

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

REVIEW OF NONPOSTAL SERVICES

Docket No. MC2008-1

PARTIAL RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO ORDER INITIATING PHASE II PROCEEDINGS AND NOTICE OF
FILING OF SWORN STATEMENTS
(January 29, 2009)

On January 9, 2009, the Commission issued Order No. 168, initiating what it characterizes as “Phase II” of the above-captioned proceeding. Order No. 168 required the Postal Service to provide, by January 29, 2009, additional specified information with respect to three activities: the licensing of Postal Service intellectual property on commercial products that relate to postal operations, the warranty repair program, and the sale of music compact discs (CDs). In partial response to this Order, the Postal Service is hereby filing two sworn statements: Statement of Rick L. Osburn (warranty repair program); Supplemental Statement of Carrie A. Bornitz (music CDs).¹ A sworn statement concerning the third issue (licensing) is still being prepared, and will be filed tomorrow, accompanied by an appropriate motion for late acceptance explaining the slight delay.

¹ On January 16, 2008, the Postal Service filed a notice of appeal of Order No. 154 with the D.C. Circuit Court of Appeals, pursuant to section 3663 of title 39. This appeal will address certain jurisdictional and definitional determinations made by the Commission in that Order. Nothing in this document or in the sworn statements should be construed as affecting, implicating, or prejudicing in any way the positions that the Postal Service may take during the course of that appeal. Rather, for the purposes of the Postal Service’s participation in this proceeding only, this document presumes the validity of Order No. 154.

Warranty Repair Program

Order No. 168 contemplates submission of a sworn statement by a knowledgeable individual if the Postal Service wishes to continue expansion of the warranty repair program to customers seeking repair of equipment not owned by the Postal Service. Order No. 168 at 3. As explained in the earlier Statement of Deputy Postmaster General Donahoe, the repair program was originally initiated as an outgrowth of the Postal Service's ongoing commercial relationships with manufacturers of equipment procured by the Postal Service for use in postal facilities. In Order No. 154, the Commission determined that, in that context, the repair program is outside the scope of section 404(e). Order No. 154 at 84-85.

Order No. 154 suggested, however, that the expansion of the program to the repair of equipment not owned by the Postal Service might fall within the scope of section 404(e). Id. In accordance with Order No. 168, the sworn statement of Rick L. Osburn addresses the details of the origins of the repair program, and its expansion to other customers. This statement demonstrates that the expanded warranty repair program allows enhanced utilization of resources developed to meet the maintenance requirements of the modern postal system, and serves a legitimate public need by providing repair services that generally are otherwise not readily available. The sworn statement thus supports the tentative treatment of this limited aspect of the Warranty Repair Program indicated in Appendix I of Order No. 154.

Music Compact Discs

In Order No. 154, the Commission suggested that the Postal Service had neglected to seek authorization for the continued sale of music CDs. Id. at 35. The Commission discussed the Frank Sinatra CD in particular, and noted that it does not appear to fall within the scope of the “Greeting Cards, Stationery, and Related Items” postal product. Id.

The Postal Service agrees with the Commission’s conclusion that music CDs, in and of themselves, do not fall within that postal product, which as noted in the MCS language that the Postal Service proposed for that product covers “items designed to be used to mail personal messages.” See United States Postal Service Notice of Filing of Proposed Mail Classification Schedule Language for Four Products It Requests Should be Added to the Product Lists as Postal Services at 15 (October 17, 2008). However, the Postal Service sells on USPS.com music CDs for various artists that are sold along with stamped mailers on which a personalized message can be written, that are designed to be mailed. The Postal Service considers these music CDs, expressly designed to include a personalized message and be mailed, to be a “postal service,” and therefore will address these items in the upcoming February filing concerning “postal services,” in compliance with section 3642 of title 39.

The general sale of other music CDs, meanwhile, falls within the scope of Officially Licensed Retail Products (OLRP). Indeed, the proposed MCS language filed by the Postal Service specifically identified the sale of CDs:

XXXX Officially Licensed Retail Products (OLRP)

XXXX.1 Description

OLRP are merchandise sold through the Postal Service's retail channels. The merchandise relates to mail, governmental services provided at the Post Office, or stamp images, or contains the postal brand.

Mail-related merchandise —Mail-related merchandise includes items that facilitate the use of the Postal Service's mailing and shipping services. It includes scales, stamp dispensers, rubber stamps, and other mail-related items offered for sale by the Postal Service.

Government Services-related merchandise —Government services-related merchandise include items associated with the Postal Service's provision of government related services. An example is the passport holder.

Stamp-related or Postal-branded merchandise —Stamp or Postal Brand related merchandise include items that have, or are associated with, a Postal Service issued stamp, or that have a postal brand. It includes ornaments, tote bags, **CDs**, framed artwork, and other types of merchandise.

See United States Postal Service Notice of Filing of Proposed Mail Classification Schedule Language for Six Nonpostal Services Pursuant to Order No. 120 at 6 (November 7, 2006) (emphasis added). The Frank Sinatra CD identified by the Commission is an example of "Stamp-related merchandise," in that it was issued to promote the Frank Sinatra commemorative stamp.

Though the Postal Service considers that music CDs fall within the scope of OLRP, which has been grandfathered by the Commission (Order No. 154 at 48-50), the Postal Service is filing the sworn statement of Carrie A. Bornitz that discusses this issue further. As Ms. Bornitz notes, the Postal Service offers a variety of CDs and DVDs that serve to support stamp releases, or to otherwise leverage the Postal Service brand on items that enhance its image and supports the mission of the Postal Service. The considerations that supported the authorization of OLRP thus apply fully to these items.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Richard T. Cooper
Chief Counsel, Business & Finance
Law

Eric P. Koetting
Joseph F. Wackerman
Keith E. Weidner

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1135
(202) 268-2993, Fax -5418