

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

COMPLAINT OF GAMEFLY, INC.

Docket No. C2009-1

**THE UNITED STATES POSTAL SERVICE
RESPONSE TO PRESIDING OFFICER'S ORDER NO. 381**
(January 28, 2010)

On September 25, 2009, GameFly, Inc. filed a motion requesting that the Commission unseal various documents that have been produced by the Postal Service in discovery under protective conditions.¹ After further submissions from the Postal Service, Blockbuster, and GameFly,² the Presiding Officer issued Ruling (POR) No. 12, which proposed a three-category framework for determining appropriate standards by which to unseal information in the relevant documents, pursuant to 39 U.S.C. § 504(g)(3)(B), 39 C.F.R. § 3007.60, and Federal Rule of Civil Procedure 26(c).³ The Commission affirmed Presiding Officer's Ruling No. 12 on January 7, 2010, and in that affirmation it required the Postal Service and GameFly to discuss the confidential documents and report to the Commission within twenty-one days. The Commission's Order also directed the Postal Service to provide specific information in support of any privilege claim.

¹ See Motion of GameFly, Inc. for Order Directing Interested Parties to Show Cause Why Certain Documents and Information Designated as Proprietary by the Postal Service Should Not be Unsealed, September 25, 2009. All citations in this document are to filings in Docket No. C2009-1, unless otherwise noted.

² Third Party Blockbuster's Opposition to GameFly's Motion to Unseal Certain Documents, October 19, 2009; Opposition of the United States Postal Service to the Motion of GameFly, Inc. to Unseal Certain Documents Produced in Discovery (hereinafter "Postal Service Opposition"), October 19, 2009; Rejoinder of GameFly, Inc., to Oppositions of the United States Postal Service and Blockbuster Inc. to Motion of GameFly, Inc. to Unseal Certain Documents and Information Designated as Proprietary by the Postal Service (hereinafter "GameFly Rejoinder"), October 25, 2009.

³ Presiding Officer's Ruling (No. C2009-1/12) on Motion to Show Cause Why Certain Documents Should Not Be Unsealed, November 18, 2009.

The Postal Service and GameFly discussed confidentiality issues on January 22, 2010, and though they reached agreements on some issues, outstanding issues remain.

In this Response, the Postal Service provides information requested for documents containing sensitive confidential information and documents protected by the deliberative process privilege as requested by the Commission and set forth in 39 CFR 3007.21(c). The attachment to this Response includes a privilege log covering the Postal Service's confidential documents, and these documents are presented to the Commission for its review.

§3007.21(c) Criteria⁴

[REDACTED]

Respectfully submitted,

UNITED STATES POSTAL SERVICE
By its attorneys:

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

Kenneth N. Hollies
James M. Mecone

475 L'Enfant Plaza, S.W.
Washington, D.C. 20260-1137
(202) 268-8917; Fax -6187
January 28, 2010

⁴ The factors are described in detail in the accompanying Application of the United States Postal Service for Non-Public Treatment of Materials. In general, the factors can be described as follows: (1) rationale for non-public treatment; (2) contact identification; (3) description; (4) identification of commercial harm; (5) hypothetical harm; (6) extent of protection; (7) length of time for protection; and (8) other.