

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

COMPLAINT OF GAMEFLY, INC.            )  
  )  
  )           Docket No. C2009-1

**MOTION OF GAMEFLY, INC.  
FOR LEAVE TO FILE REPLY TO  
REQUESTS OF THE USPS  
FOR DISPOSITION OF COMPLAINT  
(June 2, 2009)**

GameFly, Inc. (“GameFly”), respectfully moves for leave to reply to the Postal Service’s May 26, 2009 Answer, to the extent that it seeks summary resolution of certain procedural and substantive issues raised by GameFly’s complaint, including dismissal of GameFly’s complaint without full discovery, without a hearing, or without any further consideration of the case on the merits.

In ordinary civil litigation, the function of a complaint and answer is simply to put the parties on notice of the positions asserted by each party. Requests for procedural handling of the case, or summary disposition of one or more claims on the merits, are normally raised by motions to dismiss, motions for summary judgment, motions *in limine*, or various procedural motions. Motions of this kind are separate pleadings from the complaint and answer; and non-moving parties are entitled as a matter of course to respond to the motions.

By contrast, the Postal Service's May 26 Answer essentially combines an answer with several threshold motions. In particular, the Answer can be read as a combination of a traditional answer with a preliminary motion asking the Commission to: (1) find that the complaint "has failed to state a claim upon which relief can be granted" (Answer at 25); (2) limit discovery (*id.*); (3) summarily decide the case without a hearing (*id.*); and (4) consider dismissing the complaint without further consideration (*id.* at 26).

GameFly does not contend here that such a combination pleading is improper, and we are not asking the Commission to strike any portion of it. But due process entitles GameFly to a reply. Accordingly, GameFly requests that the Commission accept the reply that GameFly has filed separately today.

Respectfully submitted,

David M. Levy  
Jennifer T. Mallon  
VENABLE LLP  
575 7<sup>th</sup> Street, N.W.  
Washington, DC 20004  
(202) 344-4800

*Counsel for GameFly, Inc.*

June 2, 2009