

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

COMPLAINT OF GAMEFLY, INC.

Docket No. C2009-1

**MOTION OF THE UNITED STATES POSTAL SERVICE
FOR PARTIAL DISMISSAL OF COMPLAINT**
(May 26, 2009)

The United States Postal Service hereby files this motion to dismiss, in part, the Complaint in this docket.

Filed on April 23, 2009, the Complaint in this docket alleges that the Postal Service has violated 39 U.S.C. § 404(b). However, the Postal Regulatory Commission lacks jurisdiction to hear complaints asserting violations of this section of title 39, United States Code. Accordingly, to the extent that the Complaint relies on 39 U.S.C. § 404(b), it fails to state a cause of action for which relief can be granted and should be dismissed.

Subsection 404(b) states that:

Except as otherwise provided, the Governors are authorized to establish reasonable and equitable classes of mail and reasonable and equitable rates of postage and fees for postal services in accordance with the provisions of chapter 36. Postal rates and fees shall be reasonable and equitable and sufficient to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States.

The jurisdiction of the Postal Regulatory Commission to hear complaints is narrowly specified in 39 U.S.C. § 3662(a), as amended by the Postal Accountability and Enhancement Act, Public Law 109-435, 120 Stat 3218 *et seq.* (December 20, 2006).

That subsection clearly states that:

Any interested person . . . who believes the Postal Service is not operating in conformance with the requirements of the provisions of sections 101(d), 401(2), 403(c), 404a, or 601, or this chapter (or regulations promulgated under any of those provisions) may lodge a complaint with the Postal Regulatory Commission.

In paragraphs 53 and 55, the Complaint alleges that, by applying unreasonable methods of mail processing to mail pieces on which First-Class Mail flat prices have been paid, the Postal Service has violated 39 U.S.C. § 404(b).

However, this subsection is not one of the specific provisions of Chapters 1 and 4 of title 39, United States Code that are identified in subsection 3662(a). Nor, by definition, is subsection 404(b) a part of “this chapter” -- chapter 36 of title 39, U.S.C. -- or any of its implementing regulations.

Thus, the Commission lacks jurisdiction under subsection 3662(a) to entertain a complaint alleging a violation of subsection 404(b). Moreover, a complaint filed under subsection 3662(a) alleging a violation of subsection 404(b) fails to state a cause of action for which the Commission may grant relief. Accordingly, the Complaint in this docket must, in part, be dismissed.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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