

REDACTED VERSION

Postal Regulatory Commission
Submitted 9/28/2009 3:43:00 PM
Filing ID: 64956
Accepted 9/28/2009

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

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

OBJECTIONS OF THE UNITED STATES POSTAL SERVICE TO
DISCOVERY REQUESTS OF GAMEFLY, INC.
(GFL/USPS-84-85, 92-93, 98-100, 109, 117, 122(e)-(j), 129, 151, 152(d))
(September 28, 2009)

On September 18, 2009, GameFly, Inc. submitted 85 discovery requests, with subparts, to the Postal Service. Pursuant to the Commission’s Rules of Practice and Procedure, the Postal Service hereby provides objections to several of those discovery requests: GFL/USPS-84-85, 92-93, 98-100, 109, 117, 122(e)-(j), 129, 151, 152(d). These discovery requests are appended to this objection.

With respect to GFL/USPS-84 and 85, GameFly requests confirmation that a large number of senior officials have “personally been aware since at least 2005” of the manual processing that is often accorded to Netflix return pieces, and, if not, confirmation of the precise date in which they became aware. The Postal Service is willing to acknowledge that senior management has generally been aware of the manual processing of Netflix return pieces during that time period. However, the level of detail asked for in these discovery requests, requiring the Postal Service to determine if and when individual members of senior management gained personal knowledge of such processing, is simply irrelevant, and adds nothing material to the record. The Postal Service therefore

REDACTED VERSION

objects to these discovery requests on the grounds of relevance. The Postal Service also objects to GFL/USPS-152(d), on the same ground.

The Postal Service also objects to a number of discovery requests on relevance grounds, because they inquire into matters unrelated to the manual processing of Netflix DVD return mailers. The Postal Service has previously discussed its position that such discovery requests are not materially relevant to this proceeding, in its prior objections and responses to GameFly motions to compel, filed on August 10, 2009, August 31, 2009, and September 24, 2009, and incorporates that discussion here. The specific discovery requests that are objected to are 1) GFL/USPS-92-93, which concern service provided to outbound Netflix mailers; 2) GFL/USPS-99 and 100, which asks for details concerning the organization of the Business Mail Acceptance function at Headquarters; 3) GFL/USPS-109, which asks for information concerning the payment of postage by Netflix; 4) GFL/USPS-117, which asks for information concerning the entry of Netflix outbound mail at BMEUs back in 2003; 5) GFL/USPS-129, which concerns the entry of Netflix outbound mail; and 6) GFL/USPS-151, which concerns Netflix's use of Business Reply Mail.

The Postal Service also objects to GFL/USPS-98, in which GameFly asks for yet more information concerning Netflix-only mail slots. As the Postal Service has discussed previously in this proceeding, the designation of a mail slot as being for the deposit of Netflix mail only is expressly contrary to postal policy, a fact which the Postal Service will re-communicate to the field. See Response of the United States Postal Service to Motion of GameFly, Inc., to

REDACTED VERSION

Compel the Postal Service to Answer Discovery Requests GFL/USPS-79-80 at 2 (September 24, 2009). The Postal Service will also take corrective action against any offices identified as having such unauthorized signage. Id. Considering the existence of this postal policy, further inquiry into this matter is simply irrelevant to determining whether the Postal Service is unduly discriminating against GameFly in the processing of its return mail compared to Netflix.

With respect to GFL/USPS-122(e)-(j), the Postal Service objects to these discovery requests as seeking irrelevant information, that would not provide a material contribution to the record. In these interrogatories, GameFly asks various functions within the Postal Service to speculate as to what has motivated Netflix not to modify its DVD mailer. Such speculation would not provide material evidence, because the Postal Service cannot know Netflix's internal motivations. Furthermore, as GameFly has noted previously, this "complaint is against the Postal Service, not Netflix." See Motion of GameFly, Inc. to Compel Responses to Discovery Requests GFL/USPS-3(e), 4(e), 6(a)-(e), (g)-(h), 7, 8, 14(e), 15, 16(f), (g), 20(a)-(d), 21, 28, 29, 31, 40, and 41(c) at 16 (August 24, 2009). As such, what may or may not have motivated Netflix is irrelevant in determining whether the *Postal Service* is violating section 403(c) in its processing of Netflix mail, compared to GameFly mail. The Postal Service therefore objects to these interrogatories on the grounds of relevance. It also objects to these interrogatories on the grounds of burden, as they would require the Postal Service to determine whether any of its employees in various

REDACTED VERSION

Headquarters functions have ever at one time speculated as to what Netflix's motivations are concerning its decision not to modify its mailpiece.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Pricing and Product
Support

Kenneth N. Hollies
Elizabeth A. Reed
Keith E. Weidner

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-6252, Fax -6187

REDACTED VERSION

Discovery Requests Objected to

GFL/USPS-84. Please confirm that the following individuals have personally been aware since at least 2005 that the majority of Netflix inbound mailpieces are culled from the automation mailstream and manually processed. If not confirmed, please provide the date when each first became aware of this.

- The Postmaster General
- The Deputy Postmaster General
- The Senior Vice President, Operations
- The previous Senior Vice President, Operations
- The General Counsel
- The Senior Vice President, Customer Relations
- The Acting Senior Vice President, Strategy and Transition
- The previous Senior Vice President, Strategy and Transition
- The Vice President, Pricing
- The Acting Vice President, Engineering
- All Vice Presidents, Area Operations

GFL/USPS-85. Please confirm that the following individuals have personally been aware since at least 2005 that some Areas and Districts had Standard Operating Procedures in place instructing employees to cull Netflix inbound mailpieces from the automation mailstream and manually process them. If not confirmed, please provide the date when each first became aware of this.

- The Postmaster General
- The Deputy Postmaster General
- The Senior Vice President, Operations
- The previous Senior Vice President, Operations
- The General Counsel
- The Senior Vice President, Customer Relations
- The Acting Senior Vice President, Strategy and Transition
- The previous Senior Vice President, Strategy and Transition
- The Vice President, Pricing
- The Acting Vice President, Engineering
- All Vice Presidents, Area Operations

GFL/USPS-92. Please provide the FY 2007 and FY 2008 percentage of Netflix's outbound overnight service standard pieces that received same-day service. Please provide all underlying data and calculations.

GFL/USPS-93. Please provide the FY 2007 and FY 2008 percentage of Netflix's outbound two-day pieces that received overnight service. Please provide all underlying data and calculations.

REDACTED VERSION

GFL/USPS-98.

- (a) Please describe the typical mail flow for Netflix mail pieces that are deposited into Netflix-only mail slots.
- (b) Are these pieces generally available for pickup by Netflix on the same day that the pieces are deposited into the mail slot?
- (c) What is the official service standard for these pieces?

GFL/USPS-99. Please confirm the following statements. Explain fully any failure to confirm:

- (a) The Postal Service Intranet (“blue”) website includes a page of contact information for Business Mail Acceptance (“BMA”) managers.
- (b) The listing identifies the subject matter responsibilities of each BMA manager.
- (c) One manager is identified as having responsibility for “Netflix.”
- (d) The manager identified as having responsibility for “Netflix” is Michael Ohora.
- (e) The listings of BMA managers identify no other individual Postal Service customer as the responsibility of any BMA manager.

GFL/USPS-100. Please explain why the Postal Service assigns an individual Business Mail Acceptance (“BMA”) manager to Netflix, but to no other customer of the Postal Service.

**[Discovery Requests GFL/USPS-109, 117, 122(e)-(j),
129, 151, 152(d) Redacted]**