

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

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Complaint on Electronic Postmark®  
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Docket No. C2004-2

RESPONSE OF DIGISTAMP WITNESS RICK BORGERS TO AUTHENTIDATE'S  
MOTION TO COMPEL RESPONSES TO INTERROGATORIES AND DOCUMENT  
REQUESTS  
AUTH/DS-T1-2-6, 8, 8(b), 9-10  
(June 26, 2006)

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Authentidate filed a motion to compel information about details of my business that are not relevant to the issue of whether USPS EPM is or is not a postal service. Information such as the revenues my business generates annually, the number of employees who work in my business, and the number of transactions my business handles each year do not shed light on the question whether EPM functions in manner similar to hardcopy mail. Balanced against EPM's claim that it needs this information is the great harm that would arise from my providing it to my competitor. The information sought by Authentidate is proprietary and sensitive. I have never made this information public and would be harmed by a Commission order that I do so. I ask that Authentidate's motion to compel answers be denied in its entirety. Below, I provide specific responses to Authentidate's arguments.

In response to Argument 1 of Authentidate's Motion to Compel, I contend two things:

1. Providing Authentidate with the names of my customers with a description of our business relationship (how, when and why the customer buys our service, and revenues / cost data) will cause the company harm (e.g. competitive disadvantage).
2. The arguments that comprise and define my complaint are valid even if DigiStamp did not exist. Further, the issues that the Commission described in Order 1455 do not depend on the existence of DigiStamp. I offered a summary of Order 1455 in the title of my testimony:

“Evidence requested by Order No. 1455: Has the Postal Service introduced a new postal service ignoring the Commission's oversight and failing to create public good?”

Therefore I contend that **DigiStamp's commercially sensitive data is not essential to the resolution of issues before the commission.**

I understand that by providing the data that Authentidate has compelled could add more weight to portions of my testimony. For myself, I need to balance that risk against the business risks.

I accept the risk inherent in my position: I think that I have already given adequate and convincing evidence to win the arguments of my complaint.

As the Commission exercises their authority over the USPS EPM, my hope is that DigiStamp might add new information as it becomes relevant.

Authentidate states in their motion to compel (page 4 line 2),

“[ DigiStamp ]... has the burden of demonstrating that the information to be produced is confidential and that public disclosure will cause serious harm, e.g. competitive disadvantage”) P.O. Ruling R97-1/67 at 8 “

I would like to clarify that DigiStamp is still in business, provides customer services, pays taxes, and is marketing its service to gain new customers<sup>1</sup>. Please, as proof, come to our web site, use your credit card to give us \$10, download the software, time stamp your document, send it to all your friends and show them how well it works.

I contend that this is self-evident: Providing my competitor, the US Postal Service and its agent Authentidate, the list of our customers with a description of why that customer uses our service will cause DigiStamp harm (e.g. competitive disadvantage). This includes the company’s cost data, hiring levels, and business plans.

**DigiStamp’s commercially sensitive data is not essential to the resolution of issues before the commission.**

A key issue in this case before the Commission is whether the USPS EPM service is used as part of communication. To that issue, I gave my testimony as to DigiStamp’s experiences in the marketplace. But, it is important to note that even without DigiStamp’s experience, public data about how the USPS EPM service is used by their customers offers the same conclusion:

“...a single customer at the USPS EPM accounts for about 95% of the transactions and their usage part of a communication. The customer example, if my calculations are correct: In April 2005, a press release was issued that announced a significant increase in sales of EPMs to Liberty Healthcare Group Inc (this customer usage was given as an example in my testimony on page 10).

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<sup>1</sup> Authentidate’s states their assumption at several places in their Motion to Compel that, for example, “[DigiStamp] no longer has customer, revenue, or costs for its competing product” (page 5 line 13)

Given a previous rate of sales of EPM's was about 1000-2000 per month then this new customer would represent 95% of EPM transactions. In this customer usage example there is a one-to-one relationship between receiving a fax communication and purchasing an EPM"<sup>2</sup>

Authentidate states in their motion to compel (page 4 line 7),

“ [ DigiStamp ] statements that it was competitively harmed by the EPM, DigiStamp offers no evidence to support those statements”.

Contained in my testimony is a description of a user of digital time stamps--state governments. Specifically, those consumers who want to conduct certified electronic communications with the state must use the USPS EPM, exclusively. Eliminating DigiStamp's access to an entire customer community is harmful.

Another example: The single competitor that can leverage a marketing jingle “backed by the federal government” has a competitive advantage and thus will cause harm to any business that wants to compete in this market.

Even if DigiStamp did not exist, the USPS in the marketplace will harm competitors and the arguments of my case still stand. DigiStamp's commercially sensitive data is not essential to the resolution of issues before the commission.

I contend further evidence of harm by the mere fact that I have been motivated to spend my time writing these legal documents for these proceedings. I'm not getting paid for this work and I would much rather be involved in developing technology services for reliable electronic communications; I'm a technologist and I do not aspire to become a lawyer.

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<sup>2</sup> Responses of DigiStamp Witness Rick Borgers to Interrogatories of the United States Postal Service (USPS/DS-T1-1-9). This example was also given in my testimony.

In Argument II of Authentidate's Motion to Compel, beginning on page 4, the motion focuses on DigiStamp objections to interrogatories AUTH/DS-T1-2-4,8(b),9-10

In the section below I respond to each interrogatory included in Authentidate's motion to compel.

**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.

Authentidate's motion to compel states

"there is simply nothing commercially sensitive, proprietary or confidential about how DigiStamp's customer's used the e-TimeStamp(T1-2(a)), when DigiStamp's customer made its first purchase of the e-TimeStamp product (T1-2(b)),"

I objected because 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. This testimony would be true even if DigiStamp and its particular set of customers did not exist.

Moreover, I objected because the DigiStamp customers have 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. DigiStamp committed to our customers to maintain the privacy of their data in our consumer privacy statement here: <http://www.digistamp.com/privacy.htm#privacy>

In my statements of Argument I, I also explained why I contend that the names of my customers with a description of our business relationship are commercially sensitive and giving this data to my competitor would cause harm. In balance, the privacy issues and the commercially sensitive nature outweigh any contribution the data would make to these proceedings.

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

Authentidate's motion to compel states

“there is simply nothing commercially sensitive, proprietary or confidential about ... the number of employees DigiStamp has had since 1999 (T1-3)”

In my statements of Argument I, I explained why I contend that DigiStamp costs and operational data is commercially sensitive, proprietary and confidential information. I understand that by providing Authentidate this data, it could add more weight to portions of my testimony. Authentidate has not identified which statements in my testimony for which this interrogatory applies. Therefore, it is difficult to know how not disclosing this data might impact the weight of my testimony.

I had also objected because 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 (my reasons are described in Argument I). In balance, the commercially sensitive nature outweighs any contribution the data would make to these proceedings.

**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.

Authentidate's motion to compel did not add specific arguments about this interrogatory. Authentidate has not specified to what portion of my testimony this interrogatory applies. Therefore, it is difficult to know how not disclosing this data might impact the weight of my testimony.

I had also objected because 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 (my reasons are described in Argument I). In balance, the commercially sensitive nature outweighs any contribution the data would make to these proceedings.

**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?

Authentidate's motion to compel states

"there is simply nothing commercially sensitive, proprietary or confidential about how DigiStamp's customer's used the e-TimeStamp(T1-2(a)), when DigiStamp's customer made its first purchase of the e-TimeStamp product (T1-2(b)),"

DigiStamp objected to the question concerning the number of DigiStamp transactions as well as item "b." of this interrogatory.

In my statements of Argument I, I explain why I contend that DigiStamp costs and operational data is commercially sensitive, proprietary and confidential information.

I contend that transaction volume data 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 within the company as confidential.

DigiStamp has offered to provide transaction data in the form of percentages instead of absolute numbers, where possible, that describes how our customers use the time stamps.

In my response to Argument I, I said that I do understand that by providing Authentidate this data, it could add more weight to specific statements of my testimony. But, Authentidate has not referred to any specific testimony in their interrogatory. Therefore, it is difficult to know how not disclosing this data might impact the weight of my testimony.

Even if the volume information sought by Authentidate had some relevance, it is certainly not *essential* to the Commission's resolution of any material issue before it. In balance, the commercially sensitive nature outweighs any contribution to data would make to these proceedings.

**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.

Authentidate's motion to compel did not make specific arguments to this interrogatory.

I had also objected because 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. In balance, the commercially sensitive nature outweighs any contribution the data would make to these proceedings.

**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.

Authentidate's motion to compel states

"As to AUTH/DS-T1-10, in addition to the issue of competitive harm, the costs to provide a competitive product are relevant to the Commission's recommendation on the rate charged by the USPS for EPM's. DigiStamp's belief that this Commission would not be able to make an "accurate comparison" of DigiStamp's cost with USPS's is not a valid basis to withhold the costing information."

The procedures for recommending a rate for the USPS EPM's are beyond the scope of this case. Authentidate's argument has no connection to relevance for this case.

I objected because the information requested is not relevant to the meaning of this particular section of my testimony. The point is that the EPM program at the Postal Service has operated at a loss and the Postal Service consumer has paid for that loss.

In my statements of Argument I, I explained why I contend that DigiStamp costs and operational data is commercially sensitive, proprietary and confidential information.

Authentidate's motion to compel states

"DigiStamp's belief that this Commission would not be able to make an "accurate comparison" of DigiStamp's cost with USPS's is not a valid basis to withhold the costing information."

I had objected because given that the comparison is not possible unless we know USPS EPM costs, then the data is less relevant to this case – i.e., the data cannot be used for the stated purpose and is therefore less relevant.

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.

In Argument III of Authentidate Motion to Compel, beginning on page 6, Authentidate's motion focuses on DigiStamp's objections to interrogatories AUTH/DS-T1-5-5

DigiStamp had not objected to these interrogatories but did describe the practical reasons why it is not possible for DigiStamp to know the answers to these questions.

**AUTH/DS T1-5.** Identify each customer that switched from using DigiStamp's e-TimeStamp to USPS' Electronic Postmark Service (EPM). Please explain fully.

Authentidate's motion to compel does not specify which of its arguments apply to this interrogatory; at least, it is not clear to me.

I assume this later statement in the Motion to Compel does apply, where Authentidate states:

"DigiStamp's allegations that it lost actual and prospective customers to the EPM are highly suspect when it cannot identify a single actual or prospective customer that is lost or why it lost them."

Authentidate's interrogatory should have been stated differently, clearer, if that was their question. I thought Authentidate interrogatory requested that I develop and produce a complete list, with "each customer". For the new question of identifying at least one customer, I contend an example is already in evidence: the consumers who

want to conduct certified electronic communications with their state governments must use the USPS EPM, exclusively and thus eliminating DigiStamp's access to an entire customer community.

I had objected that, in general, I do not think most merchants could answer this question. As an analogy: as a shoe repair shop owner, I would not know if a customer did not return because they took their business elsewhere; or the customer has not had the need for a shoe repair.

I had suggested that to overcome the inherent problem with answering this question, consider a more feasible approach: the Postal Service supplies a list of their customers so that DigiStamp can identify its customers from that reduced domain of EPM customers. This would be the list that Authentidate seeks.

Authentidate's motion to compel states

" Should DigiStamp be unable to do so, these allegations should be disregarded as unsubstantiated by evidence."

Authentidate does not respond to my practical reasons why this interrogatory cannot be answered. My testimony and the record of these proceeding have given, what I believe, is reasonable and credible evidence of harm. Harm not just to DigiStamp but in the larger context of my testimony is the case: **The Postal Service should not extend its government monopoly status to compete in the electronic communication industry** (my testimony, pages 11-14 of the original complaint). This testimony would be true even if DigiStamp and its particular set of customers did not exist.

**AUTH/DS-T1-6.** Identify each prospective customer of DigiStamp's that became a user of the EPM instead of the DigiStamp e-TimeStamp product. Please explain fully.

a. For each such prospective customer, identify who DigiStamp had contact with at that prospective customer and when such contact was made.

DigiStamp's response did not include the names of each prospective customer because it does not have this data. For example, DigiStamp does not have information that allows us to count these events: a person visits the DigiStamp website, then visits the Postal Service's website and then chooses to sign-up for an EPM account. In general, I don't think any merchant could know the list of "prospective customers"; those that considered using their service.

Authentidate's Motion to Compel states:

"DigiStamp's allegations that it lost actual and prospective customers to the EPM are highly suspect when it cannot identify a single actual or prospective customer that is lost or why it lost them."

Authentidate's interrogatory should have been stated differently, clearer, if that was their question. I thought Authentidate interrogatory requested that I develop and produce a complete list with "each prospective customer." For the new question of identifying at least one prospective customer, I offer the same example already in evidence: the consumers who want to conduct certified electronic communications with their state governments must use the USPS EPM, exclusively and thus eliminating DigiStamp's access to an entire customer community.

To overcome the inherent problem in answering this question, DigiStamp offered what it believe to be a more feasible approach to answer the original interrogatory: the Postal Service supplies a list of their customers so that DigiStamp can identify those that may have contacted DigiStamp directly. This would be a portion of the list that Authentidate seeks.

I also offered an alternative by adding to my testimony information that applied to their question: At a summary level, DigiStamp's transaction volumes increased annually from 1999 to 2003, with a 200% increase in 2003. In 2004, transaction volumes decreased for the first time and growth has stalled since then. Given that the EPM rollout was in early 2004, Authentidate may be able to infer an answer to their question

Authentidate's motion to compel states

"[ DigiStamp ] further concedes that it may have lost customers for reasons unrelated to the USPS' EPM offering"

I do not know where in the record of these proceedings that this statement is made. I don't necessary disagree but I cannot find it in its surrounding context.

Authentidate's motion to compel states

"Should DigiStamp be unable to do so, these allegations should be disregarded as unsubstantiated by evidence."

Authentidate does not respond to my practical reasons why this interrogatory cannot be answered. My testimony and the record of these proceeding have given, what I believe, are reasonable and credible evidence of harm. Harm not just to DigiStamp but also in the larger context of my testimony: **The Postal Service should not extend its government monopoly status to compete in the electronic communication industry** (my testimony, pages 11-14 of the original complaint). This testimony would be true even if the subject DigiStamp and a particular set of prospective customers did not exist.

For the reasons stated above, Digistamp witness Rick Borgers requests that the Commission deny Authentidate's motion to compel.

Respectfully submitted,

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Rick Borgers  
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