

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

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

**SIXTH DISCOVERY REQUESTS OF GAMEFLY, INC.,
TO THE UNITED STATES POSTAL SERVICE
(GFL/USPS-186 – 200)**

Pursuant to Rules 25 through 27 of the Rules of Practice and Procedure of the Postal Regulatory Commission, GameFly, Inc., respectfully submits the following discovery requests to the United States Postal Service.

Respectfully submitted,

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October 6, 2009

INSTRUCTIONS AND DEFINITIONS

A. Instructions

1. These discovery requests impose a continuing obligation to respond and to provide additional information as it becomes available.
2. If no information or documents are responsive to any of these discovery requests, please so indicate.
3. For each data request, please identify the preparer or the person under whose direct supervision the response was prepared.
4. Please specify the data request to which each document applies. If a document or narrative response applies to more than one request, please provide a cross reference.
5. For data requests calling for the production of documents, please provide legible, true, and complete copies of the documents. If a responsive document has been lost or destroyed, or is otherwise unavailable, please follow Instruction 12 below.
6. Where a data request specifically requests a narrative response rather than the production of documents alone, a narrative response is required and the production of documents does not substitute for a narrative response.

7. These data requests are to be construed broadly to elicit all requested information which is discoverable under the Commission's Rules of Practice. Accordingly,

(a) The present tense includes the past tense and the past tense includes the present tense, and

(b) The singular includes the plural and the plural includes the singular.

8. The section headings in these discovery requests are provided solely for the convenience of the reader, and are not intended as restrictions on the scope of the information sought.

9. If any responsive information is not available in the form requested, please provide the available information or documents which best responds to the data request.

10. The time period covered by each question is limited to the period since November 1, 2007, unless the question (a) specifies a different time period, or (b) seeks production of the documents or information on which the Postal Service relies in support of a statement, claim or proposition.

11. These data requests apply to all responsive information and documents in your possession, custody, and control, or in the possession, custody, or control of your attorneys, witnesses, or other agents, from all files, wherever located, including active and inactive files and including electronic files.

12. If any responsive information or document is not in your possession, custody, or control, but you know or believe that it exists, please identify the information or document and indicate to the best of your ability the location and custodian of the information or document.

13. If any document responsive to any of these data requests has been destroyed or is otherwise unavailable, please identify and describe:

- (a) The subject matter and content of the document,
- (b) All persons involved in the destruction or removal of the document,
- (c) The date of the document's destruction or removal, and
- (d) The reasons for the destruction or other unavailability of the document.

14. If you assert any claim of privilege or discovery immunity in response to any data request, please identify each document withheld and state:

- (a) The document's title and type,
- (b) The privilege or immunity claimed and the basis for claiming such privilege or immunity,
- (c) Each person who prepared, signed, or transmitted the document,
- (d) Each person to whom the document, or any copy of the document, was addressed or transmitted,

(e) The date of the document, and

(f) The subject matter of the document.

15. For each response which is generated by a computer or electronic data storage mechanism, please state:

(a) The name of the file from which the response came,

(b) How the data are stored (punch cards, tapes, disks, etc.),

(c) How the data are transmitted and received, and

(d) The name of each person who collected the data or entered the data into the computer or electronic data storage mechanism.

16. For any requests with subparts, please provide a complete separate response to each subpart as if the subpart was propounded separately.

17. If information or documents responsive to any of these data requests has previously been provided in this proceeding in response to a discovery request by any participant, please provide a specific cross-reference. There is no need to make a duplicate response.

18. If you perceive any ambiguity in interpreting any data request, or any instruction or definition applicable thereto, please secure a clarification from counsel for GameFly as soon as the ambiguity is perceived.

Definitions

1. "Answer" refers to the Answer of the United States Postal Service submitted on May 26, 2009.

2. "Communication" means any correspondence, contact, discussion or exchange between any two or more persons. The term includes, but is not limited to, all documents, telephone conversations or face-to-face conversations, electronic mail, conferences or other meetings.

3. "Document" means any written, recorded, computer-stored, computer-generated or graphic material however stored, produced or reproduced. The term is to be construed to the full extent of the definition in Rule 34 of the Federal Rules of Civil Procedure. Any document that is not exactly identical to another document for any reason, including but not limited to marginal notations or deletions, is a separate document.

4. "DVD" means an optical disc storage medium also known as "Digital Versatile Disc" or "Digital Video Disc." As used in these questions, the term encompasses movie, music and game DVDs, and next-generation High Definition optical formats (such as Blu-ray Disc) as well as the standard definition format.

5. "DVD mailer" and "lightweight mailer" mean a mailpiece consisting of a DVD in a specialized mailing envelope, which may also include a protective insert. As used in these questions, the terms "DVD mailer" and "lightweight mailer" do not refer to mailpieces with DVDs in hard plastic jewel cases.

6. "Each" includes the term "every" and "every" includes the term "each." "Any" includes the term "all" and "all" includes the term "any." "And" includes the term "or" and "or" includes the term "and."

7. "Identify" means to state as follows:

- (a) With respect to a document and to the extent that the following information is not readily apparent from the document itself: (i) the document's title, date, author(s), signer(s), sender(s), addressee(s) and recipient(s); (ii) the type of document (e.g., letter, memorandum, agreement, invoice) its location and custodian; and (iii) a detailed description of its contents or principal terms and provisions.
- (b) With respect to a communication and to the extent the following information is not readily apparent: (i) the time, date and place of the communication; (ii) all maker(s) and recipient(s) of the communication; (iii) the mode of communication; (iv) the subject matter of the communication; and (v) any document generated in connection with the communication.
- (c) With respect to a person and to the extent the following information is not readily apparent: (i) the person's full name; (ii) the person's employer, job title, and a brief description of the person's current duties and duties at the time relevant to the data request; and (iii) the person's business address.

8. "Joint Statement of Undisputed and Disputed Facts" refers to the Joint Statement of Undisputed and Disputed Facts filed by the parties on July 20, 2009.

9. "OIG report" means OIG Audit Report No. MS-AR-08-001, Review of Postal Service First-Class Permit Reply Mail (issued November 8, 2007).

10. "Postal Service" or "USPS" refers to the United States Postal Service, including USPS Headquarters and any subordinate department, division, or office of the USPS, whether at the national, area, district or local level. This definition includes the officers, directors, agents and employees of the United States Postal Service and its Board of Governors.

11. "You" and "your" refers to the Postal Service, as indicated by the context of the question, as described in definition 10, *supra*.

12. The terms "related to" or "relating to" mean being in any way relevant to, commenting on, consisting of, referring to, composing, comprising, discussing, evidencing, identifying, involving, reflecting, or underlying.

13. The terms "state," "describe" and "explain" call for answers independent from any documents that are required in response to these data requests. Such answers should be in a form (e.g., narrative, tabular) appropriate to a complete response to the request.

QUESTIONS

GFL/USPS-186. This question refers to your response to GFL/USPS-45.

(a) Please name the “GameFly representatives” to whom you attribute the quoted statements. If you cannot recall the individuals’ names, please describe their responsibilities, job title, and other identifying information.

(b) Please provide the name and job title of each Postal Service employee that you contend witnessed the statements.

GFL/USPS-187. This question refers to your responses to GFL/USPS-52 and GFL/USPS-53.

(a) Please state how many multiples of the Netflix average DVD breakage rate the *Postal Service* contends other DVD rental companies should be required to accept in exchange for paying the same letter rates of postage that Netflix pays.

(b) Please state the maximum rate of postage that the *Postal Service* contends other DVD rental companies should be required to pay to obtain the same breakage rate for DVD reply mailers that Netflix obtains by paying letter rates of postage.

(c) Does the Postal Service contend that the greater mail volume entered by Netflix is a legally sufficient ground for offering Netflix DVD mailers a greater degree of manual culling and special manual processing than the Postal

Service offers to other DVD rental companies? Please explain fully any answer other than an unqualified no.

(d) Does the Postal Service contend that any other characteristic of Netflix mail provides a legally sufficient ground for giving Netflix a greater degree of manual culling and special manual processing than the Postal Service offers to other DVD rental companies? If so, please identify each such characteristic and explain why you contend it justifies the difference in handling.

(e) Do you contend that discrimination between Netflix and other DVD rental companies in the processing of their reply DVD mailers can be justified by differences between Netflix and other DVD rental companies in a mail characteristic whose cost effects the Postal Service cannot quantify? Please explain fully any answer other than “no.”

GFL/USPS-188. This question refers to your response to GFL/USPS-64(d).

(a) Please name the GameFly employee that you contend made the statement. If you cannot recall his or her name, please describe his or her responsibilities, job title, and other identifying information.

(b) Please provide the name and job title of each Postal Service employee that you contend witnessed the statement.

GFL/USPS-189. This question refers to your responses to GFL/USPS-67.

(a) The last three sentences of your response to GFL/USPS-67(a) discuss alternative meanings of “manual processing.” Is there any widely used

meaning of the phrase known to the Postal Service that would change the first word of your answer to the question? If so, explain fully.

(b) Please confirm that your answer to GFL/USPS-67(b) means that the Postal Service disagrees with the premise of the question. If you fail to confirm without qualification, please explain fully why you disagree with GFL/USPS-67(b).

GFL/USPS-190. This question refers to your responses to GFL/USPS-71(a) and (c):

(a) Please confirm that the Postal Service does not know what percentage of the inbound pieces receive the processing described in your response to GFL/USPS-71(a). Explain fully any failure to confirm without qualification, and provide supporting documentation.

(b) Please confirm that the Postal Service does not know what percentage of the inbound pieces receive the processing described in the first sentence of your response to GFL/USPS-71(c). Explain fully any failure to confirm without qualification, and provide supporting documentation.

(c) Please provide all the reasons why the Postal Service could not develop and apply a surcharge to all pieces that reflect a weighting of (i) the estimated percentage of pieces that receive the processing described in the first sentence of your response to GFL/USPS-71(c), and (ii) the estimated percentage of pieces that receive the processing described in the third sentence of the same response.

GFL/USPS-191. This refers to your response to GFL/USPS-78(b). Please list any and all “legal ramifications” *other* than a violation of 39 U.S.C. § 403(c) that the author(s) of the phrase “contemplated.”

GFL/USPS-192. This refers to your response to GFL/USPS-81. The last sentence appears truncated. If so, please complete it. If it is not truncated, please explain what the phrase “but the Postal Service” means.

GFL/USPS-193. This refers to your response to GFL/USPS-82(c).

(a) Does the Postal Service contend that no other DVD rental company other than the two companies listed in the answer have requested manual processing of their inbound DVD mailers?

(b) What potential circumstances does the Postal Service have in mind by the phrase “will be supplemented if necessary”? Does this statement refer simply to the possibility that the Postal Service might discover additional responsive documents? Or does the statement have other circumstances in mind? If the latter, please explain fully.

GFL/USPS-194. This refers to your response to GFL/USPS-87. Please name the individual.

GFL/USPS-195. This refers to your response to GFL/USPS-88. Please name the individuals and groups to the extent that you possess this information.

GFL/USPS-196. This refers to your response to GFL/USPS-143(e). What categories of “additional costs” or cost items did the author of the presentation have in mind?

GFL/USPS-197. This refers to your response to GFL/USPS-152(c). Please give a numerical answer to the question. If you cannot give a precise number, give the best approximation you can.

GFL/USPS-198. This question concerns the “data” to which you refer in the last sentence of your response to GFL/USPS-164(c).

(a) Please produce the data.

(b) Please provide each and every reason why you believe that the data are not “adequate” to draw inferences from.

(c) Does the Postal Service have better data, from any source, on the accept and damage rates that are the subject of GFL/USPS-164?

GFL/USPS-199. Please refer to your response to GFL/USPS-165(b), and the second sentence of your response to GFL/USPS-165(a). Does the *Postal Service* have enough information to comment on the accept and damage rates of the outbound and returning mailpieces of the customer in question? If so, please do so.

GFL/USPS-200. Please refer to the third sentence of your response to GFL/USPS-166(b), which contains the phrase “there was some debate . . .” If

the “debate” was reflected in any documents, please produce them or provide GFL Bates number citations to them.