

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

COMPLAINT OF GAMEFLY, INC.

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Docket No. C2009-1

**APPLICATION OF GAMEFLY, INC.,
FOR NON-PUBLIC TREATMENT OF
ANSWERS TO USPS DISCOVERY REQUESTS
USPS/GFL-1, 4, 6, 10-12, 15, 17, 18, 23-25, 37, AND 38A-38D
(May 18, 2010)**

Pursuant to Rule 3007.22, 39 C.F.R. § 3007.22, GameFly, Inc. ("GameFly") applies for nonpublic treatment of portions of its Answers to USPS Discovery Requests USPS/GFL-12, 15, 17, 18, 24 and 37, and Appendices USPS/GFL-1, 4, 6, 10, 11, 23, 24, 25 and 38A through 38D to the Answers. GameFly has today filed copies of the unredacted versions of these documents under seal with the Commission, and served the same documents upon counsel for the Postal Service. All of these documents contain information that warrants protection from public disclosure under Rule 3007.22.

A. Answers Revealing Loss Prevention Efforts

Specifically, the responses to USPS/GFL-12 and 15 contain information regarding the specific measures used by GameFly to deter and investigate theft of its DVDs. As indicated in GameFly's response to USPS-GFL-17, DVD thefts result in a significant cost to GameFly. GameFly therefore undertakes substantial efforts to reduce theft. If GameFly's responses to USPS/GFL-12 and 15 were to be publicly released, potential thieves would be informed of the measures GameFly (and the Postal Inspection Service) take to discover and prosecute theft and would therefore be better

able to evade detection. To avoid undermining GameFly's theft reduction efforts, GameFly asks that it be permitted to file this information under seal.

Public disclosure of information contained in GameFly's answers to USPS/GFL-17 and 18 would impair GameFly's efforts to combat the theft problem. With respect to USPS/GFL-17, GameFly requests confidential treatment of the specific dollar estimate of the costs GameFly incurs due to DVD losses. First, this information about a specific cost element could provide GameFly's competitors with insight into the precise magnitude of a significant cost of business for GameFly. For this reason, GameFly does not publicly release this figure. Any information relating to these losses is released only as part of aggregated cost figures. Additionally, GameFly believes that the public release of this figure could increase the rate of loss of games in the hands of GameFly customers. Finally, GameFly has redacted the names of individual GameFly and Postal Service employees involved in loss prevention efforts to protect their privacy and to conceal their identities from potential wrongdoers.

GameFly's answer to USPS/GFL-18 contains a breakdown of theft rates by 5-digit customer ZIP Code. This request relates to material identified in response to USPS/GFL-12 and could therefore reveal the specific techniques used by GameFly to combat theft of its DVDs. Additionally, revealing this information, like the information in USPS/GFL-17, could encourage copycat crimes in locations with a significant theft problem.

Thus, to continue its efforts to deter theft and maintain the efficacy of those efforts, GameFly respectfully requests that it be permitted to file its Answers to USPS/GFL-12, 15, 17, and 18 under seal pursuant to Rule 3007.22.

B. Answers Revealing Geographically Disaggregated Mail Volume And Subscriber Data And Other Commercially Sensitive Operational Information

GameFly requests confidential treatment of portions of several other answers as they contain information about operational practices that either supply GameFly with a competitive advantage or would reveal aspects of GameFly's business model that could be used to GameFly's detriment by GameFly's competitors. In particular, GameFly requests that the Commission permit it to treat any disaggregated volume information as confidential. While aggregate volume information does not provide GameFly's competitors with a significant advantage, volumes broken down by destination, season, or in other manners can give insight into GameFly's business operations, mailing practices, and market penetration that could provide its rivals with a competitive advantage.

Thus, GameFly requests that the Commission permit it to protect disaggregated volume information in Appendix USPS/GFL-1. This Appendix contains GameFly's volumes disaggregated by mailpiece type, along with the loss and breakage rates for each type. Public disclosure of this disaggregated information could release of this information would give GameFly's competitors insight into the relative effectiveness of different GameFly mailpiece designs, allowing them to mimic the most successful and avoid the least successful without undergoing the same expense incurred by GameFly in testing and evaluating these pieces. As this information would therefore provide GameFly's rivals with a competitive advantage, GameFly requests permission to treat this information as confidential.

Appendix USPS/GFL-10 contains a breakdown of GameFly's return mail volume by GameFly distribution center. This disaggregated volume information could provide insight into the organization of GameFly's distribution and return operations as well as its relative penetration in regional markets. GameFly therefore asks that it be permitted to file the volume information contained in this Appendix under seal.

GameFly requests confidential treatment of the information in Appendix USPS/GFL-11 for the same reason. This data has been disaggregated even further—indicating the number of pieces returned by 5-digit ZIP Code—and therefore could provide GameFly's competitors with even more useful information than that contained in Appendix USPS/GFL-10. GameFly's competitors could use this information to pinpoint GameFly's presence in specific, localized markets. Disaggregated volume data of this kind are generally kept under seal in litigation.

Appendix USPS/GFL-20 contains disk damage rates by 5-digit ZIP Code. Because this Appendix reveals volume information with geographic specificity, it could provide GameFly's competitors with insight into GameFly's penetration in specific markets. GameFly's competitors could use this information to target marketing efforts to areas where GameFly has not yet established a strong presence, thus gaining a competitive advantage. Disaggregated volume data of this kind are generally kept under seal in litigation.

GameFly requests that the Commission permit it to protect information in its answers to USPS/GFL-23 and 24 regarding the volumes GameFly enters at particular entry sites and the shipment centers from which GameFly distributes DVDs to customers in specified areas. Revealing this information about GameFly's distribution

network and practices would allow GameFly's competitors to mimic GameFly's operating and distribution practices. Geographically disaggregated data of this kind are generally kept under seal in litigation.

Likewise, GameFly requests confidential treatment of information in Appendix USPS/GFL-24 that, if released, would permit competitors to match GameFly's originating and destination facilities, thus gaining insight into the operating details of GameFly's network. This Appendix also contains disaggregated volumes by 3-digit ZIP Code. Revealing this information would provide GameFly's competitors with information about GameFly's presence in specific markets and potentially provide them with opportunities to take advantage of markets not yet well served by GameFly. Additionally, GameFly requests that it be permitted to protect the narrative portion of its response to USPS/GFL-24 that identifies the specific percentage of shipments that GameFly sends to customers from their primary distribution centers. Geographically disaggregated data of this kind are generally kept under seal in litigation.

Appendix USPS/GFL-25 lists GameFly's customers by 5-digit ZIP Code. This information is commercially sensitive as it reveals, with geographic specificity, GameFly's market penetration. GameFly's competitors could use this information to target marketing efforts to areas where GameFly has not yet established a strong presence, thus gaining a competitive advantage. GameFly therefore asks that the Commission permit GameFly to file this information under seal. Geographically disaggregated data of this kind are generally kept under seal in litigation.

Finally, GameFly seeks to protect the average rental period contained in its answer to USPS/GFL-37. Revealing this information would allow GameFly's

competitors to gain insight into the behavior of GameFly's customers and adjust their business practices accordingly. The information would also enable competitors to estimate GameFly's inventory turnaround time, an major determinant of operating cost. The average time GameFly customers keep the games they receive from GameFly is an important and commercially sensitive aspect of GameFly's business model.

C. Evaluation of Mailpiece Designs

Two Appendices, USPS/GFL-4A and USPS/GFL-6, contain detailed discussion of the performance of various GameFly mailpiece designs. Appendix USPS/GFL-4A consists of an internal GameFly email chain discussing test results of various mailpieces. Appendix USPS/GFL-6 is a Power Point presentation comparing test results returned from several different mailpiece designs. While the design parameters of GameFly's mailpieces are not confidential, given that they are readily available by examining a mailpiece, the relative performance of various designs provides information regarding which designs are likely to be most economical to a mailer. The Appendices in question report breakage rates for individual designs and contain discussions of how these designs run on Postal Service equipment.

The public release of this information would give GameFly's competitors insight into the relative viability of different mailpiece designs, allowing them to mimic the most successful and avoid the least successful without undergoing the same expense incurred by GameFly in testing and evaluating these pieces. As this information would therefore provide GameFly's rivals with a competitive advantage, GameFly requests permission to treat this information as confidential.

D. Names of Individual Employees

In accordance with the Presiding Officer Ruling 17 issued April 15, 2010, GameFly requests permission to file under seal appendices to its answers containing the names of individual GameFly and Postal Service employees. See POR-17 at 28, Ordering Paragraph 4 (“GameFly will be required to redact the names, title, and identifying characteristics . . . of all individual employees.”) This request applies to Appendices USPS/GFL-38-A, 38-B, 38-C, and 38-D (GameFly and Postal Service employees in attendance at National Postal Forum and meetings to discuss theft and other issues). GameFly requests permission to file these documents under seal in their entirety as they consist almost entirely of the names and identifying information of employees.

Respectfully submitted,

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