

PUBLIC (REDACTED) VERSION

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

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

**ANSWERS OF GAMEFLY, INC., TO
USPS DISCOVERY REQUESTS
USPS/GFL-47 THROUGH 60
(May 25, 2010)**

GameFly, Inc., (“GameFly”) respectfully submits its answers to discovery requests USPS/GFL-27-60, which the Postal Service served on May 11, 2010. Each discovery request is quoted verbatim and then followed by GameFly’s answer. Except where noted otherwise, these answers were prepared under the supervision of David Hodess, CEO of GameFly.

Respectfully submitted,

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May 25, 2010

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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.

Answer:

a. Yes. In fact, the vast majority of mailer types 3, 4 and 5 in Appendix USPS-GFL-1 were sent as one-ounce flats. Because the breakage rates were too high, GameFly switched to a mailer with a protective cardboard insert (mailer type 6).

b. Pro: lower postage costs. Con: increased disc breakage and a resulting degradation of customer service. On balance, GameFly concluded that these disadvantages outweighed the potential savings in postage costs.

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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?

Answer:

a. No. GameFly has always sent and received its DVD mailers as single-piece First-Class flats. Of the mailer designs listed in Appendix USPS-GFL-1 to GameFly's answer to USPS/GFL-1, the vast majority of designs 3, 4 and 5 were mailed as one-ounce flats. Because breakage rates were too high, GameFly switched to a mailer design with a cardboard insert (type 6), mailed as a two-ounce flat.

b. N/A

c. N/A

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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.

Answer:

(a)-(d). GameFly has objected to these questions. Without waiving its objections, however, GameFly states that certain responsive information appears in GameFly's answers to USPS discovery requests USPS/GFL-6 and 38; GameFly Complaint ¶¶ 26-34, 44-47; and Joint Statement of Undisputed and Disputed Facts (July 20, 2009) ¶¶ 113-131.

GameFly further states that it participated in several meetings with Postal Service employees where they brainstormed about possible operational or design solutions to the disc breakage problem. Although GameFly's mailpieces were mailed at First-Class Mail flats prices, were flat-shaped, and included the

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markings “**FIRST-CLASS MAIL FLAT**” and “**PROCESS ON AFSM 100**,” Postal Service employees suggested that GameFly could reduce the percentage of inbound pieces that received automated letter processing by further increasing mail piece height, width, and thickness.

One suggestion that the Postal Service has highlighted in this proceeding—to use mailers at least 8.5” tall—proved to be unworkable because GameFly’s envelope manufacturer could not fabricate envelopes taller than 8 3/8” in height at that time. In response to the Postal Service’s suggestion, however, GameFly did test mailers larger than the designs previously used by GameFly. All of larger mailers produced a total mailpiece weight above one ounce. See Appendix USPS-GFL-6; *compare* Joint Statement of Undisputed And Disputed Facts (July 20, 2009) at ¶ 52 (“The Postal Service acknowledges that an 8.5” tall mailpiece with sufficient stiffness not to fold over may well exceed one ounce.”). GameFly’s tests indicated that including a protective cardboard insert was more effective in minimizing disc breakage than increasing the height of the mailpiece. The mailer design that produced the least breakage was type 9 in Appendix USPS-GFL-6. GameFly began using that mailer design as a result, and still uses it today.

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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?

Answer: GameFly has objected to this question. Without waiving its objections, however, GameFly provides the following answers:

a. GameFly has not performed a scientific engineering study of DVD dimensions. The company's understanding, however, is that the standard dimensions of DVDs used for both games and movies are a diameter of 120mm and a height of 1.2 mm.

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b. GameFly personnel are not experts on this subject. The company understands, however, that all standard DVDs, for both games and movies, are made from two wafers of clear polycarbonate plastic bonded together with a very thin information-carrying layer or layers in between.

c. GameFly understands that movie and game DVDs (other than mini-DVDs, which are not at issue in this case) have the same dimensions and are constructed of the same kind of polycarbonate plastic.

d. See response to part c.

e. GameFly has not studied this issue. The company understands, however, that standard and Blu-Ray DVDs have the same physical dimensions as standard DVDs and CDs, and are constructed from the same kind of polycarbonate plastic. The design differences between standard and Blu-Ray DVDs involve the resolution of the information-carrying layer(s) that are sandwiched between the two polycarbonate wafers that are bonded together to form the disk, and the wavelength of the light source used to read the information carried in the disks.

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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.

Answer: GameFly has objected to this question. Without waiving its objections, however, GameFly states that certain responsive information appears in GameFly's answer to USPS/GFL-6.

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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.

Answer:

a. GameFly buys its DVDs from publishers and independent distributors. GameFly does not manufacture its own DVDs

b. Approximately **[BEGIN GAMEFLY PROPRIETARY]** **[END GAMEFLY PROPRIETARY]** per unit.

c. N/A

d. Approximately **[BEGIN GAMEFLY PROPRIETARY]** **[END GAMEFLY PROPRIETARY]** per unit.

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- e. GameFly has not studied the wholesale or retail prices of non-game DVDs.

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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.

Answer:

GameFly does not copy DVDs, and has not sought permission from manufacturers to do so. To the best of GameFly's knowledge, game DVDs are manufactured by the console manufacturers.

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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.

Answer:

GameFly is producing all responsive documents for the most recent 12 months as Appendix USPS/GFL-54.

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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.

Answer:

a. No.

b. N/A

c. No. GameFly removes a DVD from circulation only when the DVD is sold or too badly damaged to be playable.

d. N/A

e. N/A

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USPS/GFL-56. In paragraph 30 of the GameFly Memo, GameFly states “[s]ince 2002, Netflix return mailers have suffered unacceptably high rates of DVD breakage whenever processed on automated letter processing equipment. Almost immediately, many mail processing sites ... had begun ‘handling the return mailers manually.’” Please produce all documents and communications, including internal documents and communications with the Postal Service, that support these assertions.

Answer:

GameFly bases the quoted statements on documents produced by the Postal Service in discovery in this case. Paragraph 30 of GameFly’s April 12 memorandum provides citations to a small sample of the documents. Many of the other documents produced by the Postal Service are in the same vein, however. GameFly has provided the Postal Service with CDs containing Bates-numbered copies of all the documents provided by the Postal Service to GameFly in discovery.

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USPS/GFL-57. [BEGIN NETFLIX PROPRIETARY]

[END NETFLIX PROPRIETARY] Has GameFly requested that the Postal Service separate its outgoing return pieces from customers' return pieces? How did the Postal Service respond to this request?

Answer:

Upon inquiry, the Postal Service has clarified that the question seeks to determine whether GameFly has asked the Postal Service to separate (1) pieces that are being returned to GameFly because the subscriber is done with them from (2) pieces that are being returned because they were undeliverable to the subscriber as addressed. GameFly has not requested that the Postal Service perform this separation, but has requested that the Postal Service return all undeliverable First-Class Mail to GameFly without additional postage—a service that GameFly, like other customers of the Postal Service, is entitled to receive as part of First-Class Mail service. The Postal Service presumably separates undeliverable pieces from pieces with DVDs that GameFly's subscribers are returning to GameFly after using the DVDs, in order to calculate the applicable First-Class Mail postage and Business Reply Mail fees that the Postal Service is entitled to collect from GameFly for the latter kind of return mail.

Finally, GameFly notes that the paragraph 73 of the document cited in the first sentence of the question concerned piece separation for a purpose different than the purposes discussed in the first paragraph of this answer.

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USPS/GFL-58. Paragraphs 89 and 90 of the GameFly Memo describe the Postal Service's development of a round-trip DVD mail piece and mailers' resistance to using that mail piece. Please explain whether GameFly attempted to use this design for its mail piece. In your answer, please include the reasons for GameFly's decision.

Answer: GameFly has objected to this question. Without waiving its objections, however, GameFly provides the following answer:

GameFly does not know whether it ever tested the referenced mailer design. According to the minutes of a meeting of the Postal Service's Round-Trip Disc Mail ("RDM") Work Group in September 2005, the GameFly manager who participated in the meeting stated that "GameFly would be willing to participate in the experiment[al use of the mailpiece] for part of its mail." GFL74294. GameFly has been unable to determine, however, whether the Postal Service actually went forward with the experiment before abandoning the RDM initiative, or whether GameFly participated in the experiment if it occurred. GameFly has not found any records that answer those questions, and the GameFly manager identified in GFL74294 left the company in 2007.

In light of GameFly's subsequent experience with tests of the effectiveness of alternative mailer designs in preventing disc breakage, GameFly would be dubious about using the referenced mailer design unless it bypassed automated letter processing.

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USPS/GFL-59. Paragraph 105 of the GameFly Memo refers to envelope testing conducted by GameFly and the Postal Service in 2007 and 2008. How did this testing affect GameFly's mail piece design? Please produce all documents and communications related to this testing.

Answer: GameFly has objected to this question. Without waiving its objections, however, GameFly provides the following answers:

Please see GameFly's answer to USPS/GFL-6 for information on mailer tests.. The test data indicated that minimizing disk breakage required use of a cardboard insert and mailing the piece as a two ounce flat.

Please also see the email thread reproduced in Appendix USPS/GFL-59.

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USPS/GFL-60. In paragraph 106 of the GameFly Memo, GameFly states that “[f]rom July 2007 to July 2008, [it] performed ‘live mail’ tests of multiple mailer configurations.” Please produce all documents and communications related to these tests.

Answer: GameFly has objected to this question. Without waiving its objection, GameFly states that responsive information appears in GameFly’s answers to USPS/GFL-1 through 6.