

PRESIDING OFFICER'S  
RULING NO. C2009-1/21

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Complaint of GameFly, Inc.

Docket No. C2009-1

PRESIDING OFFICER'S RULING  
ESTABLISHING PROCEDURAL DEADLINES  
FOR PRESENTING UNRESOLVED DISCOVERY  
DISPUTES TO THE PRESIDING OFFICER

(Issued May 21, 2010)

On May 14 and 21, 2010, GameFly, Inc. (GameFly) filed objections to certain of the Postal Service's first and second round discovery requests.<sup>1</sup> In order to ensure that discovery is completed in an orderly and timely fashion prior to the hearings scheduled to commence on June 17, 2010, I am establishing the procedural dates set forth on the Attachment hereto.

BACKGROUND

In a prior ruling, I established a procedural schedule that provided for hearings on GameFly's direct case to commence on June 17, 2010.<sup>2</sup> That same ruling established May 26, 2010 as the close of initial discovery on GameFly's direct case. *Id.* Shortly

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<sup>1</sup> Objections of GameFly, Inc. to USPS Discovery Requests USPS/GFL-5, 8, 12, 15-18, 25, 26, 28, 38, 39 and 46, May 14, 2010 (GameFly's Objections); see also Objections of GameFly, Inc. to USPS Discovery Requests USPS/GFL-49-51, 54, 57, and 59-62, May 21, 2010 (GameFly's Second Set of Objections).

<sup>2</sup> Presiding Officer's Ruling Establishing Procedural Schedule, May 7, 2010 (P.O. Ruling C2009-1/20).

before the issuance of P.O. Ruling C2009-1/20, the Postal Service served its first round of discovery requests on GameFly.<sup>3</sup> Thereafter, the Postal Service filed its second round of discovery requests and its first request for admissions on GameFly.<sup>4</sup>

GameFly's May 14, 2010 objections to Postal Service discovery requests are directed at requests contained in the Postal Service's initial round of discovery served on May 4, 2010. These objections raise issues of relevance, undue burden, overbreadth, and privilege claims, which include the settlement privilege. GameFly's Second Set of Objections are similar, even though they also raise further privilege claims based upon attorney client communications and attorney work product. See, e.g., GameFly's Second Set of Objections at 6-7. The latter are directed at the requests contained in the Postal Service's second set of discovery requests and first set of requests for admission. Unless the parties can reach an informal resolution of these issues, the rules of practice provide that the Postal Service may file a motion to compel for the first set of requests on or before May 28, 2010, and that GameFly will have until June 4, 2010 to respond. Similarly, those rules would permit the Postal Service to file a motion to compel for the second set of requests on or before June 8, 2010, and that GameFly will have until June 15, 2010 to respond.

Should the Postal Service succeed in obtaining at least some of the discovery material at issue, the time available for it to obtain additional information through follow-up requests prior to commencement of the June 17, 2010 hearing will be extremely limited. This will be true even with a prompt ruling by the Presiding Officer.<sup>5</sup>

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<sup>3</sup> First Discovery Requests of the United States Postal Service to GameFly, Inc. (USPS/GFL-1 through 46), May 4, 2010.

<sup>4</sup> Second Discovery Requests of the United States Postal Service to GameFly, Inc. (USPS/GFL-47 through 62), May 11, 2010; and First Request for Admissions of the United States Postal Service to GameFly, Inc., May 11, 2010.

<sup>5</sup> The intent of the Presiding Officer is to issue a ruling promptly on any unresolved discovery issues presented by the parties. Prior rulings in this proceeding will facilitate such rulings. See Presiding Officer's Ruling on Postal Service Claims of Confidentiality and Privilege, April 15, 2010 at 6 (P.O. Ruling C2009-1/17). It must nevertheless be noted that one class of issues (*viz.* issues involving the settlement

## DISCUSSION

*Deadline for motions to compel and answers.* In the event discovery disputes cannot be resolved and the Postal Service elects to file a motion to compel, it shall file any such motion with respect to unresolved disputes that arise from its first two sets of discovery requests, or its first set of requests for admission, no later than May 28, 2010. Answers to any Postal Service motion to compel shall be filed by GameFly no later than June 3, 2010.

*Production in response to orders to compel.* In the event the Presiding Officer orders production of any documents or information in response to a Postal Service motion to compel, GameFly shall be prepared to produce such documents and information no later than close of business on the third business day following issuance of the Presiding Officer's ruling.

## RULING

The procedural schedule for presenting these unresolved discovery disputes involving GameFly's direct case to the Presiding Officer is set forth in the Attachment to this Ruling.

Dan G. Blair  
Presiding Officer

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privilege) has not previously been presented in this proceeding and, if presented, could delay at least slightly the Presiding Officer's ruling.

**Unresolved Discovery Disputes  
Procedural Schedule for Docket No. C2009-1**

(May 21, 2010)

Deadline for motions to compel production  
responsive to the first two sets of discovery  
requests or to respond to the first set of  
requests for admission

May 28, 2010

Answers to motions to compel

June 3, 2010