

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

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

**FIRST DISCOVERY REQUESTS OF THE UNITED STATES POSTAL
SERVICE TO GAMEFLY, INC.
(USPS/GFL-1 through -46)
(May 4, 2010)**

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

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:
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May 4, 2010

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 indicate the lack of responsive information or documents.
3. For each data request, please identify the preparer or the person who supervised the response.
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 a data request 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 seeks 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 that 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. If any responsive information is not available in the form requested, please provide the available information or documents which best respond to the data request.

9. The time period covered by each question is limited to the period after September 8, 2002 unless the question (a) specifies a different time period, or (b) seeks production of the documents or information on which GameFly relies in support of a statement, claim or proposition.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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 (disks, tapes, 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.

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

16. 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.

17. If you perceive any ambiguity in interpreting any data request or any instruction or definition applicable to a data request, please secure a clarification from counsel for the United States Postal Service as soon as the ambiguity is perceived.

B. Definitions

1. “Complaint” refers to the Complaint of GameFly, Inc. submitted on April 23, 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 mail piece consisting of a DVD in a specialized mailing envelope, which may also include a protective insert.

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. "GameFly" refers to GameFly, Inc. This definition includes the officers, directors, agents and employees of GameFly, Inc.

9. "You" and "your" refers to GameFly, as indicated by the context of the question.

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

11. 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 for a complete response to the request.

12. "Business Reply Mail" or "BRM" refers to a domestic service that allows a mailer to receive First-Class Mail back from customers and pay postage only for the pieces returned to the mailer from the original distribution of BRM pieces. These pieces must have a specific address and format. Postage and fees are collected when the mail is delivered back to the original mailer.

13. "USPS" or "Postal Service" 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.

14. The “GameFly Memo” refers to the Memorandum of GameFly, Inc., Summarizing Documentary Evidence filed under seal with the Postal Regulatory Commission on April 12, 2010.

15. “Destinating GameFly Facility” refers to each of the four distribution centers operated by GameFly, the locations to which GameFly brings its BRM mail pieces after it picks them up at the plant caller service location.

QUESTIONS

USPS/GFL-1. Please describe each mail piece used by GameFly to transport its DVDs through the mail. For each mail piece design, please include the period of usage, the number of pieces mailed, the breakage rates experienced during the use of each, the theft rates experienced during the use of each, and whether GameFly sought or gained the Postal Service’s approval of each.

USPS/GFL-2. Please explain the reasoning for GameFly’s decision to stop using each mail piece design described in the response to USPS/GFL-1, including strengths and weaknesses of the outgoing design compared to its replacement.

USPS/GFL-3. Please explain the reasons for each modification to the design of a GameFly mail piece described in the response to USPS/GFL-1.

USPS/GFL-4. Please produce all documents and communications related to any of the following matters:

- (a) GameFly's decision to use a mail piece to transport its DVDs through the mail;
- (b) GameFly's decision to stop using a particular mail piece or to use some other design; and
- (c) GameFly's decision to modify the design of its mail piece.

USPS/GFL-5. Please produce all documents and communications related to actual or alleged theft of GameFly DVDs, the mail piece design of each such piece, and efforts to address or remediate actual or alleged theft.

USPS/GFL-6. Please describe all mail piece design testing conducted by GameFly or on behalf of GameFly. What were the purpose and results of each test? Please provide complete results and any analysis that was developed during or subsequent to any test.

USPS/GFL-7. This question relates to each time GameFly changed the color of its mail piece, whether such change occurred at the time a new design was adopted or not. Why did GameFly decide to change the color of its mail piece? Please describe each factor that contributed to GameFly's decision to change the color of its mail piece.

USPS/GFL-8. Please describe in detail the production of mail pieces, starting with procurement of stock and all mailing/shipping supplies and extending to the point actual mail is inducted or entered. If changes in mail piece design triggered or coincided with any change in the production process, please explain completely before and after processes and why such changes were undertaken.

USPS/GFL-9. Please describe in detail how GameFly receives delivery of return DVDs and how such mail pieces and DVDs are handled by GameFly to the point where the production process described in the response to USPS/GFL-8.

USPS/GFL-10. Please describe the location and frequency with which GameFly picks up BRM pieces at each BRM return site. In your answer, please include days of the week and times per day, and a measure of volume per site on at least a quarterly frequency.

USPS/GFL-11. By designating GameFly facility, please provide the most recent accounting year volume by 5-digit ZIP Code of all mail pieces being returned from GameFly customers.

USPS/GFL-12. Please describe any measures GameFly undertakes to manage or limit theft. In your answer please include the anti-theft procedures utilized in GameFly's own plants and during transit of GameFly mail to and from postal facilities.

USPS/GFL-13. By designating GameFly facility, please provide the most recent accounting year volume by 5-digit ZIP Code of all mail pieces that failed to be received from GameFly customers.

USPS/GFL-14. Is GameFly able to track individual DVDs to individual customers? If so, how well does that work quantitatively?

USPS/GFL-15. Please describe any actions taken by GameFly when it suspects customer theft.

USPS/GFL-16. Separated by each 5-digit ZIP Code, please describe the frequency with which GameFly has taken the actions described in the response to USPS/GFL-15.

USPS/GFL-17. What threshold does GameFly consider to be an acceptable loss/theft rate? Please provide the research that determined this rate. At what rate does GameFly contact postal officials for assistance? How many times and when in the last three years has GameFly:

- (a) Contacted postal officials regarding theft issues?
- (b) Visited a postal facility to conduct further investigation?
- (c) Requested a visit when that request was denied? Or
- (d) Visited a postal facility without first seeking USPS management approval of the visit?

USPS/GFL-18. Separated by the 5-digit ZIP Code of the customer, what is the current loss/theft rate of customer-returned GameFly mail pieces by destinating facility location.

USPS/GFL-19. What are GameFly's damage rates for the mail piece it currently uses? What were GameFly's damage rates for each mail piece design it used in the past?

USPS/GFL-20. By destinating GameFly facility, please provide the most recent accounting year volume by 5-digit ZIP Code of all damaged mail pieces:

- (a) Returned from GameFly customers;
- (b) Reported by customers as having arrived damaged; and
- (c) Damaged en masse due to one or more apparently extraordinary

events that impacted many pieces.

USPS/GFL-21. What threshold does GameFly consider to be an acceptable damage rate? Please provide the research that determined this rate.

USPS/GFL-22. Separated by 5-digit ZIP Code of the customer, what is the current damage rate of customer-returned GameFly mail pieces by destinating facility location? Please also discuss the respective types of damage and your best understanding of how such damage occurred.

USPS/GFL-23. What are the average volumes per entry site by month for the last year? Please provide volume in pieces and handling units.

USPS/GFL-24. To what destination(s) does each GameFly distribution center mail? Does each GameFly distribution center mail its pieces nationally? Please provide a specific list of destinations for each distribution center. Please separate out “open and distribute” mailings (Express Mail or Priority Mail) and describe approximately how many pieces are sent from which distribution center destinating for opening in what locations and ultimate delivery in which three- or five-digit ZIP Codes.

USPS/GFL-25. What is the average distance from each GameFly distribution center to the postal facility or facilities in which the GameFly distribution center enters its mail? What are the weight averaged decile distances from each distribution center to GameFly customers served by each distribution center?

USPS/GFL-26. What is the transportation cost incurred by GameFly to transport its mail from each GameFly distribution center to the postal facility used by that

distribution center? What is the transportation cost incurred by GameFly to transport its mail from the postal facility to each GameFly distribution center?

USPS/GFL-27. Has GameFly performed any studies of or qualitatively evaluated expanding its number of USPS entry and destination locations? If so, please provide the results of these studies and all related analysis.

USPS/GFL-28. Please describe the total cost that GameFly would incur if it expanded its distribution network to sixty or one hundred twenty locations. In your answer, please itemize costs separately.

USPS/GFL-29. Please produce all documents related to GameFly's research or analysis concerning the material used in the DVDs it distributes.

USPS/GFL-30. Has GameFly conducted any testing related to materials used in the DVDs it distributes or that it is aware respective manufacturers have undertaken? In your answer please describe the tests and any results from the tests, including breakage rates for the materials tested.

USPS/GFL-31. Is there an industry standard for the material used in DVDs? Please describe the industry standard.

USPS/GFL-32. Please describe the material that makes up your DVDs. Is the material uniform in composition? How, if at all, have source materials changed over time?

USPS/GFL-33. What is the average life cycle of a gaming DVD?

USPS/GFL-34. Does the age of a gaming DVD or the number of times played have more effect on the average life cycle of a gaming DVD? What other factors can affect life cycles?

USPS/GFL-35. Does every GameFly DVD contain branding that identifies GameFly ownership? Please describe the branding.

USPS/GFL-36. Please provide all research and analysis conducted by GameFly to assess any environmental factors that may physically damage a DVD. Your answer should include, but not be limited to, impacts of temperature, temperature change and speed of temperature change.

USPS/GFL-37. Please describe the statistical categories tracked by GameFly related to how long its customers keep its DVDs. In your answer include statistical categories related to the number of times customers play the games and the effect this activity has on deterioration of DVD material.

USPS/GFL-38. Please produce all records of all meetings between GameFly and postal employees. Please include the topics discussed and the meeting minutes prepared by GameFly employees.

USPS/GFL-39. Please produce all communications with other parties identified in this case, including all parties who submitted any filing posted in the C2009-1 docket.

USPS/GFL-40. At any time did you consider preparing your mail pieces in the same manner that Netflix prepares its mail pieces? Please describe each factor that contributed to your decision related to preparing your mail pieces in the same manner as Netflix.

USPS/GFL-41. Please produce all communications related to GameFly's consideration concerning whether or not it should prepare its mail pieces in the same manner as Netflix.

USPS/GFL-42. Currently, at how many plants does GameFly pick up its mail?

USPS/GFL-43. Please produce all documents and communications related to GameFly's decision to use a flat-shaped mail piece.

USPS/GFL-44. Please produce all documents and communications related to GameFly's research, analysis or other consideration of price and cost differences between flat-shaped mail and letter-shaped mail for its round-trip DVDs.

USPS/GFL-45. Please produce all documents and communications related to GameFly's research, analysis or other consideration of breakage differences between flat-shaped mail and letter-shaped mail.

USPS/GFL-46. Please produce all records of all emails between GameFly and postal employees.