

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

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

**SECOND DISCOVERY REQUESTS OF THE UNITED STATES  
POSTAL SERVICE TO GAMEFLY, INC.  
(USPS/GFL-47 through -62)  
(May 11, 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:  
Daniel J. Foucheaux, Jr.  
Chief Counsel, Pricing and Product  
Support

Kenneth N. Hollies  
James M. Mecone

475 L'Enfant Plaza West, S.W.  
Washington, D.C. 20260-3083  
(202) 268-6525, Fax -3084  
May 11, 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 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. 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 Destinating GameFly Facility is the location to which GameFly brings its BRM mail pieces after it picks them up at the plant caller service location.

### **QUESTIONS**

USPS/GFL-47. Please refer to your answer to USPS/GFL-1, which asked for a complete list of each mail piece design used by GameFly.

- a. At any time did GameFly consider mailing its DVDs as one-ounce flats?
- b. Please describe the factors related to any consideration of mailing GameFly DVDs as one-ounce flats.

USPS/GFL-48. Please provide a complete history, including dates, of the classification and rates used for mailings of each mail piece design listed in your answer to USPS/GFL-1.

- a. Did GameFly mail any DVDs as First-Class Mail single ounce letters?
- b. If so, please provide GameFly’s breakage rate when it mailed DVDs as First-Class Mail single ounce letters.

- c. How does this breakage rate compare to GameFly's breakage rate when mailing DVDs as two-ounce flats?

USPS/GFL-49. Please provide a listing of all meetings and communications with Postal Service employees in which mail piece design, performance, including breakage and theft results, and rates and classification of GameFly mailings of DVDs were discussed. Please include dates and locations of each meeting, a list of GameFly employees attending, and a list of Postal Service employees attending.

- a. For each meeting and communication please provide a description of the discussion, including recommendations made by the Postal Service, and each response by GameFly.
- b. For each meeting and communication, please provide a description of any physical tests conducted on GameFly actual mail pieces or any prototype mail pieces that were considered.
- c. For each meeting and communication, please produce all documents and written communications, whether directed to the Postal Service or not, related to the meetings and communications referred to in your answer.
- d. For each response by GameFly to suggestions made by the Postal Service described above, please discuss the reasons why GameFly responded as it did, including any analysis employed to formulate the response.

USPS/GFL-50. Please provide a complete history of the physical design and composition of DVDs (as distinguished from mail piece design) containing games or other materials sent to GameFly subscribers and customers.

- a. For each DVD design, please provide the physical dimensions, including thickness.
- b. For each DVD design, please provide a complete description of the materials used in producing the DVD.
- c. For each DVD design, please compare and contrast the dimensions and the materials used to create the DVD with the dimensions and materials used in video DVDs sent by Netflix, Blockbuster, or any other mailers who distribute video DVDs through the mail. If you lack information about any particular mailer's practices, please answer with regard to GameFly's general knowledge of the DVD industry.
- d. For each DVD design, please compare and contrast the dimensions and the materials used to create the DVD with the dimensions and materials used in DVDs containing other data sent by Netflix, Blockbuster, or any other mailers who distribute such DVDs through the mail. If you lack information about any particular mailer's practices, please answer with regard to GameFly's general knowledge of the DVD industry.
- e. With regard to your answer to the previous question, how do the thickness, density, flexibility and manufacturing of the DVDs mailed by GameFly compare to DVDs used for new or alternative DVD formats, such as Blu-Ray?

USPS/GFL-51. Has GameFly conducted tests to determine mailability or machinability, including susceptibility to breakage and frequency of breakage on its own mail pieces? For each mail piece design listed in your answer to USPS/GFL-1, please describe any tests conducted, including dates, and the results of each test, including any quantitative analysis performed. Please produce all documents and communications related to any tests discussed in this answer, including any communications with the Postal Service.

USPS/GFL-52. For each type of DVD sent by GameFly through the mail to subscribers or other customers,

- a. Does GameFly obtain the DVDs from an independent producer, or does GameFly manufacture the DVDs under license?
- b. For those DVDs obtained from an independent producer, what is the average cost paid by GameFly for a game DVD?
- c. If GameFly manufactures the DVDs, what is the average cost per DVD incurred to produce them?
- d. For each type of DVD described above, what is the average retail price of the DVDs if they are marketed through outlet stores or through other means?
- e. For each type of DVD mailed by GameFly described above, compare and contrast the costs and prices of DVDs containing movies or other data mailed by Netflix, Blockbuster, or other mailers of DVDs. If you lack information about any particular mailer's practices or products, please answer with regard to GameFly's general knowledge of the DVD industry.

USPS/GFL-53. For DVDs that GameFly purchases from independent producers, does GameFly have permission to copy the DVDs it purchases? Has GameFly attempted to obtain this permission? Please describe the results of any discussions with DVD manufacturers related to obtaining permission to copy DVDs.

USPS/GFL-54. Please produce all weekly or other periodical reports, including reports internal to GameFly and reports provided to the Postal Service, related to the Postal Service's processing of GameFly mail.

USPS/GFL-55. With regard to DVDs sent by GameFly through the mail to its subscribers or other customers,

- a. Does GameFly monitor the type and number of uses by its subscribers or other customers for each of its DVDs?
- b. If yes, how does GameFly obtain information regarding the uses and practices of its subscribers or other customers?
- c. Does GameFly remove its DVDs from circulation after they achieve a certain number of uses?
- d. What is the threshold number of uses before GameFly removes its DVDs from circulation?
- e. Please explain how GameFly developed the threshold number of uses.

USPS/GFL-56. **[REDACTED]**

USPS/GFL-57. **[REDACTED]**

USPS/GFL-58. **[REDACTED]**

USPS/GFL-59. **[REDACTED]**

USPS/GFL-60. [REDACTED]

USPS/GFL-61. [REDACTED]

USPS/GFL-62. [REDACTED]