal Service consumer has paid for that loss.

Additionally, comparative information about the Postal Service's direct expenditures and overhead costs for their EPM product is incomplete. Therefore, an accurate comparison with DigiStamp costs is not possible.

Even if the cost information sought by Authentidate had some relevance or value when compared with Postal Service costs, it is certainly not *essential* to the Commission's resolution of any material issue before it. Under the Commission's precedent, any attenuated relevance of such information is overborne by its commercial sensitivity.

Respectfully submitted,

Rick Borgers
Lead Technologist, CEO
DigiStamp, Inc.
<http://www.digistamp.com>

June 5, 2006