

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

Complaint on Stamped Stationery )

Docket No. C2004-3

OFFICE OF THE CONSUMER ADVOCATE  
INITIAL BRIEF  
(June 8, 2006)

OFFICE OF THE CONSUMER ADVOCATE (OCA) POSITION

The Stamped Stationery that is the subject of Mr. Carlson's complaint is a postal service under §§404(a)(4), 3622, and 3623 of Title 39 of the U.S. Code, as well as under Commission Rule No. 5(s),<sup>1</sup> which sets forth the definition of a postal service. The Postal Service fails to make a persuasive case that Stamped Stationery is not a postal service, relying on arguments and distinctions that are not relevant to the issue whether the subject Stamped Stationery is/is not a postal service subject to the Commission's ratemaking and classification authority.

PROCEDURAL HISTORY

On June 24, 2004, Douglas Carlson filed a Complaint on Stamped Stationery. The Stamped Stationery described in Mr. Carlson's Complaint consists of sheets of paper that can be folded into the shape of an envelope and priced at \$14.95 for 12 sheets, or \$1.25 per letter sheet. Just above the address area, postage is imprinted on the sheet. Mr. Carlson complains that the Postal Service has established a program for

---

<sup>1</sup> 39 C.F.R §3001.5(s).

selling such stationery without first having filed a request for a new rate category (and new rate) under §§3622 and 3623 of Title 39. He explains that Stamped Stationery is “related to the routine postal functions of accepting, handling, and delivering mail” and that it is “substantially similar in use and function of aerogrammes” and to stamped envelopes and stamped cards.<sup>2</sup>

Soon after the filing of the Complaint, the Commission issued Order No. 1412,<sup>3</sup> which took the unusual (but commendable) approach of encouraging the parties (Mr. Carlson and the Postal Service) to resolve Mr. Carlson’s concerns informally, through settlement. The Office of the Consumer Advocate was designated to serve the role of settlement coordinator in a Notice issued by the Commission on July 8, 2006. The Commission expressed the view that “the Complaint would appear to be amenable to resolution, at least in certain respects.” A conference call that included Mr. Carlson, attorneys for the Postal Service, intervenor David Popkin, and members of the OCA staff took place on July 15, 2004. A frank and open discussion ensued. Unfortunately, the positions of Mr. Carlson and the Postal Service could not be reconciled.

Upon learning from OCA that there was no possibility of settlement, the Commission directed the Postal Service to file an answer to Mr. Carlson’s Complaint.<sup>4</sup> The Postal Service did so, and made several unpersuasive distinctions in an attempt to justify its decision not to file a formal request to the Commission prior to offering the Stamped Stationery for sale to the public:<sup>5</sup>

---

<sup>2</sup> Complaint at 2-3.

<sup>3</sup> “Order Concerning Complaint of Douglas F. Carlson,” July 8, 2004.

<sup>4</sup> Order No. 1416, issued August 19, 2004.

<sup>5</sup> “Answer of United States Postal Service” (Answer), filed August 31, 2004, at 2-3.

- Disney stationery is printed on superior paper stock
- Disney stationery displays high-quality graphics, including Disney characters
- This is in contrast with stamped envelopes, stamped cards, and aerogrammes that the Postal Service describes as utilitarian and lacking significant artistic value<sup>6</sup>
- The Stamped Stationery is much more akin to philatelic products than “utilitarian stamped envelope[s].”<sup>7</sup>

The Postal Service moved to dismiss the Complaint on January 8, 2006. In the Motion, the Postal Service elaborated on the legal and factual distinctions made in its previously filed Answer. Mr. Carlson opposed the Motion on January 24, 2006, and the Commission denied the Motion on April 13, 2006, in Order No. 1460. In this Order, the Commission asked participants to indicate whether there were any genuine issues of fact to be explored through hearings. In responsive pleadings, no participants identified issues of fact. Soon after (on May 4, 2006), the Postal Service moved to suspend the proceedings due to the high level of activity in other cases before the Commission. Both Mr. Carlson and OCA opposed the Motion to Suspend. The Commission denied the Motion in Order No. 1465, on May 18, 2006, and established the briefing schedule.

### ARGUMENT

The Postal Service takes the position that Disney Stamped Stationery is not a postal service by characterizing it as a philatelic product with high artistic value, printed on superior paper stock. The Service also states that the Commission does not assert jurisdiction over philatelic products. In OCA’s view, the Postal Service has failed to

---

<sup>6</sup> Id. at 2 and 4.

<sup>7</sup> Id. at 8.

establish a meaningful distinction between Disney Stamped Stationery and many other postage-imprinted and stamp(ed) products. Apparently the Postal Service chafes under the requirements imposed on it by Congress in the Postal Reorganization Act:<sup>8</sup>

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 able to occur.

The Service also warns that it might be forced

to sell unstamped stationery with a packet of stamps included, which would decrease customer convenience and the potential success of the marketing effort. . . . the result would be less choice for consumers and the attenuation of what the Postal Service believes to be a valuable educational tool.

It is evident that the Postal Service is conflating two distinct issues: (1) Is Disney Stamped Stationery a postal service? and (2) What is the proper mark-up for the Stationery? The Postal Service seeks to have the Commission find the subject stationery to be “purely” philatelic on the ground of its high-quality paper stock and artistic images, but this has never been (and should not be) a criterion for distinguishing services that are postal in character and those that are not.

The test for postal (and, by extension, not postal) services was recently established by the Commission in a final rule (Rule No. 5(s)) issued in Docket No. RM2004-1. The definition coined by the Commission provides:

Postal service means the receipt, transmission, or delivery by the Postal Service of correspondence, including, but not limited to, letters, printed matter, and like materials; mailable packages; or other services incidental thereto.

---

<sup>8</sup> Motion to Dismiss at 4.

The criteria established in the definition are simple and clear. One looks to the function of the product at issue, i.e., is the item correspondence or a mailable package? Is the product or service incidental to correspondence or a mailable package? Nowhere in the definition does the Commission suggest that one should consider the intrinsic or market value of a challenged product to discern its postal nature. The definition does not invoke criteria such as utility or artistic value. This is a correct approach, that has its roots in the language of the Postal Reorganization Act.

In §404(a)(4) of Title 39, Congress explicitly empowers the Postal Service to “provide and sell postage stamps and other stamped paper, cards, and envelopes and to provide such other evidence of postage and fees as may be necessary or desirable.” Such stamp(ed) and postage products are delegated separately and independently from the power to provide “philatelic services” in the following subpart -- §404(a)(5). An examination of §§404(a)(4) and 404(a)(5) reveals that Congress did not introduce the element of intrinsic or market value in making a separate delegation of these powers.

By contrast, the element of “value” is explicitly referenced in the Commission’s exercise of its price -setting power in §3622(b)(2) of Title 39, in Chapter 36, the chapter concerned with the Commission’s authority to establish postal rates and classifications.

The Postal Service’s reliance on utility versus high value may properly be considered in setting the price for the postal product – Stamped Stationery – but is not germane to ascertaining the nature and function of the product. Disney Stamped Stationery has two distinct functions: (1) it provides a highly decorative type of stationery on superior paper stock, and (2) it includes the imprinting of postage. If the Postal Service were to choose the alternative described in its Motion to Dismiss, i.e.,

sell unstamped stationery with a packet of stamps included,<sup>9</sup> arguably, it could set the price of the stationery unilaterally, so long as the price of stamps was set at the level approved by the Governors in the most recent ratemaking proceeding. It is the imprinting of postage on the letter sheets that imbues the Disney Stamped Stationery with its “postal service” character, thus bringing it within the jurisdiction of the Commission in Chapter 36.

In two OCA pleadings – Office of Consumer Advocate Statement as to Issues of Material Fact<sup>10</sup> and Office of Consumer Advocate Reply to Statement in Response to Commission Order No. 1460<sup>11</sup> – counsel for OCA described and furnished a photocopy of a product currently offered for sale by the Postal Service that underscores the postage component of Disney Stamped Stationery. Following the last postal rate increase on January 6, 2006, the Postal Service began to enclose 2-cent make-up stamps in the Disney Stamped Stationery packet. A message from the Postal Service is attached to the outside of the packet: “Enclosed are twelve stamps to update the postage to First Class Rate.” As Mr. Popkin observes in his Response to Order No. 1460, “By providing two-cent stamps to match the 37¢ stamps that are already preprinted on these stamped letter sheets, the Postal Service is emphasizing that they are designed to use for mailing correspondence and therefore are a postal service.”<sup>12</sup>

As for the “attenuation” of the Stationery as a valuable educational tool, it is unclear what the Postal Service is driving at. Educational value is not invoked in either

---

<sup>9</sup> At 5.

<sup>10</sup> April 27, 2006.

<sup>11</sup> May 4, 2006.

<sup>12</sup> April 28, 2006 (footnote omitted).

§404 of Title 39 nor in the Commission's definition of a postal service in Rule 5(s). Educational value is mentioned in subpart (b)(6) of §3622 of the pricing criteria, thereby reinforcing the position that the Stationery is a postal service subject to the Commission's jurisdiction. Furthermore, it is not obvious that the Disney Stamped Stationery is any more educational than Stationery sold with a separate packet of stamps included or than stamps themselves. The Postal Service takes justifiable pride in the tens of thousands of gloriously beautiful and historically important stamp issues it has made over the years. Are Disney stamps, stamps with portraits of important civic leaders, images of important historic events, or the American flag any less educational than Disney Stamped Stationery? The answer is clearly "No." The putative educational nature of Disney Stamped Stationery is of no help in distinguishing purely philatelic products from postage (i.e., "postal service") products.

Currently, there is no rate classification for Stamped Stationery. There is a classification for stamped envelopes, but the rate for stamped envelopes is based upon the postage rate, pennies for the cost of the envelope plus a markup. The Disney Stamped Stationery, when folded for mailing, becomes an envelope. If the Postal Service charge for this product were the current rate for stamped envelopes, there would be no need for a separate classification, although the impact of rolling in the cost of this product with current envelopes costs would need to be explored. The product, as stamped stationery, is a different product with different costs than the stamped envelopes. The rate for stamped stationery should reflect those costs plus a reasonable contribution to institutional costs, in addition to the postage imprinted on the stationery. Despite the relatively higher royalty costs for using Disney characters, the

rate determined pursuant to the Postal Reorganization Act is unlikely to be as much as \$1.25 per sheet of stationery.

OCA noted in its April 27<sup>th</sup> and May 4<sup>th</sup> filings, cited above, that the Postal Service also sells a similar stamped stationery product known as Garden Bouquet for the same price. That product does not appear to be related to Disney and therefore the cost for royalties or similar charges would not be part of the cost. If the costs of the Garden Bouquet stationery are rolled-in with the Disney Stamped Stationery to determine costs of the classification, the unit costs and thus the rate for this classification, would likely be reduced.

The Postal Service's view that having to bring a formal request before the Commission is a nuisance<sup>13</sup> should not influence the Commission's decision in this case. Congress established procedures for establishing new classifications and setting rates. These procedures cannot be ignored because of the "bother" to postal officials. Protections that Congress afforded to mailers and ratepayers cannot be sacrificed in the pursuit of Postal Service convenience.

### CONCLUSION

Proper application of relevant sections of the Postal Reorganization Act and the Commission's recent rule defining postal services can point to no other conclusion than the Disney Stamped Stationery is a postal product subject to application of §§3622 and 3623 of Title 39. OCA urges the Commission to issue the finding that the subject stationery is a postal service under its recently coined definition. Once having issued

---

<sup>13</sup> Motion to Dismiss at 4.

this finding, the Postal Service should immediately cease to offer such Stamped Stationery and like products for sale. If the Postal Service wishes to sell high-value Stamped Stationery (with postage imprinted) in the future, it must first submit a formal request to the Commission and await a Commission recommendation.

Respectfully submitted,

---

Shelley S. Dreifuss  
Director  
Office of the Consumer Advocate

Kenneth E. Richardson  
Attorney

1333 H Street, N.W.  
Washington, D.C. 20268-0001  
(202) 789-6830; Fax (202) 789-6819